

NGOs charge Bresser with violating OECD Guidelines in its relocation of Hasankeyf's Zeynel Bey Tomb

+++ The Initiative to Keep Hasankeyf Alive +++ Hasankeyf Matters +++ FIVAS – The Association for International Water Studies

[The Initiative to Keep Hasankeyf Alive](#) (HYG), [Hasankeyf Matters](#) (HKM) and the [Association for International Water Studies](#), Norway (FIVAS), welcome the recently published [Initial Assessment](#) with great anticipation and hope for a constructive dialogue with [Bresser](#). The Initial Assessment outlines the issues of the complaint for further discussion between Bresser and the plaintiffs, which may be facilitated by the [Dutch National Contact Point](#) (NCP). The National Contact Point is an independent body tasked with facilitating dialogue and mediation on implementation of the [Guidelines for Multinational Enterprises](#) of the Organization for Economic Cooperation and Development ([OECD](#)).

(For the Turkish version of the *Guidelines*, please click [here](#). An unofficial Turkish translation of the Initial Assessment is available [here](#).)

The complaint filed by HYG, HKM and FIVAS with the Dutch NCP on 28 July 2017 alleges that Bresser, a firm located in The Netherlands and specializing in the relocation, jacking and reinforcement of foundations, caused a violation of human rights through its role in relocating the tower and dome of the Zeynel Bey Tomb, a 15th-century memorial to a fallen warrior, which, until 12 May 2017, stood on the left bank of the Tigris River, in Hasankeyf, in the Kurdish region of Southeastern Turkey. The tomb is one of the most significant

monuments of the 12,000-year-old settlement of Hasankeyf.

This structure relocation project was initiated by Turkey's DSI (State Hydraulic Works), within the framework of the controversial Ilisu Dam and Hydroelectric Power Plant project, which, if implemented as planned, will flood the historic city of Hasankeyf as well as large parts of the Tigris Basin, including 199 villages fully or partially.

In its initial assessment, the Dutch NCP has concluded that the case – or “specific instance” – partly merits further consideration. This is the first time that cultural rights as human rights have been the subject of an NCP procedure.

Various international conventions and declarations confirm that cultural rights, including access to cultural heritage, are part of human rights. These include the UN Guiding Principles for Business and Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage (2003), Report A/HRC/31/59 by the UN Special Rapporteur in the field of cultural rights, and the UN Human Rights Council resolution 33/20.

In its statement, the Dutch NCP also states emphatically, “The decision to further examine part of this specific instance is not based on substantive research or fact-finding, nor does it entail any judgment as to whether or not Bresser has violated the *Guidelines*.”

In conclusion, the NCP writes, “. . . handling this specific instance may help clarify the OECD due-diligence recommendations for multinational enterprises regarding the human right to culture and/or the right to cultural heritage and its conservation.”

Summary of the complaint

Our disagreement with Bresser can be summarized in four points:

1. The absence of substantive consultation with the diverse stakeholders did not meet the requirements for public participation established by [CETS 121](#) and described in the *Guidelines*.
2. We maintain that Bresser failed to conduct adequate due diligence to uncover potential adverse effects of the project to relocate the Zeynel Bey Tomb and that proper due diligence would have revealed problems requiring the firm's attention and action.
3. We argue that the removal of the Zeynel Bey Tomb resulted in a severe degradation of the value of the monument as cultural heritage and therefore constituted a violation of human rights.
4. Finally, Bresser had leverage, which they should have used to bring the project into compliance with the *Guidelines*.

Summary of Bresser's response

In response, Bresser has stated to the Dutch NCP that the complaint is unjustified. They assert that they conducted due diligence and stakeholder consultation prior to and during the project.

We continue to hold that Bresser is in violation of the *Guidelines*, for the reasons outlined in the Initial Assessment (see also 1-4 above), and that the information given by Bresser so far does not suffice to demonstrate that the company is in compliance with the *Guidelines*. We expect that following careful examination of these issues Bresser will cease work in Hasankeyf and take the necessary steps (enumerated in our demands) to comply with the *Guidelines*.

About the OECD *Guidelines*

The *Guidelines* and the specific instance process are backed by the OECD's 35 member states, including The Netherlands and [Turkey](#), as well as 13 countries that have elected to adhere to the *Guidelines*. As noted in the Preface to the *Guidelines*, "Governments adhering to the *Guidelines* are committed to

continuous improvement of both domestic and international policies with a view to improving the welfare and living standards of all people.”

The *Guidelines* outline voluntary, legally non-binding standards of corporate ethics for international companies of all sizes. There is no legally binding element in the outcome of the NCP procedure.

What we hope to achieve in this process

As noted in the Initial Assessment, this specific instance focuses on the chapter on human rights, in which the *Guidelines* urge companies to, “Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts” (item 5 of Chapter IV).

We believe that we have an obligation as representatives of civil society engaged in an OECD-specific-instance procedure to understand the reasoning underpinning Bresser’s interpretation of their mandate and use this opportunity to work jointly with Bresser and the Dutch NCP to produce a clearer articulation of the measures small enterprises should follow to meet the obligations for due diligence under the *Guidelines*.

As plaintiffs representing the people whose cultural heritage is impacted, we intend to embark upon this dialogue in good faith. We solemnly hope that Bresser will participate in good faith in further discussions, and that we will reach a common understanding of the importance of people’s participation in the development of their cultural heritage.

Ideally, future discussions would reach strong statements on the standards for due diligence and stakeholder consultation in projects concerning cultural heritage. The questions of due diligence and stakeholder consultation are of paramount importance in all sectors, and especially in the field of

historic preservation.