



Collecting river water for consumption, Mekong River. Photo by Suthep Kritsanavarin.

Social and Environmental Dam Standards

The life of a dam is made up of discrete stages. It is born inside the planning processes of government ministries and agencies, approved in the legal system, paid for by project financiers and underwriters, constructed and operated by developers and contractors. In each case, a dam will age and must either be rehabilitated or decommissioned. Let's walk through the stages of a dam project to understand which standards you should promote and when. There are critical project and financing decisions taken at each stage, and assessing decision-makers' performance and compliance with standards at each moment is a critical opportunity to influence project outcomes. In some cases, if a dam does not meet the standards that follow, it most likely means it should not be built.

Rights Across All Stages

A number of the rights described in this guide are cross-cutting, meaning they apply to all or most stages of a dam project.

These cross-cutting areas include:

- Human Rights
- The Principle of Meaningful and Accountable Consultation and Participation
- Gender and Women's Rights
- Indigenous Peoples' Rights
- Labor Rights

Human Rights

Dams often violate human rights among diverse groups of stakeholders, in sometimes grave and irreversible ways. Human rights standards are cross-cutting across various aspects of hydropower projects and should be applied during various circumstances. These standards apply to all populations potentially affected by dams, but women and indigenous peoples also have rights that are specific to them, and these are described in following sections.

According to the World Commission on Dams, “Various types of rights may be relevant in the context of large dam projects. These include constitutional rights, customary rights, rights codified through legislation, property rights or the rights of developers and investors. They can be classified on the basis of their legal status, their spatial and temporal reach, or their purpose. In the spatial and temporal dimensions, one can

distinguish the rights of local, basin, regional and national entities, the rights of riparian countries, or the rights of present and future generations. Regarding the purpose or subject of rights, one can distinguish rights to material resources such as land and water, and rights to spiritual, moral, or cultural goods such as religion and dignity.” (p. 206)

Some human rights, especially those related to political rights, are not ratified by all countries. Some governments may argue that “human rights” is a western concept. For other governments, the leverage of human rights is much stronger. Still, human rights conventions have been widely accepted in most parts of the world: the ICCPR has 174 parties; the ICESCR has 160, including China; CEDAW has 187, including China; and there is currently movement in ASEAN countries to adopt some sort of multilateral agreement on human rights.

Government Duty vs. Corporate Responsibility to Respect, Protect, and Fulfill Human Rights

Traditionally, it is the government that has the *duty* to respect, protect, and fulfill human rights. As a result, rights may be violated if governments do not fulfill their duty. That could happen, for example, if a government does not protect its people from the abuses of third parties, like corporations. But in that case, the violation would be committed by the government, not the corporation itself.

The **UN Framework on Business and Human Rights** establishes the *responsibility* of corporations to respect human rights. Corporate responsibility differs from government duty. If a corporation has not upheld its responsibility under the UN Framework, it is not technically correct to say that it has also committed a violation of a treaty.

In general, human rights laws and policies are found in the following international agreements:

- The Core UN Human Rights Treaties²¹ and the optional protocols to these treaties
- The International Bill of Human Rights,²² which includes the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights
- The International Labor Organization Conventions, Protocols, and Recommendation²³

The Right to Self-determination

Dams, like any infrastructure project, may impact people’s right to self-determination. Self-determination is a collective right which is available both to peoples as well as individuals. It encompasses the right of peoples to freely determine their political status, freely pursue their economic, social, and cultural development, and freely dispose of their natural wealth and resources.

Relevant policies:

- Article 1 ICCPR
- Article 1 ICESCR

The Right to Life

Dam development may place individuals, families, or communities at risk of violence. The right to life includes the right not to be deprived of life, the right to have one’s life protected, and the right to reasonable protection from threats to one’s life (including those which arise outside the context of violence). States must protect the right to life of those within their territory. For instance, they must refrain from unlawful or arbitrary killing, use of the death penalty must be limited to only the most serious crimes, executions should not occur under convictions which infringe the right to a fair trial. Additionally, states must provide appropriate health care to facilitate the right to life and must ensure access to basic necessities which enable survival, including food and essential medicines.

“The practice of forced evictions is widespread and affects persons in both developed and developing countries. Owing to the interrelationship and interdependency which exist among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the

right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.”

– *General Comments of the UN Treaty Bodies*

Relevant policies:

- Article 6 ICCPR
- Article 3 UDHR

The Right to Equality Before the Law and Equal Protection of the Law

Often times, dam planners and builders do not recognize dam-affected communities as equal under the law to non-affected communities. The right to equality before the law, equal protection of the law, and rights of non-discrimination requires protection from discrimination on grounds including race, color, sex, language, religion, political or other opinion, national, or social origin, property, and birth or other status. The latter is interpreted widely and includes health, disability, marital status, age, and sexual orientation.

Relevant policies:

- Article 26 ICCPR
- Article 7 UDHR
- Article 2 UNDRIP

Rights of Non-discrimination

Sometimes, dam planners and builders discriminate against dam-affected communities in order to build a project. The term “discrimination” includes any distinction, exclusion, or preference made on one or more of the above grounds which has the effect of reducing or removing equality of opportunity or treatment.

Relevant policies:

- ICERD
- CEDAW
- CRPD
- Article 1 of the UDHR
- Article 2 of the UDHR

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion,

political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”

– *Articles 1 and 2 of the Universal Declaration of Human Rights*

The Right to Water and Sanitation

Dams can fundamentally change dam-affected people’s right to access and use water, by flooding, dewatering, and/or altering the course of a river on which they depend. The right to water and sanitation recognizes access to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.

Relevant Policy:

- UN Resolution 64/292

The Right of Freedom of Movement

By displacing hundreds, thousands, and sometimes more, dams also fundamentally impinge on affected people’s right to freedom of movement. This right entails the right to move freely and to choose where to live (as long as a person is lawfully present in the State) as well as the right to leave the country. The denial of the right to freedom of movement can impact on the ability to exercise other human rights; for example, being politically repressed or not being allowed to practice one’s own religion.

Relevant policies:

- Article 13 of the UDHR
- Article 12 of the ICCPR
- ICCPR General Comment 27

Rights to Freedom of Opinion and Expression

Often times, opponents of dams are threatened with repression for exercising their freedom of opinion and expression. The right to hold an opinion without interference is a right that cannot be suspended or limited under any circumstances. The right to expression includes the right to seek, receive, and impart information and ideas through any media and regardless of frontiers. This right may be restricted by law on the basis that it is necessary to protect the rights or reputation of others (for example, the right to privacy) or to protect national security, public order, public health, or morals.

Relevant policies:

- Article 19 ICCPR
- Article 19 UDHR

The Right to Freedom of Speech

Transparent access to information should be a central practice of any dam builder and financier. However, in repressive regimes, dam builders and financiers may purposely withhold information from or prevent dam-affected people from freely expressing their speech regarding a project. Freedom of speech is understood as a multi-faceted right that includes not only the right to express, or disseminate, information and ideas, but three further distinct aspects: the right to seek information and ideas; the right to receive information and ideas; and the right to impart information and ideas.

Relevant policies:

- Article 19 of the ICCPR
- Article 10 of the European Convention on Human Rights
- Article 13 of the American Convention on Human Rights
- Article 9 of the African Charter on Human and Peoples’ Rights
- Article 19 of the UDHR

“Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.

The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.”

– *Article 13 (1) and (3) of the American Convention on Human Rights*

The Right to Freedom of Assembly

This right protects the right of people to assemble peacefully and includes public demonstrations and protests. The scope of this right is limited only by laws necessary for the protection of national security, public safety, public order, public health or morals or the protection of the rights and freedoms of others. Dam builders can be implicated in the violation of this right if they, for example, seek to prevent public demonstrations in opposition to their projects either through the use of private security forces, or with government assistance.

Relevant policies:

- Article 21 ICCPR
- Article 20 UDHR, Voluntary Principles on Security and Human Rights
- UN Code of Conduct for Law Enforcement Officials
- UN Basic Principles on the Use of Force and Firearms

The Right to Freedom from Torture and Degrading Treatment

When dams are built under repressive regimes, repression of dam opponents may include torture or degrading treatment. This right includes the right to freedom from “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

Relevant policy:

- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Right to Health

Dams often cause irreversible negative impacts on dam-affected communities’ health. For example, a slow-moving reservoir in the tropics may attract zoonotic diseases such as malaria, schistosomiasis, and leishmaniasis. Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health. State parties are to take steps to achieve the full realization of this right, such as the reduction of infant mortality rates, provision for the healthy development of children, improvement of all aspects of environmental and industrial hygiene, the prevention, treatment, and control of disease and the creation of conditions ensuring that medical services and attention are available to all in the event of sickness. The right to health is innately linked to the right to an adequate standard of living.

Relevant policies:

- Article 12 ICESCR
- Article 25 UDHR
- Articles 21 & 24, UNDRIP

“Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals, and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.”

– Article 24 (1) and (2), the United Nations Declaration on the Rights of Indigenous Peoples

The Right to Housing

In some situations, dam-affected communities or populations may be deprived of culturally-appropriate housing as a result of displacement or a resettlement plan. The right to housing is recognized as part of the right to an adequate standard of living. Article 25 of the Universal Declaration of Human Rights states that “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”

Relevant policies:

- Article 25 of the UDHR
- Article 11 of the ICESCR
- The 1991 General Comment no 4 on Adequate Housing by the UN Committee on Economic, Social and Cultural Rights
- The Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity
- Article 16 of the European Social Charter (Article 31 of the Revised European Social charter)
- The Basic Principles and Guidelines on Development-Based Evictions and Displacement
- Regional policies, such as the African Charter on Human and Peoples’ Rights²⁴

The Right to Food

Dams can cause large negative impacts on fisheries and soil quality, which may disrupt dam-affected communities’ food security. The UN Special Rapporteur on the Right to Food in 2002 defined the right to food as “The right to have regular,

Case Study: Human Rights Violations Over Land Grabs and Resettlement for Gibe 3 Dam, Ethiopia

The Gibe 3 Dam began construction in 2006 on the Omo River Basin in Ethiopia, and is set to begin operation in 2014. The 243-meter dam has the capacity to produce up to 1870 MW of hydroelectricity; the regulation of the river also allows the diversion of water, which will be used to irrigate 240,000 hectares of large-scale agriculture.

According to Human Rights Watch, Ethiopian government security forces have committed various human rights violations against indigenous communities in the Lower Omo Valley during the construction of the Gibe 3 Dam and clearing out settlements to make way for sugarcane plantations that would be irrigated with water diverted from the river just below the dam. The report, "What Will Happen When Hunger Comes? Abuses Against the Indigenous Peoples of Ethiopia's Lower Omo Valley," found in 2011 that "local government and security forces had carried out arbitrary arrests and detentions, used physical violence, and seized or destroyed the property of indigenous communities. Residents said military units regularly visited villages to intimidate residents and suppress dissent related to the sugar plantation development. According to local people anything less than fully expressed support for plantation development was met with beatings, harassment, or arrest. In addition several agro-pastoral communities in the Lower Omo told



Three Generations of Women Looking Out Over the Omo River.
Photo by Alison M. Jones, www.nowater-nolife.org

Human Rights Watch that state agents informed them that they would have to reduce cattle numbers, settle in one place, and most probably lose access to the Omo River – all of which are critical to their livelihoods and food security. Soldiers regularly stole or killed cattle."²⁷

Although the Ethiopian government signed the International Covenant on Economic, Social and Cultural Rights (ICESR) in 1993, it has unfortunately never signed or ratified the majority of international human rights treaties and covenants.

permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear.”

Relevant policies:

- Article 25 of the UDHR
- Article 2 of the 1948 Genocide Convention
- Articles 20 and 23 of the CRSR
- Articles 24 and 27 of the CRC
- Article 12 of CEDAW

- Articles 25 and 28 of the CRPD

- General Comment 12 of the ICESCR Article 12 ICESCR

The Right to Culture

Dams may cause a profound an irreversible change to affected communities’ culture. For example, indigenous people who consider a river a sacred component of their culture and origin story, and depend on the river for sustenance, may be changed forever as a result of a dam. The right to culture includes the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits, and the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Relevant policies:

- Universal Declaration on Cultural Diversity
- Article 27 of the UDHR

Rights of Disabled People

Dams may cause more significant impacts on those members of dam-affected communities who are disabled in any way. Persons with disabilities enjoy the same human rights and the same full equality under the law as any other person.

Relevant policy:

- The UN CRPD²⁵

Rights of the Child

Similarly, dams may cause disproportionate impacts on children, in relation to other members of dam-affected communities. The rights of the child state that “every human being below the age of eighteen years, unless, under the law applicable to the child, majority is attained earlier,” has the right to non-discrimination; the right of devotion to the best interests of the child; the right to life, survival and development; and respect for the views of the child.

Relevant policy:

- The UN CRC²⁶

FURTHER READING:

- Search the Universal Human Rights Index for recommendations made to specific countries: <http://www.ohchr.org/EN/HRBodies/Pages/UniversalHumanRightsIndexDatabase.aspx>
- Read the Universal Declaration of Human Rights in over 400 languages at <http://www.ohchr.org/EN/UDHR/Pages/Introduction.aspx>
- Read a “Rights and Democracy Guide to Human Rights Impact Assessments” at: <http://equalit.ie/content/human-rights-impact-assessment-tool>

IDEAS FOR ACTION:

- Every one of the treaties has a treaty body that monitors implementation and usually has some form of complaints procedure. These treaty bodies are committees of independent experts that monitor the implementation of the United Nations human rights treaties by States parties. They do this by reviewing reports submitted periodically by States parties on steps taken to implement treaty provisions. Most human rights treaty bodies are competent to receive and consider individual complaints, while several may conduct inquiries.
 - Read the Civil Society Handbook for Working with the United Nations Human Rights Programme http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf
 - To access links to each treaty body, visit the United Nations webpage: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>
- Several special procedures mechanisms intervene directly with Governments on specific allegations of violations of human rights that come within their mandates. There are also complaint procedures that are received by UN special rapporteurs.
 - These are available through the webpage of the Special Procedures of the Human Rights Council: <http://www.ohchr.org/en/HRBodies/SP/Pages/Welcomepage.aspx>
 - Access the communications portal to submit information to a special procedures mechanism: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>
 - In 2007, the Office established a Complaint Procedure for the UN Human Rights Council. Read the instructions on how to submit complaints and information at <http://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCComplaintProcedureIndex.aspx>
- Contact National and Regional Human Rights Institutions that coordinate with the UN at <http://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx>
- Download and use a Human Rights Impact Assessment Toolkit from Nomogaia: <http://nomogaia.org/tools/>

The Principle of Meaningful and Accountable Consultation and Participation

Dams create large and sometimes irreversible impacts on affected communities located in the project impact area. As a result, participation of affected communities in development decisions is necessary as a way to protect communities' rights and create positive outcomes. Proper participation involves ensuring institutional transparency, granting access to information, holding proper consultations, and ultimately assuring the participation of affected communities in decision-making, at each stage of project development.

The principle of meaningful and accountable consultation and participation is a facet of human rights. The UN General Assembly Human Rights Council has stated that “the human rights whose enjoyment can be affected by environmental harm are not the only rights directly relevant to the environment. Another approach to clarifying the relationship of already recognized rights with the environment is to identify rights whose implementation is vital to environmental policymaking. In general, these are rights whose free exercise makes policies more transparent, better informed and more responsive. They include rights to freedom of expression and association, rights to receive information and participate in decision-making processes, and rights to legal remedies. When directed at environmental issues, the exercise of such rights results in policies that better reflect the concerns of those most concerned and, as a result, that better safeguard their rights to life



Day of action praying for the Salween River, Myanmar, 2013. Photo by International Rivers.

and health, among others, from infringement through environmental harm.”²⁸

The Right to Transparency and Access to Information

Project-affected people have the right to access to free and transparent information regarding any facet of a dam or series of dams, whose direct, indirect, and cumulative impacts on them and the ecosystem services which they use.

The right to information and participation in decision-making is protected under the larger banner of human rights. John Knox, the UN Independent Expert on Human Rights and the Environment, summarizes these in a recent report.²⁹

Relevant Policies:

- Inter-American System: Organization of American States General Assembly Resolutions³⁰
- European System: The UNECE Aarhus Convention Article 4
- Article 27, UNDRIP

The Right to Participation in Decision-Making

Affected people occupy a disadvantaged position in political and economic decisions which affect their livelihoods. Civil society organizations and affected people have the right to fully participate in decision-making which affects them, including in plan, policy, and project-level decisions. Civil society and affected people should be able to freely play

The UNECE Aarhus Convention

One of the strongest examples of multilateral legal cooperation to protect the principle of meaningful and accountable consultation and participation is the Aarhus Convention. The Aarhus Convention is limited to the Member States of the European Union. However, similar efforts to create multilateral agreements regarding transparency and participation in other regions are underway. Generally, the Aarhus Convention recognizes the Right to Transparency and Access to Information, the Right to Participation in Decision-Making, and the Right to Access to Justice, which are described below.

a role in strengthening regional water and energy development planning, and in assuring that project financiers and developers comply with best practices during project implementation.

Relevant Policies:

- The UNECE Aarhus Convention Article 6, Public Participation In Decisions On Specific Activities.
- The UNECE Aarhus Convention Article 7, Public Participation Concerning Plans, Programs And Policies Relating To The Environment.
- The UNECE Aarhus Convention Article 8, Public Participation During The Preparation Of Executive Regulations And/Or Generally Applicable Legally Binding Normative Instruments.
- Article 18, UNDRIP

Right to Access to Justice

Project-affected people have the right to a grievance mechanism that grants access to justice in the case that plans, policies, and projects cause negative impacts. Project-affected communities also have the right to the legal enforcement of remedies for grievance, which must be made available at the time it is expressed.

Relevant Policies:

- The UNECE Aarhus Convention Article 9, Access to Justice
- The OECD Guidelines for Multinational Enterprises
- Article 28, UNDRIP

Grievance Mechanisms and Access to Remedy

The Guiding Principles of the UN Framework on Business and Human Rights Guiding Principles state:

“As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.”

– *Foundational Principles on Access to Remedy (25), Guiding Principles on Business and Human Rights*³¹

Meanwhile, the OECD Guidelines for Multinational Enterprises state the following:

“When enterprises identify through their human rights due diligence process or other means that they have caused or contributed to an adverse impact, the Guidelines recommend that enterprises have processes in place to enable remediation. Some situations require cooperation with judicial or State-based non-judicial mechanisms. In others, operational level grievance mechanisms for those potentially impacted by enterprises’ activities can be an effective means of providing for such processes when they meet the core criteria of legitimacy, accessibility, predictability, equitability, compatibility with the Guidelines and transparency, and are based on dialogue and engagement with a view to seeking agreed solutions. Such mechanisms can be administered by an enterprise alone or in collaboration with other stakeholders and can be a source of continuous learning. Operational-level grievance mechanisms should not be used to undermine the role of trade unions in addressing labour-related disputes, nor should such mechanisms preclude access to judicial or non-judicial grievance mechanisms, including the National Contact Points under the Guidelines.”

– *Paragraph 46 of the OECD Guidelines for Multinational Enterprises*³²

Case Study: No Transparency in the Murum Dam, Sarawak, Malaysia

From 2012 through 2013, in Sarawak, Malaysia, state dam builder Sarawak Energy built the Murum Dam. However, Sarawak Energy began construction prior to releasing the project EIA to the project-affected communities, a large percentage of whom are Penan indigenous people. Without having access to project information from Sarawak Energy, the affected Penan had no way of learning of the project impacts, nor of exercising their right to consent and participation in the mitigation plans.

The Government of Malaysia ratified the UNDRIP in 2007, and thus recognizes indigenous peoples' rights to information, participation in decision-making, and redress. However, UNDRIP remains an aspirational declaration, not a binding covenant. As a result, Malaysian federal law is not required to protect these rights, but is rather only expected to aspire to their implementation.

In the meantime, Sarawak state law is distinct from Malaysian federal law. Before the creation of Malaysia as a federation of independent nation-states, the state of Sarawak signed an 18-point agreement establishing Sarawak's "free association" with the Federation of Malaysia. As a result, not all Malaysian constitutional law applies within Sarawak.

Still, as of 2011, Sarawak Energy has been a partner of the Hydropower Sustainability Assessment Protocol. The HSAP score for "best recognized practice" in governance-related stakeholder engagement states that a dam builder "must make significant project reports publicly available and publicly reports on project performance in sustainability areas of high interest to its stakeholders."⁶³ In an HSAP implementation stage assessment of the Murum Dam in 2012, Sarawak Energy scored low in this and other sustainability topics.

Because of the limitations to both federal and state implementation of UNDRIP, Sarawak Energy was able to avoid protecting indigenous peoples' rights to transparency, participation in decision-making, and redress. During 2012 and 2013, affected Penan blockaded roads in protest.

Despite the poor results both in assessment and on the ground, policy-level protection of affected people's rights have not been implemented, at both the level of the Sarawak state, and at the corporate level of Sarawak Energy.

FURTHER READING:

- Read about laws and practices relevant to the rights described in the Aarhus Convention at the Convention's clearinghouse: <http://aarhusclearinghouse.unece.org/>
- Read the resources on grievance procedures at the Business and Human Rights Resource Centre: <http://www.business-humanrights.org/ToolsGuidancePortal/Issues/Grievanceprocedures>

IDEAS FOR ACTION:

- Contact the UN Human Rights treaty bodies to lodge complaints or request more information, as outlined in the above section on Human Rights.
- Learn how to promote the same rights recognized within the Aarhus Convention in your region:
 - Contact the Aarhus Convention Secretariat http://www.unece.org/env/pp/fp_secretariat.html
 - Contact the Aarhus Convention National Focal Points <http://www.unece.org/environmental-policy/treaties/public-participation/envppcontacts-fp/envppfpnew.html>
 - Contact Aarhus Convention non-governmental organization contacts http://www.unece.org/env/pp/fp_org.html

Gender and Women’s Rights



Riverine women along the Mekong River. Photo by International Rivers.

Women’s rights are human rights. Having a clear understanding of the gender dimensions within river-basins is required for good practice planning to ensure that the needs, rights and interests of all uses and users of a river are considered. If gender issues are not considered, projects often reinforce or expand inequalities between women and men.

Planning and policy tools mentioned later in this paper, such as social impact assessments, human rights assessments, “do no harm” safeguard policies and basin scale planning should consider the particular and often distinct interests of men and women. In practice this can be best be achieved by both implementing a “mainstreaming approach” to considering gendered rights and outcomes across all processes and cycles of a project’s development, as well as by employing stand-alone gender assessments and gender action plans.

Because real power imbalances exist between men and women in most societies, these assessments and plans should include understanding of the different opportunities and resources afforded to them, and the differential impact of development on them that result. Projects are rarely gender neutral in their impacts. Achieving gender justice is fundamental to overcoming poverty, suffering and injustice.

Women are consistently under-represented in decision making around hydropower and infrastructure development. This is particularly of concern as it is women and girls who are disproportionately affected by changes to ecosystems, livelihoods and social structures – changes that occur in the development of

most dam projects. As with other elements of ‘benefit sharing,’ there are times and instances where there can be positive influences on women and gender relations, but these are possible only when there are best practice approaches in place that consider the rights and interests of women consistently from basin planning all the way through a project’s operation.

Basin Context

Gender dimensions should be understood in a basin context. Where a dam project is being developed ensuring analysis of the baseline situation should include assessment across impact areas, including: the lands and resources around the project site; the reservoir and infrastructure impact areas and the upstream and downstream watersheds. Also important are consideration of gender dimensions at host community sites if there is involuntary resettlement anticipated.

Across Project Cycle

Understanding gender dimensions should be mainstreamed in all data and information collection regarding a project – from early stage pre-feasibility for projects all the way through a project’s development, implementation, management and operation. Particularly important are project stakeholder consultations; human rights and social impact assessments. Consultations, including processes designed to advance the Free, Prior, and Informed Consent of project affected peoples should ensure equal participation of men and women, and project grievance mechanisms should also be designed with consideration of gender issues of access and use. Analysis from basin scale assessments, baseline data capture through to impact analyses and action plans should be inclusive of women, and consider gendered outcomes.

Relevant Policies:

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); The “Women’s Bill of Rights.” More than 185 countries are parties to the Convention.

CEDAW has an optional Protocol which enables individuals or groups of individuals to seek redress for violations of their human rights under the international human rights treaty. An international complaint mechanism can be effective in drawing international attention to alleged violations of rights.

Case Study: The Asian Development Bank's Gender Impact Assessment for the Song Bung 4 Dam

The Song Bung 4 Dam³⁴ (156 MW) is being constructed in Quang Nam Province in northwest Vietnam, close to the border with Laos. The project affects villages of the Co Tu indigenous ethnic minority group, whose economy and cultural organization is heavily subsistence-based. Co Tu women are largely agriculturalists, and are responsible for 57% of subsistence labor compared with 35% for men and 8% for children. Women have no ownership of land, houses, or other assets in the patrilineal and patrilocal Co Tu culture, and were recognized to have little representation in the traditional leadership and decision-making of villages. The Song Bung 4 Dam reservoir was projected to flood areas of three Co Tu communes and four villages, leading to the resettlement of community inhabitants, and changes to women's subsistence strategies, agricultural activities, and cultural traditions, structure, and worldview.

The Vietnam government ratified CEDAW in 1980, and in 2002, the Prime Minister approved the first ten-year plan for the Advancement of Women. In 1993 the government created the National Committee for the Advancement of Women to promote the status of women and provide advice on the development and advancement of the five-year National Plans of Action for Women's Advancement, though the ADB's Gender Action Plan found that neither the committee nor the five-year plans had separate budgets or proper capacity. The Ministry of Agriculture and Rural Development in 2003 created a Gender Strategy in Agriculture and Rural Development through 2010.

The Asian Development Bank has a Policy on Gender and Development, which adopts gender mainstreaming as a key strategy for promoting gender equality, and for ensuring that women participate in and that their needs are explicitly addressed in the decision-making process for development activities. The policy requires a Gender Action Plan to address concerns and involve women in the design, implementation, and monitoring of projects which affect them. The policy requires gender sensitivity to observe how the project impacts women and men

differently and to take account of their different needs and perspectives in resettlement planning; gender analysis to systematically assess project impacts on men and women and on their economic and social relationships; gender planning to formulate specific strategies to bring about equal opportunities to men and women; mainstreaming to ensure consideration of gender issues at all stages of the project and that women participate in the decision-making process; and agenda setting.

In 2007, the Asian Development Bank and Electricity of Vietnam produced a Gender Action Plan for Phase II of the Song Bung 4 Dam. The Action Plan included a Gender Impact Assessment to study the negative and positive impacts of the dam on women's lives, as well as a mitigation plan of activities related to village relocation, ownership and compensation, livelihoods restoration and development, and fishery compensation, among others. The plan outlined a strategy to mainstream gender concerns into all areas of the project, across its planning, implementation, and monitoring and evaluation activities, and mainstreamed gender issues into all data gathering, stakeholder consultations, analysis and planning components.

Women and gender aspects were incorporated into gender-specific mitigation activities across the entire project cycle. These included:

- Gender-separated stakeholder consultations
- Integrating women's concerns about resettlement, livelihoods development programs, and monitoring and evaluation
- Designing gender-separate technical training and income earning improvement components
- Incorporating women into the selection of resettlement sites and into designing village layouts
- Extending land use rights to men and women equally
- Creating gender-separate workshops

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Case Study continued

- Including women in Community Based Forest Development Plans
- Extending training for women
- Creating a grievance committee mechanism specifically for Co Tu women
- Creating capacity building programs for women, and awareness activities about HIV/AIDS and trafficking
- Integrating female health issues into the project's Health Action Plan
- Prioritizing the selection of women for employment in the dam project
- Disaggregating monitoring indicators by gender and ethnicity
- Creating trainings for gender sensitivity

FURTHER READING:

- Read Oxfam Australia's Gender Impact Assessment and Hydropower:
www.oxfam.org.au/giamanual

IDEAS FOR ACTION:

- Submit your own reports to the CEDAW committee: http://www.un.org/womenwatch/daw/cedaw/NGO_Information_note_CEDAW.pdf

The Rights of Indigenous People

As in all development projects, with dams, indigenous people must be guaranteed the right to self-determination, including the right to make development decisions that influence their cultural, social, physical, ecological, and economic well-being. The full breadth of the rights of indigenous people is covered by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and is too broad to describe here. Below, we focus on aspects of indigenous rights which are especially important to protect in relation to dam-building.

The Right to Self-determination and Self-government

Article 3 of the UNDRIP states that “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

The definition of the term Indigenous People has been hotly debated. For example, the Government of China recognizes “minority groups,” but not “indigenous groups;” though the two may be the same, the way that they are categorized by law is a political decision. Where “indigenous people” are recognized politically, there may be various definitions of the terms “People” and “Community.” “People” usually refers to the communal identity of a tribal nation. Tribal national identity often transcends political, geographical, and economic boundaries. Examples may be Navajo, Cree, Ikpeng, Shuar, and the like. The term “Community,” on the other hand, often refers to a specific set of families or relations within a “People” that share common political, geographical, economic, and other boundaries. Examples may include “La comunidad del 7 de septiembre” or “the White Lake community.”

Who specifically enjoys what type of rights within indigenous peoples has also been highly debated. The term “Collective Rights” is usually contrasted with versus the term “Individual Rights” in this fashion. Indigenous peoples’ rights often refer to both collective and individual rights shared by an Indigenous People as well as their representative indigenous communities, and the distinct members of those communities.³⁵

Indigenous Peoples’ Land Rights and Permanent Sovereignty over Natural Resources³⁶

Indigenous peoples’ development, and in fact physical and cultural survival, is intricately linked to their lands and resources. Indigenous peoples have

a “distinctive and profound spiritual and material relationship with their lands and resources”³⁷ and this relationship forms the “fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival.”³⁸

The realization of indigenous peoples’ rights to own their lands and resources is therefore “critical to the future well-being, the alleviation of poverty, the physical and cultural survival, and the social and economic development of indigenous peoples.” Indigenous peoples own their land and resources collectively, and though they often lack official title, their aboriginal title, or ownership by reason of long-standing possession, is recognized in international law. Because they are distinct peoples, indigenous peoples have what is referred to as permanent sovereignty over their natural resources, or “legal, governmental control and management authority.”³⁹

Under UN Declaration Arts. 26 and 32., indigenous peoples have rights to full collective ownership over lands, territories and resources under their possession, including both traditional lands and those they have otherwise acquired. This includes legal, governmental control and management authority, or what is known as indigenous peoples’ permanent sovereignty over their natural resources. States have an obligation to recognize these rights enshrined in core international treaties⁴⁰ the UN Declaration⁴¹ and other instruments.⁴²

Respect to indigenous peoples’ collectively held lands and resources is at the heart of their demands to States and intergovernmental organizations. The right of self-determination and collective ownership rights to land and resources are central for the physical and cultural survival of indigenous peoples as distinctive peoples within the existing nation-states. Any project on indigenous lands or affecting said lands (i.e. energy, infrastructure and extractive) must respect indigenous peoples’ land rights.

Free, Prior, and Informed Consent

Free, Prior, and Informed Consent (FPIC) is recognized by multilateral international bodies, most principally by the United Nations. It generally states that indigenous peoples have the right to approve or reject proposed actions or projects that may affect them or their lands, territories or resources.

Article 10 of the UNDRIP states that “Indigenous peoples shall not be forcibly removed from their lands

FPIC Interpreted by the Law of the Government of Peru

In general, FPIC is far from being implemented evenly in practice. One example illustrates how FPIC has recently been implemented at the level of national policy. In 2013, the Government of Peru published a “Methodology Guide on the Law on the Right to Prior Consultation of Indigenous and Aboriginal Peoples.”⁴⁷ The guide describes a seven-step process for the prior consultation of affected indigenous peoples:

- Identification of the measure on which to consult
- Identification of the indigenous peoples and their representative organizations to be consulted
- Publication of the measure
- Information sharing
- Internal evaluation of the indigenous peoples
- Dialogue between the State and indigenous peoples
- Decision

or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”

FPIC and Women’s Rights

FPIC requires respect for indigenous peoples’ traditional and contemporary representative structures, and customary laws and practices of communities including collective decision making practices. FPIC processes must also involve the participation of both indigenous women and men. The right to FPIC (and more generally to participate in community decision making processes) is not one held by men only. Women have equal rights⁴⁴ including to participate in community decision making processes, to benefit from development and to be safe from the potential negative impacts of actions and projects. Yet it must be acknowledged that indigenous women often face exceptional impediments to participation in decision making.⁴⁵ Any supposed justifications based on

culture for the exclusion of indigenous women must be challenged – within many indigenous communities, women do have (or traditionally had) important decision making roles. Dam companies should not condone, tolerate or perpetuate discrimination against women. They should acknowledge and work to avoid the gendered impacts of dams⁴⁶ including by ensuring the involvement of indigenous women in FPIC processes.

Right to Participate in the Adoption of Decisions

Article 18 of UNDRIP states that “Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.” This right reinforces the broader human rights to transparency, participation, and access to justice.

“Free, Prior, and Informed Consent” versus “Informed Consultation and Participation”

The International Finance Corporation’s Performance Standard 7 states that “informed consultation and participation” (ICP) of indigenous peoples in actions or projects that affect them should be considered best practice, while it reserves the application of FPIC for specific situations.

A significant distinction exists between “consent” and “consultation.” The term “free, prior, and informed consent” is not defined by the UNDRIP. Yet, its meaning has been suggested to imply that indigenous peoples have the right to say “no” to any project, plan, or policy which they oppose, and the right to say “yes” to those which they do support.⁴⁸ The term “consultation,” in contrast, suggests engagement and two-way dialogue with indigenous peoples. Some institutions have not yet recognized FPIC as a right of indigenous people during project development, over a fear that doing so would grant indigenous people veto power over projects, plans, or policies to which they say “no.” As a result, many institutions settle on granting indigenous people the right to “Informed Consultation and Participation” or ICP, limiting indigenous peoples’ rights to simply participating in project consultations in an informed way.

Dam Builders’ Corporate Partnerships with Indigenous Peoples

Many dam planners and developers have sought to achieve FPIC from indigenous peoples by creating benefit-sharing programs that distribute royalties and other goods. In Manitoba, Conawapa Dam operator Manitoba Hydro entered into this type of agreement

Case Study: FPIC and the Belo Monte Dam, Xingu River, Brazil

The Belo Monte Dam de-waters 100 kilometers of the Xingu river, where two tribal lands are located: the Paquiçamba territory of the Juruna tribe, and the Arara da Volta Grande territory of the Arara tribe. Further upstream on the Bacajá river tributary, a third tribe, the Xikrin do Kayapó, would be affected.

Project leader Eletrobras developed the “Indigenous Component” to the Belo Monte EIA, which contained anthropological studies of the tribes to be affected. Project consultations included representatives from the affected indigenous tribes. Yet, the consultations did not result in Eletrobras obtaining Free, Prior, and Informed Consent. Rather, the consultations simply explained project impacts to the tribes, and discussed possible mitigation activities and compensation. Simply explaining project impacts to tribes *does not constitute obtaining Free, Prior, and Informed Consent* from them for a project.

Further, Eletrobras’ implementation of mitigation activities and compensation was highly incomplete. The Brazilian



Indigenous protesters dig through the Belo Monte coffer dam to allow the Xingu River to flow freely. Photo by the Movimento Xingu Vivo Para Sempre.

environmental agency IBAMA and its indigenous peoples’ agency FUNAI fined the Belo Monte project consortium in 2012 and 2013 for having failed to properly implement mitigation actions.

when the Fox Lake Cree First Nation voted to receive compensation from the company.⁴³

While benefit-sharing should be considered in principle a common standard for any dam that will be built, indigenous communities have the right to decide whether or not to partner with a hydropower operator in such a way to derive benefits. Partnerships between operators and tribal leaders that involve the introduction of monetary benefits, gifts, and other promises may create undesirable divisions between communities, and may create unwanted dependencies on welfare derived from a project.

The Parakanã tribe in Brazil, who were displaced by the Tucuruí Dam in the 1980s in the state of Pará, became almost entirely dependent on project-generated welfare distributed by dam operator Eletrobras. Similarly, Guaraní tribes in southern Brazil became dependent on welfare generated from the Itaipú Dam, Brazil’s largest, distributed to them by dam operator Itaipú Binacional. Such dependence creates risk for indigenous communities, as control over benefits remains in the hands of the

operators, while changes in yearly project budgets may negatively affect the terms of and benefits derived from the partnership.

Pertinent International Laws

- The United Nations Declaration on the Rights of Indigenous People (UNDRIP) has been adopted by 144 countries as of 2010.
- The UN Human Rights Council (HRC)
- The International Covenant on Economic, Social and Cultural Rights (ICESCR)
- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- The International Labor Organization Convention 169
- The Inter-American Human Rights System
- The International Covenant on Civil and Political Rights (ICCPR)

FURTHER READING:

- Read the United Nations Declaration of the Rights of Indigenous People (2007):
http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf
- Read Anaya, J., 2004. Indigenous Peoples in International Law. Oxford University Press: London.
- Read the Inter-American Declaration on the Rights of Indigenous Peoples (1995):
<http://ankn.uaf.edu/iks/iachr.html>
- Read the training materials of the International Indian Treaty Council:
<http://www.iitc.org/resources-links/training-materials/>

IDEAS FOR ACTION:

- Contact the UN Special Rapporteur on Indigenous Peoples to lodge a complaint/grievance:
<http://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/SubmitInformation.aspx>

Labor Rights

Dams often involve large impacts on workers. Proper infrastructure development should guarantee that workers' rights are safeguarded throughout the project cycle. The full breadth of labor rights is covered by the International Labor Organization's core labor standards, and is too broad to describe here. Below we list a number of labor rights which are especially important to protect in relation to dam-building.

Labor rights overlap quite consistently with those human rights concepts mentioned earlier. In general, protecting labor rights involves the following:

- The practice of transparency
- The establishment of grievance mechanisms
- The verification of working conditions
- Freedom from forced labor
- Absence of child labor
- Freedom of association and collective bargaining
- Freedom from discrimination
- Job security and permanent contracts
- Workplace health and safety
- Workers are paid a living wage

Relevant Policies:

The ILO's Declaration on Fundamental Principles and Rights at Work (1998) define eight core conventions on labor rights. These are:

- The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- The Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- The Forced Labour Convention, 1930 (No. 29)
- The Abolition of Forced Labour Convention, 1957 (No. 105)
- The Minimum Age Convention, 1973 (No. 138)
- The Worst Forms of Child Labour Convention, 1999 (No. 182)

Case Study: Poor Working Conditions at the Jirau Dam on the Madeira River, Brazil



Workers strike at the Jirau Dam on the Madeira River in the Brazilian Amazon, due to violation of their right to a living wage. Photo courtesy of Google Images.

In 2012 in Porto Velho, Brasil, a consortium led by Eletrobras and GDF Suez built the Jirau Dam on the Madeira River, the largest tributary of the Amazon. As

a result of lack of pay, poor health care, poor working conditions, inadequate time off and poor compensation, consortium workers held strikes on various occasions. 16,000 workers at the dam site left work, demanding improved conditions. One demand consisted of a 30% increase in salary, and the right to take 5 days of leave for every 70 days instead of 90 days worked.

The 2012 strike followed a larger strike in 2011. On that occasion, thousands of workers overturned consortium vehicles and burned worker encampments, due to the resistance of the company to attend to their grievances over the same poor working conditions.

As a result of the 2012 strike, the Federal Labor Justice set a fine of R\$200,000 (about USD \$85,000) for each day that the consortium continued to ignore the workers' demands.

- The Equal Remuneration Convention, 1951 (No. 100)
- The Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Together, these eight conventions generally protect the right to freedom of assembly, association and expression; the right to work and decent living conditions; the right to adequate housing; the right to full compensation for losses; the right of access to justice and the reasonable duration of judicial proceedings; and the right to reparation of past losses.

FURTHER READING:

- Query which countries have ratified these core eight conventions, here: <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>
- Read Oxfam's "Checking Up on Labor Rights": <http://policy-practice.oxfam.org.uk/publications/checking-up-on-labour-rights-a-basic-assessment-tool-for-the-labour-policies-an-296870>
<http://oxfamlibrary.openrepository.com/oxfam/bitstream/10546/296870/1/ml-checking-up-on-labour-rights-assessment-tool-010713-en.pdf>

IDEAS FOR ACTION:

- Contact your respective national office of the ILO here: http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/departments-and-offices/lang--en/index.htm?lang=en#q_8