

# **Report of Ilisu fact finding mission**

## **Expropriation and compensation in Ilisu village and Karabayir**

**October 07. – 10. 2007**

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## **1) Objective of mission**

Christine Eberlein from The Berne Declaration and Ercan Ayboga from The Initiative to Save Hasankeyf visited Ilisu and Karabayir villages between 8-9 October 2007 and spoke to several heads of families as well as the village leader of these villages. The aim was to find out whether expropriation had indeed started and whether the Turkish dam building authority, DSI (State Hydraulic Works, now part of the ministry of Environment), is implementing the promises in the Terms of Reference (ToR, which are the conditions) agreed between the Export Credit Agencies (ECAs) and DSI. In the afternoon of October 9 we were ordered to come to the local army headquarters with the village leader, Mr. Celik. Afterwards, the residents of Ilisu village felt very intimidated and asked to keep their names secret, except for Mr. Abdulselam Verim. On October 7 we visited lawyers in Diyarbakir who received law cases from families in Ilisu and Karabayir villages. A week before, the British lawyer Catriona Vine had spoken to lawyers in Diyarbakir and Batman on behalf of the Kurdish Human Rights Project. We include her interviews in this report.

## **2) Major Findings**

- The expropriation process has partially started in Ilisu and Karabayir villages and will be completed by 2008, even though the project implementation structures and grievance mechanisms are not in place. (The Implementation Resettlement Report lists the total number of all affected households as 52 households in Ilisu and 208 in Karabayir).
- The mission found affected people had not been informed about the ToR or their rights and benefits. The expropriation process does not conform to the ToR at all, and DSI continues to employ the Turkish law which is of lower standard.
- The expropriation process is clearly in violation of ToR 13 and 18<sup>1</sup> (see end of document). Only one resettlement site has been proposed by DSI which is absolutely uninhabitable as it has no water supply, no fertile land, and is situated on a rocky and steep hill. Other suggestions by displaced families of resettlement sites have been ignored.
- The compensation money offered to the affected families by DSI is about half the amount usually paid for houses and land in the area. It is definitely not enough to start a new life elsewhere. All families filed lawsuits but the prices set by the courts of first instance still do not reflect the replacement value of the properties. Almost all families filed lawsuits with the court of appeal, which are still pending. However, the lawyers we interviewed stated that the courts of appeal might even lower the compensation, as DSI has also filed lawsuits.
- Further, all families we spoke to, said the only reason they took money for compensation was that they were only offered one resettlement place which was unsuitable. However all families would prefer to move collectively to a new nearby resettlement village. All inhabitants felt deeply betrayed by the DSI as they were promised good land and good compensation packages and now are much worse off compared to other dam affected people in Turkey. Although they were quite in favour of the dam in the beginning they are now against the dam and complain about the way they have been treated. They don't any longer trust the DSI or the European ECAs.
- We conclude that the expropriation and compensation process fundamentally violates the agreements of the ToR. It is a scandal that the affected people are being treated so badly. The process disregards any promises which were ever made by DSI, the ECAs, and the Governments of Switzerland, Austria and Germany. In fact, we come to the conclusion that DSI never really intended to find adequate resettlement sites, but preferred to systematically compensate affected people with money. Therefore, we question the entire

value of the ToR if the Turkish Government can simply ignore it. Why even bother making plans for income restoration and resettlement etc, if displaced people only receive cash compensation?

- We demand the ECAs and the Governments of Switzerland, Germany and Austria to immediately revise the entire expropriation process, to find adequate resettlement sites in a participative process together with affected people, and to compensate them with the replacement value of their properties, and to support them in building new livelihoods as promised in the ToR. If the ongoing expropriation process is not corrected and improved within three months, we will legally demand the Ilisu project be stopped immediately.

### **1) Interview with Mr. Abduselam Verim, affected person, Ilisu village (Interview Christine Eberlein, Ercan Ayboga, 8.10.07)**

**Questions: Have the villagers been informed? When? Did they take part in the information and focus group meetings in 2006, mentioned in the Resettlement Implementation Report?**

Mr. Verim who lives in Ilisu village says the only meetings he was ever invited to took place mid-2005 with Encon. Nor have any other family members or neighbours been to other meetings. In 2005, the Encon/DSI researchers informed them they had to move soon and suggested a place for the new village. The villagers objected to the new site, as it lacked water and was situated on the slopes of a rocky hill. The villagers preference was to move to the open plains just below the site suggested by DSI, as the land and water is much better. However DSI informed them that this sites is needed by the building companies. The villagers then suggested other places including sites in the nearby town of Dargecit, or in Batman. Yet, DSI and Encon told them that the rocky land on the steep hill was the only option available.

Mr. Verim was not aware that other meetings had taken place in 2006 and does not know anything about the meetings and pictures in the Ilisu-Resettlement Implementation Report. He knows some of the people on the picture of the Implementation Report but says they are from other villages (however the picture says the meeting took place in Ilisu). He also believes the picture titled 2006 must have been taken in 2005 as there were no meetings in 2006. His neighbour reports that his wife had taken part in the focus group meeting but that none of the women had really understood what the meeting was about as it was conducted in Turkish which the women barely understand. Based on the fact that, in 2005, DSI had not offered them other alternative places of settlement and that, no further information was given to them in the meantime, the villagers had decided they would be better off taking the compensation money. Therefore, the women explained that they preferred cash compensation.

**Q: How was the expropriation process carried out?**

Mr. Verim and his family members (who did not wish to be named) all emphasized that, initially, they were not against the dam. When DSI first came into their village in 2005 they were promised new villages and fair compensation. However, none of the promises were fulfilled; quite the opposite occurred, the villagers were betrayed, which changed their feelings toward the dam.

In December 2006 three DSI experts came to the village to take note of land ownership and size of gardens and houses but the villagers were not involved. Mr. Verim and his extended family received a letter from DSI in March 2007 which informed them that the expropriation

process was about to start. The letter asked the families to come to the municipality in Dargecit to negotiate the price of their properties. Mr. Verim went to Dargecit but DSI did not want to negotiate. He was told that he either had to accept the figure or go to court. No one who received the expropriation letter accepted the DSI prices.

DSI only offered him 2000 Lira for half a Deka of land. As a consequence, he filed a case with a lawyer in Diyarbakir. Some time later six new experts sent by DSI came to estimate the value of this land and property again. The first instance court ruled in summer 2007 that he should receive 8000 Lira for 2 Deka land and not enough for his large house and his precious fruit gardens. Mr. Verim received the compensation money instantly. As this was much too low he decided to bring the case to the court of appeal which has not yet come to a decision

**Q: Can you give examples as to why you are unhappy with the compensation you have received?**

The prices were set much too low and did not take into account the fact that land on the river Tigris is very valuable. For example in 2005 Mr. Verim was offered 10'000 Lira for half a Deka Land by a neighbour from another village. Unfortunately, he refused, as he assumed that the expropriation compensation would be much higher.

He gives another example as to how he felt he was betrayed by DSI regarding the price of his fruit garden: In 2005 he had been promised a price of 12'000 for 1 Deka irrigated garden land. However, the price set in March 2007 by DSI was 6780 Lira.

Further, DSI did not take into account the location of the land but only the size. A very fertile patch of land on the river received the same price as an arid piece of land, which the villagers found not at all fair. Other villagers complaint that the value of their stone houses, which are much better built, was not taken into account.

Mr. Verim and the members of his extended family said the money was not sufficient to buy a flat for the entire family in nearby Dargecit. After it became known in Dargecit that expropriation in Ilisu had begun, land and house prices increased dramatically.

Mr. Verim added that the Ilisu region is famous for its thermal bathes, which are owned by the community. But owners of restaurants, ferry boats and small hotels did not receive anything for their businesses and were not compensated for their loss of income, as tourism decreased. In summer, 7,000 – 10,000 people from the region come to Ilisu to use the thermal bathes. The villagers use this opportunity to sell vegetables and other things to the visitors. This supplies important extra income of about 5000 to 20'000 Lira per family. Further, the income of the direct gains from the bathes goes to the village and is then divided equally and distributed to the families. Each family receives 1000 Lira annually. The value of the baths is estimated to be around 1 Million Lira but no compensation was paid to the villagers. In fact, the income created by the bathes was totally ignored by DSI.

**Q: If they were to receive better compensation offers, would the families prefer cash compensation or would they choose to move to a new resettlement site? What is the problem with government resettlement?**

Mr. Verim and his neighbours all agree that their first choice is to stay in the area, if possible in the area of the old Ilisu village. Some have seen some resettlement sites of other dams and initially thought the government would also build similar houses for them as was promised in 2005. Yet, DSI informed them in Dargecit, in March 2007, that new houses will not be for free but 90 qm2 will cost 85'000 Lira. If, for example, their money and house is worth 100'000 Lira, DSI would only pay 15'000 Lira cash. They calculated that with so little money

left they would not be able to survive and feed a large family. Worse yet, DSI only offered to build houses (on the steep slopes of the rocky land mentioned above); irrigated land or gardens were not offered. The money would not be enough to buy new irrigated land in the area to at least keep their cattle. The Ilisu dam and a cement factory would be built adjacent to the land, suggested by DSI, negatively impacting the growth of agricultural products, further limiting their income. But without this agricultural base to support their families they would not be able to survive. Now they live almost for free, they own the fertile gardens and enough land to cultivate vegetables, crops and they have cattle as well as free water and earn a small amount of money selling agricultural goods.

**Q: What are you going to do once it is decided that you must move?**

Mr. Verim and the members of his extended family said they would like to stay in the nearby area – which is not possible. They cannot move to nearby villages as there is no land left. The fertile lands are all near the Tigris and will be flooded. What is left are pieces of land on the slopes of the rocky and sandy mountains. It might be enough to build a new house - but nobody knows what they will do to earn an income.

Their second choice would be to move to Dargecit, but there is no land there either, and affording a house or flat would be impossible, now that prices are so high.

Nobody wants to move to the larger cities, as there are strong ties with the local area and other relatives in villages which are not going to be flooded. However, their new source of income remains unclear.

They also don't want to work on the dam construction site. Mr. Verim believes that the villagers will get the dirty jobs no one else wants as they all lack skills. Yet he is a proud and well-off farmer and wants to stay a farmer - even if it is nearby. In short, affected people don't know what to do or where to move and are feeling somewhat demoralised.

**Q: Would you consider moving to the state farm Ceylanpinar, which has good land but is quite far away (250 km)?**

Nobody interviewed would ever consider moving this far away. They have never been there and fear that they would lose contact with their relatives in the Ilisu area, which is out of the question.

**Q: Anything to add?**

Mr. Verim was present in 2006 when the ECAs visited the village. He heard Mr. Yunus Beiractal from Nurol say that Nurol will build a new Ilisu village and that the affected people would be well reimbursed. When the ECAs had just left, we asked him where our village will be built. He answered that Nurol would *not* build a new Ilisu village.

Mr Verim and his male family members emphasized once again that their main aim is not be worse off after the dam. They want the same conditions applied in Ilisu as the people affected by dams on the black sea or in western Turkey. These people received new houses and good compensation. Their main objective is to be farmers again, preferably near the present location.

He said the villagers feel betrayed by DSI and no longer trust the government. DSI promises the people of Dargecit a lot of money, better roads and good business. However, nobody cares about the real dam affected people in the villages which will be flooded. He said: “No one comes to talk to us and we don't even receive what was promised. We fear that the people of Dargecit will profit and we will be the ones to lose out. The present members of his family and the affected people call for help and demanded that Christine Eberlein pass this information about their destiny on to the ECAs to help them.”

## **2) Interview with Mr. Mehmet Celik, Mukhtari, village leader of Ilisu village (Interview on 09.10. 2007, C. Eberlein, E. Ayboga)**

The village leader who we talked to individually several times basically confirmed the procedures and the testimonies listed above. Mr. Celik had been invited to speak in Switzerland, Austria and Germany by the Ilisu building consortium in 2006. He then believed the dam would be beneficial for Turkey and that the promises made to him and the villagers would come to fruition. After they received so little compensation and as it is now clear that no new Ilisu village, including enough land to grow food and raise cattle, will be made available, he has a negative attitude towards the dam. Every single person he talked to in the villages of Ilisu and Karabayir, who was part of the first phase of expropriation, felt betrayed.

Mr. Celik took part in the meetings organized by DSI and Encon, however he said it is not true what is stated in the Implementation Resettlement Report that he was informed beforehand that meetings would take place. In all these meetings DSI/Encon repeated that a new village would be built for the affected families and that they would receive a fair compensation package. He also complained that the proposed resettlement site, suggested by DSI, is unacceptable. DSI ignored the fact that the good land belongs to someone else and, hence, cannot be given to the villagers of Ilisu, and that the remaining area is uninhabitable. He said this was the only reason why people chose cash compensation as they felt betrayed and lost trust in DSI. What if they chose government resettlement and end up in bad and small houses, without land, on a rocky steep hill, without water?

## **3) Security situation and intimidations in the area**

During our talk to the Mukhtari Mr. Celik, the Kamajoks (which are the village security forces) knocked on the door and ordered Christine Eberlein and Ercan Ayboga to follow them immediately to the local army headquarters. We were accused of being journalists and needed to prove that we were not. When we returned to the village, the residents felt very intimidated and several asked us not to publish their names. They said, due to the strong military presence in the area (which had recently been increased due to the killing of 11 soldiers by PKK in the region), they did not dare making their plight public or speak out against the government.

## **4) Interview with lawyer, Mr. Serhat Aktan, Diyarbakir (Interview: Christine Eberlein, Ercan Ayboga, 7.10.07)**

Mr. Aktan was not informed about the ToR or that the displaced persons should receive better conditions. We informed him about the ToR, the roles of the COE, the Project Implementation Unit and the grievance procedures.

*He described the expropriation process according to the Turkish expropriation laws as follows:*

- DSI sent a letter to the families which are to be expropriated, stating that they have to respond within 15 days in order to make an agreement in regard to the compensation that is to be paid for the land.

- Once an agreement is made there is 45 days for the title deeds to be transferred to DSI
- If the person/family has not responded within 15 days, the DSI proposal is considered to have been refused. If there is no agreement the landowner must sign a document to that effect.
- A case is opened by DSI within three months against the landowner in the first instance court in the district where the land is situated.
- Once the case is opened by DSI and notification is received, the landowner has 30 days to lodge the (technical) objections to the valuation.
- At the first hearing the court recommends reconciliation between the parties without examining the land valuation.
- If there is no reconciliation then the court orders independent surveyors to make a valuation.
- Once this survey has been completed the court will make its judgment.
- After the decision of the first instance court the title is transferred to the expropriation agency.
- After the transfer of title takes place, the landowner may appeal the decision as regards to compensation but has no appeal against the transfer of title.
- The court of appeal may then accept or reject the decision regarding compensation.

### ***Cases dealt with by Mr. Aktan***

Mr. Aktan received claims for compensation from six large families in the villages of Ilisu and Karabayir, regarding 30 different issues. The expropriation in these villages is partial and will be completed in 2008.

The villagers informed him that a three member team had arrived in early December 2006 to estimate the value of their properties. The families to be displaced were not contacted or involved in the estimations. All families in Ilisu who received the DSI letter in March 2007 had refused to accept the DSI offer as it was about half of the price which is usually paid for houses and land in the area. In the meantime DSI appointed a six member expert team (consisting of an agricultural engineers, kamajoks (government village security forces), and civil engineers for further land and house valuations.

The first instance court ruled that prices in the Ilisu region should be the following:

1 Deka (1/10 ha) garden	= 12'700 Lira
1 Deka fruitgarden	= 14'000 Lira
1 Deka unirrigated land	= 2'547 Lira
1 Deka irrigated land	= 6'780 Lira
1 large family house	= 30-70'000 Lira
1 qm2 House (for living)	= 370 Lira
1 qm2 barn	= 117 Lira

According to Turkish law, all families were immediately paid the compensation money based on the first instance court decision. Only 2 families in Ilisu accepted the decision and decided not to file further claims. All others took their cases to the court of appeal. DSI also filed lawsuits against the first instance court decision for setting prices too high. The court of appeal has the right to decide that the compensation price set by the first instance court was too high or too low. In the first case, complainants have to repay money they were awarded. In instances, where the court of appeal decides the compensation price is too low, complainants receive further money. Several of Mr. Aktan's 30 cases on Ilisu have been

completed, whereby the court of appeals granted slightly higher expropriation funds to the complainants. Most cases however are still pending.

He further stated that the expropriation money paid will not be sufficient to start a new life as the villagers now basically live for free. They don't pay rent, have free access to water, cultivate their own vegetables, meat, food.

### ***Inconsistent court decisions***

Mr. Aktan pointed out that the court decisions are not handled uniformly by the different courts, as various courts in different districts (Dargecit, Mardin or even in Siirt or Sirnak) are responsible, depending on which side of the river the villages are situated.

Mr. Aktan thinks that there are not many cases where the Court of Appeal is likely to overturn the judgment of the court of first instance on the basis that the compensation award is too low, but does feel that it is likely that the Court of Appeal will decide that the compensation awarded was too high and thus reduce the amounts awarded by the courts of first instance.

He said that, in principle, the expert reports, which are being commissioned by the courts for valuation of the land, are fair. The problem, however, is that the courts are ignoring the reports and are instead choosing to award smaller amounts of compensation. The courts do not seem have any clear justification for its decisions other than choosing an amount that they think the applicants will accept!

Mr. Aktan mentioned one case, where the valuation was too low because the report stated that: "as the region has been affected by terrorism the value of the land has decreased".

As an example of the court's unwillingness to follow the expert reports, Mr. Aktan said that he had a case where the expert had valued the property at 122,000 YTL but the court had awarded 40,000 YTL without any obvious reasoning.

There is a problem with DSI basing its valuations on land prices in other regions of the country which are not as fertile as this region.

### ***Disputes concerning missing land titles***

Mr. Aktan informed us that he knows of 2 cases where displaced persons do not own land titles, but cultivated land for a long time. According to Turkish law in these cases people have to prove that they cultivated the land for 20 years. Other lawyers are preparing a lawsuit for this case.

Mr. Aktan also mentioned that the region Ilisu/Dargecit did not have a land-registry office until 2004 and no land was registered prior to that time. Land-disputes remain a problem because land has not yet been registered.

### ***Resettlement issues***

Mr. Aktan said the new resettlement law has been slightly improved but resettlement remains completely unattractive to displaced persons:

- The law stipulates that people who choose government resettlement do not receive the equivalent of their present house and are unable to make further claims; these persons will be given new homes, whose design and structure etc. will be chosen for them.
- They must live in this house for at least ten years and cannot sell, mortgage or rent it.



- They cannot choose the location of the new house and can not make claims for new land or gardens etc.
- Experience of other resettlement villages show that the houses constructed by the government were built inexpensively and quickly fall into disrepair; promises for water, electricity, television, telephones were often unfulfilled.

For these reasons, lawyers in the region generally tell their clients not to choose government resettlement.

### *Further issues discussed*

Mr. Aktan informed us that the court cases will cost 10-15% of the value of the compensation to be paid. This money has to be paid by the complainants themselves.

He believes that compensation disputes will also be settled by the courts in the future, as the displaced persons will always file claims with the help of lawyers and, therefore, he does not understand the necessity of a complex grievance procedure.

Similarly, he does not understand how the ToR shall be resolved, particularly when the lawyers involved are uninformed and ToR have no legal validity.

## **5) Notes of the Kurdish Human Rights Project fact finding mission, Catriona Vine, legal officer, September 25.-26. 2007**

### **Interview with lawyer in Diyarbakir (name withheld)**

He has 27 cases – 2 at first instance and 25 at appeal court regarding expropriation in Ilisu and Karabayir.

He reported that, generally speaking, the first amount offered by DSI was particularly low so Landowner opened a case at first instance court. The money offered would enable villagers to buy a small flat in the city but would not compensate them for the loss of their livelihoods, nor would it provide them with an adequate means for survival in the city. If there is any money left over from buying a property it will not provide them with enough to live on for more than one year.

In order to set up a new life there are invisible costs including psychological and social costs. The compensation only purports to take into account the material value of the land.

He believes that the appeal court will decrease the amount awarded by the first instance court.

### **Interview with lawyer in Batman Municipality**

He has 20 claims from Ilisu and 10 claims from Karabayir. All of these cases relate to the land belonging to his relatives, who asked him to represent them. He is doing this on a pro-bono basis.

He believes that there are about 350 cases from Ilisu village and about 120 from Karabayir. One lawyer is handling 200 of the cases and another is handling about 100.

The hearing, regarding compensation for the houses, has been completed, however another will begin on 24<sup>th</sup> October, this will examine compensation for irrigated and non-irrigated land.

### *Proceedings*

In Ilisu last year on 15 November, residents received notification from DSI saying that their land would be expropriated, based on Articles 8 and 10 of the Law 2942 the expropriation was rapid and there was no opportunity to challenge it. Article 27 was not applied.

In the first group of cases, the expert reports ordered by the court found in favour of the villagers and the prices were normal. DSI challenged the valuations and the court reduced the amounts.

In the second group of cases, he believes that the experts were under pressure to make lower valuations as they assessed similar land as being worth less. The second lot of reports gave the price as if the land was in Kiziltepe. The land in this region cannot be compared to the land there.

One of his clients had 10 decars (10,000 sq metres) of irrigated land, a house and a garden. He was able to survive off the land without any extra income. The total amount of compensation offered to him was 80,000 YTL – such an amount would not even allow him to buy a flat in Batman. He will have nothing to live off. His land supported 10 people.

Most of the villages and the land in the surrounding areas have been evacuated due to security reasons so it is not possible for villagers to buy land nearby, with their compensation money, and continue to farm. Their only alternative is to move to the city.

Some of the villagers have been put off by the costs of appealing the decisions. They need to pay court fees and pay for a survey which costs in excess of 500 YTL. Some of the villagers are also worried that, because the money awarded by the court of first instance is deposited into their bank accounts, if they lose at the court of appeal, they may have to return some of that money.

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<sup>i</sup> **ToR 12:** PIU will develop time-bound step-by-step compensation and resettlement measures, implementation schedule and monitoring concept for all affected populations regardless of whether they seek resettlement assistance from the state or not assuring the timely completion of resettlement six months prior to the area being affected (such as land, infrastructure, access roads) and avoiding temporary resettlement

**ToR 13:** PIU will provide measures, implementation schedule and monitoring concept for the distribution of land assigned to DSI by MARA including the option package under the umbrella of government assisted resettlement to all landless households or those with less than adequate land ownership to support their families, using as a benchmark either MARA or state statistical office standard or farm models for each of the affected areas Evidence that the communities and households affected have been informed of the options package will be provided by PIU.

**ToR 18:** Task A: PIU will calculate approximate land requirements for resettlement in all relevant categories based on an assumption of a land-for-land resettlement policy. PIU will identify all resettlement sites for all PAPs (including those opting for expropriation) Task B: For each resettlement site a feasibility study will be performed once adequacy of resettlement sites has been confirmed through consultation with the PAPs. Planning includes concrete measures and budget for site preparation. Based on the feasibility study, a farming model for income restoration will be provided. PIU will develop a participation plan in order to inform and consult PAPs.