

AN ASSESSMENT ON THE ILISU DAM AND HEPP ENVIRONMENTAL ASSESSMENT REPORT FROM A LEGAL POINT OF VIEW

A- INTRODUCTION

If the report is studied, (in the report), the following were assessed: Under the heading of Biophysical environment the issues such as Climate and hydrology, Geology, Underground resources, Vegetation, Wildlife, Water supply and water quality; under the heading of Human Environment, the issues such as Cultural Heritage and Archaeology, Agriculture and other forms of land Use, Population, Administration, Public health; under the heading of Impact assessment, the issues such as Biophysical impacts, Human impacts, Environmental impacts.

Regarding the technical characteristics of the report and our field in which we specialise, we do not assess majority of those issues.

In this assessment we will evaluate the issues of Population resettlement, the settlements affected, number of people affected, people who can claim either expropriation or resettlement rights, which were studied (in the report) under the heading of Human impacts.

Basically, in this assessment,, the issues of evacuated villages, of the proprietorship of the people who live in those villages, and the sufferings caused by the cadastral surveying and nationalisation activities in the region and especially in the Ilisu Dam and the HEPP project area will be outlined.

B- THE EVACUATIONS AND THE BURNING OF THE VILLAGES, THE REASONS AND THE CONSEQUENCES OF SUCH PRACTICES

The evacuated, burnt villages and settlement problems, which occurred because of the 15 year conflict in the region, have still been prevailing and creating sufferings. In relation with this, the democratic mass organisations have not become a driving force to provide a solution and have not even identified the problems. As far as the problems are concerned, neither with the national nor with the international organisations, they have not presented solutions and work plan.

To show the seriousness of the situation, a brief evaluation of the current situation and of historical causes will be appropriate.

1. The Evacuation Practice of the Villages - Southeast (OHAL) Region - Kurdish Reality

Turkey is located in the middle-east. Due to its geographical location, members of the many ethnic groups, of religious sects and of different religions live in this country. Since its foundation, 1923, to create a homogeneous nation, the driving force of the country, the militarist-bureaucratic body has launched a widespread long-term TURKISATION campaign in every aspect of life. This campaign has been widened and uncompromisingly kept active. As a result of this practice many ethnic groups and religious minorities have been either assimilated (e.g. Bosnians, Georgians, etc.) or forced to leave the country (e.g. Greeks, Armenians, etc.). However, the Kurdish ethnic group, the Kurdish people, who are a large part of the country's population and live in the Southeast Turkey, have fiercely resisted this assimilation attempt and rebelled many times against the central government. Turkish General Staff stated in its report that there were 28 Kurdish upheavals. The latest armed struggle, which is branded as 29th upheaval by the press and the many sectors, was launched by the PKK, Kurdistan Workers Party, in 1984.

The armed struggle started near the Southeast border and gradually became intensified and spread to the rest of the Southeast region and even to the parts of Mediterranean and Black-sea areas that are near the Kurdish regions. This spread resulted in a great deal of armed struggle from 1990 onwards. According to the official figures 30,000 people died due to armed struggles.

Upon the spreads of the struggle and the tendency of gaining support of people, Turkish General Staff has changed their strategy which was implemented up to this date by using classic gendarme forces. They developed widespread general counterattack campaign to suppress the incidents. In the mean time, the normal administrative body was abolished and the Governorship of the State of Emergency Region was formed. This governorship basically has taken 23 provinces in the region, where the armed conflict prevailed under supervision and it itself is an illegitimate institution. Besides the law on its foundation, its authority has been extraordinarily empowered with many Decree with Power of Law (DwPoL). One of the powers given by the DwPoL no 435 is to evacuate the villages.

When the military authorities, the State of Emergency Region (OHAL) authorities and the central government were convinced that they could not beat the PKK by the mean of (military) operations, they put two practices into the centre of their activities:

a) Organising some of the civil population, who settled in the area dispersedly, as village guard under the Temporary Village Guard system and arming them speedily to use them against the PKK.

b) Where the people do not wish to take part in the village guard system, to evacuate and burn the houses, either one by one or as a whole village, hamlet etc.

It was thought that if there were no people, the PKK militants, who were engaging in guerilla warfare, could not find shelter in the region without the support and could be destroyed with (military) operations. This is the basic reason behind the practices of evacuating and burning around 3500 villages and hamlets in the region.

In the direction of the strategy, outlined above, starting from 1990 villages have been evacuated. Approximately 3-4 million people were forced to flee from the region. There were almost no villages and hamlets left to exist unless people were participating in the village guard system. Regarding this issue, the reports of the Human Rights Association of Turkey (IHD) and the Human Rights Foundation of Turkey (TIHV) are the impartial sources that can be referred to. If these reports are studied the seriousness of the situation can be understood. Both of these organisations are non-governmental, civilian institutions.

The practice of evacuation and burning of villages started in 1990, reached it's peak around 1993-94-95 and is still continuing at a decreased level. During these years, the villages, which were suspected of helping the PKK, were either evacuated or burnt upon the decision of the commander of the (Gendarme) station or the village guards without giving a reason. Such evacuation and burning practices were carried out without regulations, without paying any compensation and based on the assessments of the gendarme forces or the village guards. All villages and hamlets, which were regarded as "not sided with the government", were evacuated.

These incidents were accepted by the authorities, when they became unconcealable in 1994 and in 95.. However, the authorities claimed that evacuations and burnings were carried out by the PKK members. On the other hand, the impartial sources, people in the region and the sufferers persistently stated that the villages were evacuated and burnt by the security forces, and the village guards.

The table, below, shows the number of evacuated and the burnt villages according to their provinces, which were stated in the Interior Minister's answer to the question asked in the Turkish Grand National Assembly (TGNA) in 1995:

PROVINCE	EVACUATED			FLED
	VILLAGE	HAMLETS	HOUSE	POPULATION
BATMAN	37	54	1,880	13,839
BINGOL	150	194	7,151	44,540
BITLIS	76	95	2,878	21,896
DIYARBAKIR	115	196	7,580	43,420
ELAZIG	8	6	531	3,522
HAKKARI	38	93	2,736	21,713
MARDIN	184	58	6,772	38,200
MUS	30	65	2,177	16,100
SIIRT	86	82	4,624	31,347
SIRNAK	96	110	7,686	45,184
TUNCELI	154	657	4,437	22,407
VAN	8	64	1,141	8,643
TOTAL	982	1,674	49,593	310,921

The data are the official figures up to 1995 and were given by the Interior Minister. After this date, the practice of evacuations and burnings continued. According to the latest report of the Human Rights Foundation of Turkey (TIHV) the number of evacuated and burnt villages and hamlets are at least 3500. Also, in a study, carried out by the Human Rights Association of Turkey (IHD), the number of evacuated-burnt villages and hamlets are stated as 3246.

According to the study of the Turkish Grand National Assembly (TGNA) Investigation Commission of Immigration, in total 2663 villages + hamlets were evacuated.

All these reports and documents are enough to prove clearly that practices of evacuating and burning villages have been systematically and purposely carried out by the government in the Southeast Turkey.

2. The practices of evacuating and burning villages - Domestic Law

Article 125 of the Constitution of Republic of Turkey states that: "Recourse to judicial review shall be available against all actions and acts of the administration. The administration shall be liable to compensate for damages resulting from its actions and acts." This article regulates the administrative responsibility.

In addition to that, the Penalty Code regulates penal responsibility:

Article 369 of the Turkish Penalty Code states that: "Whoever partially or wholly burns a building or another construction,, or grains or crops, whether it is harvested or not, shall be punished by heavy imprisonment for three to six years." Articles 370 and 371 contains similar rules. In addition to that, article 516 states that whoever harms a property, should be imprisoned for 1 to 3 years. Although, these are required by law, if the perpetrator is an official in practice it is made almost impossible to implement the law.

Above all, to try the civil servants who engaged in such action, the hindering provisions of the Code for Trial of Officials should be overcome which is almost impossible in practice. To carry out an investigation about an official by the prosecutors, either upon a complaint or directly, it is necessary to get permission from the supervisor of the accused official's. This permission is called "a necessity for a trial". Otherwise, the prosecution office cannot carry out an investigation and a law suit cannot be brought (against the official). (Article 4 of Code for Trial of Officials)

To understand this dysfunctional legal situation, the context of the law should be assessed. The person, who gives the permission, works in the same public service with the other person, who is supposed to be tried. Thus, the supervisor of the accused, is to decide whether or not that person should be tried. Previous practice was different and it was the Province or Town Administration Council that made such decisions. They, who took part in the council, were, too, civil servants. It should not be forgotten that it is the accused's supervisor who gives the order to that person. None of them **(Translator's note: He possibly meant the members of Administration Council)** are law people nor do they have immunity like judges. In the conflict atmosphere, where thousands of people died, it is impossible for them to give permission for putting the soldiers and village guards, who are one side of the conflict, on trial.

In addition to all this, one of the powers given to the Governor of the State of Emergency Region is to authorise the evacuation of villages. According to article 8 of

the Decree with power of law (DwPoL) no 430, dated 16 December 1990 “ **the Governor of the State of Emergency Region or the governor of any province in the State of Emergency Region is personally immune from any claim of abuse of power and neither a criminal nor a financial nor an administrative responsibility can be claimed against for their actions and decisions. For this purpose no appeal can be made to the legal authorities.**” Due to this provision, the governor of the State of Emergency Region and the governors of the provinces in the State of Emergency Region avoid the responsibility for the practices of evacuation and burning of villages. Even it is not needed most of the time. As far as the actual practice is concerned, the civil servants cannot feel necessary to investigate such complaints made by the people. All governors who worked as in the State of Emergency Region stated that they did not authorise any evacuations by using this power. **3500 villages were evacuated-burnt in this region but there are no examples of a civil servant being tried for this practice.** This has been already confirmed by the events. Despite all the efforts and risks, people could not succeed in bringing cases before the court. In relation with this, the statement by the former governor of Diyarbakir, Dogan HATIPOGLU given to the Turkish Grand National Assembly (TGNA) Investigation Commission of Migration clearly exposed the events. He said: “**There is lack of co-ordination between the institutions. In general, we became aware of the evacuation upon being informed by the head of the village or by the villagers either after or during the evacuation. When we asked ‘who ordered the evacuation and why’, no one took responsibility.**”

It is the fact that, up until now, neither any necessary investigation nor any work has been carried out. It has not been figured out how many villages, hamlets, settlements were evacuated, how many people fled, where they dispersed to and what essential problems these people faced in the resettlement areas. Of course many excuses can be made but none of the excuses can be taken into account.

C- THE EVACUATED AND BURNT VILLAGES IN THE ILISU DAM AND HEPP PROJECT AREA AND THE LEGAL PROBLEMS

1. The number of burnt and evacuated villages and settlements in the project area

Ilisu Dam and HEPP Project covers Batman, Siirt, Sirnak, Diyarbakir and Mardin Provinces and their towns. It should not be forgotten that the area falls within the project, especially Mardin, Siirt and Sirnak Provinces, are the main centres of the 15 year conflict. Thus, it is obvious that majority of the villages in this area were evacuated. The report states that 50 out of the totally affected 82 settlements, and 38 out of the

partially affected 101 settlements were evacuated-burnt. Therefore, 88 out of 183 settlements, which are affected by the project, were evacuated-burnt. Although there are no exact figures available, it is obvious that there are more evacuated-burnt settlements that would be affected by the project. According to the data that we obtained but are not confirmed by the authorities, this figure is at least around 105.

Again, according to the report, it is determined that the population who were evacuated and forced to flee from the affected settlements are 15,581. It was assumed that 8,600 of them would benefit from the expropriation or resettlement rights. In fact, we are wondering what is the basis for these figures and how they were obtained. First of all, how did the number of people that lived in the evacuated-burnt w settlements was reached? **In the report it was said that this figure was based on 1997 census. In fact, when this census was carried out these settlements were already evacuated-burnt. People had gone to the city centres, to the Cilicia, or to the Turkey's metropolitans. The census officers did not even go to a single evacuated-burnt settlement. Even if it was assumed they went there, since these settlements were empty, naturally it was impossible to count the people. Therefore, an explanation is needed how this figure was *invented*.**¹

The figures are not important in terms of eliminating the fundamental problem. The fundamental problem is the possibility of violation of rights of ownership

2. The situation of the property owners and the residents of the evacuated-burnt settlements, affected by the project.

First of all, except Bismil towns- the cadastral surveying for the majority parts of the project area has not been carried out. Therefore, the size of the affected agricultural land, vineyards and gardens are not known. The figures in the report are far from reflecting the reality. In the project area the cadastral surveying is continuing and this work has not been carried out in majority of the area.

It is impossible to find the size of the agricultural land, vineyards and gardens in the area where the cadastral surveying is not being carried out.

Without determining the rights of ownership, who either still live in the area or used to live in the evacuated-burnt settlements, carrying out such a project will create the irreparable lost and violations of the rights of ownership.

Even if we assume that the figures in the report are correct, the question of how the rights of ownership issue related to the 88 settlements will be solved should be answered.

1 ¹Translators note: The word “invented” was used by the author and literally translated.

To be able to answer this question, the Cadastre Law no 3402 dated 21.06.1987 should be studied. We will study this law article in relation with the evacuated-burnt settlements:

a) Article 2 of the Cadastre Law contains the following provision **“the administrative borders of the every province’s central town and of the other towns determine the cadastral region.”**

b) Article 3 of the same law states the followings: **“the cadastral team shall consist of 2 cadastre technicians, the head of the district or the village, and 3 experts.**

..... in the village, 6 experts should be selected by the Village Association within 15 days at the latest.

.....In the case of selection of the experts not being conducted within the period of time or the experts not being able to work, the same number of expert shall be selected by the administrative head of the region.” So that, the cadastral team cannot be formed in the evacuated-burnt settlements. Since the cadastral team cannot be formed, to determine the rights of ownership in these settlements will not be possible. Considering that the most of the area will be flooded for a while, it is obvious that thousands of people will loose their rights. Again, in regards to the above mentioned paragraph of the article, selection of the experts by the administrative head of the region will cause more serious cadastral right violations. Because of the feudal-tribal characteristics of the region and of the difficulty in finding the villagers to participate in expert teams, only the village guards will become experts. The political and also tribal hostility of the village guards will result in thousands of violations of the rights of ownership and hundreds of court cases. This situation will bring chaotic consequences and feuds.

Article 4 of the Cadastre Law regulates the cadastral surveying, publicising and objections. **“Every villages in the cadastral areaare the part of the cadastral surveying area.**

The Director of the Cadastre will publicise the name of the village that is subjected to cadastral surveying by the usual means in the centre of the region, in the surveying area, in the neighbouring villages, districts and municipals at least 15 days prior to (the practice)

The borders determined by the cadastral technicians can be objected within seven days by applying to the Office of the Director of Cadastre.

The Director of Cadastre will asses the objection and makes the decision within seven days... Appeal against this decision should be made to the Cadastral Court

within seven days and an absolute decree should be made within 15 days. It is obvious that thousands of people's rights of ownership will be violated because of this practice. When the cadastral surveying field is declared, the followings problems should be solved: How and by which means the people, who used to live in the evacuated-burnt settlements, will be informed and how the objections to the fixation and decisions can be made. Before these problems are solved, carrying out the work can produce (more) problems. Article 7 of the same law regulates the restrictions on the real estates and how to determine who the owners of the property rights are, etc. The experts, the documents held by the owners and the statements of the other people will be used when determining the owners. In such a situation, the rights of thousands of people, who either would not (willing) to be or would not be able to be in the villages or the settlements, should be discussed and resulted.

Article 11 of the law regulates the declaration of the outcome of the cadastral surveying. "Director of the Cadastre arranges the notice lists according to the cadastral records, make the notice lists put on the board at the cadastre office and the office of the head of (the villages/districts) for 30 days and it will be stated that whoever objects to the lists can bring a law suit against it at the cadastral court. This article especially can cause a loss of rights. How will those people, who fled from the evacuated settlements and went to Cilicia and to the other metropolitans in Turkey, hear, see these notices and object to them. If this fact is considered in relation with article 13 and 14 of the Cadastral Law, it is obvious that there will be serious consequences.

As article 13 of the Cadastral Law out lines the rules for determining the owners of the property rights for the registered real estates, article 14 regulates determining the unregistered real estates. Considering that the majority of the agricultural land, vineyards and gardens are not registered in the region, the severity of the incident can be more understandable. Article 14 rules that: **"As far as the unregistered lands are concerned, for the irrigated land up to 40 donum², for the dry land up to 100 donum, one or more real estates will be registered on the person who proves that s/he owned them for 20 years and there is no dispute by providing documents or statements obtained either from witnesses or from experts."**

In the light of article 14 of Cadastral Law, the issues related to the 88 evacuated settlements -given figure in the report- are as follows:

Most of the lands are not registered. It is almost impossible to find the experts, witness and the head of the village in the evacuated settlements to carry out the cadastral surveying. In this situation, can the experts appointed by the head of the administration

¹ ²Donum is a special measurement in Turkey. 1 donum is equal to 940 square metres.

office state who the real owners are? -It is likely possible that the village guards will be appointed as experts because there is no one lives in there but village guards-. Would they not make a statement for their benefit or for the benefit of other village guards whom they are related to? Experiences show that in the cadastral surveying field, giving such untrue statements and false information and getting their family or tribe members usurpation are characteristic attitudes of these people. In this situation what kind of legal mean can be provided for the people of the evacuated settlements? For various reasons, especially for their own security reason, these people could not even go to the area that is subjected to cadastral surveying. Yet, they would be prevented by the village guards etc.

If this project is implemented under these conditions, the opportunity of obtaining ownership would be readily available for the village guard mobs who have been exploiting the region for years. If this project should definitely be implemented, the village guards system should be abolished; during the cadastral surveying the return of the people from the evacuated settlements, even temporarily, should be realised and their safety should be guaranteed. Otherwise, carrying out any work can mean nothing but infringement of thousands of rights of ownership, many new feuds and prosperity for the village guards.

CONCLUSION: Besides many deficiencies and drawbacks, from a legal point of view, implementing the project at this stage would create big problems , as far as the evacuated-burnt settlements. In such situations, citizens will lose their rights of ownership as the village guards usurp the ownership. Therefore:

- a) State of Emergency and its product, the village guard system, should be abolished immediately,
- b) People's return to the evacuated settlements and their safety should be guaranteed,
- c) After determining the genuine owners of the property rights by carrying out serious and true cadastral surveying, implementation of the project should be assessed once again.

In my belief, no one, who has humanly feelings, would say "yes" to this project at this stage.

Av. Mahmut Vefa

Diyarbakir Bar Association

