

## Call for inputs for a report: Cultural rights and climate change

Date: 1 May 2020

Input provided by:

*Dr Kevin Grecksch*<sup>1</sup> ([kevin.grecksch@csls.ox.ac.uk](mailto:kevin.grecksch@csls.ox.ac.uk))

British Academy Postdoctoral Fellow, Centre for Socio-Legal Studies, University of Oxford, Oxford, United Kingdom

*Dr Beatriz Barreiro Carril*<sup>2</sup> ([beatriz.barreiro@urjc.es](mailto:beatriz.barreiro@urjc.es))

Associate Professor of International Law, Universidad Rey Juan Carlos, Madrid, Spain

### Introduction

In the following we will make the case for the link between climate change, water and cultural rights. We will exemplify this with the case of the Ilisu dam project in Turkey. First, we introduce the important link between water and climate change. Second, we present the case study of the Ilisu dam in Turkey through the lenses of water governance, cultural rights and international law. We conclude with some recommendations. Our input addresses several questions of the Call for Inputs, especially questions 5, 7, 8, 11, 13, and 14.

### Water and Climate Change

Water and climate change are inextricably linked. As early as 2007, the IPCC (Intergovernmental Panel on Climate Change) said that ‘water is the medium through which climate change impacts are being felt and will be experienced’<sup>3</sup>. Floods, droughts, water scarcity, and sea level rise are among the most prominent projected effects of climate change. Sustainable water use, management and subsequently governance is a key challenge of the 21<sup>st</sup> century and a precondition for successful adaptation to climate change. Water is an important, if not the most important part of the Sustainable Development Goals. Humans use water for a variety of purposes: Drinking water, river navigation, irrigation, canals, cooling water for thermal power stations, dams, desalination or recreation are only a few among the many uses of water. Humans divert water, they pollute water, and it has been a reason for war, even more so in present times<sup>4</sup>. If more people have to share the same resource, issues of distribution, access and equity arise.<sup>5</sup>

### Water as a cultural good

---

<sup>1</sup> Kevin Grecksch is a postdoctoral fellow at the Centre for Socio-Legal Studies, University of Oxford. He specialises in climate change adaptation, water governance and questions of natural resources and property rights.

<sup>2</sup> Beatriz Barreiro Carril is associate professor of International Law. She specialises in international human rights and cultural diversity.

<sup>3</sup> IPCC - Intergovernmental Panel on Climate Change. ‘Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change’. Cambridge, 2007.

<sup>4</sup> Lossow, Tobias von. ‘Water as Weapon: IS on the Euphrates and Tigris: The Systematic Instrumentalisation of Water Entails Conflicting IS Objectives’, 2016. <http://www.ssoar.info/ssoar/handle/document/45970>.

<sup>5</sup> Grecksch, Kevin. (2019). Water Resources. In: Keskitalo, E. Carina H.; Preston, Benjamin L. (Eds.). Research Handbook on Climate Change Adaptation Policy. Cheltenham: Edward Elgar. pp. 384 – 402.

Water is as well a cultural good. No other resource is linked to human settlement and culture as is water. We need water to survive, to prepare food or to clean. Humans have traded along waterways thereby shaping cultural practices and traditions. Moreover, water plays an important part in human spiritual and religious life, for example during the act of baptising or the huge importance of the Ganges river to Hindus. For instance, Kapfudzaruwa & Snowman<sup>6</sup> present a map of a South African river depicting different sites along a river used for washing, healing or initiation rites. The projected effects of climate change may alter the course of a river, lead to more frequent drought events or coastal erosion if being close to the sea. Hence, making some or all of these cultural activities impossible. And while climate change adaptation policy focusses a lot on the political and economic aspects, intangible aspects such as culture and identity are only slowly catching up, usually in the context of migration or displacement: ‘Forced displacement, both relocation and migration, clearly affects access: loss of land and home, and therefore potentially loss of culture and identity is a serious human rights violation.’<sup>7</sup> If international human rights norms already contemplate the effects of climate change in the context of migrant rights<sup>8</sup>, the link between climate change and cultural rights has not explicitly been made. This fact makes this report of the Special Rapporteur of Cultural Rights essential.<sup>9</sup>

### **The case of the Ilisu dam**

An ongoing case in Turkey exemplifies this, in this case not just potential but actual, loss. The Ilisu Dam project on the river Tigris and the city of Hasankeyf. The Turkish state describes the dam project as the largest hydropower project in the country framing it as development project to boost economic growth. Following the Turkish Government, the Ilisu dam ‘will have major environmental benefits. It will avoid the emission of millions of tons of greenhouse gases from alternative thermal power plants.’<sup>10</sup> Whether the intentions of the Turkish State are economic or climate change mitigation related, this case can be taken as an example of what to avoid if climate change mitigation measures want to be respectful of individuals and peoples’ cultural rights. As Borzcut & Sen emphasise: ‘There are still plans and investments to construct more dams on the Euphrates and Tigris rivers. On one hand, decreased water availability and reduced hydropower potential in the future make it questionable to build more dams on these rivers for power generation. (...) Construction of more dams in the basin, however, causes, in addition to environmental problems, irreversible damages to the rich historical and cultural heritage of the region. For instance, planned construction of Ilisu Dam on the Tigris River has already

---

<sup>6</sup> Kapfudzaruwa, Farai, and Merle Sowman. ‘Is There a Role for Traditional Governance Systems in South Africa’s New Water Management Regime?’ *Water SA* 35 (2009): 683–92.

<sup>7</sup> Grecksch, Kevin; Klöck, Carola. (2020). [Access and allocation in climate change adaptation](#). *International Environmental Agreements (INEA)*, p.4

<sup>8</sup> In this sense the recent decision of the Human Rights Committee establishing that countries cannot deport people who have sought asylum due to climate-related threats is important. cf. <https://news.un.org/en/story/2020/01/1055671>

<sup>9</sup> Climate change will contribute to forced migration, but the ability to migrate often depends on mobility and resources. As a result, those who are most vulnerable may be unable to migrate, instead remaining in locations that are subject to the harms caused by climate change. Those who do migrate may be particularly vulnerable to human rights abuses, since they may often be doing so in an irregular process. ‘Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.’ A/HRC/31/52. 1 February 2016, paragraph 28.

<sup>10</sup> Republic of Turkey. Ministry of Foreign Affairs. (2011). Ilisu Dam. Retrieved on 28 April 2020 from: <http://www.mfa.gov.tr/ilisu-dam.en.mfa>

been beginning to affect the biological, historical and cultural heritage of Hasankeyf, which hosts a unique habitat in the upper Mesopotamia.’<sup>11</sup>

At the beginning, the project was co-financed with loans to construction companies from Germany, Austria and Switzerland. However, after protests all three countries withdrew their credit guarantees and the Turkish state is now financing the project alone<sup>12</sup>. Hasankeyf will be submerged once the reservoir lake is filled up with water and the residents of Hasankeyf were told to leave their town by 8 October 2019. They have been resettled to a new town a short distance away. People settled down in Hasankeyf 12,000 years ago and the flooding will mean that artefacts and cultural heritage will be swallowed up by the Tigris. Among them a bridge that was part of the old Silk Road. Some artefacts have been moved to safer sites, yet the majority will be lost. Yet it is not only this city, but the dam will create large reservoir lake submerging 300 archaeological sites and dozens of towns and rivers<sup>13</sup>. There are also wider geopolitical implications: ‘According to Iraqi officials, the dam would decrease the waters of the river by 47% annually, depriving Mosul of 50% of its waters during summers’<sup>14</sup>. What we see in this case is a forced displacement and the loss of heritage and cultural sites in order to provide not water supply but electricity. Hydropower is a form of renewable energy, however, if this comes at the price of massive ecological and social costs in the form of the loss of livelihood, heritage and culture, especially in an area that is called the cradle of civilisation, the question must be asked whether this is justified. Climate change adaptation is a political process and reflects existing power constellation and this often means that not all affected stakeholders are involved.<sup>15</sup> This case shows a need to include the cultural rights approach in climate change adaptation measures. In fact, the right to take part in cultural life includes the right to participate in the decision-making processes affecting this right.

### **The case at the international level**

The international legal actions taken until now have been unsatisfactory. This proves **a need to improve the legal norms and mechanisms in order that cases like this one, where climate changes concerns need to be taking into account jointly with cultural rights concerns, can be properly addressed.**

In the context of the United Nations, the case arrived to the attention of the Committee on Economic, Social and Cultural Rights (CESCR) in 2010 in the context of the exam of the periodical report of Turkey. The attention to the case was brought by ‘European NGOs and activists from areas to be affected by the construction of the dam.’<sup>16</sup> The ‘Initiative to Keep Hasankeyf Alive’ and ‘GegenStrömung’ (CounterCurrent) ‘raised a number of concerns as to

---

<sup>11</sup> Borzkut, Denis, and Omer Lutfi Sen. (2013). ‘Climate Change Impacts in the Euphrates-Tigris Basin Based on Different Model and Scenario Simulations’. *Journal of Hydrology* 480: 149–61.

<https://doi.org/10.1016/j.jhydrol.2012.12.021>.

<sup>12</sup> Mayer-Rüth, Oliver. (2020). Hasankeyf. Der Stausee schluckt alles. Retrieved on 19 April 200 from: <https://www.tagesschau.de/ausland/hasankeyf-tuerkei-101.html>

<sup>13</sup> Hansen, Suzy. (2018). In Turkey, a power play will leave ancient towns undeThe nation’s plan to control its most precious resource includes a controversial dam that will drown some of its history. Retrieved on 28 April 2020 from: <https://www.nationalgeographic.com/magazine/2018/11/turkey-flooding-dams-displaced-antiquities-mesopotamia/>

<sup>14</sup> Albayrakoğlu, Esra Pakin. (2011). Climate Change and Security: The Case for Turkey. *Akademik Bakış*. 5(9) pp. 59-75.

<sup>15</sup> Grecksch, Kevin; Klöck, Carola. (2020). [Access and allocation in climate change adaptation](#). *International Environmental Agreements (INEA)*

<sup>16</sup> Drazewska, Berenika, (2018), Hasankeyf, the Ilisu Dam, and the Existence of “Common European Standards” on Cultural Heritage Protection, *Santander Art and Culture Law Review* 2/2018 (4): 89-120, p. 104

the Ilisu dam construction process in the context of Turkey's obligations under Article 15 ICESCR (right to cultural life) [...] including violation of the duty to respect and protect cultural heritage, to ensure access to it, and to ensure participation of the affected communities in relevant decision-making processes.' Moreover 'the following year, in collaboration with several other NGOs and associations, the 'Initiative to Keep Hasankeyf Alive' and 'GegenStrömung' produced a report on the impact of dam construction in Turkey on economic, cultural, and social rights.'<sup>17</sup> The Committee is still considering the issue, and already 'during its 46th session it has expressed deep concern over the potential impact of the Ilisu dam on cultural (and other) rights', but the concluding observations it can establish are only *soft law*.<sup>18</sup> Besides, since Turkey is not party of the Optional Protocol to the Covenant on Economic, Social and Cultural Rights (OP), the case cannot be brought to it through the complaints procedure.

From its part, the European Court on Human Rights (ECHR), knew the case through the petition of a group of Turkish citizens concerned about the future of Hasankeyf. The ECHR, contrary of following a progressive reasoning which would have been in line with former cases -*Ahunbay et al.* 2016 - considered that it cannot be said that there is a 'European consensus' about the existence of an 'universal right to access cultural heritage', and declared the case inadmissible. As Berenika Drazewska points out, it seems that this outcome is related to the mistrust of the Court towards *action popularis*. For being admitted, a petition needs to be brought by a victim who is a person or group of persons 'directly or indirectly affected by the alleged violation'. It considered the petitioners to be directed by the Turkish. This was, therefore a lost opportunity for the ECHR, who did not consider a broader approach of cultural rights and cultural heritage which would have taken into account not only its own precedent jurisprudence but also all the developments of International Law dealing with cultural rights and related issues. Among them we can find the Universal Declaration of Cultural Diversity (UNESCO 2011) which states that cultural diversity 'is the common heritage of humanity and should be recognized and affirmed for the benefit of present and future generations', not reducing the importance of cultural expressions to the individuals who generate them. Like that, victims of the Turkish plan would not only be the people leaving in Hasankeyf (especially Kurdish people). As the Special Rapporteur on Cultural Rights said, while the recognition of difference is important in the field of human rights, so is the recognition of commonality. We must not forget that one of the most important communities to which we all belong is 'the human family.'<sup>19</sup>

Besides the need to take a more universal approach regarding who can claim the protection of cultural heritage is the need of linking cultural rights' concerns with climate change adaptation issues. The Dutch Supreme Court Decision in the Urgenda Case based on the Paris Agreement and establishing that the Netherlands was 'acting unlawfully by not taking stronger action to reduce emissions'<sup>20</sup> is an important step for climate change litigation. There is no reason for excluding this kind of litigation issues related with cultural rights or the participation of communities, since as the Special Rapporteur on Human Rights and the Environment has point out 'the Paris Agreement recognizes the importance of respecting the rights of the most vulnerable. Its preamble specifically refers to the rights of indigenous people and local

---

<sup>17</sup> Ibid. p. 105

<sup>18</sup> Ibid.

<sup>19</sup> Special Rapporteur on Cultural Rights (2016), *Mapping of cultural right and preliminary views on destruction of cultural heritage as a violation of human rights* A/HRC/31/59, para. 18.

<sup>20</sup> See January 6, 2020 A New Classic in Climate Change Litigation: The Dutch Supreme Court Decision in the Urgenda Case Written by André Nollkaemper and Laura Burgers. Available at <https://www.ejiltalk.org/a-new-classic-in-climate-change-litigation-the-dutch-supreme-court-decision-in-the-urgenda-case/>

communities.’<sup>21</sup> However, as it is shown in the Hasankeyf case one of the challenges would be to realise and act consequently to the fact that the Turkish project has not only effects in the Hasankeyf communities but also in other communities further down along Tigris river, included those of other states such as Iraq. This, which is already a well-established fact in water governance, needs to be the object of more attention by International Human Rights. For instance, by looking with specific attention into the possibilities of developing more concrete extra-territorial human rights norms, something that in the case of climate change and cultural rights appear to be essential. The already current consciousness around climate change as a global concern<sup>22</sup> could be used as a starting point to make the cultural rights concerns of such a process also global.

### **Key Recommendations**

1. Water is the medium through which climate change impacts will be felt. Humans need water to survive but it also has immense cultural value. Humans have been settling along water courses for thousands of years and water is also used for spiritual and religious purposes. It is a vital part of human heritage.
2. The projected effects of climate change could mean a loss of land and home, and therefore potentially loss of culture and identity, which is a serious human rights violation.
3. The presented case of the Ilisu dam project in Turkey and especially the affected town of Hasankeyf prove a need to improve the legal norms and mechanisms in order that cases like this one, where climate change concerns need to be taken into account jointly with cultural rights concerns, can be properly addressed.
4. This path started with the Urgenda case allowing climate litigation needs to continue as well and include cultural rights concerns, so that the right to take part in decision-making processes, which affect the cultural lives of individuals and peoples is respected. The respect of this right would be a procedural obligation that states could not shy away from.
5. Climate change is a global concern. But cultural rights concerns are as well global: the case of Ilisu dam project shows that an action taken by one state can affect not only the cultural lives of people living in their own territory but also those living in others. Actions for climate change mitigation and adaptation should take into account these extra-territorial effects. States need to develop a more sophisticated framework of extra-territorial human rights obligations.

---

<sup>21</sup> Special Rapporteur on Human Rights and the Environment *Climate Change Report A/HRC/31/5* para. 84

<sup>22</sup> The words of Justice Streefkerk, member of the Supreme Court and responsible of the Urgenda decision are interesting in this sense: He says that “the argument that a cut in emissions in the Netherlands would not have a big effect on a global level did not absolve a country from taking measures to reduce its own emissions. ‘Every country is responsible for its share.’ In ‘Strongest’ Climate Ruling Yet, Dutch Court Orders Leaders to Take Action See <https://www.nytimes.com/2019/12/20/climate/netherlands-climate-lawsuit.html>