

A Critique of the IHA's Draft Hydropower Sustainability Assessment Protocol

International Rivers
October 2009

In 2008, the International Hydropower Association (IHA), in collaboration with other partners, established the Hydropower Sustainability Assessment Forum (Forum) to create a new evaluation tool for hydropower projects. The 14 Forum members – from government, industry, funding agencies and four NGOs – have been conducting their work primarily in closed meetings, although documents have been disclosed on the IHA website. The draft Hydropower Sustainability Assessment Protocol (Protocol) was disclosed in August 2009 and will be finalized in early 2010. The Forum is soliciting comments on the Protocol through November 2009.

A flawed process...

The Forum process is fundamentally flawed and therefore cannot achieve its goal of establishing a “broadly endorsed sustainability assessment tool”. The Forum is an exclusive, self-selected group; **dam-affected people and Southern civil society networks have not been part of the negotiations.**

The two belated opportunities for public input during the Forum process have **not met minimum requirements for a credible consultation process and have so far involved little civil society participation.** The Forum has not allocated sufficient resources to organize civil society consultations or develop appropriate consultation materials for diverse civil society audiences. Most Forum documents have been produced only in English, although the draft Protocol and a summary were recently translated into a few languages. Feedback on these documents has been primarily solicited through online questionnaires and by phone and email, which also limits effective civil society input. More than halfway through the final consultation period, it is still unclear what, if any, civil society and dam-affected peoples consultation events have been planned. The discussions that are taking place are occurring towards the end of the process when there is limited opportunity to influence the Protocol and its overall approach.

... leads to an ineffective outcome

The 229-page, four-section draft Protocol is essentially a complex scorecard for rating dam projects – from very poor to excellent, or from one to five – on a long list of criteria. **The Protocol is not a standard or even a set of guidelines. The Protocol measures performance, but does not require dam developers to meet any benchmarks; there are no minimum standards they must follow or rights they must respect.** Even a dam project that violates national and international law or the rights of affected people, or that simply favors managing impacts over avoiding them, could easily receive an overall score of “good”. Since the Protocol

and its intended application do not provide incentives for dam developers to go beyond this median score (which should be considered “average” at best), it is unclear how the Protocol would lead to improved environmental and social performance in the hydro sector.

The Protocol is not practical, clear or objective, and will be difficult to apply. The Protocol’s complicated approach involves reviewing up to 28 aspects divided into multiple attributes and sub-attributes for as many as 15 different “scores” each across four sections representing different stages in the project cycle. For example, the assessment for project preparation (Section II) requires a score on 270 different points. The majority of the criteria deal with processes and plans instead of outcomes and the language is subjective and vague in many areas. Even if the project were to be assessed by an outside auditor, the auditor would rely primarily on information provided by the company or its consultants. Little ground-truthing is envisioned or practically possible, especially considering that the assessment would be completed within three to five days. Large, complex or transboundary projects could not possibly be meaningfully assessed with this tool in such a short timeframe.

The World Commission on Dams (WCD) remains the clearest framework for protecting rights, allocating risks and evaluating dam projects.

The Forum process differs notably from the comprehensive, participatory, and extensive review carried out by the WCD from 1998 to 2000. The WCD commissioned 130 technical papers, studied seven dams and three dam-building countries in great depth, reviewed another 125 dams in less detail, carried out consultations in different parts of the world with 1,400 participants, and accepted 950 submissions from experts and the interested public. Altogether, the WCD reviewed experiences from 1,000 dams in 79 countries.

After this extensive, multi-stakeholder research and consultation effort, the WCD presented a new framework for decision-making based on recognizing the rights and assessing the risks of all interested parties. The WCD framework includes seven Strategic Priorities which are each supported by several Policy Principles. A set of 26 Guidelines lays out specific actions for complying with the Strategic Priorities at five key stages of the project development process.

In its document mapping the WCD Strategic Priorities with the draft Protocol, the Forum says that “much of the WCD content is reflected in the Draft Protocol.” However, rights cannot be evaluated on a graded spectrum or scored from one to five: they are either respected or they are not. **While the IHA Protocol may reference some of the same issues, unlike the WCD it does not define any clear minimum standards that dam developers must comply with or rights that must be respected.**

The following list illustrates key WCD principles that are not *required* in the draft Protocol:

- Access to information and legal support for stakeholders.
- Legally enforceable, negotiated agreements with affected people covering both mitigation measures and benefit sharing arrangements.

- Benefits provided first to adversely affected people in all project areas.
- The free, prior, and informed consent of affected indigenous peoples.
- Land-for-land compensation for affected people.
- A comprehensive, participatory assessment of development needs and options to meet those needs – where environmental and social concerns are given the same significance as other factors – that influences the decision to proceed with a particular water or energy project.
- Time-bound license periods for dams and license renewal only after outstanding issues have been identified and addressed.
- A basin-wide approach to decision-making on water and energy projects.
- The delineation of certain areas of high conservation value as off-limits to big dams.
- A clear compliance framework, subject to independent review, that includes both sanctions and incentives with necessary costs built into the project budget.
- Negotiations amongst riparian states before the construction of a dam on a shared river.

Measuring respect for rights is not the same as respecting rights. This is the key difference between the WCD and the draft Protocol and the reason the Protocol is unlikely to lead to improved social and environmental performance of large dams.

Specific concerns regarding the draft Protocol

The draft Protocol includes a number of attributes and criteria which are quite irrelevant and often immeasurable. On the other hand, key requirements of good dam projects – in particular, compliance with basic rights and international obligations – are missing. The numbers below refer to the Section (I-IV) and the Aspect (1-28) from the draft Protocol.

Missing the point

II-5, III-2 and IV-3, Economic viability including additional benefits: Proposes to score criteria such as “Quality of the process leading to an understanding of the existing regional socio-economic baseline, regional economic activity and infrastructure, and related constraints and opportunities”, but doesn’t actually score (let alone require) economic viability.

II-7 and III-4, Public sector governance and II-8, III-5 and IV-5, Corporate governance: Many planning and management criteria scored under these aspects, but not the corruption track record of governments and developers, or the government’s ranking on Transparency International’s Corruption Perception Index.

II-10 and III-7, Integrated programme management and communications: “Quality of the process leading to an understanding of communication needs and strategies to support the overall programme” (under assessment), and “Conformance with internal and external communications management plan”, but no right to access of information.

II-12, III-9 and IV-6, Procurement: “Quality of the process leading to an understanding of the major supply needs for works, goods and services”, and “Designated points of communication for potential bidders and contractors”, but no competitive bidding requirement.

II-18, III-15 and IV-13, Labor and working conditions: Proposes to measure the “Quality of the process leading to an understanding of policies, laws and standards relevant to labor and working conditions”, but no requirement to actually comply with such laws.

IV-7, Markets, innovation and research: “Quality of the process leading to an understanding of research and innovation pathways relevant to positioning of the hydropower project in future markets” and “support of stakeholders for market adaptation and innovation and research management process”.

Not measurable

I-5, Institutional capacity, management: “For governments, planning to address public sector capacity shortfalls” and “For project developers, planning to address public sector capacity shortfalls”

II-7, Public sector governance, effectiveness: “Likelihood of mitigation of public sector corruption risks” and “Likelihood of mitigation of political risks”

III-5, Corporate governance: “Level of public credibility in terms of sustainable and ethical business practices” and “Likelihood of or success in mitigation of corruption risks”

II-24, III-21 and IV-19, Reservoir management: “Degree to which opportunities for reservoir multiple use benefits are identified and are likely to be achieved, mindful of the proponent’s role and responsibilities” (with “Thoroughly identified, and maximized as far as practicable” for a score of 5).

II-23 and III-20, Catchment management: “Degree to which negative project impacts to catchment users and uses are identified, and are being or likely to be avoided, mitigated and/or compensated, mindful of the proponent’s role and responsibilities”; and “Quality of the process leading to an understanding of present and likely future catchment uses and users, issues and opportunities, and the interactions and influences of the project with these”

Consultation overload

I-6, Technical issues and risks: “Quality of the consultation process on the part of the developer in building understanding [sic] project technical issues and risks”

II-23, III-20 and IV-18, Catchment management: “Quality of the consultation process with respect to catchment management planning”

II-27, III-24 and IV-22, Erosion and sedimentation: “Quality of the consultation process to address erosion and sedimentation issues”

III-26, Waste, noise and air quality: “Quality of consultation process to address waste, noise and air quality”

II-3 and IV-2, Hydrological resource availability and management: “Quality of the consultation process with respect to hydrological resource management planning”

II-8, III-5 and IV-5, Corporate governance: “Consultation with internal and external stakeholders on vision, values, policies, systems and business structures”

IV-7, Markets, innovation and research: “Quality of the consultation process on markets, innovation and research”

Rights ignored

p. 1-13: The Guidance Note on consultation processes says that consultations should be guided by “the consideration of rights, risks and responsibilities”. But the Protocol’s scoring method is not guided by any such consideration.

II-14, III-11 and IV-10, Project affected communities: no right to free prior informed consent (FPIC), and no right of affected people who are not displaced or lose land, such as downstream affected people, to compensation.

II-8, III-5 and IV-5, Corporate governance, auditing guidance notes: “Commonly accepted principles of corporate governance include the following elements: rights and equitable treatment of shareholders – the developer should respect the rights of shareholders and help shareholders to exercise those rights.” There is no similar statement for affected people – and the Protocol certainly doesn’t follow such an approach.

Legal compliance not required

Draft protocol proposes *scoring* rather than *requiring* criteria such as the following: “compliance with regulations” (Corporate governance); “compliance with regulatory approvals process requirements” (Regulatory approvals); “compliance with legislation or any publicly stated commitments relating to human rights” and “performance on human rights issues” (with “good performance with minor gaps, internal analysis” sufficient for a score of 3) (Project affected communities); “compliance with construction permit requirements” (Construction management); “level of compliance with license conditions relating to social impact assessment and management” (Social management plan); “level of compliance with public health legislation and relevant permit conditions” (Public health); “level of compliance with license conditions relating

to environmental impact assessment and management” (Environmental management plan); “level of compliance with permit conditions for biodiversity and invasive species” (Biodiversity and invasive species); “level of compliance with permit conditions for erosion and sedimentation management” (Erosion and sedimentation); “level of compliance with permit conditions for water quality management” (Water quality); “compliance with any license conditions relating to reservoir management” (Reservoir management); “compliance with environmental flow license requirements” (Environmental flows and downstream sustainability); “compliance with legal requirements” (Procurement; Asset reliability and efficiency; Indigenous peoples).

Many aspects propose scoring the “level of compliance” without specifying compliance with what, making the criterion meaningless. Examples include: Labor and working conditions, Cultural Heritage, Assets and community safety, Environmental impact assessment and management, and Financial viability.

II-2 and IV-1, River basin and transboundary issues: proposes to score compliance, but states that compliance is “generally not relevant” during project preparation or project operation. This ignores the rights of riparian countries under many agreements and soft international law.

II-15, III-12 and IV-11, Indigenous peoples: proposes “full consent with legally binding agreements”, but only for score 5 for one of 15 criteria. Score 3 for the same criterion calls for “general agreement with most groups and no major opposition”. Similarly, Resettlement and land acquisition (II-16 and III-13) proposes “full consent with legally binding agreements” for score 5 of one out of 14 criteria.

II-18, III-15 and IV-13, Labor and working conditions: Does not require compliance with International Labor Organization (ILO) conventions (see above).

II-19, III-16 and IV-14, Cultural heritage: Does not require compliance with the UNESCO World Heritage Convention.

II-22, Environmental impact assessment and management: Does not require compliance with Biodiversity or Ramsar conventions or in fact with anything specific.

II-25, Environmental flows and downstream sustainability, and II-26, Biodiversity and invasive species: Compliance “generally not relevant at project preparations stage” – why not?

II-9 and III-6, Regulatory approvals: There is a whole aspect on this topic, but again, “compliance with regulatory approval requirements” is measured, not actually required.

Low expectations, missing aspects

p. 1-14, Guidance note on Stakeholder support: Score 5 for stakeholder support can be achieved if “nearly all stakeholder groups directly affected by that issue support the outcomes”.

II-4, Project siting and design optimization: Management criteria, “Integration of information on technical, economic, financial, environmental and social issues, risks and opportunities into

siting and design options for the major project components”. Should be self-evident but only requires “some integration for most components” for score 3, and doesn’t weigh the different aspects to be considered.

II-16 and III-13, Resettlement and land acquisition requires FPIC for the score 5, but no land-for-land compensation or recognition of traditional land rights for any score.

II-16 and III-13, Resettlement and land acquisition: under “Considerations relevant to project context or scale” states that “some countries have policies that stipulate the compensation measures for those people physically or economically displaced by land acquisition, and these may or may not require improvements to livelihoods and living standards; the project may not be able to go beyond national policy”. So the Protocol does not require compliance with national policy, but here argues that national policy could actually *limit* the amount of support dam builders provide to affected communities. This language also contradicts the language in the first paragraph that calls for respecting rights and improving living standards.

II-24 and II-21, Reservoir management: under “Considerations relevant to project context or scale” discounts developers’ responsibility for vegetation clearance with statement, “clearing reservoir vegetation may not be practical for reservoirs of any significant scale, and is most likely where there is a commercial value for that vegetation.”

II-24 and III-21, Reservoir management: “Lifetime of the project” should be specified so that reservoir GHG emissions are assessed on a 40-year time-span. The reservoir emissions sub-attribute does not account for the fact that existing ecosystem may be a sink and that reservoir flooding would turn the area’s negative emissions into positive emissions. Furthermore, the key issue is not simply the increase in emissions from the hydro project but how its net emissions compare with other generation sources (including renewables and negawatts). The language also needs to specify that turbine/spillway/downstream degassing emissions and emissions from created wetlands in the drawdown zone should be included in the assessment.

II-25 and III-22, Environmental flows and downstream sustainability: Criteria propose scoring “Articulation of flow-related objectives and flow requirements” (with “basic definition of objectives sufficient for score 3), and “Degree to which environmental flows provide a fit of flow requirements between all objectives in relation to thresholds of sustainability”, but doesn’t give any preference to environmental flows.

II-25 and III-22, Environmental flows and downstream sustainability: “Level of commitment to environmental flow delivery and adaptive management to ensure objectives are met” only requires that it’s “public” to be considered “very good”.

II-3 and IV-2, Hydrological resource availability and management, auditing guidance note on the quality of the hydrological analysis says that data should include actual field measurements “over at least 3 years” only.

The draft Protocol could prioritize avoidance of negative impacts over minimization and compensation, eg by giving a score of 4 or 5 to avoidance, and lower scores to minimization and

compensation. Instead, many aspects propose to score the “likelihood of avoidance, mitigation and/or compensation” (with “all major and minor impacts with no gaps” for a score of 5). Examples: Biodiversity and invasive species; Erosion and sedimentation; Water quality; Environmental management plan; Catchment management; Cultural heritage; Public health.

Industry bias

p. 1-3: “Sustainable development calls for considering (...) trade-offs amongst economic, social and environmental values.” Sustainable development really means avoiding such trade-offs through the precautionary principle.

p. 1-9: Explanation of what is meant by “objective evidence”. Needs to be produced by the developer/owner, and can include qualitative information, oral information etc.

p. 1-18, glossary of terms: “Minimized” is defined as “achieved to as little an extent practicable, taking into account all constraints”. This is an Orwellian definition tailored to the interests of the dam industry. (Examples of how this term is used, eg Project siting and design optimization.)

p. 1-19, glossary of terms: “Stakeholder” is defined as “one who is interested in, involved in or affected by the hydropower project and associated activities.” While the figure on that page differentiates between stakeholder groups, in the text of the Protocol they are often grouped together (eg under “Stakeholder support” attribute). Project affected communities (including indigenous people and economically and physically displaced communities) should be the primary stakeholder in many project aspects.

I-1 and II-1, Demonstrated Need: “The presence of viable markets for water and energy services is understood to indicate a demonstrated need.” This definition turns need from a social into a commercial concept and would justify destroying ecosystems and people’s lands for amusement parks, aluminum smelters, etc. This devalues the effectiveness score.

I-4, Political risks: According to auditing guidance note, “political risk is a risk of financial loss or inability to conduct business faced by investors, corporations and governments” due to a variety of factors. The impacts of political risks on affected people are not considered.

I-7, Social issues and risks: Includes criteria such as “Planning to manage project social issues and risks”, but does not requirement an assessment of the actual extent of social risks. The same is true for aspect I-8, Environmental issues and risks.

Scoring method

p. 1-1: “The score of 3 is intended to be basic good practice.” So this is really the score that matters.

pp. 1-23ff: Under many aspects, there is a big gap between the scores 3 (good) and 2 (poor, minimal etc). In practice this will likely mean that many unsatisfying projects will be brought up to the passing grade of 3 because they are considered slightly better than poor.

Positive aspects

I-2, Options Assessment: good criteria such as “degree to which prioritization of options reflects a balance of sustainability criteria” and “degree to which the options assessment guides development choices based on sustainability criteria” (but crowded out).

II-6, Financial viability: Beneficial PPA has been removed from the criteria

II-15, III-12 and IV-11, Indigenous peoples and II-16 and III-13, Resettlement and land acquisition: inclusion of “Full consent with legally binding agreements” under “Level of support”, but should be 3 and not 5.

II-14, III-11 and IV-10, Project affected communities; II-15, III-12 and IV-11, Indigenous peoples; II-16 and III-13, Resettlement and land acquisition: Good description of the intent of the aspect in opening paragraph “that the dignity and human rights of those affected by the project are respected, etc...” but not adequately reflected in the attribute scores (eg, 5 should be a 3).

II-17, Benefit sharing: Good examples in auditing guidance notes and clarification that benefit sharing goes beyond compensation or resettlement (but it should be required).

II-20, Public health: Good examples in auditing guidance notes but sub-attributes are too vague and general.