



**Submission of Input to the Special Rapporteur on
the Environmental Impact Assessment Processes
and the Right to a Clean, Healthy and
Sustainable Environment in Türkiye**

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Diyarbakır Bar Environment and Urban Law Commission***

This report has been prepared by the Diyarbakır Bar Association's Environment and Urban Law Commission ("Commission"). Our Commission actively monitors environmental degradation and violations of environmental rights in Diyarbakır and nearby cities. Some of these cases have already led to lawsuits currently before the courts, while others are under the Commission's close observation, with potential legal steps planned in the near future. Our Commission is committed to advocating for climate and environmental protection as well as amplifying the voices of affected groups. In this report, we highlight critical issues concerning Environmental Impact Assessments (EIAs) and the right to a clean, healthy, and sustainable environment, also protected under the Constitution of the Republic of Türkiye.

A. Key Aspects of EIA Regulations and Implementation

1. As early as 19 August 1983, the Official Gazette published the adoption of the Environment Law No. 2872, which included the requirement of conducting an EIA in projects that may cause environmental issues. Law No. 2872 also provided that the type of activities requiring an EIA, the content of the EIA, and the approving authority will be determined by subsequent regulations.
2. According to Articles 8(1), 8(2), and Annex-3 of the Environmental Impact Assessment Regulation (the "Regulation"), adopted under Law No. 2872, an EIA must include: (1) the affected area's population, fauna, flora, geological and hydrogeological characteristics, natural disaster risks, soil, water, air quality, and atmospheric conditions, climatic factors, property status, cultural heritage and protected sites, landscape features, current land use, sensitivity level, groundwater table fluctuations impacting historic environments and protected zones; (2) potential environmental impacts, pollutant quantities, interaction with the receiving environment, and cumulative effects; climate impacts (greenhouse gas emission quantities and characteristics) and the impact of climate change to the project; disaster or accident risk related to the project due to climate change; planned measures to reduce negative environmental impacts; (3) the assessment of the cumulative environmental impacts; (4) the environmental and social action plan; (5) methods to identify affected communities and integrate public input into the EIA, other consulted parties and a Stakeholder Engagement Plan.
3. Our Commission observes that EIAs do not meet most of these criteria. The administrative authorities continue to approve the EIAs, despite inconsistencies with the Regulation and insufficient review and analysis. The statistics shared by the Ministry of Environment, Urbanization and Climate Change (the "Ministry")¹ show that, between 1993-2024, the Ministry adopted 8,078 positive and 88 negative EIA determinations.² The Ministry issued 80,870 "EIA Not Required" determinations compared to just 1,422

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¹ İlk ÇED Yönetmeliği'nin yayımlandığı 1993 yılından 2024 yılı sonuna kadar verilen ÇED Kararları, Türkiye Cumhuriyeti Çevre, Şehircilik ve İklim Değişikliği Bakanlığı (2024), <https://ced.csb.gov.tr/ced-istatistikleri-i-111186> (last accessed 14 April 2025).

² It should be noted that a negative EIA determination does not constitute a project prohibition. Rather, it indicates the project requires modifications to meet environmental standards and may be resubmitted for approval making adjustments. Some rejected EIAs in this study might have been redrafted or revised and resubmitted to the Ministry and received positive determinations later on.

"EIA Required" decisions. The notable imbalance in the Ministry's EIA-related decisions —with significantly more exemptions and approvals than rejections—may reflect broader challenges in both assessment quality and regulatory oversight. Strengthening institutional oversight to ensure rigorous, legally compliant assessments is urgently needed.

4. **Climate change** is extremely rarely taken into account in EIAs, even though many projects in Türkiye are planned in the forests, grasslands, and wetlands – key environments for climate resistance that act as carbon sinks. Even some petroleum extraction projects do not have climate considerations in their EIAs. In *Lice Mizag (Kılıçlı) Copper Mine*,³ despite the Project Introduction File⁴ expressly stating that the 700 hectares of forest were allocated to Dimin Mining Joint Stock Company's copper mining, not a single sentence mentions the project's climate impacts. The expert witness report taken during the lawsuit does not point out the lack of climate impacts, either. Similarly, in *Zori River Kayser Hydroelectric Dam*⁵ and even the *Sur Oil Exploration*⁶ do not involve EIAs, to mention any climate change impacts. During the lawsuits, the expert witnesses do not call attention to these insufficiencies either, rendering the climate change requirements in the Regulation void.
5. The **ecosystem-based approach** is sometimes mentioned but often undermined in most EIAs. Some ecosystem components are gone completely unassessed in some EIA reports. For instance, there is an entire pond that has gone unmentioned in the EIA in *Cıxsî (Eskiğaçlı) Solar Power Plant*⁷. Even pictures in this EIA does not match the project area. Addressing these components superficially is also common practice. The EIA report for the *Dicle Pirejman (Kurşunlu) Lead and Zinc Mine Capacity Increase*, destroying 292 hectares of forest, confirms the area hosts 28 reptile species and numerous endangered/endemic species.⁸ Despite these findings, the report proposes no protective measures, offering only speculative claims that species will "migrate" once operations begin. *Birsu Hydroelectric Dam*⁹ threatened the habitat of the critically endangered Batman Loach (*Paraschistura chrysicristinae*),¹⁰ a species believed to be extinct until its rediscovery after 47 years. Despite warnings, EIA and expert witness reports in court ignored this. This case exemplifies systemic flaws in the EIA process in Türkiye: even "highest-protection" species are ignored.
6. Even when effects to the ecosystem are mentioned, realistic solutions to mitigate ecosystem impacts are rarely proposed. Even basic commitments, such as pausing construction activities like blasting during breeding seasons of endangered or ecologically critical species, are avoided. However, if commitments

³ The lawsuit for the cancellation of the administrative act adopting the decision that EIA is not required is ongoing, *Case No. 2024/694, Diyarbakır 4th Administrative Court*.

⁴ A shorter version of an EIA. This is generally used to get the "EIA is not required" decision.

⁵ The lawsuit for the cancellation of the administrative act holding that the "EIA is positive" is ongoing, *Case No. 2023/1195, Diyarbakır 2nd Administrative Court*.

⁶ The lawsuit for the cancellation of the administrative act holding that the "EIA is positive" is ongoing, *Case No. 2023/1195, Diyarbakır 2nd Administrative Court*.

⁷ The lawsuit for the cancellation of the administrative act holding that the "EIA is positive" is ongoing, *Case No. 2025/367, Diyarbakır 4th Administrative Court*.

⁸ The affected species include *Testudo graeca* (Spur-thighed Tortoise, CITES & Bern Convention Appendix II/IUCN VU), *Rafetus euphraticus* (Euphrates Softshell Turtle, Bern Appendix II/IUCN EN), and *Neurergus strauchii* (Strauch's Spotted Newt, IUCN VU), along with endemic reptiles (*Eirenis occidentalis* [Siverek Snake] and *Eirenis eiselti* [Şırnak Snake]) - most protected under Bern Appendix II (EIA p.114). Mammals include wild goat (Bern Appendix I) and wolf (Appendix II) (pp.134-135). Studies recorded 69 bird species (46 under Bern Appendix II), including critically endangered *Neophron percnopterus* (Egyptian Vulture, EN) and vulnerable *Streptopelia turtur* (European Turtle Dove, VU) (p.119). The area also sustains hundreds of plant species, including two endemics: *Centaurea kurdica* and *Astragalus commagenicus*.

⁹ Erzurum 2nd Administrative Court cancelled the act holding that the "EIA is positive", *Case No. 2023/779 Decision No. 2024/481, Decision dated 14 March 2024*. The Ministry and the project owner company appealed the decision. The case is now at the Council of State with *Case No. 2024/1778*.

¹⁰ The species' rediscovery received widespread global coverage, with even Leonardo DiCaprio highlighting it on his X (Twitter) account: <https://x.com/LeoDiCaprio/status/1478509045355098112> (last accessed 14 April 2025).

as such were to be made, they would be binding on the project owner, under Article 6(1) of the Regulation, and the implementation of Articles 18(1) and 19(1)(b) could even lead to the project's cessation, in case of non-compliance. Failing to activate legal safeguards, such as the commitments, undermines the very purpose of the Regulation provisions. These implementation gaps are particularly concerning, given that project sites are often located in ecologically sensitive areas.

7. Despite the Regulation requiring the EIA to have an entire chapter for the cumulative impacts, most EIA reports either do not involve the **cumulative impacts** or are severely insufficient. In *Zori River Kayser Hydroelectric Dam*,¹¹ despite the project area being encircled by other massive dams (Ilisu and Batman Dams as well as the Silvan Dam, Europe's second-largest), no cumulative impact assessment was conducted in the EIA. The court process was frustrating, as the primary expert panel, which questioned the potential cumulative impacts, leading them to decide that EIA was insufficient, was replaced with another panel, which omitted to mention the lack of cumulative impacts analysis in the EIA. This oversight is alarming, given that this area represents the watershed's last undisturbed stretch where the river flows unimpeded and ecosystems remain intact. It is the final refuge for aquatic and terrestrial wildlife; if disrupted, species will have nowhere left to retreat. In *Ergani Hançerli Oil Exploration*,¹² the EIA failed to address cumulative impacts despite the project area being surrounded by numerous oil exploration and extraction wells – a simple fact also confirmed by the expert witness report, despite the report not highlighting this as one of the EIA's insufficiencies.
8. According to the Regulation, the affected communities have the right to express their opinions in the **"meeting on public information and participation"** regarding all projects under its Annex-1 and projects under its Annex-2 only if the project covers an area greater than 25 hectares. The Regulation provides that the public is informed about the project while their opinions, suggestions and questions are noted and reported during the meeting.
9. A critical flaw is the systematic disregard for community input during participation meetings. Villagers do not have an actual chance to persuade the project owners, as the project owners are highly likely to proceed without the local consent. In nearly all cases our Commission monitors, the Ministry decided to give the EIA approvals, even though the affected groups expressed strong disapproval in public information and participation meetings. In *Cıxsî (Eskiğaçlı) Solar Power Plant*,¹³ the villagers clearly stated in the meeting that they did not want the project, that the village's main source of income was animal husbandry and that the project would destroy the village's only functional pasture area. In response, our Commission suggests implementing regional or national quotas to limit positive EIA decisions in cases of overwhelming public opposition.
10. Lastly, women's, children's and disabled people's participation could be sought with effective and targeted invitations. Women, children and disabled people are often not encouraged to attend such meetings leading to their exclusion, even though their input must have critical significance in designing environmental policies for fair and inclusive policies.
11. Under the Regulation, EIA findings and conclusions are **publicly disclosed** at the village administrator's office, district governor's office, provincial governor's office, and on the Ministry's "e-EIA Announcements" website. This notification also marks the beginning of the time limit for filing an administrative lawsuit, during which affected parties may file lawsuits to cancel the project.
12. A recurring issue involves project owners attempting to prevent project announcements at village administrations to block legal challenges by affected communities, as the 30-day litigation period commences with this notification. There are concerning indications that some project owners are

¹¹ *Zori River Kayser Hydroelectric Dam*, *supra* note 5.

¹² The lawsuit for the cancellation of the administrative act adopting the decision that EIA is not required is ongoing *Case No. 2024/245, Diyarbakır 2nd Administrative Court*.

¹³ *Cıxsî (Eskiğaçlı) Solar Power Plant*, *supra* note 7.

leveraging their influence over local administrations to avoid actual public disclosure of EIAs. For instance, in *Lice Mizag (Kılıçlı) Copper Mine*,¹⁴ the project was limited to 24.87 hectares and avoided EIA requirements, receiving an “EIA is not required” decision on 16 September 2020. The decision must have been announced but it has not, and the affected villagers only became aware of this decision in 2024, when the company initiated operations. Taking the issue to litigation, we rightfully argued that public notices were not announced at the village administrator's office as this decision did not reach a single villager. Our Commission suggests that this structural issue can be remedied through regulatory reform mandating direct notification via SMS, e-government (E-Devlet) messages to all residents and property owners in affected villages or official service of notice (tebligat) to registered addresses.

B. EIA Governance and Responsible Entities

13. According to the Regulation, institutions and organizations (including companies) authorized by the Ministry prepare and submit the EIA to the Ministry. The Ministry forms a commission consisting of officers of relevant public institutions and organizations and Ministry officials. Under the Regulation, the Ministry must take into account this commission's work and the public's views while making positive and negative EIA determinations. The Ministry also decides whether the project requires an EIA (or only requires a Project Introduction File), but it may delegate this authority to Provincial Directorates of Environment, Urbanization, and Climate Change.
14. Communiqué on the Environmental Impact Assessment Competence Certificate, published under the Regulation, covers the eligibility of the institutions to conduct an EIA and the EIA competence certificate. The eligibility criteria can be considered sufficient in terms of technical capacity.
15. Having said this, neither this Communiqué nor the Regulation include any provisions on the EIA conducting institution's ethical duties or mechanisms to spot conflicts of interest or avoid such conflicts. This is problematic for at least two reasons. First, the EIA conducting institution is selected and paid by the project owner. This, in and of itself, creates a conflict of interest because there is a shared interest by both the EIA conducting institution and the project owner in producing a report favorable for the project. Second, the law does not prohibit more severe types of conflict of interest. There is seemingly no legal obstacle for a shareholder to own both the project owner company and the EIA conducting institution.
16. In our opinion, the Ministry should play a more active role in the EIA's preparation, rather than just overseeing them superficially. A fairer system would involve the Ministry creating and managing this mechanism itself. Alternatively, the project owner should apply to the Ministry for the preparation of the EIA, and the Ministry should randomly assign an institution. This would prevent project owners from forming partnerships with specific companies. Furthermore, the Regulation or the Communiqué must be revised to involve safeguards for ethics and the EIA conducting institutions' independence and impartiality, such as disclosure of financial and personal relationships and an obligation to recuse in case of a conflict of interest in a decision-making process.

C. Other Main Challenges

17. Challenges regarding the content of EIAs, affected groups' consultation and participation processes and EIA's public disclosure have been described in **Chapter A** above.
18. The **temporal scope** of the EIA Regulation poses critical risks to ecosystems and cultural heritage. Under Law No. 2872, projects that began before 7 February 1993 are exempt from environmental assessment. This exemption allows major projects like the Silvan Dam¹⁵ and Ilisu Dam to proceed without conducting an EIA. The Silvan Dam, currently under construction, is set to submerge dozens of

¹⁴ *Lice Mizag (Kılıçlı) Copper Mine*, *supra* note 3.

¹⁵ In the letter dated 19 April 2024 No. E-49956952-220.01-9290512 sent by the Diyarbakır Governorship Provincial Directorate of Environment, Urbanization and Climate Change, it was stated that the Silvan Dam and Hydroelectric Power Plant remained outside the scope of the EIA regulations.

villages, while also destroying historical sites such as the Goderne Bridge. Previously, the Ilisu Dam, one of the largest in the region, led to the flooding of Hasankeyf, a historically significant site that has been continuously inhabited for over 12,000 years, showcasing layers of Mesopotamian, Roman, Byzantine, and Islamic civilizations, and significant ecological damage.

19. The broad interpretation of **public interest exceptions** found in several laws creates significant impediments to effective environmental protection. The legally protected areas (such as forests, wetlands, and agricultural lands) can be opened for destructive projects, including mining, dams, solar and wind projects, or fossil fuel activities, under broad and vague “public interest” exceptions embedded within the same laws and exercised by the Ministry without sufficient regard to the affected groups’ needs and the ecological balance. Our Commission recommends that public interest exceptions must be revised to include restrictive criteria, involving climate, ecological, and social impact.
20. Perhaps the most serious issue for legal certainty and environmental protection is that, even after courts annul the Ministry’s positive EIA consideration decisions, some projects continue operating. The **non-compliance with court judgments** erodes trust in both legal institutions and environmental governance. A well-known example to this is *Okyay and Others v. Turkey*, where non-compliance with the administrative court’s order to suspend activities of thermal powerplants due to the threats to the environment and public health led the European Court of Human Rights to decide that applicants’ right to a fair trial has been violated.¹⁶ That these thermal power plants are still active is alarming.¹⁷

D. Effective Practices of Implementation

21. The Ministry’s Circular No. 2009/7 (repealed) allowed project owners to revise their existing EIA instead of preparing a whole new EIA, in certain circumstances. If merely a certain part of the EIA is invalidated by the court, the project owners can rely on the “revised EIA” procedure, where they will only correct the EIA’s invalidated part. However, in practice, this circular was abused, as project owners whose projects’ EIAs were deemed completely invalid by courts also used this procedure. The Constitutional Court of the Republic of Türkiye concluded that recourse to “revised EIA” procedure is unlawful in projects whose EIA is determined to be completely invalid.¹⁸ Considering that the Constitutional Court decisions are binding on all courts in Türkiye, this development is positive.
22. The Regulation previously allowed mining projects with an operational area under 25 hectares to proceed without an EIA report. Exploiting this loophole, mining companies designed multiple adjacent sites each slightly below the threshold (e.g., 24.8 or 24.9 hectares) to avoid conducting an EIA, even though the total area exceeded 25 hectares. However, the Council of State of the Republic of Türkiye ruled that such fragmented “EIA not required” decisions effectively enabled the expansion of large-scale mining operations, found the relevant provisions unlawful, and ordered a stay of execution of those regulatory clauses.¹⁹

¹⁶ ECtHR *Okyay and others v. Turkey*, App No. 36220/97 (12 October 2005), paras. 70-75.

¹⁷ Yatağan Termik Enerji, <https://www.yatagantermik.com.tr/> (last accessed 15 April 2025); Yeniköy Kemerköy Enerji, <https://ykenerji.com.tr/> (last accessed 15 April 2025).

¹⁸ Constitutional Court, *Yasemin Pelenk and others*, Case No. 2017/33865, Decision dated 1 November 2023.

¹⁹ 14th Chamber of the Council of State, Case No. 2017/2082, Decision dated 4 December 2017.