

GegenStrömung CounterCurrent



Proposed questions to the Government of the Republic of Turkey

Regarding

Economic, Social and Cultural Rights of the population affected by large dams, notably the Ilisu Hydropower Plant

Potsdam, 29 April 2010

Submitted at the occasion of the Pre-Sessional Working Group, 25-28 May 2010 of the Committee on Economic, Social and Cultural Rights by:

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Introduction

This submission has been prepared by the Initiative To Keep Hasankeyf Alive and CounterCurrent. The *Initiative To Keep Hasankeyf Alive* is an association of 73 organisations including local authorities, professional organisations, human rights, women's, cultural and environmental organisations. It is based in the five provinces affected by the Ilisu dam. Its mission is to protect the human and cultural rights and environmental heritage of the people affected by the Ilisu dam project and to foster the sustainable development of the region. *CounterCurrent (GegenStrömung)* is a German network of non-profit organisations campaigning for the observance of highest human rights and environmental standards in economic activities abroad conducted or supported by German companies, banks and the Government. Its legal sponsor is the *Institute for Ecology and Action Anthropology (INFOE)*, a non-profit organisation founded in 1987 to support indigenous peoples in the defence of their human rights (www.infoe.de).

Our submission is a response to the State party's initial report and the lack of the Government of Turkey to adequately address the economic, social and cultural rights of dam affected people, including those people affected by the Ilisu dam project on the Tigris river in Southeast Turkey.

In its initial report the Turkish government states that

- food related problems in Turkey stem from poor level of knowledge on food and nutrition rather than economic hardships (para 394); and
- the protection of the historical, natural and cultural heritage (...) are among the indispensable parts of the cultural policy of Turkey (para 639).

With regards to the population affected by dam construction in Turkey and specifically by the Ilisu dam project, we have to conclude that the State party has failed to fulfil its obligations under Article 11 of the Covenant, concerning the rights to an adequate standard of living, including adequate food and housing, and to the continuous improvement of living conditions. We also conclude that the State party has failed to fulfil its obligation under Article 12 of the Covenant, concerning the right to the highest attainable standard of health. We further conclude that – in contrast to the assertion in the state report - food related problems not only arise from a lack of knowledge, but can also stem from measures taken by the Turkish government which can severely aggravate the economic conditions of people affected by infrastructure projects like dams and infringe on their right to an adequate standard of living. We also question Turkey's claim that the protection of the historical, natural and cultural heritage is guaranteed by existing Turkish procedures and conclude that the State party has failed to fulfil its obligations under Article 15 of the Covenant, concerning the right of everyone to take part in cultural life.

The Ilisu dam project is the largest hydropower plant currently under preparation by the Turkish government. Creating a reservoir of 313 km², it would result in the displacement of up to 80,000 people¹. The governments of Germany, Austria and Switzerland had granted export credit guarantees to European companies and banks providing deliveries for the

¹ 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

project. As they found the project to be in breach of the relevant World Bank standards, the export credit agencies (ECAs) attached 153 conditions to these guarantees, including requirements on compensation and resettlement. International experts monitored the implementation of the conditions. In July 2009, the ECAs withdrew the guarantees due to non-compliance by the Turkish authorities.²

Turkey has made it clear that it will not implement the conditions designed to bring the project up to international standards, if the export credit guarantees are withdrawn. Currently, two Turkish banks have pledged additional funding and construction has re-started in March/April 2010.

The right to an adequate standard of living, including adequate food and housing, and to the continuous improvement of living conditions (Art. 11)

Several issues indicate that Turkey is in continuous breach of its obligations under the Art. 11 of the Covenant:

- People near the construction site in the village of Ilisu have been told to leave their homes by summer 2010. New houses for them have been built. However, no adequate substitute agricultural land is available in the resettlement area. The affected people are mostly small-scale farmers currently using the fertile river bed. The resettlement plan drawn up to meet the conditions imposed by the ECAs had envisaged to terrace the surrounding land and establish dairy agriculture. With their withdrawal these plans were abandoned and people fear to be left without any source of food or income.
- In 2009 inhabitants of the village Kesmeköprü III were expropriated 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.³
- Fact-finding missions by non-governmental organisations have established that in the past dam affected people, e.g. by the Birecik dam, have been left without new sources of income and lead a life in great poverty.⁴
- Consultations with the affected population that were held in response to the ECAs' demand that World Bank standards should be fulfilled were utterly inadequate: The participants were intimidated by the presence of security forces, statements by dam opponents were distorted, etc.⁵
- A fact-finding mission by CounterCurrent and Berne Declaration in May 2009 established that thousands of nomadic families living off the Tigris valley and its confluent Botan had not been informed about the project, nor had they been offered

² http://www.agaportal.de/en/aga/nachhaltigkeit/umwelt/projekt/ilisu/presseinfo/2009-07-07_ilisu.html

³ <http://www.swr.de/blog/tuerkei/2009/12/08/der-ilisu-staudamm-verstaatlichung-auf-tuerkisch/>,
<http://www.gegenstroemung.org/drupal/node/67>

⁴ "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 9-16 October 2000. ISBN 1-900175-36-3.

⁵ <http://www.hasankeyfgirisimi.com/en/index-Dateien/batmuni.htm>

any compensation or alternative means of income. The nomads themselves clearly stated that they will not be able to find other land to continue their livelihood⁶.

- The Turkish resettlement law (No. 5543) clearly breaches World Bank standards intended to safeguard an adequate standard of living for resettlers. It stipulates that resettlers who do not receive sufficient compensation to buy a new house and build up a new livelihood, be offered loans. Especially for poor small peasants, forced to resettle to an unfamiliar urban environment where they are unable to use their skills to generate a new income, this bears a high risk of impoverishment, which is why the World Bank condemns the practice of providing loans to people without material assets who just lost their entire livelihood.⁷
- The Turkish expropriation laws Nos. 2942 and 4650 regulate compensation levels for people who lose their assets due to an infrastructure project. However, certain groups of people (tenants, employees, government officials) are not entitled for compensation. The loss of business opportunities is not compensated for, and only the market value of the material assets is compensated. This is highly insufficient in cases like dam projects. 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 and compensation of lost business opportunities.⁸

In concluding we observe that the provisions of the Turkish resettlement and expropriation laws in general and the expropriation of villagers relating to the construction of the Ilisu dam constitute violations of the Covenant in the following aspects:

- the right to adequate food as described in General Comment No. 12, para 14 (the obligation of the State party to achieve progressively the full realization of the right to adequate food), para 15 (the obligation of the State party to respect existing access to adequate food) and para 7 (referring to the notion of sustainability and food security)
- the right to housing as described in General Comment No. 4, para 8 (c) and 9.
- the right to housing as defined in General Comment No. 7, para 7, para 15 (on appropriate procedural protection including an opportunity for genuine consultation), para 16 (stating that individuals should not be rendered vulnerable to the violation of other human rights by forced eviction and should be provided with inter alia access to productive land), para 18 (explicitly stating that full respect of World Bank or OECD guidelines on resettlement is essential)

Proposed questions:

1. Which steps does the State party take to fulfil its obligation to respect, protect and realise the right to an adequate standard of living, including the right to food and housing, and to the continuous improvement of living conditions, of the sedentary

⁶ 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

⁷ Berne Declaration/ECA Watch Austria / WEED: Evaluation of the Terms of Reference on resettlement and their implementation for the Ilisu Dam Project in Turkey. Aug 2007. http://m-h-s.org/ilisu/upload/PDF/Analysen/Evaluation_of_ToR_resettlement_EvB_Sept_2007.pdf

⁸ Ibid.

- people affected by the Ilisu dam, given the lack of substitute land and low compensation levels as demonstrated in the case of the Ilisu and Kesmeköprü III villages?
2. Which steps does the State party take to fulfil its obligation to respect, protect and realise the right to an adequate standard of living, including the right to food and housing, and to the continuous improvement of living conditions of the nomadic population affected by the Ilisu dam?
 3. Which precautions does the Turkish government take to prevent that the provisions of the laws on expropriation (Law Nos. 2942/4650) - notably the exclusion of certain groups of people from compensation, the lack of compensation for the loss of business opportunities, and the compensation of only the market value of lost assets - leads to the impoverishment of people expropriated in the course of an infrastructure project and violates their right to an adequate standard of living, including the right to food and housing?
 4. Which precautions does the Turkish government take to prevent that the provisions of the law on resettlement (Law No. 5543) - notably the loan-based resettlement of people who do not own enough assets to build up new means of existence from their compensation - lead to the impoverishment of people expropriated in the course of an infrastructure project and violates their right to an adequate standard of living, including the right to food and housing?

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

Experts warn of an increase in water-borne diseases and a sharp deterioration of the water quality due to the damming of the Tigris river. Planned water treatment plants are deemed insufficient by the experts.⁹ As stated above, consultations on the dam's impacts were flawed, although the decline in water quality would affect hundreds of thousands of people in the region and far downstream in neighbouring country Iraq¹⁰. 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 which depends on the Tigris river for its agricultural needs may face severe impacts on its food security if the spring floods are kept back in the Ilisu reservoir, especially if another smaller dam directly downstream of Ilisu which is planned for irrigation (Cizre dam) will also be constructed. In addition, regarding a different dam project in Turkey (İkizdere Barajı), the administrative court in Rize province has lifted the licence for the dam due to the lack of a watershed plan. It refers to Article 56 of the Constitution granting the right of the people to a healthy environment¹¹. Regarding the Tigris river and Ilisu dam, a watershed plan is also lacking.

We conclude that the planning and construction of the Ilisu dam constitutes violations of the Covenant in the following aspects:

⁹ EAWAG – aquatic research. Independent Review of the Environmental Impact Assessment Report (EIAR) 2005 on the future Ilisu Dam (Turkey). http://m-h-s.org/ilisu/upload/PDF/Analysen/Hydrol-GutD8_20EAWAG_Ilisu_02.2006.pdf

¹⁰ Phil Williams & Associates, A Review of the Hydrologic and Geomorphic Impacts of the Proposed Ilisu Dam. http://m-h-s.org/ilisu/upload/PDF/Analysen/PWA_Ilisu_Report.pdf

¹¹ <http://www.hurriyetdailynews.com/n.php?n=environmentalists-to-have-strong-card-to-play-against-hydro-plants-2010-02-02>

- the right to the highest attainable standard of health as described in General Comment No. 14, para 11 (stressing the right to the underlying determinants of health such as access to safe and potable drinking water and an adequate supply of safe food, and the right to participation of the population in all health-related decision-making)
- the right to water as defined in General Comment No. 15, paras 2, 6, 7, 8 and 10 referring to the right to safe and sufficient water for personal, domestic and agricultural use and to be free from interference like the contamination of water supplies; para 16 (e) referring to nomadic population; paras 17, 19 and 21 regarding the state parties' obligations to respect the right to water and to take steps towards the full realization of this right; and para 31 stating the state obligation to respect the enjoyment of the right to water in other countries

Proposed questions:

1. Which measures is the State party taking to fulfil its obligations to respect and protect the right to water and food security of populations living in downstream areas, including affected neighbour states?
2. Which measures is the State party taking to protect the right of the affected population to a healthy environment given the judgement of the administrative court in Rize province stating that a watershed plan is a prerequisite for licensing a dam and for the protection of the right to a healthy environment?

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

The Ilisu dam will affect numerous threatened or endemic species like the Euphrates soft-shell turtle, red-wattled plover, striped hyena, Bonelli's Eagle and others¹², as well as cultural assets of outstanding value. Approximately 300 archaeological sites would be flooded as well as the 10,000 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. 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 continued¹³. 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.

We conclude that the flooding of the antique town of Hasankeyf and the surrounding Tigris valley by the Ilisu dam reservoir would constitute a violation of the Covenant in the following aspects:

¹² http://m-h-s.org/ilisu/front_content.php?idcat=126

¹³ 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 ,
<http://www.designconsult.com/ilisu/page.php?modul=HTMLPages&pid=67>

- the right to take part in cultural life as explained in General Comment No. 21, para 6, 16 (a), 49 (b), (d), (e), 50 (a), (b), 54 (b) describing the availability of cultural goods and natural features as a condition for the full realization of the right to take part in cultural life; calling for the State party's obligation not to interfere with the access to cultural goods and to ensure the access to cultural goods; pointing out to the relevance of access to cultural goods; describing the right to take part freely in any important decision-making process that may have impact on his or her way of life; and stressing the obligation of the state to respect and protect cultural heritage at all times.

Proposed question:

3. Which measures will the Turkish government take to protect the right of the local population to take part in cultural life in light of the envisaged drowning of the town of Hasankeyf, up to 300 archaeological sites and important natural features in the Ilisu reservoir?