



Human rights aspects of the construction of the Ilisu Dam and Hydroelectric Power Plant Project in Turkey

I. Introduction

1. Purpose and nature of this paper

- Any large dam construction project has a strong impact on the human rights of the people affected by it. A vast array of human rights and pertaining international standards are applicable (see II).
- The purpose of this position paper is to provide a human rights review of the project by looking at selected areas of the project, assessing them against international human rights standards and giving pertinent recommendations.
- This assessment is of a preliminary nature as it is limited to the study of available documents. No additional fact finding was undertaken.

2. The Ilisu Dam Project

- The Ilisu Dam and hydroelectric power plant is part of the Turkish South-eastern Anatolia Project (GAP). It is located at the Tigris river, 65 km upstream of the Syrian border and is planned to create a reservoir with a live storage volume of 7460 million m³, extending 136 km up the Tigris valley.
- Its planning started in 1954, with a preliminary report about the Tigris River in 1971 and a feasibility study and a final project design in 1982 being important steps in the process. After halting of the project in 2001 because of serious concerns regarding its consequences for the environment, a renewed effort has been taken in the last years, with updates of the Environmental Impact Assessment Report (UEIAR) and of the Resettlement Action Plan (URAP) in July 2005.
- Main actors in the Ilisu project are the Turkish Government and the Ilisu Consortium, with the Austrian VA Tech Hydro as project leader.

3. AI's approach to the Ilisu Dam Project on the basis of international human rights standards

- Amnesty International Austria works for a “world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.”
- Turkey is directly bound by international law to respect and ensure the human rights of all people under its jurisdiction. While Turkey has the primary responsibility in this regard, the private corporations, forming the ILISU consortium, have legal and moral obligations – within their respective spheres of activity and influence – to respect and promote human rights.
- The Ilisu Dam and HEPP project will directly affect the human rights of at least 52.433 persons (see III.4.) and might have an effect on the human rights of many more. Amnesty International Austria takes the position that the Ilisu Dam and HEPP Project must be undertaken in full accordance with international human rights standards, and this is the focus of the present analysis. It does not deal with other issues, such as the international legal questions in Turkey's relations with Syria and Iraq, compliance with ecological standards or the preservation of cultural heritage.

II. The human rights analytical frame

1. Applicable human rights

- International human rights standards derive from international treaties as well as policies and declarations by international organizations. Of particular relevance in this context are the following treaties which Turkey has ratified:
 - the European Convention on Human Rights (ECHR),
 - the Revised European Social Charter (Rev ESC),
 - the International Covenant on Economic, Social and Cultural Rights (ICESCR),
 - the International Covenant on Civil and Political Rights (ICCPR).
- The Ilisu Dam and HEPP Project involves a number of fundamental **human rights** which are guaranteed by international law:
 - The right to property (Art 1 of Additional Protocol No.1 to ECHR) protects possessions against interference by the state which is not done in accordance with minimum standards, in particular an adequate compensation scheme.
 - The right to home (Art 8 ECHR, Art 17 ICCPR) and the right to housing (Art 11 ICESCR, Art 31 Rev ESC) protect the home and houses of people against arbitrary interference and contains the obligation to provide adequate compensation in case of public-interest-based eviction.
 - More broadly, the right to an adequate standard of living (Art 11 ICESCR) obliges states to refrain from any action which lowers or has a negative effect on the standard of living of right-holders as well as to take all steps to improve the people's standard of living. This encompasses the cultural adequacy of the living conditions of people.
 - Closely linked, the right to work (Art 6 ICESCR, Art 1 Rev ESC) protects the opportunity of everyone to gain a living by work which is freely chosen and accepted. States have an obligation not to interfere with this right as well as to take appropriate steps to safeguard and fulfil this right.
 - The right to the highest attainable standard of health (Art 12 ICESCR, Art 11 Rev ESC) obliges states not to lower the standards of health care as well as to refrain from any action which might increase risks to health.

- The right to life (Art 6 ICCPR, Art 2 ECHR) obliges states not to contribute to conditions which might threaten the lives of people.
- The right to education (Art 13 ICESCR, Art 2 of Additional Protocol 1 to ECHR) obliges states to maintain the level of existing educational institutions and guarantee equal access to these institutions.
- The right to participation guarantees any person a right to take part in the conduct of public affairs (Art 25 ICCPR), at all stages of development projects, and to be entitled to have adequate access to relevant information (Art 19 ICCPR).
- The right to an effective remedy in case of human rights violations as well as the right to a fair trial (Art 13 and 6 ECHR, Art 2/3 and 14 ICCPR) contain certain procedural standards in case of grievances.
- Finally, the right and principle of non-discrimination (Art 26 ICCPR, Art 2/1 ICCPR, Art 14 ECHR) protects against any distinctions in treatment which are linked to certain criteria (e.g. religion, ethnicity, language, sex) and which are not justified by objective reasons.

2. International standards regarding resettlement

- **Other relevant international standards** have been elaborated by international governmental organizations, whose mandates encompass carrying out or supporting development projects involving resettlement. The most relevant international instruments related to the issue of resettlement are:
 - World Bank Operational Policy/Bank Procedures 4.12 (2001), replacing the earlier World Bank Operational Directive OD 4.30 on Involuntary Resettlement
 - the OECD Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects, Nr. 3 (1992),
 - The standards contained therein are further explained in the International Finance Corporation's Handbook for Preparing a Resettlement Action Plan (2002) and in World Bank's Involuntary Resettlement Sourcebook (2004).
 - Furthermore, the Report of the World Commission on Dams (2000), a panel of experts convened by the World Bank and the World Conservation Union, contains relevant guidelines which have been accepted by the European Union as pertaining to applicable international standards in the field.

- The instruments mentioned above are not treaties under international law, but have the character of so-called soft law; that is, they are not as such legally binding. However, the detailed standards contained therein provide guidance for the interpretation of the legally binding provisions in international human rights treaties. With regard to the soft law standards mentioned above, General Comment Nr. 7 of the Committee on Economic, Social and Cultural Rights on the right to housing (forced evictions) states this very clearly:

“Some institutions, such as the World Bank and the Organisation for Economic Cooperation and Development (OECD) have adopted guidelines on relocation and/or resettlement with a view to limiting the scale of and human suffering associated with forced evictions. Such practices often accompany large-scale development projects, such as dam-building and other major energy projects. Full respect for such guidelines, insofar as they reflect the obligations contained in the Covenant, is essential on the part of both the agencies themselves and States parties to the Covenant. The Committee recalls in this respect the statement in the Vienna Declaration and Programme of Action to the effect that ‘while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights’ (Part I, para. 10).“

3. Corresponding obligations of duty bearers

- Human rights carry **corresponding obligations** of duty bearers which are governmental authorities. Thus, the **Turkish authorities** must respect the human rights of their citizens, must protect these rights against interference by private parties, including business, and must take reasonable steps to fulfil these rights on a non discriminatory nature. In other words, human rights oblige Turkey, on the one hand, not to interfere unreasonably with the rights of people and, on the other hands, to take appropriate and reasonable steps to ensure these rights.
- While Turkey has the primary responsibility in this regard, the **ILISU Consortium**, within its respective sphere of activity and influence, has “the obligation to promote, secure the fulfilment of, respect, ensure the respect of, and protect human rights recognized in international as well as national law.” (UN Draft Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to human rights, 2003). The project leader, VA Tech Hydro is a member of the Global Compact and has thus pledged itself to “support and respect the protection of international human rights within its sphere of influence” and to make sure that it is not “complicit in human rights abuses”. This means that equally the ILISU consortium is bound not to interfere unreasonably with the human rights of the affected people and to take appropriate and reasonable steps to avoid retrogression from existent levels of human rights realization and to improve these levels.

4. Key features of a human rights assessment of the Ilisu Dam and HEPP Project

- “Involuntary resettlement may cause severe long-term hardship, impoverishment and environmental damage unless appropriate measures are carefully planned and carried out” (World Bank, O.P. 4.12, para. 2). From a human rights perspective, these possible consequences of involuntary resettlement – severe long-term hardship, impoverishment – can be seen as infringements of the human rights mentioned above (II.2).
- Any involuntary resettlement programme logically entails that people have to leave behind possessions, their houses and established structures for leading their economic and social lives. Thus, involuntary resettlement programmes necessarily entail interferences with the right to property and the right to housing. Equally, any involuntary resettlement entails (at least temporary) retrogressions from existent levels of the fulfilment of the right to an adequate standard of living and of the right to health as well as of the right to education.
- These interferences as well as retrogressions do not constitute violations of these human rights, if adequate guarantees exist and appropriate measures are taken to compensate for the loss of the level of enjoyment of human rights.
- The main question, therefore, of a human rights assessment of the Ilisu Dam and HEPP Project concerns the issue whether the guarantees and the measures in favour of the people whose human rights are affected meet the standards of “appropriateness and reasonableness”. The criteria for judging appropriateness and reasonableness of guarantees and measures are taken from the international instruments mentioned above (II.2) as well as from best practice.
- Given the immense intensity of interference with the lives and the rights of the affected people, AI takes the position that only full compliance with international guidelines in this field means that international human rights obligations are met.

III. The Updated Resettlement Action Plan and other aspects of the Ilisu Dam and HEPP project in the light of international human rights standards

1. What is assessed?

- The focus of this human rights assessment is on the Updated Resettlement Action Plan (URAP) of July 2005, issued by Turkey's General Directorate of State Hydraulic Works and prepared by the ENCON (Environment Consultancy Co).
- Furthermore, parts of the Updated Environmental Impact Assessment Report (UEIAR) are analyzed.
- Of particular relevance for the assessment were the following studies by renowned experts in the relevant fields:
 - Comments on the Resettlement Action Plan for the Ilisu Dam and HEPP Project, by Prof. Dr. Michael M. Cernea, 23 February 2006;
 - A review of the hydrologic and geomorphic impacts of the proposed Ilisu Dam, by Philip Williams and Setenay Bozkurt Frucht, 20 February 2006.

2. The legal framework

- The Turkish legal framework regarding expropriation and relocation is one of the oldest in any developing country. While it reflected the "state of the art" at the time of adoption, it is currently failing to meet international standards. This is also recognized in the URAP (chapter 4.)
- The main problems include (on the basis of the summary in Cernea, p.19 et seq.):
 - Turkish laws separate expropriation and resettlement, while international standards require full integration of both.
 - There is no provision for minimization of resettlement.
 - Compensation provisions are outmoded as they focus on the market value of assets and not on their replacement value.
 - Opportunity losses and transaction costs are not or only partly recognized.

- Turkish law discriminates against some categories of affected people, in particular “artisans of small traders earning more than 12 times the minimum official wage annually” and “government officials or permanent workers who reside in the expropriation area”.
- The URAP partly goes beyond Turkish law in remedying some of the legal gaps mentioned above. However, one has to bear in mind that the URAP does not constitute a legal basis to which aggrieved people can resort to.
- From a human rights perspective, the principal of legality is of paramount importance as it provides for enhanced certainty and reliability which only the law can provide. Thus, an amendment of the domestic legal frame is needed.

3. The policy framework

- The existence of an adequate policy framework is an essential element of any resettlement action in line with international standards. To have such a framework is part of an obligation to take appropriate and reasonable steps to fulfil the human rights involved, in particular the right to an adequate standard of living. The importance of the adequacy of the policy framework is enhanced in the Ilisu Dam and HEPP Project in view of the size of resettlement.
- An adequate policy framework would have to reflect the idea that “resettlement activities should be conceived and executed as sustainable development programs” (World Bank OP 4.12. para.2), or, put differently, “involuntary resettlement should be conceived of as an opportunity for improving the livelihoods of the affected people and undertaken accordingly.” (IFC Handbook on Resettlement).
- The main problems with regard to the policy framework are (on the basis of the summary in Cernea, p. 14 et seq.):
 - A solid statement and rationale about the objectives of the RAP are missing and there is no consistent discussion of whether and how various components of the RAP are contributing to or consistent with these objectives.
 - There is a tilt in the document to the means of displacement rather than to the means and goals of resettlement. In other words, there is much focus on expropriation, but little on the proper and well-planned, tenacious reconstruction of the economic basis, productive systems and communities of the displaced people.

- This neglect of a proper focus on reconstruction is also reflected in the organizational set up. (see III.5.)

4. Population assessment, income restoration planning, risk assessment

- The correct assessment of the size and composition of the affected population is the basis for an adequate resettlement plan. Carrying out a correct population assessment is part of the obligation to take appropriate and reasonable steps to safeguard the applicable human rights.
- The main problems in this regard are (for more details see Cernea, p. 20 et seq.):
 - The URAP admits the unreliability of data, in particular of the data gathered earlier.
 - Different figures are given on the total number of the affected population (52.433 and 54.742).
 - There are good reasons for assuming a significant understatement of the numbers:
 - Previous estimates pointed to a higher number.
 - The high population growth rate in the affected areas is not reflected in the URAP.
 - There are no estimates of people affected by auxiliary infrastructural constructions (e.g. area highways and roads, train corridors).
- A further “appropriate and reasonable step” for fulfilling the human rights of the people affected is the sound and professional character of income restoration planning.
- Chapter 7 URAP deals with this issue but has been characterized as blatantly failing to meet international standards (in the unusually strong language used by Cernea, 24: “not a plan for income restoration but a vague wishful thinking description”). The main thrust of the criticism concerns the amorphous and vague way of treating the potential for employing displaced people. No concrete indicators, no concrete numbers, no obligations for contractors are given.
- International experience shows that firm planning and organization of resettlement belongs to the indispensable steps for mitigating the adverse consequences of displacement for the affected population. As compensation payments alone have proven not to be sufficient for this purpose, having an adequate resettlement plan is part of the obligation to take “appropriate and reasonable steps”.

- Other important elements are an appropriate risk perception assessment and response strategies. While the URAP provides for the risk perception analysis, it does not contain any response strategy to the risks identified.
- Lastly, the risks linked to the political history of the area and the ethnic characteristics of the population are not determined. It is well known that Southeast Anatolia has a long history of conflict, with many human rights violations and abuses. Any reference to this wider context is missing in the URAP.

5. Organizational set-up and management of the resettlement process

- A clear structure and an adequate organizational capacity for managing the resettlement process are demanded by international standards on resettlement. Appropriate planning and organization of state actions which have consequences on human rights are also well established elements of state obligations to ensure and fulfil human rights.
- In this regard, major weaknesses of the current URAP are apparent:
 - There is a lack of unitary, single command execution and coordination organization; the current set-up with overlapping competencies of many central and local agencies is anachronistic.
 - The organizational set-up is not commensurate with the task, lacks coherence and focus;
 - There is no clear coordination between resettlement and engineering processes (e.g. sequencing of activities).
- International standards demand that resettlement is conceived and executed as a sustainable development program. The best way to do this is create a twin project structure: one for the technical and civil works, the other one for resettlement and reconstruction.
- No training of resettlement staff seems to be planned as there is no mention of it in the Resettlement Plan. An adequate initial and constant in-service training is of fundamental importance so as to guarantee a smooth running.
- Lastly, an adequate monitoring arrangement is an essential part of any good organizational performance. To have it is part of the international standards on resettlement and, more broadly, of the international obligations to fulfil human rights. The main problematic issue in the URAP (ch.11) concerns the need to provide for independent monitoring, in addition to the internal ones. Furthermore, the way the results of monitoring will be communicated to the sponsors and external co-financing agencies is not specified.

6. Grievances procedures

- Any arguable claim of a human rights violation requires the existence of an effective remedy at the national level. Further, any determination of civil rights and obligations requires decision by a competent, independent and impartial tribunal. International standards on resettlement provide for the existence of “affordable and accessible procedures for third-party settlement of disputes arising from resettlement”.
- A main problem regarding the grievance procedures relates to the role of the project authority as addressee as well as arbiter of the grievance. In other words, the entity against which grievances are brought decides on whether the grievances are justified. This is at clear odds with international standards as it violates the principles of independence and impartiality which are characteristic for any fair proceedings. In order to conform to human rights standards, provisions for an independent entity must be made.
- The URAP describes the routine state procedures and mentions three types of grievances against which redress can be sought: related to expropriation, construction and resettlement. In particular, the list of possible grievances in the resettlement phase is incomplete as it does not include e.g. grievances about the non-restoration of basic social services, such as sanitary and health services or water supply. These issues are essential parts of the human rights to an adequate standard of living and/or to health.

7. Participation

- Participation of all stakeholders is a key requirement for any resettlement project, both from a human rights perspective and a development perspective. The human right to participation is based primarily on Art 25 and Art 19 of the International Covenant on Civil and Political Rights. Community participation figures prominently in the international standards of the World Bank and the OECD related to resettlement.
- Participation is a right and a principle in all stages of the resettlement process, from looking for alternatives to monitoring.
- The URAP chapter on “Participation and Consultation” describes what has been done in order to include relevant stakeholders. Steps were: a stakeholder analysis, study of project-affected persons on the basis of data obtained from updates of the census, assets inventories and socioeconomic surveys. Methods used were: focus group meetings, in depth interviews.

- The extent to which the process of participation and consultation corresponded to international standards is difficult to assess on the basis of the available documents. There are, however, indications that the process was not fully participatory:
 - The description of the process in chapter 9 contains many pages of general points on the need, the advantages and the principles of participatory approaches, but falls clearly short of providing an adequate description of their actual implementation in practice.
 - The number of project-affected persons attending public informative meetings of ENCON (1300) seems very low, given the overall number of people affected.
 - There is no indication of the written information on the project provided to affected people in the Kurdish language.
 - There have been claims by mayors of affected villages that they had not been involved adequately.
 - There have been claims by local persons with whom deep interviews were held that the content of their statements were reproduced in a distorted and biased manner URAP.
 - Finally, the context of the long history of conflict, the ongoing violence and human rights violations in Southeast Anatolia with its heavy effects on substantive freedom of expression clearly restrains and diminishes the possibility of holding adequate consultations. Special attention would have to be given to the creating a safe environment for consultations to be adequate.

8. Health and public safety issues

- International human rights oblige states to improve protection against illness and diseases and to refrain from any action which would increase the risk of diseases. Furthermore, the underlying determinants of health, such as access to safe water and food, belong to the human right to health as well as to the human right to an adequate standard of living.
- The main problems in this regard are:
 - The UEIAR does not deal sufficiently with the public health hazards which pollution and eutrophication of the reservoir could create for the people drinking water or eating fish caught in the reservoir. The mitigation measures proposed by UEIAR have been deemed unsatisfactory and not complying with international best practice (see Williams/Frucht, pp.16 and 17).

- The UEIAR analysis is inadequate regarding the following issues (Williams/Frucht, p.19):
 - the change of flood hazards;
 - the consequences of a dam break/failure.
- The UEIAR does not deal satisfactorily or plays down the risks resulting from summer exposure of large areas of the reservoir bed. Summer exposure will provide a major habitat for disease vectors such as malaria and careful health planning is required as part of a prevention policy. (Williams/Frucht, p. 19, and Aksoy et al., The GAP project in South-eastern Turkey: The Potential for Emergence of Diseases, Emerging Infectious Diseases, Vol.1 No.2 1992, pp.62 and 63).

IV. Conclusions and Recommendations

- The above assessment leads to a very clear overall conclusion: The Ilisu Dam and HEPP Project in its current shape is not in accordance with international human rights standards. If it were started without substantial and substantive changes addressing the problems identified above, Turkey would violate a number of human rights and thus its obligations under universal and European human rights law. The ILISU Consortium would be complicit in these human rights violations and VA Tech Hydro would act in contravention with the voluntarily accepted obligations under the Global Compact.
- Non compliance with international standards is seen in the following areas:
 - inadequate domestic legal framework
 - inadequate policy framework
 - inadequate organizational set-up
 - inadequacies in the population assessment, risk assessment and income restoration planning
 - lack of effective and fair grievances procedures
 - inadequate arrangements to deal with public health risks
 - unsatisfactory participation process
- Amnesty International Austria therefore recommends to the sponsors of the Ilisu Dam and HEPP Project to undertake a thorough revision of the project in major areas, including a systematic analysis of its impact on human rights with a view to seeing whether and under which conditions the project can be carried out. Such a process of revision should be done in a fully participatory way and should benefit from up-to-date professional expertise in this area.
- Amnesty International Austria recommends to international lenders not to grant export risk guarantees before the project is demonstrated to fully meet international standards.