

United Nations Environment Programme Dams and Development Project

Compendium on Relevant Practices - 2nd Stage

Final Report Addressing Outstanding Social Issues

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Executive Summary

Outstanding social issues are those social issues related to a) the economic, institutional and socio-cultural sustainability of involuntary physical & economical resettlements, b) loss of cultural heritage assets, c) boomtown formation incl. problems to integrate construction townships into the regional development process, d) long term liability, e) changes affecting downstream populations, and f) other issues, which were 1) addressed in the Environmental and Social Management Framework (ESMF), but where the mitigation measure didn't work out, 2) not addressed in the ESMF, but which are claimed based on evidences, 3) not addressed in the ESMF, but which are claimed without providing evidences, 4) which have not been addressed and not been claimed, but which could be verified.

The Report describes why and how outstanding social issues of hydropower and other large scale development projects were addressed by companies, governments and financial institutions. In preparation of the UNEP-DDP Compendium on Relevant Practices it uses a descriptive ("how it has been done") rather than a normative ("how it should be done") form of presentation and draws its conclusion from 10 examples from all over the world.

Why are outstanding social issues addressed by projects, governments and donors?

1. To enhance public acceptance and to reduce the risks of a lengthy and costly project-planning and -authorization process, which is often associated with resistance resulting from outstanding social issues of earlier projects and/or the absence of mechanisms to address additional social issues in new projects. Two methods have been used: a) A **remedy funds** has been established in Québec, Norway and the PR China to enable project affected people/local governments to address outstanding social issues under their own management and b) **an Ombudsman** has been created in Germany to enhance communication and through this the chances to recognise and address outstanding social issues at a very early stage.

2. To comply with the right to remedy, which is triggered when a project oversteps its obligations established in project funding agreements, international laws and/or standards. Remedy is defined as action or process that repairs, makes amends, or compensates for damages. There are three forms of remedy: a) **Restitution** is designed to put the offended party back in the position it would have been, if the violation had not occurred. In South Africa all lands, which had been expropriated due to apartheid rules - thus in violation of international laws - have been returned to its original owners. b) **Compensation** involves the payment of money to the offended party for any lost profit, value or property. In the PR China, Guatemala, Pakistan and Thailand financial institutions and national governments made available **remedy funds** to address unsolved social issues of earlier projects, while the US government only provided funds, when it was requested to do through a legal verdict. **3. Satisfaction** includes almost every other form of reparation and is meant to address any nonmaterial damage through formal apologies etc.

How are outstanding social issues addressed in dam projects?

1. Through remedy funds, which extend the basic principal of social safeguards (livelihood restoration) to those issues, which were not addressed in the planning process. A shortcoming is seen in the fact that the affected people have to claim compensation and to provide evidences to receive remedy. An example from Germany documents that a pro-active grievance process in which the Ombudsman is able to address also unclaimed outstanding issues is able to mitigate this negative aspect. Remedy funds are implemented through:

- a) cash compensations (lump sum)**, which are easy to manage, have low transaction costs, and provide the recipient with the freedom to use the funds at his will, but which embody the risk that the funds are unsustainable used; thus create their own outstanding social issues. Due to that, most policies and legal frameworks advise against lump sum compensations but examples suggest that this risk was mitigated by extending them through annual instalments so that those unsolved issues, which were created by the lump sum payment, could be addressed at a later stage with new funds.
- b) cash compensation (annual instalments)**, which are in most cases a follow up of and addition to lump sum settlements. They share the advantages of lump sum payments but reduce the risk that the funds leave behind or create new issue. The most common form of stocking funds is through benefit sharing mechanisms. The PR China transfers for each kW produced a certain amount into the remedy funds, while examples from the USA and Canada provide a fixed annual amount and in Norway a certain percentage of the project-revenue to stock remedy funds. The negative aspect related to annual instalments is the need to establish a structure to manage these, which in one example has resulted in misuse and the risk that difficult cases are postponed indefinitely.
- c) support to livelihood systems**, which has been adopted as principal tool to address outstanding social issues. The problem is that all examples document that it is getting in a more developed world more and more difficult to find land, forests, rivers etc. to rehabilitate the livelihoods of farmers, hunters and fisherfolk without affecting other people. This transforms the rehabilitation of livelihoods from a technical problem (how to find similar assets) to a more complex issue; thus creating secondary and third level issues.
- 2. Through grievance processes**, which are prescribed by policies and normative frameworks to discuss outstanding social issues on neutral grounds. The examples document that effective grievance processes – independent ombudsmen at community level – are able to address outstanding social issues even before they are considered outstanding and enhance the frequency and quality of discussions between the stakeholders.
- 3. Through restitution processes**, which in its original sense are in dam projects only possible after the decommissioning of the dam and its reservoir. The example from South Africa is certainly a special case, but it also challenges our understanding of compensation and benefit sharing. If one transfers this mechanism to dam projects, the project affected people would be the owner of the dam and reservoirs and entitled to receive rent from the project for their land during the entire project period and before receiving the land back after the decommissioning of the dam.
- 4. Through legal processes**, which have served in examples from Canada, the USA and Germany as a fall back position to address outstanding social issues, which were not recognised within the ESMF and only become obvious at a later stay. They helped when all other mechanisms failed, but they provided a very slow (10–50 years) response to important issues
- Policy and normative framework prescribe to use a combination of these mechanisms to address outstanding social issues:** Grievance mechanisms to make outstanding social issues visible as early as possible and remedy funds to provide the necessary funds to address them, while the right to get a legal ruling on a project is a fundamental right, which serves as a fall-back position if all other mechanisms don't work out.

1. Introduction

This Report introduces a) reasons why outstanding social issues of hydropower and other large scale development projects were addressed by companies, governments and financial institutions, b) outlines applied mechanisms to do so, and c) documents through a set of examples how these mechanisms have been implemented in existing projects. Following the general setup of the UNEP-DDP Compendium on Relevant Practices, the report utilises a descriptive (“how it has been done”) rather than a normative (“how it should be done”) form of presentation. This has many advantages (it focuses on realistic measures, which have been tested and can be evaluated on the base of its outcomes), but also some shortcomings: As the implementation of mechanisms to address outstanding social issues can only be documented in projects, which did not solve all social issues in the normal planning and implementation phase of the projects, some – if not all – projects used in this report are controversial and/or their utilisation in the context of the UNEP-DDP Compendium contested. This report does not provide or intend to provide any judgement on these projects as such, but - despite their contested overall performance - it is assumed that they are good examples for relevant mechanisms to address outstanding social issues. This does neither imply that all social issues of the examples have been solved nor that the sample projects are necessarily as such good projects.

According to the Terms of Reference (see annex 1) the objective of this assignment was to: *“identify, collect information and compile examples of relevant practices concerning the integration into policy/normative frameworks and implementation of outstanding social issues. The compilation of examples is a substantive element leading to the elaboration of a Compendium on relevant practices for improved decision-making, planning and management of dams and their alternatives”*.

This Report is structured into four sections:

- Section 2 provides a description of the methodology used,
- Section 3 introduces mechanisms to address outstanding social issues and
- Section 4 presents 10 examples of how these mechanisms have been implemented.

The annex provides the Terms of Reference, the Itinerary, the Presentations made in The Hague, the references and information used in this study and the comments made to enhance the quality of the report and the responses provided by the consultant.

2. Methodology

Within the very tight timeframe provided by DDP for this assignment (30 days in total), it was not possible to do any primary research and/or in-depth study of any of the relevant mechanism to address outstanding social and/or of the 10 examples of how these mechanisms have been implemented. The chance for a detailed assessment was further constrained by the fact that much more has been written about outstanding social issues than on ways how these were addressed. The reasons for this is closely related to the nature of 'outstanding social issues'. By definition, these are issues, which are not addressed or not satisfactorily addressed. In the traditional planning concepts such issues do not exist and/or were perceived as a short coming of the specific planning process rather than a reality, which used to appear in nearly every project. Due to that, one hardly finds information on outstanding social issues in the official documentations, but merely in reports provided by project affected populations, NGOs and independent researchers. The problem is that these reports - in turn - often remain at the level of descriptions and/or fundamental critiques, which don't suggest any detailed mitigation process within the project framework and/or acknowledge the existence and/or effectiveness of mechanisms to address outstanding social issues proposed by the project, the governments and/or international agencies and financial institutions. To sum up, our knowledge base is extremely weak and much more research is needed before we have a comprehensive understanding of this important topic.

To structure the search for information, relevant mechanisms and examples of how these mechanisms have been implemented, a set of set of questions have been used:

- a) How are "outstanding social issues" conceptualised in policies, normative frameworks and guidelines and which mitigation mechanisms are suggested?
- b) How were these different mechanisms implemented in concrete projects?

To optimise time, the focus was right from the beginning on those major international, national and private bodies, which have financed and build dams over the last 20 to 30 years:

- multilateral development banks: World Bank, Inter-American Development Bank, African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, European Investment Bank and Islamic Development Bank;
- multilateral aid agencies of the United Nations, EU etc. ;

- bilateral aid agencies such as USAID (United States), DFID/CDC/ODA (United Kingdom), GTZ/KfW (Germany), JBIC/JICA/OECF (Japan), AFD (France), CIDA (Canada), SIDA/BITS (Sweden) and NORAD (Norway);
- export credit agencies such as: Exim Bank (United States), Jexim (Japan) and KfW (Germany);
- governmental agencies;
- corporations - whether state owned or private - which run large power utilities etc;
- major dam construction companies.

The assessment of potential sources of information aimed at: a) identifying and describing relevant mechanisms of how outstanding social issues should and can be addressed according to policies, guidelines and normative frameworks and b) identifying and describing good examples to illustrate the implementation of these mechanisms in dam or other development projects.

To achieve satisfying results in a timely manner, the consultant carried out the following activities (as specified in the work plan approved by the DDP secretariat on 16/3/2006):

1. Identification of key issues in addressing outstanding social issues.

Preliminary findings of how science, policies and normative frameworks define 'outstanding social issues' and how these 'outstanding social issues' should in turn be addressed were presented on the consultants' coordination meeting with the DDP Secretariat and interested Steering Committee members in The Hague (15-16/2/2006) (see annex 3). These preliminary findings were further enhanced and enlarged with the help of the recommendations provided by the participants and through a review of published and unpublished literature. To achieve this

2. an assessment of potential sources of information has been carried out (6-10/3/2003). About 200 sources (proceedings of international conferences, websites of national and international organisations, multilateral development banks, professional associations, research centres and specialised NGOs etc.) were assessed and stored in a database (see annex 4). These two activities resulted in the:

3. identification, acquisition and documentation of good examples of how different mechanisms to address outstanding social issues were implemented. The preliminary list of examples provided by the DDP secretariat (see ToRs in Annex 1) were with the help of the raster resulting from the activities 1 & 2 and the comments provided by other team-members and the DDP secretariat further enhanced. Following a go-ahead from the DDP secretariat (22/3/2006), the

mechanisms were described with the help of the examples in the form of fact sheets (following a template provided in the ToRs), and cross-checked with the help of other sources (1-8/4/2006). The aim was to find 15 good examples of relevant practices, but already during the meeting in The Hague, the participants agreed that it might be difficult to find such a large number of good examples. On 12/4/2006 the DDP secretariat informed the consultant that 14 of the 17 examples were - according to some steering committee members - not suitable to serve as examples in the UNEP DDP Compendium. In reaction the consultant screened all criticised projects to verify whether the claims of the group of steering committee members are factual. In most cases this assessment made clear that the outcomes of the mitigation mechanisms to address outstanding social issues were contested and that the consultant without an in-depth study would not be able to judge on the various claims and counterclaims. The consultant also screened alternative examples proposed by steering committee members to find out whether they include information on how outstanding social issues have been addressed (17-19/4/2006). This was not the case. In turn, those examples where the literature suggested that most stakeholders are of the view that some outstanding social issues were successfully addressed were sustained and are presented in this report.

4. An **interim report** (20-21/4/2006) and on the basis of the recommendations of the DDP secretariat (see Annex 5) and further communication and exchange with other team members (Vincent Roquet [Compensation Policy], Dominique Egre [Benefit Sharing])
5. a **draft final report** were elaborated (2-5/5/2006).
6. On the base of the comments provided by the DDP secretariat (see annex 5) a **final report** was established (9/6/2006).

3. Addressing outstanding social issues

As there is no common understanding of what “outstanding social issues” are, the following definition has been elaborated on the base of the different frameworks, policies and scientific publications (see database in annex 4): **Outstanding social issues** are those social issues related to a) the economic, institutional and socio-cultural sustainability of involuntary physical & economical resettlements, b) loss of cultural heritage assets, c) boomtown formation incl. problems to integrate construction townships into the regional development process, d) long term liability, e) changes affecting downstream populations, and f) other issues, which were 1) addressed in the Environmental and Social Management Frameworks (ESMF; base on Environmental Impact Assessments, Resettlement Plans, Indigenous Peoples Plans, Community Development Plans, etc.) but where the mitigation measure didn't work outⁱ, 2) not addressed in the ESMF, but which are claimed based on evidences, c) not addressed in the ESMF, but which are claimed without providing evidences, d) which have not been addressed and not been claimed, but which could be verified.

3.1. Why were outstanding social issues addressed? The first question discussed here is to find out why companies, governments and financial institutions used in the examples significant funds and energy to address social issues, which have not been solved in the original framework or which became only visible at a later stage. There are merely two reasons, which are closely interlinked:

3.1.1. The wish to enhance public acceptance. The key actors here are companies, governments, development banks and agencies. In the examples, they addressed outstanding social issues without the legal binding obligation to do so and reduced through this the risks of a lengthy and costly project-planning and authorization processes, which is often associated with resistance resulting from outstanding social issues of earlier projects and/or the absence of mechanisms to address additional social issues in the new project. Two methods have been used in the examples:

3.1.1.1. A comprehensive remedy fund have been established by Hydro-Québec (4.2.1), the Glommen's and Laagen's Water Management Association (4.2.2.) and all hydropower project commissioned after 1985 in the PR China (4.2.4.) to provide project affected people or local governments with the means to address outstanding social issues under their own management. This transferred the responsibility to address outstanding social issues to the affected communities and provided them with the funds to do so; thus it empowered the communities of the affected people and the governance at local level.

3.1.1.2. An **Ombudsman**, who enhances and qualifies the communication between all stakeholders and assists the affected people and communities to voice their grievance in the right format and at the relevant institutions, has been created for lignite opencast mines in Garzweiler (4.2.3.). This enhanced the chances to recognise and address outstanding social issues at a very early stage – sometimes even before they are considered as “outstanding” – and has reduced the critique voiced towards the project.

3.1.2. Compliance with the right to remedy. The right to remedy goes back to § 8 of *The Universal Declaration of Human Rights*, which states that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” This right has been further specified by the *International Covenant on Civil and Political Rights*, which has been ratified by 132 states, and which declares that “each State Party to the present Covenant ensures that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”

In the case of dams, an overstepping of obligations established in project funding agreements, which have often the status of treaties, and/or international laws and standards creates a legal responsibility for remedy. Remedy/reparation is defined by international law as action or process that repairs, makes amends, or compensates for damages. There are three generally recognized forms:

3.1.2.1. Restitution is designed to put the offended party back in the position it would have been, if the violation had not occurred. For example, received the Makuleke community, which had been displaced from the Kruger National Park in 1969, in the context of the **land restitution process in South Africa** their entire land back (4.3.2).

3.1.2.2. Indemnity/compensation involves the payment of money to the offended party for any lost profit, value or property. In dam projects *compensation* typically refers to payments to dam-affected peoples to compensate for the loss of assets and property. A project, agency or state might also provide post-project remedy funds to address outstanding social issues related to non-compliance with guidelines and/or international laws and to redress for example those people, which were displaced while overstepping the agreed proceedings and guidelines. In the PR China the government (4.3.1), in Guatemala (4.4.1), Pakistan (4.4.2) and Thailand (4.4.3) the World Bank (together with its partners

Asian Development Bank and Inter-American Development Bank and the national governments, which had adopted the World Bank policy on involuntary resettlement for a specific project in view to qualify for financial support) made voluntarily significant **remedy funds** available to address unsolved social issues of earlier projects, while the US government only provided funds, when it was requested to do so in the Columbia River Basin through a legal verdict, which sustained a claim of project affected people (4.3.3).

3.1.2.3. Satisfaction includes almost every other form of reparation and is meant to address any nonmaterial damage through formal apologies etc. In the case of dam development projects, where obligations have not been met because funds were misallocated, satisfaction might include criminal proceedings, public acknowledgements and formal apologies to those who experienced harm. Successful resistance and/or claims for restitution and compensation are obvious forms of satisfaction, while it can be questioned whether the death penalties for governmental officials, who had misused resettlement funds of the Three Gorges Project in the PR China (4.2.4) can be considered as satisfaction.

To provide reparations to solve outstanding social issues requires considerable political will not only from national governments, but also from international agencies and financial institutions. While the demands for reparations, retroactive compensation, and remedies are many, articulated for example in the 1994 Manibeli Declaration, the 1997 Curitiba Declaration and captured in the Final Declaration from the November 1999 Southern African Hearings for Communities Affected by Large Dams, the responses are few:

The PR of China was perhaps the first country to put in place a legal binding framework to systematically address outstanding social issues through its 1986 *Post Resettlement and Rehabilitation Fund for Irrigation Projects*, which aimed at improving living conditions of some 5 million resettlers across 46 resettlement areas (see example 4.3.1). Other examples are remedy funds established by international agencies and financial institutions well after project completion to solve outstanding social issues (see examples 4.4.1, 4.4.2 & 4.4.3).

In 1994 the US-Congress responded to claims for reparation made in 1951 by a confederation of Native American, who had lost homes, lands and Salmon runs due to the establishment of the Grand Coulee Dam and the Columbia River Basin (see example 4.3.3.) after a court voted in support of the indigenous peoples.

3.2. How were outstanding social issues addressed? In the 10 examples the developers, governments and financial institutions used four different instruments:

3.2.1. Remedy funds and other forms of compensations. This is maybe the easiest and most logic instrument as it extends the guaranteed livelihood restoration - agreed on in all contemporary resettlement plans - also to those issues, which were not addressed in the plans. As all stakeholders agree that nobody should be negatively affected by a dam or any other development project, it seems logic to provide the necessary funds to ensure this also for cases, which have not been addressed in the original compensation and mitigation plans.

A shortcoming which has been voiced by affected peoples and NGOs, is the fact that the affected people have to claim compensation from the funds and to provide evidences to receive remedy; thus they are forced to request something from the project, while it was in the first place the project, which had requested something from them and didn't fulfil its obligations. Due to that, NGOs claim that addressing outstanding social issues should not limit itself and base itself upon claims of the affected people, but based on a more effective monitoring and evaluation system, which independently verifies whether compliance has been achieved or whether additional outstanding social issues need to be addressed before the construction/implementation process can officially be closed. The example from Germany (4.2.3.) documents that a pro-active grievance process in which an Ombudsman is also able to address outstanding social issues, which have not been claimed, might be able to mitigate this negative aspect. Remedy funds are merely implemented through three forms:

3.2.1.1. Cash compensation (lump sum). The examples document that a lump sum payment is easier to manage, has low transaction costs, and provides the recipient with the freedom to use the funds at his will, but in turn it embodies the risk that the funds are unsustainable used and/or might not guarantee the long term economic and social wellbeing of all project affected people; thus creating its own outstanding social issues. While some lump sum payments are made to the individuals (examples 4.3.3, 4.4.1. 4.4.2. & 4.4.3), others are handed over to organisations of the project affected people (example 4.2.1), commissions of all stakeholders (4.2.3), local governments (examples 4.2.3 & 4.2.4), or national governments (4.3.1). But there is no one-fits-all solution: The case of the Pak Mun dam (4.4.3) documents, that the payment of lump sum settlements for reduced

income due to shrinking fish stocks was well perceived when the Thai economy boomed, but heavily criticised when investments made with the cash compensation did not provide long term incomes. Due to that, most policies and legal frameworks advise against lump sum compensations, but most examples show how the risks associated with a lump sum payment were mitigated by extending it through annual instalments so that the unsolved social issues created by the remedy fund could be addressed at a later stage with new funds.

3.2.1.2. Cash compensation (annual instalments). This form of remedy funds, which is mostly the follow up of and addition to a lump sum settlement, shares the advantages of a lump sum payment, but reduces the risk that the funds are unable to solve all outstanding social issues. The most common form of stocking the fund is through benefit sharing mechanisms. The PR China might have introduced the most simple system by making sure that for each kW produced a certain amount is transferred into the remedy funds (4.2.4), while the sampled projects from the USA (4.3.3.) and Canada (4.2.1) provide a fixed annual amount and in Norway (4.2.2.) a certain percentage of the revenue generated are used to stock and maintain the remedy fund. The negative aspect related to annual instalments is the need to establish a structure to manage this, which in one example (4.2.4) has misused the fund and the risk that difficult cases are postponed indefinitely. There are many options how and by whom such a funds could be managed (association of project affected people, local governments, commissions of all stakeholders, insurance companies, etc.), which all have their advantages and shortcomings. It seems as if there is no one-fits-all mechanism as the choice of an adequate mechanism depends very much on the social environment and the interest and will of the various stakeholders.

3.2.1.3. Support to livelihood systems. All policies and frameworks underline that a compensation land-for-land etc. - i.e. the rehabilitation of livelihoods -, is the preferred choice, which has been also adopted as principal tool to address outstanding social issues. In the examples, most outstanding social issues occurred when a project or government was unable to compensate land-for-land, fishing/hunting-ground-for-fishing/hunting-ground etc. The problem is that all examples document that it is getting in a more developed world more and more difficult to find land, forests, rivers etc. to rehabilitate the livelihoods of farmers, hunters and fisherfolk without affecting other people negatively. This transforms the rehabilitation of livelihoods from a technical problem (how to find similar assets) to

a more complex issue as it requests the project affected people to change their livelihoods, which in many examples did not work out; thus creating secondary and third level outstanding social issues.

In developed countries this method seems to collide more often with the variety of interests of the project affected people. While in Norway (4.2.2) voluntary cash compensation has entirely replaced the rehabilitation of livelihoods, the project affected people in Germany (4.2.3) need to appeal to a commission, if they don't want to benefit from the collective mitigation measures and receive individual cash compensations to avoid that in the end the rehabilitation of livelihoods don't work out, because the dynamic elements of the resettled communities have disappeared in the resettlement process, leaving the vulnerable groups behind.

3.2.2. Grievance process. To provide separate mechanisms to address grievance outside the project and legal framework has been introduced by policies and normative frameworks in the last years as it became obvious that legal frameworks are too slow and complicated to provide timely results and that projects mostly don't have the capacity to reflect critically their own work and offer a fair judgement on claims, which say that the project did not fulfil its obligations. As most projects are older, only one example (4.2.3.) documents how an effective grievance process – in this case independent ombudsmen at community level – are able to address outstanding social issues even before they are considered outstanding and enhance the frequency and quality of discussions between the stakeholders. By assisting project affected people to voice their grievance in the required format and at the relevant structures, the requirement that all responses need to be cleared by him and the option to investigate independently issues and cases the mechanism "Ombudsman" encourages, facilitates and speeds up the addressing of outstanding social issues and enhances the communication and understanding of the different stakeholders, which also makes it more likely that the Other is not perceived as enemy, but merely as part in a joint undertaking. The key problem might be to find somebody to fill such a challenging position at reasonable costs.

3.2.3. Restitution. Restitution in its original sense is in dam projects only possible after the decommissioning of the dam and its reservoir. Due to that are hardly any examples available. It also requires a significant will of a government to carry out restitutions as in most cases, it is difficult to establish a clear cut-off line and it embodies the commitment to declare in public that a decision has been wrong. The

example from South Africa (4.3.2) is certainly a special case, but it also challenges our understanding of compensation and benefit sharing as the people of Makuleke are today owner of land used by a project and receive all benefits generated by this land. If one transfers this mechanism to dam projects, the project affected people would be the owner of the dam and reservoirs and entitled to receive rent from the project for this land during the entire project period before receiving the land back after the dam is decommissioned. Nevertheless, no example could be found where land restitution was used in the context of hydro-power projects, but it might be worse to consider a model in which land is not expropriated but least for the entire duration of a project.

3.2.4. Legal process. The chance to get a legal opinion on whether an individual or an group has a right to remedy for outstanding social issues is a fundamental right, but the example from Canada (4.2.1.), the USA (4.3.3.) and Germany (4.2.3) document that this is a very slow process, which doesn't help the project nor the affected populations. It is certainly a fall back position, which can be used if all other mechanisms fail, but to wait 10-40 years for a final judgement will either calls an end to all sorts of projects (if all claims have to be addressed before a project can be implemented) or provides the ground for social insecurity of the affected people and will lead in most cases to resistance and conflicts.

As documented here policy and normative framework prescribe to use a combination of mechanisms to address outstanding social issues: Grievance mechanisms to make outstanding social issues visible as early as possible and remedy funds to provide the necessary funds to address them, while the right to get a legal ruling on a project is a fundamental right, which serves as a fall-back position if all other mechanisms don't work out.

4. Selection and Description of Examples

While the DDP Workshop on Addressing Existing Dams developed in a normative approach new methods and mechanisms to address outstanding social issues and recommended a full set of activities how this could and should be ensured through a reform of governance and funding frameworks, this study focuses on those mechanisms, which can be tracked down to the level of implementation, i.e. concrete examples of how they have been used in the past. The main reason for this is that the compendium to which this study contributes should enhance the decision making process through compiled examples of how outstanding social issues were addressed rather than how they should or could be addressed.

This excluded a good number of mechanisms: a) those, which are new and due to that not yet tested and b) those, where the outcomes are not described in detail in publications available through the Web. The final criteria for the selection of mechanisms was the need that they addressed with a specific instrument a specific or a specific set of outstanding social issues after the end of the construction period. To serve as an example, the functioning of the mechanism to address outstanding social issues needed to be documented in some form in public sources. This might have excluded many good examples and relevant practices, but the tight timeframe (30 days) did not facilitate any detailed research.

To select good examples for these methods was even more complex. In particular as the DDP secretariat and steering committee members had different views on whether the compendium should provide good examples for the mechanisms or generally positive examples as such. While it might make sense for other issues of the compendium to focus on “positive examples”, this is impossible for the issue “addressing outstanding social issues”, as the key requirement for any project to serve as an example is that there are or were at some stage outstanding social issues. This might disqualify for some steering committee members the example for any utilisation in the compendium, but in turn only the existence of problems qualifies the example for a study on how outstanding social issues have been addressed. If there are no or no documented (i.e. in most cases no significant) outstanding social issues, there is no need or chance that a mechanism is employed to solve them and due to that no chance to serve as an example of how this mechanism has been implemented. The consultant has used significant time and efforts to find out how those examples suggested by a group of steering committee members addressed outstanding social

issues, only to learn in the end that in nearly all of them either no outstanding social issues occurred or have not been documented in published sources (see table). In some cases where a large number of publications questioned the effectiveness of the mechanisms to address outstanding social issues, the consultant followed the argument of a group of steering committee members, while those examples were sustained, where their claims seem to be merely a minority position.

In general, a four step selection process was used:

- 1) Assessment of examples suggested by the DDP secretariat in the TORs;
- 2) Assessment of examples, which have been used in the general literature on addressing outstanding social issues or which have been recommended by team members and/or experts on social issues related to dams;
- 3) On this base a preliminary list was elaborated and sent to the DDP secretariat, the team and experts on social issues and updated based on their recommendations;
- 4) Following comments from some steering committee members, which disqualified 14 of the 17 selected examples all contested examples have been screened to verify whether the selection was well justified or whether the recommendations made by some steering committee members should be followed, several new examples suggested by some steering committee members and other sources have also been screened to see whether they fulfil the criteria set up in this study.

In the end 10 examples have been selected to serve in this study to document, which mechanisms have been used to address outstanding social issues.

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4.1 List of Good Examples

The following table provides the list of examples that have been identified on the basis of the process described in Section 2.

Framework	Mechanism	Example	Perception		Reason for decision
			Good	Bad	
		Africa			
National Law	Restitution	South Africa (Kruger National Park)		DDP-S	Thee DDP-S notion that restitution is not applicable for dam projects is not shared
		Cameroon (Chad-Cameroon Pipeline)		Moore; CS	Not treated as requested by CS
		Ghana (Volta I&II, Akosombo& Kpong)	DDP	CS	Not treated as requested by CS
		Rice Intensification (Madagascar)	CS		No outstanding social issues
		Mozambique (Cahora Bassa)	DDP		Insufficient data
		Nigeria (Kainji)		CS	Not treated as requested by CS
		Senegal, Mali & Mauritania (Manantali)		Moore, CS	Not treated as requested by CS
		Zambia & Zimbabwe (Kariba)	DDP	Moore, CS	Not treated as requested by CS
		Americas			
Corporate Social Responsibility	Remedy fund	Canada (James Bay Complex)		Moore	Most published sources have a positive perception of this example
Operational Policy	Remedy fund	Guatemala (Chixoy)		CS, DDP-S	The dams were not good projects, but the way how outstanding social issues were addressed are good example for the practice
Right to remedy	Legal Process	USA (Grand Coulee)		Moore, CS, DDP-S	
		USA ("Flex Your Power" Energy Efficiency Campaign)	CS		No documented outstanding social issues
		Uruguay (Resistance against the Machadinho Dam)	CS		No documented outstanding social issues
		USA (Two Forks Dam)	Moore		No documented outstanding social issues
		USA (Deschutes River Conservancy)	Moore		No documented outstanding social issues
		Asia			
National Policy	Remedy fund	PR China (Three gorges Dam)		CS, DDP-S	Most published sources have a positive perception of this example
National Policy	Remedy fund	PR China (Danjiangkou Dam)		DDP-S	Most published sources have a positive perception of this example

Framework	Mechanism	Example	Perception		Reason for decision
		India (Narmada valley resistance)	DDP	Moore, CS	Not treated as requested by CS
Operational Policy	Remedy fund	Pakistan (Ghazi Barotha & Tarbela)		CS, DDP-S	Most published sources have a positive perception of this example
		Philippines (San Roque)	DDP	Moore, CS	Not treated as requested by CS
Operational Policy	Remedy fund	Thailand (Pak Mun Dam)	DDP	Moore, CS, DDP-S	Most published sources have a positive perception of this example
		Nepal (Andhi Khola Dam)	CS		Insufficient data
		Nepal (Chilime Dam)	CS		Insufficient data
		India (IDE's Drip Irrigation Systems)	CS		No documented outstanding social issues
		India (IDE's Drip Irrigation Systems)	CS		No documented outstanding social issues
		India (Rainwater Harvesting Rajasthan)	CS		No documented outstanding social issues
		Europe			
Corporate Social Responsibilities	Ombudsman	Germany (lignite exploitation)			
Corporate Social Responsibilities	Remedy fund	Norway (Glomma-Lågen River Basin)		DDP-S	Most published sources have a positive perception of this example

	Example treated
	Example not treated

- DDP** Example recommended by the ToRs (see annex 1)
- DDP-S** Comments from the DDP secretariat (see annex 5)
- CS** Civil Society Comments on Preliminary List of Examples (dated 4/4/2006 made available to the consultant on 12/4/2006)
- Moore** Comments of Ms. Deborah Moore on Preliminary List of Examples (dated 7/4/2006 made available to the consultant on 12/4/2006)

4.2. Mechanisms at project level

4.2.1. Corporate Social Responsibility develops from the believe that public acceptance is in the interest of companies. As all general principles, it is not implemented as such, but channelled through companies, which subscribe to this principle, and through governments, which encourage companies to commit to social accountability. In the following, the establishment of a **remedy fund** through a comprehensive settlements negotiated between **Hydro-Québec** and **indigenous communities** will be discussed in the context of the **James Bay Complex (Canada)**, established by Hydro-Québec between 1970 and 2005.

Description of the Framework

The province of Québec in eastern Canada occupies a territory of approximately 1.6 Million km². The province is inhabited by more than 7 million people, including approximately 80,000 indigenous peoples from 54 communities. The rights of the indigenous populations were not recognized until 1971, when the national government through its Dorion Commission requested that the provincial government of Québec should recognize the rights of indigenous peoples to all lands north of the Eastman river which flows into the James Bay. The recommendations of the Dorion Commission were implemented through the James Bay and Northern Québec Agreement (JBNQA), which was signed in November 1975 by the Government of Canada, the Government of Québec, Hydro-Québec, the James Bay Energy Corporation (a subsidiary of Hydro-Québec), the James Bay Development Corporation and Cree' and Inuit' communities. In January 1978 it was amended by an agreement with the Naskapi Indian Band (NEQA). The JBNQA & NEQA included a comprehensive settlement of all outstanding claims of whatever kind and whether filed or not for a lump sum of US\$ 208 million. Compensations were to be paid by Canada and Quebec into remedy funds managed by the Cree Regional Authority and by the Makivik Corporation for the Inuit. Beside this settlement through a comprehensive compensation, the agreements defined native rights and established regimes for future relations between natives and non-natives in the region and among local, regional, provincial and federal governments. As of June 30, 1993, 11,458 Cree, 7,066 Inuit and 610 Naskapi were affected by the agreements (DIAND 1993). This comprehensive settlement, which included among other topics also outstanding environmental and social issues of hydroelectric projects, is considered by all stakeholders as a landmark agreement. It transfers the responsibility to address

outstanding social issues to the affected communities and provides them with the funds to do so; thus it empowers the communities of the affected people.

However, the agreement was first and foremost a social contract between indigenous populations and governments; only one chapter out of thirty actually deals with hydroelectric development and due to its comprehensive nature, it is difficult to differentiate this mechanism to address outstanding social issues from general benefit sharing schemes. In fact, the JBNQA provides a general framework and funds and requests indigenous communities, Hydro-Québec and other developers to implement it through concrete and detailed negotiations.

An example how the framework has been implemented

The James Bay territory covers approximately 400,000 km² between the 49th and 55th parallels in Northern Québec. In 1970, the massive James Bay hydro-electric project (La Grande Complex) was launched to exploit the hydro-electric potential of all rivers draining into James Bay. Hydro-Québec, the developer of the Grande Complex, is a provincial government-owned electricity producer, whose generating facilities have today an installed capacity of 34,000 MW, with hydropower producing 93% of its total energy output. To foster public acceptance, Hydro-Québec had developed over the years in partnership with the affected communities a corporate policy, which provides measures and funds: a) to mitigate environmental and social impacts; b) to award compensation for irreversible disturbances; and c) to provide support for regional development, but it did - as most development agencies at that time - not have a policy on indigenous peoples. In line with their 1970 policy, Hydro-Québec did not provide any specific measures for indigenous populations when they started to transform the land around the Eastman River into a hydropower complex. This resulted in significant outstanding social issues.

In 1972, the Quebec Association of Indians applied to the Quebec Superior Court for an injunction to stop all construction work. The injunction was granted on the grounds that the Government of Quebec had committed itself to implement the recommendations of the Dorion Commission and to settle all land claims by indigenous communities. Although this decision was overturned a few days later, this struggle led to the JBNQA and to more detailed agreements between Hydro-Québec and the indigenous populations.

One example for these detailed agreements is associated with the Caniapiscau & La Forge Diversion, which is located in the northeast sector of the James Bay territory and

is an important part of the entire complex. When this 230 km long diversion was commissioned in 1984, its purpose was essentially to channel water from the upper Caniapiscau Basin to the Grande River and its generating stations. In 1989, a second construction phase was undertaken to develop its remaining hydroelectric potential. This complementary development included the construction of three generating stations (La Forge 1, 2 & 3) with a total installed capacity of 1,700 MW, the impoundment of a new reservoir and the construction of additional power lines and access roads. There were no permanent settlements in the area, but the area is used by Cree hunters from the Chisasibi community – a 3,500 person settlement on the coast of James Bay some 500 km west of the Caniapiscau & La Forge Diversion – to harvest geese, caribou, waterfowls and fishes. Some of its components, such as the Forge 2 generating station and its related structures and the final design of Forge 1, were not included in the original description of the Grande Complex as agreed upon in the JBNQA. In order to settle these litigations and the outstanding social issues associated with them, the parties negotiated an amendment to the JBNQA and signed the Opimiscow & La Grande Agreement (1992), in which they agreed to address outstanding social issues such as loss of income from hunting and fishing in the area of the Caniapiscau & La Forge Diversion through a comprehensive cash compensation. This agreement relieved Hydro-Québec from outstanding financial obligations pursuant to the JBNQA and its amendment in exchange for one-time payments of US\$ 20.4 million to the Inuit and US\$ 1.5 million to the Naskapi. Once these agreements were implemented, all outstanding social and environmental issues in view of the Inuit and Naskapi and related to the implementation of the JBNQA & NEQA were considered as solved, while a grievance mechanism has been put in place to deal with any future issues.

Another outstanding social issue of the Grande Hydroelectric Complex resulted from the transformation of Lake Caniapiscau into a reservoir during the first phase of the James Bay Project (1975-1982). The damages caused by this project on the environment and on the livelihood of indigenous hunter and trappers had been addressed in the context of the JBNQA and through a lump sum payment, but it did not solve all social issue. The Cree Regional Authority and Cree Communities used the remedy funds to build houses and community infrastructure and to subsidise Cree hunters and trappers on a comprehensive bases rather than on the basis of individual cases. This shortcoming became obvious by the end of the 1990s, when hunters and trappers affected by the flooding of Lake Caniapiscau voiced in Cree Band Councils their claims that they had not been properly compensated for damages incurred to their

hunting grounds and that their claims had never been heard. As part of ongoing discussions between Hydro-Québec and the Cree communities on how to address outstanding social issues in order to be able to move forward on new projects, it was decided to set up a joint panel to listen to the concerns of trappers in the Eastern Sector in 2003-4 and in the Western Sector between 2002 and 2005. The joint panel included representatives from Hydro-Québec, from the Cree Regional Authority and the Cree communities of Chisasibi, Mistissini and Whapmagoostui. The conclusions and recommendations, which included detailed remedy measures for the affected hunters and trappers (boat access ramps, snowmobile trails, etc), have been implemented and resulted in a more fruitful interaction of the concerned parties.

Consequently, a grievance committee was established in 2002 in the context of the Paix des Braves Agreement to facilitate the discussion on outstanding issues. This commission is chaired by Lucien Bouchard (former prime minister of Québec), who has visited a number of communities to listen to peoples concerns and advise on how to find mutual solutions. Beside these direct settlements of outstanding claims and social issues, Hydro-Québec elaborated in the 1990ies an 'Integrated Enhancement Program', which foresees that 1 % of a project's total investment capital are placed in community remedy funds, which are managed by the communities to mitigate and compensate new and outstanding social and environmental impacts.

Overall Conclusions

The establishment of a remedy fund through a comprehensive settlements to address outstanding social issues has significant advantages as it doesn't require that the partners address and solve every single outstanding claim, protects the developer and the government against any future claims about past violations, empowers the indigenous peoples' communities to solve harm placed upon its members, but embodies also the risk, that the funds are primarily used for collective projects and not necessarily to settle all individual claims or outstanding social issues. This mechanism enhanced the local acceptance in the James Bay and thereby reduced for Hydro-Québec the risks and costs of a lengthy project-planning and authorization processes. For the indigenous communities, the settlements and partnerships are tools to carry out under their own management a full array of social welfare and development projects and to provide the financial, organisational and technical framework to enjoy their right to self-determination as independent nations.

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4.2.2. Cooperate Social Responsibility develops from the believe that public acceptance is in the interest of companies. As all general principles, it is not implemented as such, but channelled through companies, which subscribe to this principle, and through governments, which encourage companies to commit to social accountability. In Norway, the licence process requests that all projects are accepted by the majority of the population. To receive a licence for the development of the **Glomma and Laagen River Basin** (GLRB), the Glommen's and Laagen's Water Management Association (GLB) established a **remedy fund** for the project, which includes a large number of small to moderate sized facilities (e.g. dams, reservoirs created from existing lakes, and river course diversions) in a close geographic proximity, which have been established over a period of 100 years between 1897 and 1988.

Description of the framework

Several laws regulate hydropower development in Norway. Two planning systems (The Master Plan and The Protection Plans) were introduced in the early 80ties in order to plan further hydropower development with all stakeholders. The Masterplan is a ranking system for hydropower development plans based on economic profitability and impacts for the different user-interests. The Protection Plans contains instructions to the Norwegian Government not to licence hydropower development in a selection of watercourses of great value for other user interests and/or when a project is not accepted by the public. Hydropower plants are operated and owned either by public authorities (the state, the counties and the municipalities) or by the private sector. Through the Watercourse Regulation Act developer, which fully commit to the laws and regulations including full accountability, obtains the right to expropriate user rights and land titles if this becomes necessary. The landowner is in turn entitled to full compensation at market prices plus an additional 25 % of this value.

An example how the framework has been implemented

The GLRB in southeast Norway covers about 13 % of Norway's total land area (41,971 km²). 422 km² (1%) of the basin is in Sweden. About 14,5 % of Norway's population live in the basin area, which includes some of the countries richest agriculture lands. The GLRM has a total of 40 dams/reservoirs with a total reservoir capacity of 3,580 m³ and an annual hydropower production of approximately 10 TWh, about 8 % of Norway's electricity production. The hydropower reservoirs in the GLRM are mainly natural lakes with low levels of storage. The larger dams are in the mountains, which reduces their social impacts as these areas are sparsely populated. Another factor,

which reduces negative impacts on human habitations and livelihoods is the limited area affected by the dams. Despite the vast area covered by the GLRB, the total inundated land from reservoirs encompasses only 45.8 km² (0.1 %). The GLB operates reservoirs, watercourse diversions, and hydropower stations in the basin (e.g. control of water levels, timing of releases, generation output etc.). The ultimate aim for GLB is to optimise a set of parameters over the entire basin level, rather than for any single facility. As most of the dams and water facilities in Norway, the GLRB has been set up mainly for hydropower purposes, but flood protection, irrigation, water supply and recreation were also taken into consideration during the planning processes.

About 620,000 people (14.5 % of Norway's population) live in the GLRB area, which includes some of the countries richest agricultural lands. The WCD case study reports that no resettlement has been carried out in the GLRB, as the reservoirs which affected the largest areas are located in sparsely populated mountain areas (WCD 2000, p.44). From 1917 on the Watercourse Regulation Act required developers to carry out mitigation measures such as building of community centres/village halls, covering medical expenses, supplying workers and their families with satisfactory housing and establish and stock remedy funds through benefit sharing schemes (annual fees and compulsory delivery of electricity to the local municipalities).

An unsolved social problem had been the lack of a regulation on how to compensate for reduced income from fisheries, which had been traditionally an important source of income. Historically, the commercial fishing in the lower parts was the most important inland fishing area in southern Norway. The fishery was considered highly valuable, and a complex system of fishing rights has evolved during centuries. The impounded lakes and regulated rivers hinder the fish migration and reduced through this the fish production and income opportunities related to them. The negative impacts have been partly mitigated through the economic boom in Norway which offered new income opportunities in other sectors, stocking, habitat improvement, release of minimum water flow and the construction of fish ladders all financed through the remedy funds. The WCD study by Norwegian researchers makes clear that there is a lack of good and reliable studies of how fisheries have been affected by the GLRB, but the study makes clear that some of the impacts were fatal for the fishery sector: "Examples here are the eradication of the large brown trout fishery with traps downstream from the Hunderfossen in Lågen and damming and destruction of the famous quality angling spot Bjønnhølen and other sections in the Vinstra tributary. Generally, most effects on fisheries in the basin can most likely be classified as minor negative. Studies in

important fishing areas like Rena and the northern part of the lake Øyeren document significant complaints from anglers on effects from HPD. This is often related to concern for the fish stock or to interference on the actual fishing from fluctuating water levels. Generally, there has been an ongoing discourse between different stakeholder and interest groups about the effects of hydropower regulation and the effects of the different mitigation actions taken” (WCD 2000, p. 50). During the last 10-15 years, GLB, environmental authorities, as well as landowners have co-operated to solve outstanding social issues in the domain of fisheries. The aim of this work has been to identify the optimal use of resources to improve the conditions for fish production and angling. The work includes test fishing, registration of fish migrations in fish ladders, catch statistics and dates to evaluate mitigation measures, as well as implementation of various mitigation measures such as fish stocking, habitat improvement, fish ladders and minimum water flow. The experience from these projects is according to the WCD case study very positive and shows some of the benefits from an open dialogue and co-operation between the stakeholders. (WCD 2000, p. 125).

Nevertheless, in the 80ties there had been some resistance against the extension and continuation of GLRM, but it focused mostly on ecological problems and not so much on outstanding social issue, which is certainly an indicator that most social issues had been solved.

Overall Conclusions

The example provides us according to the WCD case study (p.173) with the lesson learned that “flexibility in the authorisation of mitigation and co-operation in the GLRB have yielded more effective measures to compensate for negative impact from hydropower development.” The remedy fund has been a flexible instrument to provide compensation for outstanding social issues and to finance mitigation measures such as the construction of fish-ladders to offset the reduced access to fish, which had been underestimated in earlier planning-processes.

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Berge Larsen, T. 1999. "The National Plan for Protection of Water Courses", Oslo: Ministry of Environment, Working Paper.

World Commission on Dams (2000). Case Study Glomma and Laagen River Basin (Norway). (www.dams.org).

4.2.3. One mechanism to address outstanding social issues is the establishment of an independent **Ombudsmen** to collect grievance in an pro-active way. This mechanism will be discussed through the example of **lignite opencast mining in Garzweiler (Germany)**. The Ombudsman has been introduced as part of the **corporate social responsibility** of the lignite component of the **Rheinisch-Westfälische Elektrizitätswerk RWE** (former Rheinbraun) to enhance public acceptance.

Description of the framework

The concept of “ombudsmen” originated in Sweden in the early 19th century and has been copied in various forms in Australia, Canada, Germany, Israel, New Zealand, all over Scandinavia, the United Kingdom and the USA. The ombudsmen are commissioners to investigate citizens' complaints. They are appointed by the government, but supposed to be independent - and presumably impartial - arbiters between all stakeholders. Their scope of authority covers all agencies, boards, and commissions. Although the ombudsmen's jurisdiction is vast, their power is solely recommendatory. They may suggest changes in government action, but may not command them.

To install ombudsmen to evaluate and discuss outstanding social issues of projects is one form of establishing an independent grievance process as suggested in the Operational Policy of World Bank on involuntary resettlement and other similar guidelines. The ombudsman receives complaints and takes up some of his own volition. The idea is that an independent person is better positioned to communicate with the citizens and to discuss complaints. He could solicit clarification and helps the aggrieved person to explain his grievance intelligibly. If complains are voiced towards the wrong structure or the party has not exhausted available project related remedies, the ombudsman may assist the citizen to lodge his complaint at the relevant body. In giving advice, the ombudsman provides legal aid in the administrative sphere - an area of the law in which such assistance has otherwise been lacking.

Completed complaints are transmitted to the relevant project structure for elucidation. After the project completes its fact-finding and delivers the results, the ombudsman forms an opinion as to the correctness of the proposed action. Ideally, he does not impose his judgment, but asks whether the administrator acted reasonably under the law and the agreed proceedings, but he could also recommend to adjust the framework, if this is proved to be inadequate and/or provide special treatment for an individual case of specific hardship.

An example how the framework has been implemented

Lignite opencast mining is carried out in four areas in Germany, but there is no national resettlement policy, as resettlement is considered to be a regional issue. 55 % of the total lignite comes from the Rhineland, which is located in north-western Germany. 92 % of the lignite in the Rhineland is used for power generating and results in an output of 11,000 MW, but the vast opencast mines required since 1945 31,000 people to move. Lignite exploitation and resettlement related to this exploitation had been very controversial. In the 80ties several plans to open new fields had not been approved by the government due to ongoing protests.

To enhance public acceptance, the RWE, a private company in which the state holds around 50 % of the shares, had developed in the early 90ties a new resettlement policy on the base of the World Bank Policy and insists in contrast to other resettlement concepts in Europe on the collective movement of villages. The resettlement policy of RWE foresees to address outstanding social issues with the help of Ombudsmen to be established at village level. This policy has been first put into practice in the context of the resettlement and management plan for Garzweiler 2, which requires the resettlement of 7,600 people from 18 villages. Due to public protest the surface area of the mine had been reduced from 6,800 ha to 4,800 ha and the resettlement plan, which had been elaborated in 1992, approved by the provincial government in 1995 was only implemented in 2005 after the highest German court ruled against claims from environmental NGOs and affected people.

To enhance the cooperation between RWE and the project affected people and to increase the public acceptance, RWE committed itself in the Jüchen' Agreement (1998) to use the resettlement package and coverage agreed on for Garzweiler 2 to address also outstanding social issues of the Garzweiler 1 (surface area 5,500 ha), which caused the resettlement of 10,000 people between 1980 and 1995 through two instruments:

- a) The hardship commission (Härtekommission), which is constituted through equal representation from the different stakeholders. It should find mutual solutions for those cases, where the agreed measures are no longer the preferred option, where the agreed option is no longer suitable or feasible and/or where mitigation measures did not work out. The main issue addressed here is to find mutual solutions for individuals, who are no longer willing or able to participate in the collective movement of the villages due to the individual wish to move to other areas. As the resettlement plan does not foresee cash compensations, but the rehabilitation of entire villages and

individual houses, there is no market for property and/or at a very low level. The commission manages the remedy fund and is able to invite independent experts to enhance the quality of decision making on individual cases. The recommendations of the commission are not binding for RWE, but have been adopted in all documented cases.

- b) The position of an Ombudsman for resettlement issues had been created in 2001 by the provincial government in all project affected communities following the request of RWE to serve as independent mediator between RWE and the affected populations. The Ombudsmen receive funds from the remedy fund and interacts closely with the hardship commission. The job embodies to be available for the resettlers whenever they need assistance and to provide independent advice on all relevant matters in general and all form of grievance in particular.

From newspaper articles it seems as if the majority of the population is more or less satisfied with their Ombudsmen, while environmental NGOs, which have been against the project on ecological ground, perceive the introduction of the ombudsmen as an instrument to split the resistance movement, which earlier united those protesting due to environmental and social concerns.

Overall Conclusions

The creating of an independent Ombudsman to enhance and qualify the communication between all stakeholders provides the chance to recognise and address outstanding social issues at a very early stage – sometimes even before they are considered as “outstanding” – and has reduced the critique voiced towards the lignite exploitation in Germany.

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4.2.4. The Later Stage Support Fund for new Hydropower and Water Conservancy Projects (1991, revised in 1996) (Yimin houqi fuchi jijin) became obligatory in the **People's Republic of China** in 1991 through a circular from the State Planning Commission (now State Development and Reform Commission). In the following, the instrument "Later Stage Support Fund (LSSF)", which is a classic remedy fund will be discussed in the context of the **Three Gorges Project (PR China)**, which is implemented since 1994 by the Chinese government through the Three Gorges Project Construction Committee, which is the highest policy-making body under the State council and which coordinates and supervises all works.

The framework

The PR China has over 24,000 large dams and is one of the most active dam building countries. An estimated 12 million people have been resettled from the reservoirs and construction sites (Fuggle, 2000, p.11). In most of the projects prior to 1980, people were resettled without proper planning or participation, with insufficient compensations, shortages of farmland and often unsuitable resettlement sites (Wei Yi 1999). In 1989, the poverty relief office acknowledged that roughly 70 % of the reservoir relocates were still living in extreme poverty (Ministry of Agriculture 1989, p. 25).

Since 1980 resettlement regulations gradually developed and focused more on environmental and social issues. The most recent government initiative in that domain is the Land Administration Law of the People's Republic of China (1986, revised in 1996). It ensures the need not only to compensate affected people but also to provide for adequate subsidies to rehabilitate livelihoods. The law requires that the State Council approves the standards of compensation schemes and foresees that provincial and local governments obtain from the public comments and suggestions on compensation and mitigation measures (Fuggle, 2000, p.84).

Despite the general improvement of resettlement politics and practices in the PR China, various social problems continued to appear within projects (lower fertility of lands in the resettlement areas, difficulties of farmers to adjust to jobs in urban areas and a general degradation of traditional social networks, etc.) despite all efforts to identify and mitigate risks at the planning stage (Heggelund, 2001, pp. 227). To address these issues, which appeared in nearly all projects, but could not be mitigated in the initial Resettlement Plans and Social Frameworks, the State Planning Commission decided to use two policy frameworks:

- a) Unsolved social issues in existing irrigation projects are addressed through a Post Resettlement and Rehabilitation Fund for Irrigation Projects at national level (see example 4.3.1.), and in
- b) new projects, a Later Stage Support Fund (LSSF) at project level should address those issues, which could not be foreseen in the initial planning, but might appear after the construction phase.

LSSFs are required for all hydropower projects that were commissioned between 1986 and 1995 as well as for all new hydropower and water conservancy projects cleared for construction after 1996. The LSSFs are generally established for 10 years and financed through power sales. The budget of the LSSF is determined by the number of resettlers multiplied by an amount from US\$ 30 to 50 per year for each resettler. The regulation foresees that the project should earmark between US\$ 0.00015 and 0.0005 for each kWh produced for the LSSFs. All Funds within a province are managed by the Provincial Resettlement Bureau. Together with a stronger focus on rural resettlements, training of peasants, increased dialogue and stakeholder participation and a more decentralized implementation the remedy funds for new projects should mitigate unforeseen social issues. It is considered to increase the chance for a successful resettlement, based on the belief that local governments are more aware of local conditions and what is needed in their respective areas than the central authorities.

An example how the framework has been implemented

After more than 80 years of planning and preparation, the State Council decided in 1989 after a final and comprehensive study by the Ministry of Water Resource and Electric Power to start the Three Gorges Project (TGP). Main objectives of the TGP are flood control, power generation and navigation. The construction of the dam started in 1994 and exceeds all dams build so far world wide: Situated at Sandouping near Yichang in Hubei province, the dam stretches 1,983 meters across the river. The reservoir is 600 km long and reaches Chongqing – the largest municipality in China with 30.6 million inhabitants. According to its engineers, the reservoir will enable 10,000-ton ocean-going freighters to sail directly into the interior for six months of each year, opening a burgeoning with agricultural and manufactured products, which the dam's hydropower turbines further support with the same amount of electricity as 18 nuclear power plants (Kennedy 2006).

The reservoir affects an area of 1,084 km², 1.2 Million Peoples have been resettled and 23,000 ha of cultivated land inundated (Heggelund, 2004, p.17). The government tried to

improve the living standards of the resettlers, but not all mitigation measures and compensation schemes worked out. Specialists believe that one third of the population has been relatively well resettled, one third has been resettled with difficulty and the remaining one third has not been well resettled (Wei Yi 1999). Between 1998 and 2003 the project realised that the demands exceeded the resettlement budgets and in an effort to bring resettlement compensation under control, the government initiated a "resettlement funding responsibility system" to reduce spending on unforeseen issues. After the resettlement budget had been mostly spent, the LSSF has been initiated in 2001 (Article 45 of the 2001 TGP regulations). The fund addresses presently outstanding social issues in Chongqing municipality, Hubei province and the provinces and cities that receive the out-moving rural population, but there isn't any information available in non-Chinese publications and even less from independent sources on whether these funds are used properly to address outstanding social issues, while official media report a significant improvement in resettlers livelihood due to the LSSF. A key problem is that it is not clear if the LSSF addresses also individual cases where social issues are unsolved or merely provide development for all project affected people in the form of a benefit sharing scheme. Independent data are missing here as in so many other projects in the PR China.

Overall Conclusions

"A conclusion about this Fund is that it is praiseworthy and illustrates the rehabilitation perception that exist in China" (Heggelund, 2004, p.124). Even critics acknowledge that the government of the PR China addresses unforeseen social problems in a timely manner by issuing new resettlement regulations and instruments such as the LSSF. "There is a certain amount of feedback in the Chinese system, in the sense that there is willingness to attempt to solve problems, which indicates a dynamic decision-making process" (Heggelund, 2004, p. 114). Increased attention has been placed on the restoration of livelihoods, as well as on ways how to address wishes and preferences of project affected people more accurate (culture, customs, tombs, etc.).

As the resettlement funds in general is the LSSF very attractive for misuse and it is considered that the largest threat to the well functioning of the LSSF is the existing corruption on all levels, which impacts on the funding available for mitigation measures. The government of the PR China and the TGP Construction Committee have taken sincere steps to fight the misuse of resettlement funds, but the impact of these measures is not well documented.

According to experts from within China the key problem is that resettlement and also addressing outstanding social issues is considered merely as an economic issue, while it embodies complicated and multidimensional social issue. They are of the view, that the impoverishment risks are more or less well addressed through the LSSF, while other outstanding social issues such as equality, regional disparity and social stability are not addressed at the same priority level (Wei Yi, 1999).

It is highly recommended to commission an independent case study of the functioning and effectiveness of the instrument Later Stage Support Fund as it seems to be a quite comprehensive approach to provide the means to address outstanding social issues after the end of the implementation phase.

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4.3. Addressing outstanding social issues at national level

4.3.1. In July 1986, the State Council of the **People's Republic of China** released a Ministry of Water Resources circular (Government Doc 56 of 1986), which allocated US\$ 240 million for a 10 year period to deal with “left over” problems of reservoir resettlements. In the following, the instrument “**Post Resettlement and Rehabilitation Fund for Irrigation Projects** (PRRFIR shuiku yimin yiliu wenti)” will be discussed in the context of the **Danjiangkou Dam (PR China)**, which had been implemented between 1958 and 1974 by the Chinese government.

The framework

The PR China has over 24,000 large dams and is one of the most active dam building countries. An estimated 12 million people have been resettled from the reservoirs and construction sites (Fuggle, 2000, p.11). In most of the projects prior to 1980, people were resettled without proper planning or participation, with insufficient compensations, shortages of farmland and often unsuitable resettlement sites (Wei Yi 1999 & World Bank 1993). In 1989, the poverty relief office acknowledged that roughly 70 % of the reservoir relocates were still living in extreme poverty (Ministry of Agriculture 1989, p. 25).

Since 1980 resettlement regulations gradually developed and focused more on environmental and social issues. The most recent government initiative in that domain is the Land Administration Law of the People's Republic of China (1986, revised in 1996). It ensures the need not only to compensate affected people but also to provide for adequate subsidies to rehabilitate livelihoods. The law requires that the State Council approves the standards of compensation schemes and foresees that provincial and local governments obtain from the public comments and suggestions on compensation and mitigation measures (Fuggle, 2000, p.84).

In the context of this general improvement of resettlement politics and practices in the PR China, the government decided to use two policy frameworks:

- a) For new projects: a Later Stage Support Fund at project level, which should address those issues, which could not be foreseen in the initial planning, but might appear after the construction phase (see example 4.2.4).
- b) For unsolved social issues of existing irrigation projects: the Post Resettlement and Rehabilitation Fund for Irrigation Projects (PRRFIR), which had been set up at national level with significant funds and the aim to plan and implement rehabilitation programs in 46 resettlement areas with 5 million resettlers.

All experts agree that thanks to the PRRFIR the living conditions of these people have improved over the years, even if no independent or detailed data exist. But all experts also agree, that the PRRFIR was not able to solve all problems. In 1992, the China's State Planning Commission frankly acknowledged that "various problems of reservoir resettlement are becoming a principal impediment to the construction of hydraulic and hydroelectric projects. If not handled properly, these problems will affect agricultural development and social stability. After the Third Plenum of the 11th Congress of the Chinese Communist Party, the Central Committee of the Chinese Communist Party and the State Council became keenly concerned about and paid special attention to reservoir resettlement problems. We have since adopted a series of effective policies to improve the situation. Better results have been achieved subsequently. Through earmarked funds, we have eased many leftover problems affecting 10 million people. Most reservoir resettlers have been able to enjoy improved living standards and better conditions for production, reaching the basic point of proper resettlement. Consequently, the number of organized visits to government agencies to seek solutions to the old problems of reservoir resettlement has dropped and social order in reservoir areas has become stable" (State Planning Commission 1992 in: Yun Ying, p. 15). Despite these enhancements, a World Bank report released that year cited the Chinese government as saying that 46 percent of China's resettlers displaced for water control projects had yet to be "properly resettled" and that they "were at great risk of poverty" (World Bank 1994, p.2).

An example how the framework has been implemented

The Danjiangkou Dam in the Hubei Province is the second largest of those dams been constructed before the enhancement of policies and practices in the 80ties. The dam was constructed to supply drinking water to five counties, for irrigation and hydropower and also to serve as flood water storage to protect downstream rivers. The inundation zone caused the resettlement of 345 villages with 278,841 individuals. 86 % were peasants. They received as compensation on average 0.04 ha of arable land per head, which is less than half of what has been provided in contemporary resettlement programmes.

Starting from 1986 the Chinese government did their level best to improve the living standards of the resettlers in the Danjiangkou area and addressed through the PRRFIR many outstanding social issues. Beside the PRRFIR, which aimed to solve specific outstanding issues, revenues from hydropower generation was made available to create income-generating enterprises. But despite all these efforts a good number of outstanding social issues remained unsolved: In 1997, more than 8,000 units of

housing and 2,000 elementary schools were in dangerous conditions, 5,000 households were affected by a shortage of drinking water, 18,000 people did not have access to electricity and the significant shortage of land forced 35,148 resettlers (12.5 %) to live below the poverty line (Yun Ying 1999, p. 30). Nevertheless, according to Scudder “the Danjankou Dam provides an excellent example. (...) During a visit in the late 1980s I was impressed by the range of enterprises being funded and the good repayment rate that ensured the funds continuity” (Scudder 2005:114).

Overall Conclusions

Even critics acknowledge that the government of the PR China addresses unforeseen social problems in a timely manner by issuing new resettlement regulations and instruments such as the PRRFIR. “There is a certain amount of feedback in the Chinese system, in the sense that there is willingness to attempt to solve problems, which indicates a dynamic decision-making process” (Heggelund, 2004, p. 114). Increased attention has been placed on the restoration of livelihoods and all experts agree that the PRRFIR had solved some outstanding social issues. But as with most projects and frameworks in the PR China our knowledge is still weak with very little detailed and hardly any independent studies.

The PR China as the first country worldwide implemented through their PRRFIR the right to remedy - outlined in the *Universal Declaration of Human Rights* - in dam projects and has managed through this step to reduced outstanding social issues in older resettlement sites and increase the acceptance towards new dam development projects.

Some more independent research on the impacts on the PRRFIR is highly recommended as it certainly a milestone in addressing outstanding social issues of dam and reservoir projects at national policy level.

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Heggelund, G. 2004: *Environment and Resettlement Politics in China*. The Three Gorges Project. Ashgate Publishing Company, Hunts / England.

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4.3.2. The **right to remedy** was implemented in the example of the **Makuleke community**, which had been displaced from the **Kruger National Park** in 1969, through the South African **Land Restitution Policy (South Africa)**.

Description of the framework

In the following the mechanism to provide remedy through a comprehensive restitution/compensation process will be discussed in view of the Land Restitution Programme in South Africa, which has been proposed by the African National Congress as an element of its programme for the first democratic elections in South Africa (1994). The ANC informed the public that if elected, it would address the injustices of forced removals and the historical denial of access to land, which is a key outstanding social issue of apartheid in South Africa, through a comprehensive land reform. The ANC received 63% of the votes and specified the three elements of the reform in the 1997 White Paper on Land Policy:

The **Land Redistribution Programme** provides disadvantaged and poor households with land for residential and productive purposes. A grant mechanism is used to purchase land from willing sellers. Because land is both relatively costly and unavailable in small grant-sized parcels, people wishing to acquire land with the grant had to form themselves into groups to acquire land.

The **Land Tenure Reform Programme** provides people with secured tenure where they live and fulfil the constitutional requirement that all South Africans have access to land.

The **Land Restitution Programme** implements the Right to Land Restitution of 1994, under which individuals or communities, which were dispossessed of property after June, 19, 1913 as a result of racially discriminatory laws and practices, are entitled to a restitution of that property or if this is not possible a comparable redress. Thus, the Land Restitution Programme tackles the main outstanding social issue of apartheid most directly. By the cut-off date in March 1999, 67,531 claims had been filed. Till date, about 30% of the cases have been settled. As many claims are on behalf of entire communities, it is estimated that around four million people (~ 10% of the population) will benefit from this programme (Sibanda 2001, p. 5).

An example how the framework has been implemented

Historically, members of the Makuleke Clan lived between the Luvuvhu and Limpopo Rivers along the South African borders with Mozambique and Zimbabwe. Livestock and rainfed agriculture along the floodplains, supplemented by wildlife products, formed the basis of the people's livelihoods. In 1969, some 3,000 members of the clan were forced to leave their ancestral land in line with the apartheid policy

and to resettled in the homeland of Gazankulu. They received no compensation for the 24,000 hectares taken and little or no resettlement assistance. The boundaries of the Kruger National Park were then extended to the Limpopo River to include this land. Justification for the inclusion of the Makuleke's land was based on the area's high biodiversity and high conservation value.

Shortly after the election of the first democratic government in 1994, the Makuleke initiated a land claim process, and entered into protracted negotiations with South African National Parks (SANParks) for the return of their land. An agreement was reached between the parties and ratified by the Land Claims Court in 1998. In terms of the settlement, ownership and land title were returned to the Makuleke, in the form of a Communal Property Association established in terms of the relevant land act. The Makuleke people in turn agreed to use the land in a manner that is compatible with the protection of wildlife and not to occupy, nor use it for agriculture or mining. The Makuleke retained full rights to commercial development compatible with the conservation objective, while the SANParks retained the rights to future gate fees. Presently, the land is managed by a Joint Management Board, which consists of six members, three from each of the parties, and chairmanship rotates annually. Decision-making is by consensus and the agreement describes a series of deadlock-breaking mechanisms, including referral to the parties' principals; mediation and final arbitration.

The Makuleke have entered into cooperative business ventures with the private sector. By mid-2005 these had already triggered investments totalling US\$ 8.7 million. For example some luxury lodges and eco-camps have been built in partnership with the private sector and an old airstrip has been rehabilitated. Since 1999 they generate per year around USD 100,000 direct income from hunting licences. This income increases rather fast as they have negotiated with SANParks a hunting quota for elephants, which generate USD 10,000 each for the community. Money earned from hunting and tourism was spent to electrify the villages as well as to improve health and education conditions to enhance skills leading to jobs. Some money was in cooperation with the tourism facilities used to provide scholarships to Makuleke youth to provide them with the skills to take over in the long run leading positions in tourism facilities.

Overall Conclusions

The Land Restitution Process is considered by most parties as an effective tool to address outstanding land issues and the Makuleke example documents, that this does not necessarily results in land degradation and/or endless debates about the sharing of benefits generated by the land returned to the community. Most stakeholders and scientist are of the view that the Land Restitution Process documents that to solve outstanding land issues provides the chance for a win-win situation in which the project and/or government gains significant public acceptance, while the community either gets the chance to continue their livelihoods as if the project would not have existed or benefit from a comprehensive benefit sharing scheme as they are the rightful owner of land on which the project is located; thus stake- and shareholders of the project.

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4.3.3. The **right to remedy** was implemented in the example of the **Grand Coulee Dam and the Columbia River Basin (USA)**, which have been constructed between 1933 and 1955 by the US Army Corps of Engineers, through a **legal ruling** which made clear that compliance is not limited to those elements addressed in the original social and environmental management frameworks, but includes also social issues to be only claimed and/or documented at a later stage.

Description of the framework

The present example documents how and why the US government responded 1994 to claims for reparation made in 1951 by a confederation of Native Americans, who had lost homes, lands and Salmon runs due to the establishment of the Grand Coulee Dam and the Columbia River Basin.

An example how the framework has been implemented

When completed in 1941, the Grand Coulee Dam was the largest hydro-electric dam in the world and remains the largest in North America, tapping the might of one of the planet's fastest rivers. The dam is 170 m high and its reservoir stretches 243 km and produces around 6,800 MW. While the aim of the Grand Coulee Dam was merely to generate hydropower, the focus of the Columbia River Basin Project was irrigation. It provides 267,414 ha with water. The irrigation project consists of 27 large dams, reservoirs, and 536 km of main canals (WCD 1999).

The reservoirs required the resettlement of 3,000 – 4,000 non-indigenous people from farms and 10 villages and of around 2,000 indigenous peoples from settlements in three reservations. It seems as if all people who lost their homes were compensated according to the regulations in force in the 1930ties and 1940ties, beside of one Native American, who refused to accept the compensation of US\$ 482 for his farm and house (Watkins 2000, p. A122).

While non-indigenous people were able to settle in the irrigated plains created by the Columbia River Basin Project, the Native Americans and Canadian First Nations had to stay in their shrinking reservations (about 20% have been inundated by the reservoirs – Watkins 2000, p.A154). Direct and indirect impacts of the project were felt primarily by the Colville and Spokane tribes. Other tribes that were significantly affected were the Coeur d'Alene, Kootenai, Kalispel, Nez Perce, Umatilla, Warm Springs, and Yakama in the USA and the Ktunaxa, Shuswap and Lakes-Sinixt in Canada. The project displaced them from the best reservation farm lands in the valleys (WCD 2000a, p.73), reduced

their access to gathering and hunting grounds both in and outside the reservations due to increasing water levels and the transformation of land in irrigated farms and inundate many tribal graves during parts of the year leaving them open to theft and desecration.

But the single most important impact was that the dams reduced the flexibility in providing adequate flows for juvenile fish flushes on the Columbia River during spring (WCD 2000a, p.25). In result, the production of Salmon and other fish dropped by 50% (WCD 2000a, p.50-58) and caused the loss of access to all or most of anadromous fish, which are the centrepiece of indigenous economy and culture in this area.

Due to unclear responsibilities, compensation was not offered or paid for any of these losses, beside the loss of housing. In turn, the Colville Confederated Tribes filed in 1951 a suit against the USA and the construction and operation of the Grand Coulee Dam and the Columbia Basin Project. The court separated these claims into two cases:

One case dealt with the fishery losses prior to 1939 and the elimination of fish runs caused by the dams, The Indigenous Claim Commission (ICC) did not issue an opinion until 1978. Finally, the ICC ruled that the tribes were entitled to be paid the difference between the fish they were able to catch between 1872 and 1939, and the value of what their normal subsistence catch would have been for the time after. The government had to provide US\$ 13 million into remedy funds to compensate the loss of income and subsistence for the period between 1939 and 1979, but the court awarded no damages.

The second case dealt with claims to compensation for water-power values of the lands occupied by the Grand Coulee Dam and the Columbia River Basin. After rulings in federal courts in 1990 and 1992, the US Congress and the tribes reached a negotiated settlement in 1994. Recognising the unfulfilled promise of 1933 to pay the tribes an annual share of power revenues, the USA – for the very first time – provided a compensation to Native Americans. The Confederated Tribes received a US\$ 53 million lump sum settlement, which was distributed per capita: each tribal member received \$5,937 and an annual payments of approximately US\$ 15 million from 1994 onwards (WCD 2000a, p.78-79).

The Spokanes, which were exposed to similar outstanding social issues were not covered by the settlement as they had missed the chance to file a claim in time. In 1999, bills were filed in Congress to provide compensation and annual payments also to the Spokane with a volume equivalent to 39.4% of that paid to the Colvilles. In contrast to addressing the outstanding social issues for Native Americans in the US, the outstanding social issues of First Nations salmon fisheries in Canada have despite

all efforts not been addressed as they can not file claims in the USA, while the Canadian government consider itself not as party of this conflict.

Overall Conclusions

It took 50 years before the outstanding social issues of the Grand Coulee Dam and the Columbia River Basin Project have been addressed, and in contrast to the examples from the PR China, Guatemala and Pakistan, did the US government act only when it was requested to do so by a court ruling. Due to that and also in view of the limited amount provided is the perception of this case in its far majority negative. Most stakeholders and scientist are of the view that the Grand Coulee documents that to solve outstanding social issues through courts takes to long, places the need for documentation on the affected people; thus does not enhance the acceptance of dams and hydropower and irrigation projects. Nevertheless, it is a method able to address outstanding social issues of dam projects.

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- WCD 2000b *Reparations and the Right to Remedy*. Thematic Study by Barbara Rose Johnston.
- WCD 2000c *Displacement, Resettlement, Rehabilitation, Reparation and Development*. A thematic report by Leopoldo Jose Bartolome, Chris de Wet, Rhodes, Harsh Mander and Vijay Kumar Nagaraj.
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4.4. Addressing outstanding social issues through international processes

4.4.1. The **right to remedy** was implemented in the example of the **Chixoy Dam (Guatemala)**, which had been constructed by the Guatemala National Institute for Electrification (INDE) between 1980 and 1983, through the **operational policies** of the World Bank and the Inter American Development Bank with the help of a remedy fund.

Description of the framework

The right to remedy goes back to § 8 of *The Universal Declaration of Human Rights*, which states that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” This right has been further specified by the *International Covenant on Civil and Political Rights*, which has been ratified by 132 states, and which declares that “each State Party to the present Covenant ensures that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”

In the case of dams, an overstepping of obligations established in project funding agreements, which have often the status of treaties, and/or international laws creates a legal responsibility for remedy. Remedy/reparation is defined by international law as action or process that repairs, makes amends, or compensates for damages. There are three generally recognized forms:

- a) **restitution**, which is designed to put the offended party back in the position it would have been, if the violation had not occurred;
- b) **Indemnity/compensation**, which involves the payment of money to the offended party for any lost profit, value or property. In dam projects *compensation* typically refers to payments to dam-affected peoples to compensate for the loss of assets and property. A project, agency or state might – as in this case - also provide post-project indemnity payments for outstanding social issues related to non-compliance with guidelines and/or international laws to redress for example those people, who were displaced while overstepping the agreed proceedings and guidelines;
- c) **satisfaction**, which includes almost every other form of reparation and is meant to address any nonmaterial damage through formal apologies etc.

To provide reparations to solve outstanding social issues requires considerable political will not only from national governments, but also from international agencies and financial

institutions. While the demands for reparations, retroactive compensation, and remedies are many, articulated for example in the 1994 Manibeli Declaration, the 1997 Curitiba Declaration and captured in the Final Declaration from the November 1999 Southern African Hearings for Communities Affected by Large Dams, the responses are few.

An example how the framework has been implemented

The Government of Guatemala and INDE constructed the Chixoy dam with the financial support from the Inter-American Development Bank (US\$ 105 million) and the World Bank (US\$ 117 million) which contributed about 50% of the total budget. During the loan negotiations the World Bank requested a resettlement plan, which was published in December 1979. The plan projected that 450 people would need to be resettled from the reservoir area, but the rural people resisted. In the following – according to a WCD case study - “one of the worst cases of violations of human rights developed. The Chixoy dam funded by the World Bank was built in the area where the Maya Achi have lived for generations. The campaign of terror against the indigenous Maya Achí people of Rio Negro village began after they refused to move to the camped houses and poor land at the resettlement site (...). Prior to the completion of the dam and the filling of the reservoir nearly 400 people from Rio Negro were killed by the armed police and military, among them were women and children. The issue remained largely forgotten until a 1996 investigation by Witness for Peace. The investigation established that some 376 people from the village of Río Negro - around 1 in 10 of those to be resettled in the dam submergence zone - were massacred between 1980 and 1982. The Witness for Peace report states that ‘the Río Negro victims died because they blocked the ‘progress’ of the Chixoy Project.’ Many villagers believe INDE encouraged the violence so that their officials could pocket compensation payments due to the villagers” (WCD 2000a, p.17). Beside of the killings, several outstanding social issues were recorded: 1,000 hectares of communal land were inundated, but only 224 hectares provided as compensation. Ceremonial religious centres were inundated without any compensation or mitigation measures. The community as a whole lost its sense of safety, security, psychological stability and cultural integrity as neighbouring communities competed for compensation and displaced families were separated into four different communities.

In 1996, following a report by the human rights group Witness for Peace, the World Bank sent a commission to Guatemala to investigate the causes of the violence and the implementation status of resettlement plans. The commission established a long list of

outstanding social issues and came to the conclusion that INDE did only partly implement the mitigation and compensation measures agreed on in the Resettlement Plan. In turn, the World Bank urged INDE to provide the outstanding compensations etc. in a timely manner (World Bank 1996). To speed up the process, the World Bank provided a remedy fund and asked a national NGO to purchase farmland and provide training and technical assistance to the community.

In 1999, the World Bank came to the conclusion that the project affected communities have reached the socioeconomic level they had in 1976 when relocation began (World Bank cited in World Rivers Review 1999, p. 8), but this compliance has been challenged by community leaders and NGOs (Aguirre et al. 2004). Additional independent research is highly recommended to qualify the debate on this dam as the effectiveness of the measures put in place to address those outstanding social issues, which can be mitigated.

Overall Conclusions

It becomes obvious that the World Bank played a leading role in implementing the right to remedy in the case of the Chixoy Dam and that the remedy fund for post-project indemnity payments solved many outstanding social issues generated by the dam. While it is also clear that not all issues – including remedies for the murdered villagers and the fact that the resettlers received the compensations 15 years too late – have been solved, the living conditions of the survivors have been enhanced and reduced to some extent the critique voiced against the Chixoy Dam.

- Aguirre, M., Bird, A.; Colajacomo, J., Jonson, B.R., Sanchez, C.O.; 2004. Compliance struggles – Chixoy Dam Legacy issues, Guatemala. In: DDP Workshop on Addressing Existing Dams, Proceedings, August 2004; pp. 76-80.
- Marthews, A., Neta, G., Sullivan, M. & Uzzell. 2000. *Reparations For Dam-Affected Populations*. Richard and Rhoda Goldman School of Public Policy, University of California at Berkeley.
- McCully, P. 1999. *After the Flood: Reparations for Dam Victims Needed to Right Past Wrongs*. World Rivers Review.
- Stewart, J., O'Connell, K., Ciborski, M. & Pacenza, M. 1996. *A People Dammed - The Impact of the World Bank Chixoy Hydroelectric Project in Guatemala*. Witness for Peace.
- WCD 2000a *Displacement, Resettlement, Rehabilitation, Reparation and Development*. A thematic report by Leopoldo Jose Bartolome, Chris de Wet, Rhodes, Harsh Mander and Vijay Kumar Nagaraj.
- WCD 2000b *Reparations and the Right to Remedy*. Thematic Study by Barbara Rose Johnston.
- World Bank 1992. *Project Performance Audit Report: Guatemala: Chixoy Power Project*.
- World Bank 1996. *Background Note: Chixoy Hydroelectric Project, Guatemala*.
- World Rivers Review 1999. *Resettlement Gone Wrong: The Case for Reparations*.
- WCD 2000c *The Chixoy Dam*. Case study by Jaroslava Colajacomo.

4.2.2. The **right to remedy** has been implemented in the example of the **Tarbela Dam (Pakistan)**, which had been constructed by the Pakistan Water and Power Development Authority (WAPDA) between 1968 and 1976 with financial assistance from the World Bank, through the **Government of Pakistan** and the **operational policy** of the World Bank and the Asian Development Bank with the help of a remedy fund set up in preparation of the **Ghazi Barotha Hydroelectric Project (Pakistan)**, which have been constructed between 1995 and 2003 also by WAPDA and which received financial support among others from the World Bank and the Asian Development Bank.

Description of the framework

The right to remedy goes back to § 8 of *The Universal Declaration of Human Rights*, which states that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” This right has been further specified by the *International Covenant on Civil and Political Rights*, which has been ratified by 132 states, and which declares that “each State Party to the present Covenant ensures that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”

In the case of dams, an overstepping of obligations established in project funding agreements, which have often the status of treaties, and/or international laws creates a legal responsibility for remedy. The right to remedy can be also applied on a voluntarily bases by a government, a developer or a financial institution, if they consider that outstanding social issues should be addressed even if there is no legal obligation to do so. Remedy/reparation is defined by international law as action or process that repairs, makes amends, or compensates for damages. There are three generally recognized forms:

- a) **restitution**, which is designed to put the offended party back in the position it would have been, if the violation had not occurred;
- b) **Indemnity/compensation**, which involves the payment of money to the offended party for any lost profit, value or property. In dam projects *compensation* typically refers to payments to dam-affected peoples to compensate for the loss of assets and property. A project, agency or state might also provide post-project indemnity payments for outstanding social issues related to non-compliance with guidelines

and/or international laws to redress for example those people, who were displaced while overstepping the agreed proceedings and guidelines;

- c) **satisfaction**, which includes almost every other form of reparation and is meant to address any nonmaterial damage through formal apologies etc.

To provide reparations to solve outstanding social issues requires considerable political will not only from national governments, but also from international agencies and financial institutions. While the demands for reparations, retroactive compensation, and remedies are many, articulated for example in the 1994 Manibeli Declaration, the 1997 Curitiba Declaration and captured in the Final Declaration from the November 1999 Southern African Hearings for Communities Affected by Large Dams, the responses are few.

An example how the framework has been implemented

The Tarbela dam was built to feed the water from the Indus into the irrigation systems of Northwest Pakistan and to generate hydropower (2,100 MW). Construction started in 1968 and was completed by 1976. The total costs of the projects were above US\$ 2,500 million. A resettlement study carried out in the 60ties predicted that 80,000 people would need to be resettled and about 100 villages submerged. The resettlement was carried out on the base of the Pakistan Land Acquisition Act (1894 with subsequent amendments), which foresees a compensation for property lost at market value to be determined by the provincial Land Acquisition Department and Land Acquisition Collector. It should be noted that the Tarbela resettlement plan was elaborated long before Pakistan elaborated its resettlement laws (2002) and even long before the World Bank and other donors established their first operational policy on involuntary resettlement (1980), which made the restoration of livelihoods mandatory.

The project created a set of outstanding social issues: a) the number of people, which needed to be resettled was much higher than expected. The WCD case study documents that 96,000 people have been displaced from lands with a total surface area of 33,000 ha (WCD 2000, p. 75 see also Cernea 1997, p. 24) i.e. 16,000 people more than scheduled. b) The government had allocated 12,000 ha as resettlement site, but only 4,400 ha were made available. Both measures were insufficient to allow the resettlers to continue with their previous livelihood patterns. c) In reaction to insufficient land available for the resettlement, the project compensated in contrast to the procedures foreseen in the resettlement plan not with land, but in cash. The compensation was below the real market value of land and did not allow most resettlers to obtain land. In sum: In 1999 – 25 years after the end of the construction phase - 24% of the resettlers

made clear that they didn't receive any compensation and 64% did not receive any agricultural land (WCD 2000, p.76-78; Scudder 2005, p.85).

Beside the land issue, which is considered as the most important outstanding social issue of the Tarbela dam, a good number of other social issues were still outstanding at the time of the WCD case study: reduced income from fishing, polluted water, social problems as families had to split up in the resettlement process etc. (WCD 2000 74-104).

In 1994 the Government of Pakistan approached the World Bank and the Asian Development Bank for a loan to construct 7 km downstream of the Tarbela Dam the Ghazi-Barotha Hydropower Project. In the context of the preparatory studies, NGOs informed the World Bank about the outstanding issues of the Tarbela Dam and provided evidences that traditional instruments to ensure compliance (appeals to the project, courts etc.) didn't provide satisfying results. In turn, the World Bank and the Asian Development Bank made the settlement of outstanding social issues of the Tarbela Dam a pre-condition for the loan requested for the Ghazi-Barotha Dam. This is an innovative approach to solve outstanding social issues and also aimed at an enhanced acceptance for the new dam (World Bank 2004).

In compliance with this requirement WAPDA appointed in 1996 a team to assess the outstanding social issues, but after serious conflicts between the stakeholders of this study, the final report was only submitted to the Ministry of Water and Power in July 1999. The Commission received in response to a call in newspapers 12,000 applications including 112 applications already pending with WAPDA. In addition, there were 385 applications from the "tribal areas". The review committee determined that a total of 2,197 farms and 1,282 residential plots had not been compensated despite the fact that the people were entitled to this through the resettlement plan and that 4,089 additional claims for farms and 7,649 for residential plots were justified (WCD 2000, p.79).

In a first round 2,400 families were allotted 5 ha of land in Punjab and further 667 families 6.5 ha in Sindh. But this didn't solve the outstanding social issues as WAPDA considered that this compensation 25 years after the resettlement fell within the responsibility of Local Government and the Rural Development Department, which are in charge of maintenance, while these institutions claimed that WAPDA should solve the outstanding social issue created by the dam constructed by WAPDA. Following an open letter from the World Bank (2002) the Government requested that the provinces should provide land to this first group of resettlers, but the local authorities announced that they were unable to provide enough land. Finally the Government opted for a cash

compensation. By the end of 2003 most people from this first group had received the agreed amount, while the second group was still waiting for land and/or a cash compensation for their property last 30 years before (World Bank, 2004).

Overall Conclusions

The attempt to address outstanding social issues of the Tarbela Dam within the project preparation of the Ghazi Barotha was an innovative approach and urged also the implementer and the government to commit for fast results. Nevertheless, the new approach was not easy to implement (World Bank, 2002, 2004). This example shows that implementing the right to remedy requires much more than the elaboration of a sophisticated framework or conditionalities. It requires strong commitments from the government, the developer and strong support and follow-up from the financial institutions.

Some more research is recommended to document the inputs and the relation of the different driving forces (project affected people, Government of Pakistan, World Bank and Asian Development Bank) in addressing the outstanding social issues of the Tarbela Dam.

- Asian Development Bank (1998). *Handbook on Resettlement: A guide to good practice*. Available online at www.adb.org.
- Cerne, Michael, M.; 1997. *Hydropower and social impacts: A sociological perspective*. World Bank: ESD-papers.
- GBTI (2002). *Ghazi Barotha Hydropower Project*. Available online at www.esports.sdnpk.org/stories/gbhp.htm.
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- WAPDA (1994). *Ghazi-Barotha Hydropower Project, Resettlement Action Plan*. Available online at www.worldbank.org.
- WCD (2000). *Tarbela Dam and related aspects of the Indus River Basin (Pakistan)*. Case study prepared by Asianics Agro-Dev. International, (www.dams.org)
- World Bank (2004). *Implementation Completion Report on a loan in the amount of US\$350.0 million to the Islamic Republic of Pakistan for a Ghazi Barotha Hydropower Project*. Report No 28781. Available online at www.worldbank.org
- World Bank (undated). *Resettlement in the Pakistan Ghazi-Barotha Hydropower Project. Involuntary Resettlement Case Study*. Available online at www.worldbank.org.
- World Bank. 1986. *Project Completion Report of Tarbela Dam Project*. Report No. 6398, Washington D.C., USA.

4.4.3. The Operational Policy on Involuntary Resettlement (OPIR) of the World Bank is - several times revised - since 1980 the binding instrument for all projects receiving funding from the World Bank and guarantees that all displaced persons are assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher. In the following, the instrument “OPIR” will be discussed in the context of the **Pak Mun Dam (Thailand)**, which has been implemented between 1990 and 1994 by the Thailand's Electrical Generating Authority (EGAT). It should be noted that the project was only required to fulfil the resettlements standards at the time of appraisal (1990) and not any of the later versions of the OPIR.

Description of the framework

The quest for a framework and for guidelines on how to insure certain minimum standards for projects is as old as development planning as such. Scudder describes in detail how the different agencies funding dams in the 60ties and 70ties have been involved in elaborated guidelines and frameworks. “None of them had an impact that extended beyond the projects and activities of which they were part” (Scudder 2005, p.42). That distinguishes them from the approach introduced by the World Bank and taken over by other multilateral development Banks and funding agencies. The Bank's team drew up a first “Operational Manual Statement 2.33 – Social Issues Associated with Involuntary Resettlement in Bank-Financed Projects” in 1980, which had been revised in 1986 (Operations Policy Note 10.08), 1990 (OD 4.30) and 2001 (OP 4.12). The OPIR applies for all projects receiving funding from the Bank and to all components of the project that result in involuntary resettlement, regardless of the source of financing. It also applies to other activities resulting in involuntary resettlement, that in the judgment of the Bank, are a) directly and significantly related to the Bank-assisted project, b) necessary to achieve its objectives as set forth in the project documents; and c) carried out, or planned to be carried out, contemporaneously with the project. It guarantees that the livelihoods of all project affected people are restored at least to pre-resettlement levels, this embodies that the assistance and compensation does not only apply to those social issues addressed in the resettlement plans, but also to those outstanding social issues, which become only visible at a later stage. While the earlier versions did not specify, how this should be organized, are projects since 1990 obliged to make available affordable and accessible procedures for

third-party settlement of disputes arising from resettlement and are advised to establish a remedy fund. Such grievance mechanisms should take into account the availability of judicial recourse and community and traditional dispute settlement mechanisms to address outstanding social issues.

An example how the framework has been implemented

The Pak Mun Dam near the boarder between Thailand and the Laos has been intended as a run-of-the-river hydro power plant. When construction started in 1991 the dam wall had been established 1.5 km away from the originally designated area after the older plans have been considered by international experts as insufficient and became the subject to quite some resistance. According to the resettlement plan 1,700 households from 31 villages lost their home, land, or both, while other studies presented higher figures. The original resettlement action plans in line with OPIR had been updated in a hast for the new situation and were due to that unable to provide satisfying results, leaving behind many unsolved social issues, which created a significant amount of resistance against the project.

As the OPIR principles of compensations at replacement costs and livelihood restoration, which had been adopted by the Thai government to qualify for funding from the World Bank, applied also to the new site and for all people affected by the project, the implementer (EGAT) “committed itself to improve the living standards of affected households, to provide a range of options, and to implement resettlement with the participation of the affected people. The issue was how to establish a fair compensation” (World Bank 2001, p.62), despite the fact, that it was clear that the outstanding social issues outnumber those foreseen in the resettlement plan by far. From the technical point of view the key problem was the lack of baseline data.

EGAT enhanced several times its offers including a fivefold increase in the land compensation rate, but it is difficult to determine the influence of the OPIR on this positive development as the original correspondence is not available. The World Bank itself played down its role and stated that the enhancement of compensation packages “was largely due to extensive protests by resettlers and NGOs against the base policy rate. EGAT opted to pay much higher rates to quell the increasing complaints against the construction of Pak Mun. This strategy succeeded in overcoming resistance” (World Bank 2001, p. 63). But also this is somehow an implementation of OPIR as the policy requires that all resettlers are equal or better of than before the project, which was very much in line what most of the protesters requested. The OPIR applied for

those issues addressed in the resettlement plan, but also for all outstanding social issues as long as they are a risk that peoples' livelihood is falling short their standard of living before the project.

One outstanding social issues, which gained much recognition, was the compensation for income losses of fisherfolk outside the resettlement area during the construction period. Their losses had neither been addressed in the plans, nor officially recognised before the end of the construction phase. When the dam became operational in 1994 the issue had not been solved and it took a full year until an agreement was achieved. In a first round (1996) 3,000 households were compensated and at a later stage (1999) another 3,000 households.

Another outstanding social issue was the reduced income from fishing due to reduced fish migration and based on that reduced stocks. On the basis of the OPIR principals EGAT elaborated a land-based compensation strategy, but was unable to find fishing grounds and decided due to that in 1997 to offer a significant cash compensation for the affected households. In 1998 payment was suspended when the Thai Prime Minister withdrew the offer, arguing that compensation could not be paid for a project which had already been completed; i.e. that outstanding social issues can not be addressed (WCD report 2000, p.84). This resulted in a new peak of resistance during which 5,000 protesters stormed the dam in March 1999 and remained there until 2001. In June 2001 the Thai government opened the dam gates for one year to conduct studies on fisheries, social impacts and the relevance of the dam for electricity supplies. In June 2002 the government decided based on its own studies, which were contested, to close the gates and get the dam back into operation. To mitigate the outstanding social issues, EGAT agreed to open the sluice gates for four month a year to allow fish migration, but also this decision is contested.

A third outstanding social issue, which is even more contested, are those cases in which dam affected people have invested their cash compensations unwise and lost most of their assets during the economic crisis which shook south-east Asia in the late 90ties. While some resettlers and some NGOs considered this also as outstanding social issue of the Pak Mun, EGAT in line with the position of the government and the World Bank refused responsibility and due to that further payments.

The overall cost of the project was estimated in 1999 to be US\$ 260 million with a compensation and resettlement budget of US\$ 44 million (17%), which is much higher than in other projects. On average household "incomes have increased primarily due to

spontaneous actions on the part of the resettlers rather than organised options designated by EGAT, the government or the World Bank. The rapid growth of the Thai economy made this possible” (World Bank 2001, p.71). According to de Wet, three reasons provided the ground for the positive outcomes: a) the boom of the Thai economy in the early and mid 90ties, which allowed many resettlers to find jobs outside their traditional sectors, b) the political preparedness and the financial ability to address outstanding social issues in a timely manner and the c) the flexibility on the part of EGAT in terms to responding to the demands of the resettlers “managing to turn things around, and leave people better off, and broader satisfied with the actual relocation aspect” (de Wet 2002). The last two aspects seem to be closely linked to the OPIR. To sum up, the project addressed due to the requirements of the OPIR most outstanding social issues.

Overall Conclusions

It is a common understanding that the Operational Policy on Involuntary Resettlement of the World Bank has enhanced the performance of dam projects and solved many outstanding social issues in those projects receiving funding from the World Bank, ensured for most project affected people a livelihood restoration and reduced significantly the resistance against these projects.

Some more research is recommended to document the inputs and the relation of the different driving forces (project affected people, Government of Thailand and World Bank) in addressing the outstanding social issues of the Pak Mun Dam.

- Deetes, Pianporn (2004) Dam decommissioning and restration of the river ecosystem and local livelihoods: A case study of Pak Mun Dam Mekong River Basin Thailand. In: DDP Workshop on addressing existing dams – Proceedings August 2004; pp. 84-87
- de Wet, Chris (2002): Development-Induced Displacement and Resettlement (DIDR): The case of Pak Mun Dam in Thailand. Paper prepared for the Refugee Studies Centre Summer School, University of Oxford.
- Scudder, Ted (2005): *The Future of Large Dams: Dealing with social, environmental, institutional and political costs.*
- World Bank 2001 (Hrsg. Picciotto, R., van Wicklin, W. & Rice, E.). *Involuntary resettlement: Comparative Perspectives.* London: Transaction Publisher.
- World Commission on Dams (2000). *Case Study: The Pak Mun Dam and the Mekon River Basin*, Thailand prepared by Amornsakchai, S., Annez, P., Vongvisessomjai, S., Choowaew, S., Thailand Development Research Institute (TDRI), Kunurat, P., Nippanon, J., Schouten, R., Sripapatrasite, P., Vaddhanaphuti, C., Vidthayanon, C., Wirojanagud, W., Watana, E. (www.dams.org.).

5. Conclusions and recommendations

This report documents why and how outstanding social issues are addressed in dam and other large scale development projects. As this is a first assessment of a rather new topic, carried out within a very tight schedule, it is far from being comprehensive. It was not possible to do any primary research and/or in-depth studies of any of the relevant mechanism and/or the examples of how these mechanisms have been implemented, while the literature review made clear that much more has been written about outstanding social issues than about ways how these were addressed. The reasons for this imbalance are closely related to the nature of 'outstanding social issues'. In traditional planning concepts such issues do not exist and/or were perceived as a shortcoming of the planning process rather than a reality, which used to appear in nearly every project. Due to that, one hardly finds information on outstanding social issues in official documentations, but merely in reports provided by project affected populations, NGOs and independent researchers. The problem is that these reports in turn often remain at the level of descriptions and/or fundamental critiques, which don't suggest any detailed mitigation processes within the project framework and/or acknowledge the existence and/or effectiveness of such mechanisms as the outstanding social issues were not perceived as a small problem within a successful project, but as the tip of an unsuccessful project, which needed to be stopped. In sum, our knowledge is extremely weak and much more research is needed before we can claim to have sufficient data to draw general conclusions.

In what follows, the findings of this report are used to recommend on topics and subjects for additional research:

a) While outstanding social issues can by definition not entirely be pressed into a fixed typology, additional research is needed to enhance our understanding of what the most common outstanding social issues of dam and other large scale development projects are. This will help to enhance planning systems and to reduce the number and magnitude of outstanding social issues and enable us to search for outstanding social issues in a more pro-active way, which tries to provide responses for unsolved problems before they result in significant personal and societal hardship and the formation of resistance. Data on outstanding social issues are available in published sources and the research-need is merely to provide a classification system and to carry out an assessment of the 200-300 well documented projects. A draft typology is provided in this report (chapter 3), but it would be good to have much more detailed information on what normally remains unsolved in dam and development projects.

One of these topics is the reduced access to fish. One should further investigate how this issue has been addressed for example in the Glomma and Laagen River Basin in Norway (see chapter 4.2.2), which is considered by all stakeholders as a success stories, and what its outcome are. Already the WCD case study had recommended to carry out this research but nothing has been published yet. It might be also possible to draw conclusions on how to address the outstanding social issue of reduced access to fish from the case of the Pak Mun dam in Thailand (see chapter 4.4.3), but as this is a highly controversial project, it might be much more difficult to establish results, which are accepted by all stakeholders.

b) Another point which is not very clear in published sources, is the motivation behind the decision to address outstanding social issues. The report documents that the wish to enhance public acceptance and to comply with the right to remedy, which are guiding principals of most laws and policy frameworks dealing with dam and large scale development projects, were the arguments provided by those, who tried to solve outstanding social issues. As these are basic principals adopted by the United Nations, governments, financial institutions and most larger companies, one would expect that hardly any project fails to address outstanding social issues earlier or later, but a large amount of reports document the contrary. So it would be important to find out why some projects address outstanding social issues, while others don't do so. In view to better understand the internal dynamics resulting in a successful or unsuccessful implementation of general guidelines DeWet (2005) has developed a comprehensive research programme to enhance our knowledge on the internal communication and functioning of projects. This research programme is highly relevant for the addressing of outstanding social issues, because a) more successful projects would reduce the number and magnitude of outstanding social issues and b) a better knowledge of the functioning of project implementation would also enhance the efficiency of mechanisms to address outstanding social issues.

c) Some of the mechanisms proposed by policies and conceptual frameworks to address outstanding social issues have not been covered in this study as it was impossible to find sufficient data on the implementation of these mechanisms and their impacts within the given timeframe. Additional research should be able to document how these mechanisms have been implemented and with which outputs. As new mechanisms are implemented in new projects, this will require a good amount of primary research, if nobody else comes up with case studies that inform also about the functioning of these new mechanisms and the impact chains put in place by them. As

this study made clear that most authors of case studies are not particularly interested in the mechanisms to address outstanding social issues (see above), it might be good to commission in a pro-active way detailed case studies on new mechanisms.

c) Concerning the mechanisms outlined in this report, the recommendation on where to search for additional information can be much more precise. The report suggests that a combination of a remedy fund and a pro-active grievance process was used in many projects to address outstanding social issues, while restitution and legal processes might not be able to solve outstanding issues in a timely manner.

Nevertheless, it would be interesting to further investigate the relevance of land-restitution-processes for dam and other large scale development projects. This is important in view of projects, which will be decommissioned in the near future and communities and/or private land owners, which are interested to receive a regular rent for their land. It would be also good to see whether more progressive legal systems were able to provide timely decisions on well documented outstanding social issues.

In view of remedy funds the focus of additional research should be a) on the functioning of these funds and b) the decision making process on how the funds were used. The study provides some knowledge on what remedy funds are and what they have achieved, while our knowledge on how they function is not very well developed.

The two instruments put in place by the government of the PR China (the 'Post Resettlement and Rehabilitation Fund for Irrigation Projects' to address unsolved social issues in existing irrigation projects [chapter 4.3.1.] and the 'Later Stage Support Funds' for new projects [chapter 4.2.4.]) are the most comprehensive approaches to address outstanding social issues. Additional and independent research on their functioning and impacts would be able to capitalise the experiences of this remarkable decision and processes for the global debate.

Another example which could enhance our knowledge, are the remedy funds put in place by Hydro-Québec (chapter 4.2.1). Published sources suggest that the funds have been used to address most if not all outstanding social issues, but here it would be good to document in more details how the decision on where and how to put in place mitigation measures and compensation schemes was established.

In the case of the Chixoy Dam (Guatemala; chapter 4.4.1), the Tarbela Dam (Pakistan; chapter 4.4.2.) and the Pak Mun Dam (Thailand; chapter 4.4.3) it would be important to carry out fully independent research on the impacts of the remedy funds put in place as

most existing data are either from the projects and their donors and/or the project affected people and their NGOs and due to that highly contested. Some more research is also needed to understand the complex relation of the project affected people, governments and financial institutions and their influence on the decision making process, as all actors claim to be the driving force behind the decision to make available remedy funds. This is not only relevant for outstanding social issues, but would enhance our knowledge on how normative and conceptual frameworks are implemented in dam and development projects.

Comprehensive grievance processes are an important element not only to know where and how to address outstanding social issues, but for the participation of project affected people in the project implementation. The mechanism ‘Ombudsman’ used in Germany (chapter 4.2.3) to make remedy funds more proactive and to enhance the communication between the project affected peoples and the project is considered by all stakeholders as a success, but as this is a rather new mechanism, there are no detailed descriptions on how it works and with which impacts. Additional research would be able to provide conclusions on this mechanism and provide a response to the requests and recommendation of the DDP Workshop on Addressing Existing Dams in view of outstanding social issues (see above).

In sum, the report makes clear that in nearly all projects some social issues were not addressed within the regular planning and implementation process; thus that the existence of outstanding social issues is a reality, which will need to be addressed in all dam and development projects. The report provides first information on applied mechanisms to address outstanding social issues and to incorporated them as comprehensive element in all project planning frameworks seems to be a probate instrument to enhance public acceptance and comply with the right to remedy which results from the Universal Declaration of Human Rights.

ANNEX 1 : TORs

TOR FOR THE IDENTIFICATION, COLLECTION OF INFORMATION AND COMPILATION OF EXAMPLES OF RELEVANT PRACTICES CONCERNING THE INTEGRATION INTO POLICY/NORMATIVE FRAMEWORKS AND IMPLEMENTATION OF OUTSTANDING SOCIAL ISSUES

Special Service Agreement (SSA)

A. OBJECTIVE

Under the guidance of the Coordinator of the Dams and Development Project the Consultant will identify, collect information and compile examples of relevant practices concerning the integration into policy/normative frameworks and implementation of Outstanding social issues. The compilation of examples is a substantive element leading to the elaboration of a Compendium on relevant practices for improved decision-making, planning and management of dams and their alternatives. See Annex C.

B. BACKGROUND AND SUBSTANTIVE ELEMENTS TO BE ADDRESSED

Outstanding social issues is one of the key aspects included in the more general topic of addressing existing dams. Opportunities exist to optimise benefits from many existing dams, address outstanding social issues and strengthen environmental mitigation and restoration measures. Outstanding social issues associated with existing large dams need to be identified and assessed and processes and mechanisms to remedy them need to be developed with involvement of the interested affected communities. These actions might be a component of programmes to restore, improve and optimize benefits from existing large dams. Mechanisms to address unsolved social issues might involve compensation measures, access to dams benefits or innovative benefit sharing mechanisms. Dispute resolution and funding are also issues intrinsic to this topic. The DDP workshop on Addressing Existing Dams focused on governance issues (policies, legal venues and frameworks) and funding issues to deal with the social reparations.

Against this background the task involves a description of the substantive elements characterising the topic and the current status of development and identifying and collecting information on examples of national and international frameworks and their implementation dealing effectively with identification, assessment and resolving of outstanding social issues resulting from dams' planning and management.

C. ACTIVITIES

1. Work plan

1.1. Elaboration of a work plan detailing the proposed methodological and operational approach, planned activities and timeframes to achieve the expected outcomes.

2. Brief characterisation of the priority key issue

2.1. Drawing on available information from relevant sources from national and international organisations, including the WCD and DDP knowledge bases, the consultant will elaborate a brief note describing the main features of the corresponding priority key issue and the state of the art in terms of its consideration by policy/normative frameworks around the world in developed and developing countries and its implementation resulting from the application of the such frameworks. The note will differentiate the different stages of the

project's life cycle when they involve different approaches in the consideration of the issue. The note will identify the existing areas of agreement and disagreement associated with interpretation and implementation of the issue. The

- 2.2. This elaboration will be completed along with the development of all the activities established for the consultancy, drawing on their outcomes. A preliminary draft should be presented by the consultant at the start up meeting referred to in 4.2. The final version will integrate the final report submitted as final product of the consultancy.

3. Search and assessment of potential sources of information

- 3.1. The consultant will review and make a thorough assessment of the potential sources of examples and information provided in the table attached to these ToR (see Annex B) and will carry out its own search for additional ones in order to come up with a comprehensive database of projects, organisations and countries dealing with the issue of the reference in terms of policy/normative frameworks and implementation. These sources will include but will not be limited to the following relevant ones: websites, proceedings from international conferences, reference centres of national and international organisations (multilateral development banks, professional associations, research centres, specialised NGOs,)
- 3.2. The resulting database, including a summary characterisation of the sources, relevant contact details and web links will constitute an annex of the final report. A preliminary draft will be presented by the consultant at the start up meeting referred to in 4.2.

4. Identification of examples and acquisition of information

- 4.1. Building on the results of Activity 2, the consultant will identify potential examples of integration of the priority key issue into national and international frameworks and implementationⁱⁱ.
- 4.2. The consultant will gather all relevant available information concerning the examples identified. All available sources of information concerning the framework ruling about the issue and project/programme in which context the issue has been implemented, should be reviewed in order to collect factual information from different stakeholders regarding the examples. This involves ensuring multi-stakeholder approach while collecting information, i.e. involving civil society, and taking into account gender issues. The case studies should highlight regulatory frameworks, lessons to be used and practices to be drawn, enforcement mechanisms, and available remedies. The consultant will consider projects of different sizes (small and large dams).
- 4.3. The scope of the required information will suffice to cover the issues addressed in the presentation template include as Annex A

5. Compilation of the examples

- 5.1. The consultant will summarise the information gathered regarding the framework and implementation of the key issue following the outlines established in Annex B. All examples should cover homogeneously the sections and topics in the outline. All additional background information will be included as annexes and properly referenced in the summary text. The contents of the summary should be supported by facts and objective indicators based on the information collected. The consultant will avoid incorporating his own

judgements though it is expected that he will provide an objective interpretation and assessment of the relevance and quality of the information obtained.

- 5.2. The consultant will participate of a start up coordination meeting with colleagues dealing with other key priority issues and DDP Secretariat soon after the initiation of the activities. The meeting will allow clarifying the scope and content of the activities above described and establish a common approach that will result in a homogeneous presentation of outputs for all issues. However each issue will have particular approaches and requirements that will be established individually with DDP Secretariat, as needed.

6. Elaboration of the report

- 6.1. The consultant will elaborate a final report containing summary descriptions of the activities carried out, outcomes and conclusions regarding the incorporation of the examples into the Compendium. The report will include the characterisation and review of the state of the art concerning the priority key issue (output of Activity 1), the description of all collected examples according to the outline in Annex A (output of Activity 4), the database of sources, including a summary characterisation of the sources, relevant contact details and web links (output of Activity 2) and other annexes containing all background information referenced by and in supporting the statements in the main part of the report (output of activity 3).
- 6.2. All information will be provided in electronic and hard copy format.

D. OUTPUTS

- a) Work plan (activity 1).
- b) Draft concept note reporting the characterisation and review of the state of the art concerning the priority key issue (activity 2).
- c) Draft database, including a summary characterisation of the sources, relevant contact details and web links (activity 3).
- d) Interim progress report detailing the efforts and results of the identification and collection of examples, including the example templates completed up to the date of the report.
- e) Draft final report containing all outputs resulting from the above described activities including all elements indicated in 5.1
- f) Final report taking into account the comments issues by DDP Secretariat.

E. REQUIRED EXPERTISE

The consultant should have appropriate educational background (second degree or equivalent professional experience), skills and demonstrated extensive international experience (7 years) in the fields of knowledge associated with the referred issue in terms of policy, criteria and guidelines and implementation. [Specific terms of reference for each issue will include more detailed expertise requirements]

F. DURATION OF THE ASSIGNMENT

The assignment will start on the date of signature and end on *[four months]* upon satisfactory and timely completion of all tasks to be undertaken.

G. FEES

As full consideration for the services performed under the terms of this agreement, UNEP/DDP shall pay the consultant a sum (equivalent to 6 weeks full time dedication. Fee according to UN rules) disbursed in three instalments as follows:

- i) (20%) will be paid upon submission of the work plan (Output a) to the DDP Secretariat within 15 days from the signature of the contract.
- ii) (30%) will be paid upon submission ii) of the interim progress report (Outputs b), c) and d)) 60 days after the signature of the contract and its approval by UNEP-DDP.
- iii) (50%) will be paid upon presentation of the draft final report (outputs e) and final report (output f) and its approval by UNEP-DDP.

H. TRAVEL ARRANGEMENTS

- a) The consultant will travel to a location to be specified to attend the start up coordination meeting. Further to this mission, the means of communication will be in the mode of e-mail (primary), courier, fax and telephone. No further physical travel is foreseeable.
- b) The fee is exclusive of travel expenses such as ticket (economy class), accommodation and incidental expenses. The consultant will make his/her own insurance (medical, travel, baggage, etc.) arrangements.

Appendix A

Draft outline for presentation of examples

Identification of the example

1. Title of the example.
2. Key issue addressed (second and third level associated issues if appropriate).
3. Integration: National/ international policy/normative framework .
4. Implementation: Project identification (name, country, year, developer).
5. Stage regarding the project life cycleⁱⁱⁱ.

Description of the framework

6. General description of the country institutional set up where the specific policy/normative is located.
7. Detailed description of the specific policy/normative framework addressing the key priority issue.
8. Brief description of the organisational set up adopted/available for implementation, enforcement and monitoring.
9. Brief description of the implementation history of the norm, including enforcement and compliance aspects (reference to other examples of success/lessons learnt dealing with the implementation of the key issue).

Description of the example

10. Project description (Objective, location, developer, relevant institutional and organisational set up, timeframe).
11. Implementation of the key issue (methodology, actions taken, outputs, actors involved, roles performed).
12. Outcomes and results (based on factual information): (i) expected, (ii) required by the regulation and (iii) achieved.
13. Assessment of outcomes/ results by involved stakeholders (government, developer, civil society)

Overall Conclusions

14. Review of challenges and opportunities emerging from the analysed institutional and organisational set up and the example that should be addressed to improve/optimize implementation efficiency, achievement of expected outcomes and compliance.

Appendix B

Compendium on Relevant Practices 2nd stage- Identification and Compilation of Examples

Preliminary draft list of sources of information on relevant examples concerning priority key issues
(This list will be updated by DDP Secretariat until the commissioning of the consultancy and thereafter by the Consultant who will review and further upgrade it)

	Specific Source/ project	Organisations	Countries	Comments
Benefit sharing (SP5)	<ul style="list-style-type: none"> ▪ J.Milevski of WB, ▪ Nepal Benefit sharing policy ▪ India (National Policy on Resettlement and Rehabilitation Plan 2003) ▪ Giomma & Lagoon Rivers, Norway [IHA] ▪ Lubuge, China [IHA] ▪ Yantan, China [IHA] ▪ Minastouk, Canada [IHA] ▪ Rio Grande, Columbia [IHA] 	<ul style="list-style-type: none"> ▪ DDP data ▪ NTL 	<ul style="list-style-type: none"> ▪ Laos ▪ Australia 	
Stakeholders participation (SP1)	<ul style="list-style-type: none"> ▪ Deduruyoa Dam Project by Irrigation Department of Sri Lanka ▪ Skagit, USA [IHA] ▪ Clark Fork, USA [IHA] ▪ Nisqually, USA [IHA] ▪ Mokelumne River, USA [IHA] ▪ Savannah River, USA [IHA] 	<ul style="list-style-type: none"> ▪ UNDP framework, ▪ Hydro-Quebec, ▪ Hydro-Tasmania, ▪ WB publications ▪ INBO-River basins ▪ IUCN 	<ul style="list-style-type: none"> ▪ German legislation ▪ Norway ▪ South Africa 	Check with other development issues (airports, national parks, city development)
Compliance: enforcement/ mechanisms (SP6)	<ul style="list-style-type: none"> ▪ Middle Marsyangdi project, Nepal ▪ IFC Compliance Ombudsman of WB ▪ WB Inspections ▪ ADB (Special Review Missions) ▪ ADB (agreements through dialogue)/ Panels (accountability mechanisms), ▪ Narmada (monitored by Yashada and Tata Institute of Social Sciences in Mumbai) ▪ EU standards ▪ OXFAM (Ombudsman system), ▪ Issue based workshop of DDP 	<ul style="list-style-type: none"> ▪ JBIC in Kenya, 	<ul style="list-style-type: none"> ▪ USA ▪ Canada ▪ Sweden, ▪ Botswana, ▪ USA 	
Compensation	<ul style="list-style-type: none"> ▪ Itaipu – livelihood aspect (Brazil), 	<ul style="list-style-type: none"> ▪ UN Studies/ 	<ul style="list-style-type: none"> ▪ China’s experience 	

	Specific Source/ project	Organisations	Countries	Comments
policy (SP5)		Recommendations <ul style="list-style-type: none"> ▪ DFID – livelihoods in development approaches and methods 	(positive examples and source of rich information),	
Outstanding social issues (SP3)	<ul style="list-style-type: none"> ▪ Thailand (Pak Mun dam) [Lessons learnt] ▪ Philippines (San Roque Dam) [Lessons learnt] ▪ India (Narmada Dam) [Lessons learnt] ▪ Mozambique (Karabasa Dam on the Zambezi River) [Lessons learnt] ▪ Ghana (2 Dam on the Volta River) [Lessons learnt] ▪ Zambia and Zimbabwe (Kariba Dam on the Zambezi) – some positive developments were made but more needs to be done 		<ul style="list-style-type: none"> ▪ South Africa 	
Social Impact Assessment (SP5)	<ul style="list-style-type: none"> ▪ Sri Lanka (Maha weva Dam) – good SIA but implementation on the ground is different, ▪ India (Narmada Dam –Monthly Operational Summary (MOS) Committee Report, an independent review sponsored by WB in 1992), ▪ Lang Dunham Dam (North India for good gender analysis) ▪ Olifant Dam (South Africa – good EIA), ▪ Taibam Research (Thailand – completed by Pak Mun Dam affected people) ▪ Kpong dam (Ghana) [IHA] 	<ul style="list-style-type: none"> ▪ IFC, ▪ WB, ▪ UN Habitat ▪ IPPUR/UFRJ of Brazil 	<ul style="list-style-type: none"> ▪ Nepal (SIA is a part of the EIA) ▪ Brazil, 	
International policy concerning shared river basins (SP7)	<ul style="list-style-type: none"> ▪ Mekong River Commission, ▪ Jaicopi Agreement between South Africa and Swaziland including Lesotho, ▪ USA/Canada Water Sharing Agreement, ▪ Volta Basin Governance Project between Ghana and Burkina Faso, ▪ Zambezi River Authority between Zambia and Zimbabwe ▪ Indus Water Treaty between India and Pakistan ▪ ICWC Agreement between 6 countries of Central Asia 		<ul style="list-style-type: none"> ▪ Sweden, ▪ Botswana, ▪ USA 	
Sources: 4 th DD Forum break groups : Sustainable Hydropower Website, International Hydropower Association (IHA)				

Appendix C

COMPENDIUM ON RELEVANT PRACTICES ON IMPROVED DECISION MAKING, PLANNING AND MANAGEMENT OF DAMS AND THEIR ALTERNATIVES SECOND STAGE: IDENTIFICATION AND COLLECTION OF EXAMPLES

Background

1. DDP Phase 2 is tasked with improving decision making, planning and management of dams and their alternatives building on WCD core values and strategic priorities and other relevant reference materials through promoting dialogue at national, regional and global level and producing non prescriptive practical tools.

2. On this grounds decision was taken to produce a Compendium of relevant examples^{iv}. An online inventory of policy/normative frameworks (www.unep-dams.org) and the database of examples and lessons learnt implemented during Phase 1 were established as supporting tools.

3. The process for elaboration of the Compendium comprises, in principle, of four stages:

Stage 1: Elaboration of a checklist of key issues concerning planning and management of dams and their alternatives, a matrix analysis of their consideration by national and international frameworks and selection of a set of priority issues for further detailed analysis in further stages of elaboration of the Compendium.

Stage 2: Review of information sources in search of examples of relevant and good practice of the integration into national and international frameworks and implementation of the selected priority key issues. Retrieval of the available information concerning the identified examples and its organisation into a standardised format.

Stage 3: Consultation of collected examples with governments (GACG) and stakeholders (SC, DD Forum and fact finding missions where necessary) with a view to their compilation into the Compendium. Elaboration and publication of the Compendium (Version 1.0).

Stage 4: Wide dissemination and consultation of the Compendium among countries and international and national organisations aiming to raising awareness, promote strengthening of existing frameworks and collecting opinions to further improve the methodological approach and the contents of the Compendium with a view to proceed with the remaining key issues in the checklist.

4. Stage 1 was almost completed^v with the consultation held at the 4th DD Forum meeting resulting in the following set of priority key issues:

Benefit sharing (SP5)
Stakeholders participation (SP1)
Compliance: enforcement/ mechanisms (SP6)
Compensation policy (SP5)
Outstanding social issues (SP3)
Social Impact Assessment (SP5)
International policy concerning shared river basins (SP7)

Stage 2

5. This paper succinctly deals with methodological and operational aspects of the second stage to be completed during the first semester of 2006.

Sources of information

6. The information provided by DD Forum participants concerning project/programmes, organisations and countries where relevant examples could be found constitutes the starting point for identification of potential sources of data (see

Annex B). The database will be further expanded through direct consultation to SC members, specialised contact persons and organisations and search through Internet.

7. DDP Secretariat will make an initial research effort aiming to expand the database of potential sources of information, understanding that each priority issue will deserve a particularised approach. The information will then be transferred to the consultants/organisations commissioned with the identification and collection of examples, who will further develop the research effort.

Identification and collection of information

8. Selected organisations/consultants with appropriate background will be commissioned the reviewing of the sources of information, identifying examples and collecting the corresponding information. ToRs specific to each key issue will be drafted and organisations/consultants will be selected from available rosters in UNEP and colleague organisations in consultation with the SC. It is expected that consultants will conduct their research mainly through electronic means (Internet, electronic mail) and mail correspondence. Annex A provides a generic draft ToR proposal that will be adapted on a case by case basis. Missions, when deemed necessary, will be carefully planned in coordination with the various organisations/consultants to optimise travel efforts in support of more than one key issue.

Presentation of the information

9. The information gathered will be presented in a standard format (see draft proposed outline in Annex C) seeking to provide homogeneous detailed information on the examples, facilitating their comparative analysis within each priority issue and between them. Appropriate referencing will allow the interested reader to seek for additional details in the supporting documentation that will be provided by the organisation consultant together with the completed templates.

Elaboration of Compendium Stage 2 Activity Plan									
	Activity	2005			2006				
		NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
1	Finalisation of methodology and ToR through consultation								
2	DDP Secretariat research of additional sources of information								
3	Contracting of organisations/consultants ^{vi}								
4	Coordination meeting with DDP Secretariat and interested SC members (venue and date to be defined)				♦				
5	Identification of examples and collection of information (Organisations/consultants)								
6	Consolidation of individual reports into a final report for consultation (DDP Secretariat)								
7	Consultation with SC, DD forum and GACG								

ANNEX 2 : Itinerary

Day	Date	Activity
1	24/1/06	Health Check, Preparation for assignment.
2	13/2/06	Elaboration of preliminary findings on key issue (incl. Presentation) Activity 1
3	14/2/06	Elaboration of draft work plan (incl. Presentation) Travel Kinshasa-The Hague
4	15/2/06	Participated in the consultants' co-ordination meeting in The Hague with the DDP Secretariat and interested Steering Committee members
5	16/2/06	
6	17/2/06	Travel The Hague – Kinshasa & Finalisation of Work Plan Activity 1
7	6/3/06	An assessment of potential sources of information Activity 2
8	7/3/06	An assessment of potential sources of information Activity 2
9	8/3/06	An assessment of potential sources of information Activity 2
10	9/3/06	An assessment of potential sources of information Activity 2
11	10/3/06	An assessment of potential sources of information Activity 2
12	13/3/06	Elaboration of list of possible examples Activity 3
13	19/3/06	Revision of list of possible examples on the base of comments from the DDP secretariat and the other consultants
14	1/4/06	Acquisition and documentation of relevant information and successful examples. Activity 3
15	2/4/06	
16	3/4/06	
17	4/4/06	
18	5/4/06	
19	6/4/06	
20	7/4/06	
21	8/4/06	
22	17/4/06	Revision of list of possible examples following the recommendation of the steering committee members. Acquiring information on recommended examples and assessing their relevance for the study.
23	18/4/06	
24	19/4/06	
25	20/4/06	Elaboration of Interims Report
26	21/4/06	Elaboration of Interims Report
27	2/5/06	Elaboration of Draft Final Report
28	3/5/06	Elaboration of Draft Final Report
29	4/5/06	Elaboration of Draft Final Report
30	9/6/06	Finalisation of Report

ⁱ This issue is often considered to be a problem of compliance, but in most cases - especially in older projects – developers are not accountable for the long-term functioning of mitigation strategies.

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- ii For the purpose of this ToRs, frameworks involve national and regional policy/legislation/regulations and standards and international criteria and guidelines. Integration refers to the effective consideration of the key issue by the framework and implementation refers to the application of the priority key issue as established by the norm in the context of a given project or programme.
 - iii E.g; policy, strategic planning, river basin planning, project planning, implementation, operation, decommissioning
 - iv The Compendium will compile examples of good and relevant practices related to the integration into policy/normative frameworks and international guidelines and implementation of key issues concerning planning and management of dams and their alternatives.
 - v Currently revised versions of the checklist of key issues and of the matrix analysis of how these issues are considered by some selected frameworks are being completed by the consultants commissioned by DDP Secretariat.
 - vi The proposed timeframe might be affected by factors out of DDP Secretariat's control