
Human Rights and the Environment: Ilisu Dam

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Photographs are copyright of **European Rivers Network** whose website address for the Ilisu is:
www.rivernet.org/turquie/ilisu.htm#introduction

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A presentation given on 12 May 2004, and timed to coincide with the Law Week of the Law Society of WA themed "No one is above the Law".

Overview: roles examined

- Environmental and human rights lawyers in addressing the ethical basis on which project funding should be advanced for international development
- The international community in upholding liberal democratic standards for dealing with:
 - public participation in environmental decision-making and
 - self-determination of peoples

Today the EDO discusses human rights and environmental issues in relation to a case study – the Ilisu Dam project in Turkey. The Ilisu Dam project was placed on hold after Mahmut Vefa, a local lawyer, presented a social critique of the project to the British government in 1991. Although Mahmut Vefa now faces charges of overtly insulting the moral personality of the Turkish State which could result in his imprisonment, we want to highlight his individual efforts to give a voice to Kurds affected by the Ilisu Dam project and the consequences. There were consequences that were serious for him personally, but on a positive note, the British government changed its approach to funding international development.

Other examples of dams involving huge controversy internationally include the Franklin Dam in Tasmania and the Three Gorges Dam on the Yangtze River in China. International pressures were minor, compared to the Ilisu Dam, however, because there was an extra geopolitical dimension. The Ilisu dam violates the *Convention on the Non-Navigational Uses of Transboundary Waterways (1997)*. It sits at the heart of the Middle East on one of the two ancient Mesopotamian Rivers.

Freedom of speech is basic to our success as environmental defenders: that the lesson from today. If we have taken it for granted, we must not do so in future. Remembering the Kurds who are not allowed to speak their language in public, we need to value the work of journalists, who visited the area, the international campaigns launched by the Kurdish Human Rights project and the Friends of the Earth, without which the project would have proceeded.

Ilisu Dam

- The dimensions of the proposed Ilisu Dam were:
 - Surface area of 313 square kms
 - 10 Billion cubic meters of water
- It would have created a reservoir of water to create hydropower (1200MW), and was part of a complex development project called the GAP, which involved other reservoirs in related projects in south eastern Turkey.

Ilisu (Hasankeyf) Dam – geopolitics



The Ilisu Dam site is 65 km from the border of Turkey and Iraq. The European Rivers Network reported that:

“Water is considered a major cause of international conflicts in the 21st century. The claims of Turkey, Syria and Iraq on the water of the Euphrates and Tigris exceed the capacities of the two rivers by 55 and 12 percent respectively. While the dams on Euphrates, used primarily for irrigation, reduce the average annual water flow by almost 50 percent, the Tigris projects, primarily used for power production, will reduce water flows by 10 percent. Turkey has so far not been prepared to negotiate a peaceful compromise regarding the management of the rivers, but relies on its position of power on the upstream part of the river to pressurize and blackmail the other riparian countries. Syria supports the Kurdish PKK guerrillas as a pawn against this threat. The recent crisis between Turkey and Syria can only be understood in the context of the conflict over water. In late August 1998, the Iraqi government in turn threatened to bring the water issue to an international tribunal if Turkey proceeded with its present water and dam-building policies.

In May 1997, the UN General Assembly approved the Convention on the Non-Navigational Uses of Transboundary Waterways with a vote of 103 : 3 (with 27 abstentions). This convention attempts to prevent significant negative impacts of projects on international waterways on other riparian countries. Apart from China and Burundi, Turkey was the only country which rejected the convention. More specifically, Turkey rejected the provisions ruling the prior notification of riparians about water projects, the prevention of significant harm, and the peaceful resolution of international water conflicts (cf. chapter 9.)”

www.rivernet.org/turquie/ilisu.htm#Introduction

Ilisu (Hasankeyf) Dam



The medieval bridge piers at Hasankeyf: photograph by Stephan Michel, copyright of the European Rivers Project, website address at the front page of this presentation

Environmental and social consequences in Turkey

- Over 50 villages and small towns were to be flooded displacing thousands of people.
 - Malaria and other diseases associated with large reservoirs would have been introduced to the surrounding areas.
 - The risks to the Tigris auto-purification mechanisms were high, as acknowledged by the GAP
 - The medieval town of Hasankeyf would have been flooded, which would have been a cultural as well as a social disaster as it was given complete protection by Turkish archaeological authorities in 1978 as being the only remaining undisturbed medieval Anatolian village in existence.
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Ilisu (Hasankeyf) Dam



The medieval village, and tower, of Hasankeyf: photograph by Stephan Michel, copyright of the European Rivers Project, website address at the front page of this presentation.

In 2001, Mahmut Vefa presented a criticism of the Environmental Impact Assessment (EIA) to the financial backers of the project in England. He did not address the environmental implications (loss of built heritage for example) so much as the likely implications of the flooding of the land on which thousands of Kurds depended for their livelihood. The GAP EIA admitted to displacing 15,000 people, whereas the figure was said by Mahmut Vefa to be 78,000 (5,500 of which were from this ancient village).

Mahmut Vefa

- General Secretary of the Dyarbarkir Law Association
- Accused of 'overtly insulting the moral personality of the Government and the military and security forces'. Trial: 13 April 2004
- Translation of Dyarbarkir Law Association Journal Article of January 2002 at www.ilisu.org.uk (follow link at top of webpage)

By the end of 2001, the British firm responsible for the British Government funding application had pulled out. Mahmut Vefa then published his criticism in the Dyarbarkir Law Association Journal (January 2002). It can be found on the internet at www.ilisu.org.uk if you follow the link at the top of the home page.

The Swiss Bank, UBS, then pulled out immediately after publication, although I cannot say that there was a link between the two events.

Mahmut Vefa was accused of overtly insulting the moral personality of the Government and the military and security forces. This is a criminal offence with a possible sentence of imprisonment of up to 3 years. His trial began on 13 April 2004, and was accompanied by a flurry of activity from environmental defenders offices from all around the world as letters were sent to the Turkish government asking for all charges to be dropped.

Ilisu (Hasankeyf) Dam



The valley, photograph by Stephan Michel, copyright of the European Rivers Project, website address at the front page of this presentation

Mahmut Vefa pointed out that in 1995 the Turkish Interior Minister admitted that 310,000 had already become displaced by a Turkish program of depopulation of the larger area around the Kurdish towns of Sirt and Mardin.

The fact that dams displace rural peoples ought not to have been surprise to the financial backers of the project.

The Corner House, an NGO, stated in its submission to the House of Commons Select Committee on International Development on 4 December 2003 (www.parliament.the-stationery-office.co.uk/pa/cmselect/cmintdev):

“...The adverse impact of many UK-backed projects on the environment are well-documented. Such impacts go beyond the immediate destruction caused by pollution or forest destruction: of equal importance are the wider ramifications of infrastructure investments on poorer peoples' access to and control over the environments that they rely on for their livelihoods. Dams in particular—many of them backed by the UK through both bilateral aid and through the World Bank and other multilateral development banks—have proved a major cause of environmental degradation, triggering a downward cycle of dispossession, poverty and immiseration as people are forced to move in search of new livelihoods. In India alone, it has been estimated that between 20-50 million people have been displaced by dams, many of them backed by the UK or built with UK involvement. “

Mahmut Vefa said...

- *According to research carried out by the Migration Research Commission of the Turkish Parliament 2,663 units of settlement have been evacuated. All these reports and documents are sufficient to clearly demonstrate that a systematic, conscious, centralised administrative practice of village evacuation/burning was carried out by the government in the Southeast of Turkey.*

The Turkish government's reaction to a commentary on an environmental impact assessment is perhaps difficult for us to understand, unless we read his article. It is supported extensively with quotes from the Turkish administrative system and Constitution. He explains unemotionally the systemic evacuation and burning of hundreds of Kurdish villages in the early 1990's even before this particular dam was proposed) and the use of armed guards in each remaining village to exercise control. He complained that the Turkish state was judge and jury in its own cause: that there was no independence involved in the system being set up by the Ilisu Dam proponents to adjudicate on villagers rights despite the Turkish constitution's guarantee of judicial review of administrative action and compensation for administrative wrongdoing. In effect, he said the village guards would become the adjudicators of compensation.

For many years, the Turks have denied that the displacement of Kurds as described by Mahmut Vefa have occurred. Clearly, it is not for me to say that they have or haven't occurred. What we can say is that if the Turkish state punishes those who speak out on issues – this lawyer was reputable – what hope have the the mainly Kurdish villagers affected by the Ilisu Dam project? What is the message that it sends to its citizens?

Kerim Yildiz, Director of the Ilisu Dam Campaign, comments, "We have said all along that there could be no open consultation with affected communities where the Ilisu Dam would be built, because freedom of expression is so heavily restricted. The case against Mr Vefa, a lawyer, demonstrates that people are not free to express their views in Turkey."

Expectations – liberal democratic society

- Freedom of speech
- Access to impartial adjudicator
- Access to information to be able to participate in environmental decision-making
- Influence of the norms of liberal democracies on other states

Mahmut Vefa's concerns are closely linked to environmental defenders work around the world. In all liberal democracies and those that aspire to such status, a citizen or resident in civil society has to be able to exercise freedom of speech and have access to an impartial adjudicator in order to participate fully in environmental decision-making. Rights to access to information about environmental impacts of proposals and perhaps even participation in decisions relating to the environment are unable to be exercised by peoples and communities unless there is the political will to protect freedom of speech and provide access to an impartial adjudicator.

Access to information is increasingly empowering people in countries that oppose free speech, such as the Philippines where the people recently organised the overthrow of the government by text messages on mobiles.

No freedom of speech – or of movement

- *“When environmentalist Nicholas Hildyard and three human rights lawyers visited the area they were followed everywhere they went. People they spoke to were taken away for questioning. When the Times reporter Ann Treneman visited the Ilisu region recently she found in just one day she was followed by 41 different men and a tank. When Mathew Chapman visited the area to produce a programme for BBC Radio 5 Live he was shadowed everywhere by the secret police, they would even barge into interviews and demand to know what was being said.”*

□ (<http://www.heureka.clara.net/sunrise/ilisu.htm>)

Contrast the above approach with that of the British parliamentary democracy, when it became clear that Britain was to have funded the project through the Export Credit Guarantee agency. There was an Inquiry by the Ombudsman as to how the project had got as far as it had. There were Select Committee hearings. Indeed, the Foreign Office was criticised by the UK Select Committee on International Development in its report on the Ilisu Dam presented 29 March 2001 for not having made enquiries about the Ilisu Dam's effects on those living in the region.

The Government's response is on the House of Commons Select Committee for International Development website :

“It is now part of the ECGD's Mission to take account of the Government's international policies on sustainable development, human rights, good governance and trade, whilst furthering its core aim of benefiting the UK economy by assisting exports and investments overseas.”

([www. Parliament.the-stationery-office.co.uk/ep/pa/cmselect/cmintdev/211rep/21103.htm](http://www.Parliament.the-stationery-office.co.uk/ep/pa/cmselect/cmintdev/211rep/21103.htm) : Response dated 4 April 2001).

Freedom of Speech

- Freedom of speech internationally helped to ensure that the World Bank refused funding for the project on environmental grounds, that the Swiss Bank pulled out (see:<http://news.bbc.co.uk/1/hi/world/europe/1844465.stm>) and that the UK's Export Credit Guarantee Department revised its rules for the funding of international development projects.
- See now the sustainable development section of the ECGD's business principles at the following web address: www.ecgd.gov.uk/ecgdbusprinciples.pdf

In Australia our Constitution does not provide a right of freedom of speech in the Constitution. The implicit rights of citizens to disseminate material relating to government or political debate must be exercised reasonably which has severely limited that right: *CCWA v Chapman* discussed in our defamation seminar in January and now available on our website.

In WA the criminal law of defamation operates in certain circumstances to create a risk of imprisonment for those found to be in breach: section 360 and 361 of the *Criminal Code*.

Access to Information

- Freedom of Information legislation (Cth and WA)
- Aarhus Declaration - a UN initiative for the EU
 - Public participation in environmental decision-making expressly linked to
 - Access to information and
 - Access to impartial adjudication of environmental issues

<http://www.unece.org/env/pp/>

In Australia our access to information is excellent. The FOI legislation has provided people with access to documents from agencies, such as Ministers and local government. One pays a small fee and the turnaround time is 45 days for the State and 30 days for the Commonwealth. Documents can be withheld notably in commercial in confidence matters or when the documents are part of a deliberative process (for up to 10 years). Legal professional privilege will protect legal advice given to agencies. Cabinet documents are also exempt. However, there is a good degree of transparency in our processes so that private projects that are subject to regulatory processes are mostly dealt with in the open. Many documents relevant to the processing of environmental projects, or matters, are available and can be used in order to express one's views on the projects or policies. There are exceptions such as the projects dealt with by State Agreement. Occasionally we get no opportunity to make any informed decision whatsoever (e.g. the Chevron- Texaco JV known as Gorgon). We could be doing better, but our institutions are strong and our record is mostly very good.

"Although regional in scope, the significance of the Aarhus Convention is global. It is by far the most impressive elaboration of principle 10 of the Rio Declaration, which stresses the need for citizen's participation in environmental issues and for access to information on the environment held by public authorities. As such it is the most ambitious venture in the area of environmental democracy so far undertaken under the auspices of the United Nations."

Kofi A. Annan, Secretary-General of the United Nations

The European Directive on Public Access to Environmental Information 2003/4/EC is also setting standards for the dissemination of public information.

Access to Impartial Adjudicator

- Ombudsman
- Information Commissioner - FOI
- Parliamentary representatives
- Courts

Who do we have to ensure that our voices are heard on public interest environmental matters?

Ombudsman - - must have made a complaint to the relevant Minister or local government before the Ombudsman will investigate.

Information Commissioner - FOI

Parliamentary representatives

Courts

Access to an impartial adjudicator

- Article 125 of the Turkish Constitution states:
“Recourse to judicial review shall be open against all actions and acts of the administration..... the administration shall be liable to compensate for damages resulting from its actions and acts.”
 - See however Res 58/161

Should we strengthen our institutions so that the guarantees are better – does a bill of rights in itself assist access to justice? What is the role of political will in reinforcing our existing institutions? How can we create the political will for change. Mahmut Vefa's is a great example because of the absence of checks and balances in the Turkish system he was able to achieve a huge amount. What is the role of international institutions?

What human rights mean for peoples within nations

- The UN acts as an impartial body in many disputes between peoples and the State in which they live (e.g. the Palestinians and Israel).
- General Assembly resolution 1803 (XVII) of 14 December 1962, "Permanent Sovereignty over Natural Resources" Adopted by General Assembly resolution 1803 (XVII) of 14 December 1962

http://www.unhchr.ch/html/menu3/b/c_natres.htm

**General Assembly resolution 1803 (XVII) of 14 December 1962,
"Permanent Sovereignty over Natural Resources"
Adopted by General Assembly resolution 1803 (XVII) of 14 December 1962**

Declares that:

1. The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.
2. The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities.
3. In cases where authorization is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force, and by international law. The profits derived must be shared in the proportions freely agreed upon, in each case, between the investors and the recipient State, due care being taken to ensure that there is no impairment, for any reason, of that State's sovereignty over its natural wealth and resources.
4. Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases the owner shall be paid appropriate compensation, in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law. In any case where the question of compensation gives rise to a controversy, the national jurisdiction of the State taking such measures shall be exhausted. However, upon agreement by sovereign States and other parties concerned, settlement of the dispute should be made through arbitration or international adjudication.
5. The free and beneficial exercise of the sovereignty of peoples and nations over their natural resources must be furthered by the mutual respect of States based on their sovereign equality.
6. International co-operation for the economic development of developing countries, whether in the form of public or private capital investments, exchange of goods and services, technical assistance, or exchange of scientific information, shall be such as to further their independent national development and shall be based upon respect for their sovereignty over their natural wealth and resources.
7. Violation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations and hinders the development of international co-operation and the maintenance of peace.
8. Foreign investment agreements freely entered into by or between sovereign States shall be observed in good faith; States and international organizations shall strictly and conscientiously respect the sovereignty of peoples and nations over their natural wealth and resources in accordance with the Charter and the principles set forth in the present resolution.

Environmental Defenders Office

- Public interest environmental legal
 - Advice
 - Legal education and
 - Law reform

www.edo.org.au/edowa

The theme of the Law Society this Law Week is that “no-one is above the Law”. In her address on Monday evening at the Sir Ronald Wilson lecture, Chief Judge Antonette Kennedy discussed the jury trial system, habeas corpus and the onus of proof as being the key principles of the ‘rule of law’. In my view, the Magna Carta is more than the medieval output of a bunch of British politicians and lords. The rights of the individual against the State have been declared and developed since then in an international context, over time, so that peoples as well as individuals now have rights against State oppression and to the natural resources on which they depend. In the twentieth century the international community of nations has ratified the International Covenants on Human Rights, and many resolutions and conventions relating to access to justice. Without deference to these conventions and the pressure of the international community, I believe that the Ilisu Dam project would not have been put on hold. However, Mr Vefa’s role was that of an individual, insofar as despite the international journalists and campaigners supporting him, he did not rely on the institutions of his own nation State. The fundamental rights of freedom of speech that he asserted in the face of opposition from the Turkish State are a beacon for environmental defenders and encourage us to believe that the rule of law is something that transcends States and their institutions in order to deliver environmental justice.