

REPORT

**THE ILISU DAM AND ITS  
IMPACT ON HUMAN  
RIGHTS IN IRAQ:  
THE IRAQ GOVERNMENT'S  
FAILURE TO ACT**



# **The Ilisu dam and its impact on human rights in Iraq: The Iraq government's failure to act**

Submission to the U.N. Committee on Economic, Social and Cultural Rights  
for its 56<sup>th</sup> Session, 21 September - 9 October 2015

Submitted on September 4<sup>th</sup>, 2015 by:

- Save the Tigris and Iraqi Marshes Campaign
- Iraqi Social Forum
- Iraqi Civil Society Solidarity Initiative
- CounterCurrent – GegenStrömung / INFOE
- Environmental Defender Law Center (EDLC)
- Initiative to Keep Hasankeyf Alive
- The Corner House
- Un ponte per ....

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## **0. Information on submitting organizations**

The following report has been compiled by non-governmental organisations and initiatives in Iraq, Turkey and Europe that represent dam affected people or have monitored one or more dam projects over a long period of time.

**Save the Tigris and Iraqi Marshes Campaign** is an advocacy campaign led by a coalition of civil society organizations from Iraq, Turkey and Iran. The campaign is part of an international effort to Save the World Heritage on the Tigris River from the impacts of the Ilisu Dam, a hydroelectric project being constructed on the Tigris River by the Turkish government. It links groups and movements concerned with the adverse impacts of dams and other development projects on the Tigris and Euphrates and advocates for policies that secure the sustainable and equitable use of water for all who live in the region, and opposes the privatization and commodification of water supplies and natural resources.

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**Iraqi Social Forum** is a joint project between Iraqi social movements, Iraqi trade unions, civil society organizations and many individual Iraqi social justice activists. It supports the vital, ongoing expansion of social justice movements in Iraq. Iraqis and internationals are working together to establish an Iraqi Social Forum that works as an open political and social space for movements, organizations, and individuals, who share a progressive agenda, to gather together in Iraq. The Forum facilitates the exchange of information and coordination of activities among Iraqi civil society organizations.

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**Iraqi Civil Society Solidarity Initiative** supports the nonviolent initiatives of Iraqi NGOs, labor unions, social movements and independent media that are striving to promote social justice, defend human rights and overcome years of war, violence, and deprivation by building a just and lasting peace. It does this work via communications, advocacy and campaigning and international solidarity.

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**CounterCurrent - GegenStrömung** is an initiative in Germany founded to monitor the involvement of the German Export Credit Agency (ECA) in the Ilisu dam project in Turkey. It campaigns for compliance with international standards by the German government, German banks and companies in their economic activities abroad, with a special focus on the impacts of large dams. The legal sponsor of CounterCurrent is the Institute for Ecology and Action Anthropology (INFOE), a German non-governmental organisation supporting indigenous peoples.

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The **Environmental Defender Law Center (EDLC)** is a U.S.-based non-profit charity that has worked since 2003 to protect the human rights of people in developing countries who are fighting against harm to their environment.

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The **Initiative to Keep Hasankeyf Alive - Hasankeyf'i Yaşatma Girişimi** was founded in January 2006 to stop the Ilisu dam project. Its more than 86 members comprise human rights, women's, environmental, culture and social NGOs, the local authorities of all affected communities, professional organizations and unions from the affected 5 provinces of Turkey. The initiative demands that alternatives to the Ilisu dam should be developed with all relevant stakeholders in order to enhance the socio-economic situation of the people in the region, to develop the cultural heritage of the area and save the natural environment of this region.

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**The Corner House** is a not-for-profit solidarity and research group. It has been actively monitoring the human rights, development and environmental impacts of the Ilisu dam and other dams in the region since 1999.

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**Un ponte per ....** is a volunteering association founded in 1991 immediately after the start of the bombings on Iraq ended and the international embargo. Its aim is to promote solidarity initiatives in favor of Iraqi people who suffered from the war. Since then, Un ponte per... has worked closely with local civil society organizations in order to prevent conflicts, especially in the Near East and Serbia, by setting up advocacy campaigns, cultural exchanges and international cooperation programs. The Association rejects war as a means to solve international conflicts and works for peace and solidarity among peoples by facilitating encounters among different cultures, languages, religions and traditions with the idea of promoting a more equal and pacific coexistence. Un ponte per... believes that solidarity interventions to help people suffering from war are inseparable from the political commitment to influence the causes of conflicts.

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## **I. Relevance of the matters discussed to the issues in the Fourth Periodic Report by Iraq**

In paragraph 22 of its March 24, 2015 "List of issues in relation to the fourth periodic report of Iraq", the Committee requests that the state of Iraq:

"update on measures adopted to improve access to safe drinking water and to adequate sanitation services in the State party and provide up-to-date data on such access in all provinces."

As will be described below, the state of Iraq has failed to take critical measures to improve access to safe drinking water, due to its failure to protect the key water resources of the Tigris and Euphrates rivers that originate in Turkey but supply Iraq with the bulk of its water. In fact, by some estimates, the construction of upstream dams and hydropower projects in Turkey on these two rivers has reduced the supply of water to Iraq by 40-45 % from 1975 levels.<sup>1</sup>

## **II. Access to water in Iraq: current status and threats resulting from the neglect of trans-boundary water impacts**

Access to water in Iraq is a complex issue. Factors like pollution, internal water management policies, dysfunctional water infrastructure, impacts of climate change, and the current conflict with Daesh make the situation more urgent. These problems are compounded by the failure of the Iraqi government to take measures to ensure that Turkey, Syria and Iran release adequate flows of water into Iraq via its shared rivers. In the long-term this failure may prove the greatest threat to ensuring the human right to water.

The water situation in Iraq is in severe crisis, as acknowledged by the United Nations itself in their country profile for Iraq<sup>2</sup>:

- The availability of water for agriculture, industry and household supplies is a major issue for Iraq. Upstream damming, pollution, climate change and inefficient usage impact the quality and quantity of the country's water.
- The Tigris and Euphrates rivers are Iraq's two major surface water sources; they may dry up by 2040 if current trends prevail.
- The amount of water available per person per year decreased from 5,900 cubic metres in 1977 to 2,400 cubic metres in 2009.
- 20% of households in Iraq use an unsafe drinking water source.
- 65% of households use public networks as a main source of drinking water.
- 92% of total freshwater is used for irrigation and food production.
- Iraq's environment has suffered greatly from the impact of poor policies on pollution and resource management.
- As a result, the country is exposed to a range of environmental issues, including drought, desertification and increasing soil salinity.
- The Marshlands in the south of Iraq are the largest wetlands in Southwest Asia and are recognized as one of the world's most exceptional ecosystems, yet the percentage of dried marshlands is now 90%.

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<sup>1</sup> <http://www.theguardian.com/environment/2014/jul/02/water-key-conflict-iraq-syria-isis>

<sup>2</sup> [http://www.uniraq.org/index.php?option=com\\_k2&view=item&layout=item&id=941&Itemid=472&lang=en](http://www.uniraq.org/index.php?option=com_k2&view=item&layout=item&id=941&Itemid=472&lang=en)

The 2013 UN Factsheet on Water in Iraq also states that the quality of water used for drinking and agriculture is poor and violates both Iraqi National Standards and World Health Organization guidelines.<sup>3</sup>

Other independent reports also highlight the poor state of water resources in Iraq. Recent studies by the London-based Chatham House<sup>4</sup> think-tank and the International Organisation for Migration<sup>5</sup> have variously found:

- Growth in water-intensive agriculture, pesticide use and industry has wrought havoc on downstream water quality and ecology.
- Salinity in some regions, especially in the Euphrates River is more than double the natural level.
- Salinization in the lower part of the Euphrates basin is a cause of acute concern. Studies show that the level of salinity in the area of the Hindiyah Barrage in southern Iraq has risen at least fourfold since 1980, to a level considered unfit for most agricultural irrigation and unhealthy for animals to drink.
- High pollution and salinity had devastating effects on livestock, agriculture, and fishing in the Muthanna, Missan, Basra, and Wassit governorates. The governorates of Dhi-Qar and Muthanna have been particularly affected by dehydration, sanitation-related illnesses, animal deaths, farm losses and displacement.
- Water scarcity is having a significant impact in the areas of health, livelihood, and day-to-day household management for vulnerable families throughout Iraq.

As stated above, reasons for this situation are complex. Yet, major factors contributing to this dire situation are the water policy of the neighbouring state of Turkey and Iran and Iraq's failure to address the harms caused by Turkey and Iran.

Iraq is heavily dependent for its water supply on the Tigris and Euphrates rivers, both of which originate in Turkey. In order to control and use that water, Turkey has been building large dams over the past decades. And not only Turkey, but also Iran has been building big dams. Iran has blocked the flow of the Alwand River<sup>6</sup> that is one of the tributaries of the Tigris River that flows from Iran into the province of Suleimaniya in the north. In the south of Iraq, Iran has also been pumping its “salty discharge from cleaned land”<sup>7</sup> into Iraq.

Unlike other regions, there is no comprehensive treaty on transboundary water cooperation between the riparian states of the Tigris and Euphrates basin, and the current water-sharing agreements between Turkey, Syria and Iraq do not ensure an adequate water supply to Iraq. In response to this Iraq, and within it, the autonomous Kurdish Regional Government, have as a solution been building new dams as a measure to protect its citizens and ensure access to water. This policy is short sighted, as it does not address the root cause of the problem, the lack of a comprehensive transboundary water agreement.

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<sup>3</sup> UN Iraq, Water in Iraq: Fact Sheet, Available at <http://www.iau-iraq.org/documents/1866/Water-Factsheet.pdf>

<sup>4</sup> M. Nouar Shamout with Glada Lahn (2015) The Euphrates in Crisis: Channels of Cooperation for a Threatened River. London: Chatham House, Available at

[http://www.chathamhouse.org/sites/files/chathamhouse/field/field\\_document/20150413Euphrates\\_0.pdf](http://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/20150413Euphrates_0.pdf)

<sup>5</sup> IOM (2012) Iraq Special Report: Water Scarcity. Available at <http://environmentalmigration.iom.int/iom-iraq-special-report-water-scarcity>

<sup>6</sup> <http://www.iraq-businessnews.com/2012/07/17/iran-cuts-flow-of-al-wind-river/>

<sup>7</sup> <http://www.thenational.ae/news/world/middle-east/iraq-blames-iran-for-water-pollution>

Another circumstance that makes the situation more complicated, is the fact that Daesh is using Iraq's water supply to pressure local communities and using war tactics, including flooding and cutting off water, in order to manipulate the population and impose their agenda. The fact that Daesh is reducing the water supply to Iraqis makes it all the more imperative for the government of Iraq to meet its duty to enter into satisfactory water-sharing agreements with its neighbours.

The Euphrates River is already heavily dammed on the Turkish side, greatly restricting the flow of its waters into Iraq. The Tigris River is still largely free-flowing, but a huge dam designed for hydropower generation in Turkey, the Ilisu dam, has been constructed and is nearing its completion.<sup>8</sup> It is estimated that Ilisu (in combination with other hydro-developments) will reduce water flow to Iraq by over 50%.<sup>9</sup> Together with the smaller Cizre dam, which is designed for irrigation and to be built between Ilisu and the border to Iraq, it will hugely further impact the accessibility of water in Iraq. Evaporation and irrigation will severely reduce the amount of water from the Tigris reaching the border, and potential eutrophication of the reservoir may cause water quality to deteriorate.

And the Ilisu dam is but the tip of the iceberg, as it is just one of twenty-two hydroelectric dams constructed in Turkey under the Southeastern Anatolia Project (GAP). Eighteen have already been built in the region since the Turkish government approved the project in 1982. Some estimates project that GAP will have reduced the overall flow of the Tigris River in Iraq by 80 percent when complete.<sup>10</sup>

Although Syria and Iraq have both sought to negotiate a tripartite agreement on the sharing of the Euphrates and Tigris waters, Turkey has refused to do so. Talks have taken place between officials from the three countries but these have not resulted in an intergovernmental agreement. Iraq was not consulted on Turkey's dam building plans prior to their implementation, although such consultation is clearly required under international customary law and the 1997 U.N. Convention on the Law of the Non-navigational Uses of International Watercourses.<sup>11</sup>

In the absence of a fair and comprehensive water sharing agreement between Turkey, Syria and Iraq, the impacts on the Iraqi population downstream of further dam building on the Euphrates and the Tigris Rivers will be immense.

The impact on the Marsh Arabs living at the confluence of the Euphrates and Tigris in the Mesopotamian Marshes is of particular concern, since their culture is intrinsically dependent on the marsh ecosystem. They will therefore be disproportionately affected. The Iraqi Marshes have been nominated for inclusion on the UNESCO World Heritage site list as both a natural and cultural site due to their unique ecology. Iraq has designated its very first National Park in the Central Marshes and identified the Hawizeh Marsh as its first Ramsar Wetland of International Importance. The region is globally important as a Key Biodiversity Site and the marshes are also said to be the site of the original Garden of Eden.

After the intentional drying-out of large parts of the marshes during the 1980s under the regime of Saddam Hussein, a restoration program for the marshes was conducted with the help of international actors during the past decade. More recently, the combination of drought conditions and the upstream damming of the Euphrates in Turkey have largely undone the benefits of this

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<sup>8</sup> Information on the impacts of the Ilisu dam on the economic, social and cultural rights of those affected in Turkey was submitted to the committee at its 46<sup>th</sup> session: "Dam construction in Turkey and its impact on economic, cultural and social rights."

[http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/TUR/INT\\_CESCR\\_NGO\\_TUR\\_46\\_10201\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/TUR/INT_CESCR_NGO_TUR_46_10201_E.pdf)

<sup>9</sup> <http://voices.nationalgeographic.com/2013/04/11/drought-and-dams-in-biblical-garden-of-eden/>

<sup>10</sup> *Ibid.*

<sup>11</sup> While Turkey has not ratified the 1997 Convention, according to international law specialists, it is nonetheless bound to respect it.



program. Moreover, should the Ilisu dam be filled, and a transboundary agreement that guarantees Iraq adequate amounts of water at all times not be reached, the success of this program and the continued survival of the Marsh Arab culture will be in grave doubt.

This is not a speculative claim. The level of water in the central marshes as of mid-August of this year was 0.4 meters when during the same period last year it was 1.5 meters<sup>12</sup>. This is in part due to a drought in the region, the fact that Turkey is not releasing the amount of water it should, and partly because of internal quota systems between the different provinces in Iraq.

### **Box: The Marsh Arabs**

A unique culture in the south of Iraq is that of the Marsh Arabs. This culture dates back thousands of years to the ancient Sumerians and has been kept alive because of water. This culture and way of living depends on a functioning marsh ecosystem. It supports economic activities such as fishing and water buffalo breeding (used for milk production, meat and skins), which are unique to this area. Water is important for the buffalo's thermoregulation in the hot climate of the south of Iraq. A rich cultural heritage is exemplified by the *muddhif*, or traditional reed house, and the *mashouq*, a local boat used to navigate the channels that connect marshes,



**Figure 1** Photo of a child in a traditional boat near Chibayish, taken July 2012.

lakes and houses, and are used for fishing and collecting reeds. The marshes provide habitat for significant populations and species of wildlife. They are important in the agricultural production of rice, wheat, millet, and dates. The marsh ecosystem also sustains an economically important local and regional fishery, providing spawning habitat for migratory fin fish and penaid shrimp species that use the marshes for spawning migrations to and from the Persian Gulf.<sup>13</sup>

The drying of the marshes in the 1990s and now again after their short-lived restoration has taken a heavy toll on the people, environment, and culture of the marshes. People in the marshes are demanding that their government engage with Turkish authorities to release more water from the Euphrates River, which currently supplies water to part of the marshes. This has been limited by the absence of a transboundary water agreement that can be used to enforce water sharing of the Euphrates and Tigris Rivers.

<sup>12</sup>From a conversation via skype with Jassim Al Assadi on August 19th, 2015. He is resident of Chibayish and Director of the environmental NGO Nature Iraq's office in Chibayish.

<sup>13</sup> Stevens M. Dr. Ahmed H. K. (2012), *Eco-Cultural Restoration of the Mesopotamian Marshes, Southern Iraq*, on Higgs, E. (2012). *Human dimensions of ecological restoration: Integrating science, nature, and culture*. D. Egan, E. E. Hjerpe, & J. Abrams (Eds.). Island Press

Nor are the harms to the Iraqi people limited to those living in the marshes. The 3.8 million people living in Baghdad rely on the Tigris for their water supply, and diminished flows will inevitably affect supplies and quality, which are already below permissible WHO standards.<sup>14</sup> Further south, the quality of the Shatt Al-Arab would also be severely affected by reduced flows from the Tigris and Euphrates. In the City of Basrah, more than 90 km into the Shatt al Arab, where 90% of the water is already of poor or very poor quality,<sup>15</sup> there is intrusion of salt water from the Gulf. With this situation, reduced flows would further concentrate pollutants in the water; undermining (and perhaps even overwhelming) any improvements that result from new water treatment facilities.

### **III. Economic, social, and cultural rights that are being violated by Iraq**

Iraq is a signatory to both the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>16</sup> Further, “[A]ccording to the legal system of Iraq, the Covenant forms an integral part of the national legislation and may be directly invoked before the courts, although it regrets the lack of information on any cases where the Covenant was actually referred to by the courts or invoked directly before the courts.”<sup>17</sup>

The water crisis described above poses a severe threat to the following rights enshrined in the International Covenant of Economic, Social and Cultural Rights:

- The right to work including the right to gain a living by a work freely chosen (Art. 6)

The right of the marsh dwellers and other citizens to earn a living in Iraq is under threat due to the lack of water. Water buffalo have died due to a lack of clean water.<sup>18</sup> Fishing, which together with buffalo herding is a key source of economic activity in the marshes, has also been destroyed.<sup>19,20</sup> Farmers and fishermen living in the marshes have been internally displaced in an attempt to find water for their animals. Increased salinity has exacerbated these problems.<sup>21</sup>

In fact, the supply of fish has been so affected by the water shortages that marsh dwellers have been reduced to importing fish from Iran.<sup>22</sup> The Ilisu dam (in combination with other hydro-

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<sup>14</sup> Khudair B.H (2013) Assessment of Water Quality Index and Water Suitability of the Tigris River for drinking water within Baghdad City, Iraq. Journal of Engineering Volume 19: No 6. Available at <http://www.iasj.net/iasj?func=fulltext&aId=73582>

<sup>15</sup> Risala A.M. (2013) Water Quality Index for Basrah Water Supply, Eng. & Tech Journal Vol. 31, Part (a), No. 8. Available at [http://www.uotechnology.edu.iq/tec\\_magaz/2013/volum312013/No.08.A.2013/Text%20%2810%29.pdf](http://www.uotechnology.edu.iq/tec_magaz/2013/volum312013/No.08.A.2013/Text%20%2810%29.pdf)

<sup>16</sup> It is also a signatory to the Convention on the Elimination of all forms of Racial Discrimination, as well as the conventions on the rights of women and children.

<sup>17</sup> *Concluding observations of the Committee on Economic, Social and Cultural Rights: Iraq. 12/12/1997. E/C.12/1/Add.17. (Concluding Observations/Comments)*, at para. 4, found at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/a3271f401ef2364c8025656b0053e4c4?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/a3271f401ef2364c8025656b0053e4c4?Opendocument).

<sup>18</sup> [http://www.boston.com/news/world/middleeast/articles/2009/04/16/drought\\_imperils\\_iracs\\_garden\\_of\\_eden\\_marshes\\_an\\_ancient\\_culture/](http://www.boston.com/news/world/middleeast/articles/2009/04/16/drought_imperils_iracs_garden_of_eden_marshes_an_ancient_culture/)

<sup>19</sup> Taken from a statement from Eng. Hasan Al Asadi from Dhi Qar Provincial Council on August 13th, 2015 <https://www.facebook.com/profile.php?id=100003847676675&pnref=story>

<sup>20</sup> <http://news.nationalgeographic.com/2015/07/150709-iraq-marsh-arabs-middle-east-water-environment-world/>

<sup>21</sup> *Ibid*

<sup>22</sup> <http://www.washingtonpost.com/wp-dyn/content/article/2009/07/23/AR2009072303851.html>

developments) will exacerbate the situation, decreasing the water flow of the Tigris entering Iraq by over 50%, and destroying 670,000 hectares of arable land in Iraq.<sup>23</sup>

Article 6 of the ICESCR provides that:

"The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right."

Not surprisingly, as with all other rights, the right to work is further protected by the "obligation to *protect* [that] requires States parties to take measures that prevent third parties from interfering with the enjoyment of the right to work."<sup>24</sup>

The state of Iraq's failure to protect the water resources that are essential to the exercise of the right to work - especially by the marginalized people living in the marshes - represents a violation of this Article.<sup>25</sup> Further, that violation is deemed to be worthy of compensation by the state of Iraq.<sup>26</sup>

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

Article 11(1) of the ICESCR provides that: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent."

General Comment no. 15 of this Committee<sup>27</sup> speaks at length to the importance of water in the exercise of the rights enshrined in Article 11. In particular, States have a special obligation to ensure the availability of adequate water resources to women, children, rural people, and minority groups.<sup>28</sup> Moreover, States are under an affirmative duty to implement measures to ensure that water resources are not diminished by third parties<sup>29</sup>, and that duty is specifically recognized in regard to rivers controlled by other actors.<sup>30</sup> The threats posed by dams to water supplies, and the corresponding obligation to take steps to protect against such threats, are also recognized in the General Comment.<sup>31</sup>

In the light of the host of water-related harms described earlier in this document, Iraq's unfulfilled obligations and corresponding violations of the rights to water of its citizens could not be clearer.<sup>32</sup>

Besides other factors mentioned above, the neglect of the Iraqi government to take measures to achieve an adequate water influx from upstream is largely contributing to the exacerbation of these harms.

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<sup>23</sup> <http://voices.nationalgeographic.com/2013/04/11/drought-and-dams-in-biblical-garden-of-edem/>

<sup>24</sup> *General Comment No. 18, E/C.12/GC/18, at para. 22*

<sup>25</sup> *Id.* at para. 31(a), 35

<sup>26</sup> *Id.* at para. 48

<sup>27</sup> *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment No. 15, E/C.12/2002/11, 20 January 2003*

<sup>28</sup> *Id.* at para. 16

<sup>29</sup> *Id.* at para. 23

<sup>30</sup> *Id.* at para. 24

<sup>31</sup> *Id.* at para. 28(a)

<sup>32</sup> *Id.* at paras. 30,31,33,35, 37,40,43,44

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

Article 12(1) of the ICESCR provides that: "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

In a statement on August 11th, the governor of the Dhi Qar province Yahya Mohammed Baqir al-Nasseri confirmed a record outbreak of one thousand infected with chicken pox due to the drought in the marshes and warned about the spread of cholera and described it as "a very serious health set back."<sup>33</sup>

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

Article 15(1) of the ICESCR provides that: "The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life..."

The Iraqi marshes support a unique culture and economic activity, which is highly dependent on water availability. The lack of water translates into the inability of the marsh Arabs to enjoy their cultural life, a right that is clearly protected by this article of the ICESCR.<sup>34</sup> This is especially true for women, keepers of cultural knowledge who have been moved from active participants in social life to mainly doing housework for survival. Recent research conducted on the marshes revealed that young women, who used to benefit from activities supported by the ecosystem services provided by the marshes like animal husbandry and making handicrafts from reed and selling on the market, are no longer able to do so. In a generation or two the valuable cultural knowledge will be lost as a result of the change in the environmental conditions, namely, the lack of water.<sup>35</sup>

#### **IV. The obligation of the Iraqi government to act**

While state parties are required by international human rights treaties to refrain from taking actions that violate the human rights protected by such treaties, it is an equally well-established principle of international human rights law that state parties are required to take steps affirmatively to protect those same rights. The ICESCR is to this effect as well, providing in Article 2(1) that:

"Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

In addition, States have a duty to act on behalf of their citizens to redress and remedy the environmental harms experienced by their citizens, irrespective of where such harms originate. This duty was acknowledged by the World Commission on Dams, when it recognized that

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<sup>33</sup> *Ibid.*

<sup>34</sup> *General comment No. 21, E/C.12/GC/21, passim.* See also paras. 48,63 in regard to the State's duty to take affirmative steps to protect against the violation of the right by third parties, such as foreign governments.

<sup>35</sup> Paper sent for publication, *Effects of Mesopotamian Marsh (Iraq) Desiccation on the Cultural Knowledge and Livelihood of Marsh Arab Women.* Nadia Al-Mudaffar Fawzi, Kelly P. Goodwin, Michelle L. Stevens, Bayan Mehdi.



"[e]xisting international laws have articulated a legal premise for a right to remedy, or reparations which is also reflected in the national legislative frameworks of many countries ... [t]he responsibility for initiating the process of reparation rests with government. The affected people may also file claims with the government" and that "[i]t is the State's responsibility to protect its citizens, including their right to just compensation."<sup>36</sup>

Measures taken by the Iraqi government to respond to the water crisis - according to Iraq's Fourth periodic report, submitted on 22 May 2013 - include subsidizing water by drilling artesian wells and by increasing water purification and sanitation. These measures are welcome, but insufficient to protect the above-mentioned rights of its population. Notably, they ignore the upcoming threat of a further deterioration of the situation by not taking all measures to reach a comprehensive transboundary water agreement that ensures adequate water supplies to its citizens, and while this takes place, to demand the stop of the construction of Ilisu dam and other relevant dams.

While talks on water issues between Turkey and Iraq have irregularly taken place over the years, no actual negotiations have been conducted. And while the Iraqi government has occasionally voiced its opposition to the Ilisu dam, it has not taken all steps at its disposal to protect its citizens' water rights. Notably, Article 5 of the 1949 Protocol No.1 ("Relative to the Regulation of the Waters of the Tigris and Euphrates and of their Tributaries") to the 1946 Treaty of Friendship and Neighbourly Relations between Iraq and Turkey states:

"The Government of Turkey agrees to inform Iraq of any projects relating to protection works it may decide to construct on either river or on its tributaries in order to render such works, as far as possible, [to] serve the interest of Iraq as well as serve the interest of Turkey."<sup>37</sup>

Of critical importance is that Articles 3 and 5 of the 1946 Treaty further require consultation between the two governments, and if such consultation does not lead to a successful resolution, disputes are to be referred to the U.N. Security Council. Iraq is not using these means to protect its citizens' rights to work, food, water, the continuous improvement of living conditions, the highest attainable standard of health, or to take part in cultural life. Consequently, by virtue of Article 2 of the ICESCR, the Iraqi government is also violating Articles 6, 11, 12, and 15.

## **V. Conclusion and Recommendation**

The state of Iraq is failing to protect its citizens' enjoyment of a host of human rights. Instead, the state of Iraq should be using all the means at its disposal, including negotiation of a binding and specific agreement, based on needs and human rights, with the government of Turkey and other neighbors to protect Iraqis' access to water from the Tigris and Euphrates rivers; the use of diplomatic measures at all levels; and if unsuccessful, a complaint to the U.N. Security Council.

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<sup>36</sup> World Commission on Dams, Dams and Development: A New Framework for Decision-making, at 229-230 (November 2000) (internal footnote omitted, emphasis added).

<sup>37</sup> Treaty of Friendship and Neighbourly Relations, quoted in Ministry of Water, "Republic of Iraq, The Ilisu Dam on the Tigris River in Turkey: Negative Impacts on Man and Environment in Iraq and the Legal Rules related to the Tigris and Euphrates waters utilisation," Baghdad, 2006.