



Room Document No. 12

**CONSULTATION BETWEEN CIVIL SOCIETY ORGANISATIONS AND MEMBERS OF THE
OECD WORKING PARTY ON EXPORT CREDITS AND CREDIT GUARANTEES
AND THE PARTICIPANTS TO THE ARRANGEMENT
ON OFFICIALLY SUPPORTED EXPORT CREDITS**

**THE OECD ARRANGEMENT AND NEW SUBSIDIES FOR DAMS:
THE CASE FOR STRENGTHENED STANDARDS**

ECA WATCH

3 October 2005 (starting at 10.00)

Room 1, OECD Headquarters, La Murette, Paris

The OECD Arrangement and New Subsidies for Dams:

The Case for Strengthened Standards

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1. Export Credit Agencies and Dams

Export Credit Agencies (ECAs) have a long history of granting support for hydroelectric projects in developing countries. Although the total number of dams funded by ECAs to date is unknown,¹ a preliminary assessment suggests that ECAs have been involved in financing at least 30 major dams, the overwhelming majority of them with severe and adverse environmental and social impacts (*see Annexe 2*). A significant number of the projects, including those funded by Britain, have been rife with corruption or have left countries saddled with debts that have only been repaid at great cost to the poorest sectors of society.

In Britain's case, some £683 million has been spent by the UK Export Credits Guarantee Department (ECGD) since 1990 on financing such large dams (*see Annexe 3*), including:²

- The **Muela Hydropower Project**, (£16 million)³ – part of the **Lesotho Highlands Water Project**, which resulted in the forced resettlement of 27,000 people, the shooting of striking construction workers, proven corruption and major environmental impacts;
- **Turkwell Gorge, Kenya** (£17.5 million) - now recognised as a “byword for corruption and mismanagement”⁴; and

¹ Until recently, few ECAs gave details of projects funded and many have not kept records once projects have been completed or any debts incurred have been repaid.

² From 1990 to present, the ECGD has provided financial support for the following dams: Ewaso Ngiro, Kenya (£21 million); Pergau, Malaysia (three guarantees totaling £600 million); Hydri, Thailand (£17 million); Mini Hydros, Thailand (£6.4 million); Muela, Lesotho (£16 million); Nathpa Jhakri, India (£22.8 million). See: Llewellyn, B., Emails to Nicholas Hildyard, 2 August 2005 and 5 August 2005; Hansard, Column 406 W, 26 February 2001 (<http://www.parliament.the-stationery-office.co.uk/pa/cm200001/cmhansrd/vo010226/text/10226w23.htm>) ; ECGD, *Annual Accounts 1996/97*, ECGD, London.

³ The ECGD has given two different sets of figures for the number of guarantees issued for Muela. In 2005, in response to a query from Corner House, it stated that four credits had been issued between 1994 and 1995 to a joint value of £15,490,838. However, in a 2001 response to a parliamentary question by Dr. Jenny Tonge MP, it listed five guarantees for the dam, issued between 1993 and 1997, to a total value of £16 million. See: Llewellyn, B., Response to email from Nicholas Hildyard, 2 August 2005; Hansard, Column 406 W, 26 February 2001 (<http://www.parliament.the-stationery-office.co.uk/pa/cm200001/cmhansrd/vo010226/text/10226w23.htm>)

⁴ See Hawley, S., *Turning a Blind Eye: Corruption and the UK Export Credits Guarantee Department*, Corner House, June 2003, <http://www.thecornerhouse.org.uk/item.shtml?x=52007>

- **Naptha Jhakri**, India (£22 million)⁵– resettlement so grossly mismanaged that many of those forcibly evicted from their homes have yet to be rehabilitated.⁶

Many would argue that addressing the continuing failures of large dams should be prioritized over funding of new projects and that ECAs have a moral, if not legal duty, to ensure redress for those affected by past projects. Instead, the world's most powerful ECAs have negotiated a special agreement within the OECD which will give dam builders additional subsidies to revive the industry which, since the early 1990s, has been experiencing a severe decline,⁷ in large part due to public concern over the adverse impacts of large dams.

Environmental and development groups have strongly argued that such privileged treatment should be conditional on projects complying with international best practice aiming at mitigating the negative impacts on people and environment. However, the ECAs (Britain included) look set merely to link the new subsidies to the World Bank's ten 20-year old safeguard policies⁸ – policies that many, even within the hydro-industry, acknowledge to be outdated and inadequate for addressing the known impacts of hydropower projects. Some ECAs have argued that even these limited safeguards are too onerous.

This paper sets out the background to the new subsidies that have been negotiated for hydropower; evaluates the accompanying standards that ECAs are currently minded to adopt; and identifies four key areas where ECAs must take action if future funding for dams is not to result in the egregious environmental and social impacts that have characterized the past.

It concludes that:

- ECAs would incur major reputational (and consequently financial) risks if new subsidies are granted for dams without making them conditional on international good practice to safeguard against adverse impacts;
- The World Bank standards have to date failed to safeguard the rights of affected communities or to protect the environment (see Section 3);
- The World Bank standards do not embody international good practice and are lower in all major respects to the development standards now promoted by the United Nations and by the major hydro-industry trade associations (*see* Section 4 and Annexe 1 – Comparison Table);
- More stringent standards are not only practicable but are already being implemented by other financial institutions (*see* Section 5);
- There is already a wide consensus on appropriate criteria for assessing whether or not dams comply with current international good practice and such criteria would dovetail easily into existing ECA social and environmental screening procedures (*see* Section 6).

⁵ ECGD, Annual Accounts 1996/97, London; Llewellyn, B., Response to email from Nicholas Hildyard, 5 August 2005.

⁶ World Bank, *India - Nathpa Jhakri Power Project 2002/09/25, 24899 Implementation Completion Report, Vol. 1* (English). The World Bank also provided funding, to the amount of US \$485 million. In 2002, the loan was cancelled following severe project design and implementation failures, with the remaining balance of US \$54 million cancelled. The Bank's own completion report notes of resettlement: "Eight years after the project has been appraised, it became evident to the Bank that full-scale resettlement impacts were much higher than the estimated figures" (Page 11, Para 4.6.1) In early reports, the World Bank estimated the number of affected families to be 73, however, the actual number of affected families was 480 (Page 5, Para 3.5.7). For further details see Annexe 2 and Schneider, A.K., *The World Bank's legacy of funding hydropower projects in India: Nathpa Jhakri*, International Rivers Network, October 2004.

⁷ The number of large dams being built annually has fallen dramatically - from a high of 848 in 1978 to just 48 in 2005. Since 1990, 3791 dams have been built, as against 13,091 from 1970-1980. See: ICOLD, *World Register of Dams*, 2005.

⁸ The World Bank has 10 safeguard policies covering: Environmental Assessment, Natural Habitats, Forests, Pest Management, Cultural Property, Involuntary Resettlement, Indigenous Peoples, Safety of Dams, Disputed Areas and International Waterways.

2. The Re-Negotiated OECD Arrangement: New Subsidies for Dams

Although a number of developing country ECAs – notably China's Ex-Im Bank – are now active in financing dams, the vast majority of export credits for hydropower are granted by ECAs from countries that are members of the Organization for Economic Cooperation and Development (OECD). As such, they are subject to a voluntary agreement, known as the OECD Arrangement, which was introduced in 1978 in order to prevent member states from undercutting their competitors through heavily-subsidised export credit support for their home industries.⁹ The Arrangement, which has been periodically revised since 1978, sets limits on the terms and conditions for export credits, including the interest rates and premium fees that can be charged.

The latest revision to the Arrangement was negotiated in 2005, following a proposal from the European Commission to encourage "renewable energy and water projects" by extending the maximum repayment term for selected ECA-backed projects from 12 years to 15 years. Large dams were included in the scheme, despite vigorous objections from non-governmental and other organisations that the often irreversible damage caused by such dams rules them out from any realistic definition of "renewables".¹⁰ Extended payback terms would greatly benefit the hydro industry since large dams typically have long construction periods and hence a longer period before the project begins to generate the income to repay debt.

The new agreement agreed a two-year trial period for the extended repayment scheme, starting on 1 July 2005. With regard to hydro-power projects, the Participants to the Arrangement deferred implementation of the special terms in order to consider whether or not the extant guidelines agreed under the 2003 OECD Recommendation on Export Credits and the Environment¹¹ "are sufficient to comply with the relevant standards for such projects."¹² A conclusion on hydropower projects will be made at the Participants next plenary meeting in November 2005, following an assessment of the current guidelines by the ECAs' environmental practitioners.

Civil society groups have strongly argued that on the Common Approaches are insufficient to safeguard the environment and rights of those affected by dam projects and that additional safeguards are necessary to bring ECA standards into line with international good practice on hydropower.

It is therefore of considerable concern that the ECAs' environmental practitioners, who met in June 2005 to assess the adequacy of the Common Approaches, appear minded (at best) to recommend that the new subsidies do not require additional safeguards other than benchmarking against an additional seven of the World Bank's safeguard policies. These World Bank policies have already proved inadequate to ensuring that dams funded by the Bank itself do not result in unacceptable social and environmental damage. Moreover, as the analysis in Section 4 below demonstrates, they fall far short of current good practice in the dam building industry.

⁹ OECD, *Arrangement on Officially Supported Export Credits*, 5 July 2005, TD/PG (2005) 22/Final, Paris, 2005. Article 1 (i) explains the purpose of the Arrangement: "The Arrangement seeks to foster a level playing field for official support . . . in order to encourage competition among exporters based on quality and price of goods and services exported rather than on the most favourable officially supported financial terms and conditions."

¹⁰ For further details, see: International Rivers Network, *Twelve Reasons to Exclude Large Hydro from Renewables Initiatives*, www.irm.org/programs/greenhouse/12reasons.pdf; ECAwatch, *Letter to Participants in the Arrangement on Guidelines for Official Export Credits*, 7 April 2005, http://www.eca-watch.org/problems/fora/oecd/ECAWlrtoOECD_renews042005.pdf

¹¹ Under the terms of this recommendation (dubbed the 'Common Approaches'), finalised in 2003, OECD export credit agencies are currently required to benchmark hydropower projects against "one or more relevant environmental standards and guidelines published by the World Bank Group, the European Bank for Reconstruction and Development, the Asian Development Bank, the African Development Bank and the Inter-American Development Bank." In addition, benchmarking is also required against the following World Bank Group safeguard policies: involuntary resettlement (OP/BP 4.1.2 and OD 4.30), indigenous peoples (OD 4.20) and cultural property (OP 4.11). Such benchmarking does not require that the projects comply with the cited standards, merely that they are evaluated against them. Although there is an expectation that the standards will be applied, the ECAs may derogate from them at their discretion, provided they subsequently report their reasons for doing so to the OECD's Export Credit Group.

¹² OECD, *Agreement on Special Financial Terms and Conditions for Renewable Energies and Water Projects*, TD/PG(2005)19/FINAL, 13 May 2005.

3. World Bank Standards have failed to provide adequate safeguards

The practitioners' recommendation that ECAs rely on World Bank standards to safeguard against future adverse impacts of dams not only threatens to jeopardise the environment and affected communities but also to embroil ECAs in increased controversy (with attendant reputational risks) over their role in development finance. Ironically, the weak standards that have been recommended are also likely to further undermine the political future of the hydro-industry by failing to address the most pressing reasons for its current decline: namely, the continuing lack of public confidence that the industry and public funders are serious in addressing the impacts of dams.

Although the World Bank's safeguard policies are stronger than many of the other standards recommended for benchmarking under the OECD Common Approaches, the record clearly shows that they are currently inadequate for protecting the human rights, livelihoods and environment of communities affected by dam projects.

The Bank has financed at least 550 dams to the tune of at least \$86 billion (in 2004 dollars) in its 60 year history.¹³ These dams have displaced at least 10 million people and have rarely achieved positive development outcomes for those affected.¹⁴ Examples¹⁵ included Yacyretá (Argentina/Paraguay) which has been described as "a monument to corruption"; Pangué (Chile) where a Bank-commissioned report found that the International Finance Corporation (IFC) had failed to comply with 80% of its environmental and social directives;¹⁶ and Kedang Ombo (Indonesia) where the Bank's own internal reports acknowledge that 72 per cent of families evicted by the dam were worse off than before the project began.¹⁷

Indeed, it was in recognition of the need to improve safeguards for dams that the World Bank itself set up the World Commission on Dams (WCD) to review the environmental and social impacts of dams. The WCD's review of dams is the most comprehensive to date and its proposed decision-making framework for future dam projects has been widely endorsed by civil society and industry alike. The WCD's conclusion as to the record of the industry was unequivocal: "In too many cases, an unacceptable and often unnecessary price" had been paid to secure the benefits of large dams. Moreover, the burden had fallen disproportionately on "the poor, other vulnerable groups and future generations", causing "the impoverishment and suffering of millions."¹⁸

The lessons are clear. If the failures of the past are not to be replicated, new standards are necessary. Relying on the standards that have failed to date can only serve to ensure that the history of highly damaging projects repeats itself. Indeed, in the view of Professor Thayer Scudder, who served as a Commissioner on the WCD and who has worked for the Bank as a consultant since 1964, ECAs must now look beyond the Bank's standards if they are to "do no harm" through their future funding for dams.¹⁹

¹³. Bosshard P., *The World Bank at 60: A Case of Institutional Amnesia? A Critical Look at the Implementation of the Bank's Infrastructure Action Plan*, International Rivers Network, April 2004, www.irn.org

¹⁴. Sklar, I., McCully, P., *Damming the Rivers: The World Bank's Lending for Large Dams*, International Rivers Network, 1994, p. 37

¹⁵. For further details of the World Bank's record on dams, see: Environmental Defense, Friends of the Earth, International Rivers Network, *Gambling with Peoples' Lives: What the World Bank's New "High Risk/High Reward" Strategy means for the Poor and the Environment*, 2003, www.irn.org

¹⁶. IRN (1997e), "Independent Review Blasts World Bank Over Chilean Dam Project", *World Rivers Review*, Vol. 12 No. 4, Aug 1997, International Rivers Network, web-site: <http://www.irn.org/pubs/wrr/9708/cover.html> accessed 22 Oct 1999.

¹⁷. Chatterjee, P. (1995), "Secret World Bank Document Admits Mistakes in Indonesia", *Interpress Service (IPS)*, Washington, 4 May 1995.

¹⁸. World Commission on Dams, *Dams and Development: A New Framework for Decision-Making*, London, Earthscan, 2000. <http://www.dams.org/report/>

¹⁹. Scudder, T., *Letter to Janet West*, Export Credits Group, OECD, 14 June 2005. http://www.eca-watch.org/problems/fora/scudderexpertltr_toOECD_ondams_june05.html

4. Good Practice: Current Standards Compared

Senior figures in the hydro-industry readily acknowledge the need for change if public confidence in dams is to be restored and appropriate dams built.²⁰ Moreover, following the WCD's report, there is growing consensus both within the more forward-looking elements of the hydro-industry and within civil society on the issues that need to be addressed if dams are to make a positive contribution to sustainable development and poverty alleviation.

These issues – and the extent to which the current standards of industry and International Financial Institutions meet them – are summarised in **Annex 1 (Comparison Table)**.

As the comparison makes clear, whilst industry associations, some ECAs and a number of commercial banks and companies have risen to the challenge of change, the World Bank has not. Far from strengthening its safeguard policies in response to the WCD and other reports, the World Bank has instead moved to weaken them.²¹ In doing so, it has ceased to be the leader in the field and now trails other institutional actors.

The key areas where the World Bank standards fall below international good practice are set out below under the headings:

- A. Respecting Human Rights
- B. Gaining Public Acceptance
- C. Decision-Making through Multi-stakeholder Process
- D. Strategic Review through Options Assessment
- E. Addressing the Legacy of Existing Dams
- F. Approach to Environmental Assessment
- G. Securing Entitlements and Ensuring Compliance

Respecting Human Rights

Respect for human rights is central to the stated aims of the majority of governments. It is also a pre-requisite for just and sustainable economic development, as recognised increasingly in the policies adopted by bilateral, European and UN development agencies. The World Bank, however, has no human rights policy and has resisted introducing human rights safeguards.

A rights-based approach to development now frames the policies of many bilateral²² and UN development agencies. It is also accepted as an *a priori* by many industry groups and by such regional political groupings as the European Union:

- At the UN level, the Charter of the United Nations obliges member states to promote “universal respect for and observance of human rights and fundamental freedoms”²³ and calls on “every organ of society” to do the same. Specific obligations have subsequently been codified in a number of international agreements.²⁴ The

²⁰ According to Axel Wenblad, Senior Vice President of Skanska, for example, one of the main reasons why Skanska supported the World Commission on Dams was the recognition that “something has to be changed.” See: Lang, C. and Hildyard, N., *Dams Inc 2*, The Corner House, 2004.

²¹ For further details see: Bosshard, P., *The World Bank at 60: A Case of Institutional Amnesia – A Critical Look at the Implementation of the Bank's Infrastructure Action Plan*, International Rivers' Network, April 2004. As Bosshard notes: “The Bank accepted the general strategic priorities that the WCD proposed in November 2000. It did however not adopt any of the WCD's specific recommendations in the form of binding policies. The Bank weakened its safeguard policies in important aspects as part of the policy conversion process that it started in 1996. Several internal evaluations by the Operations Evaluation Department (OED) concluded that the Bank has failed to mainstream social and environmental concerns into its decision-making processes, and that the quality of environmental assessments has deteriorated in recent years.”

²² The British, Dutch, Norwegian, Australian, Danish, Canadian and Swedish bilateral aid agencies all employ some form of rights-based approach to development.

²³ *Charter of the United Nations*, 26 June 1945.

²⁴ For example, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Vienna Declaration and Programme of Action, adopted by consensus by 171 UN Member States, has also reaffirmed that “Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments” (Vienna Declaration and Programme of Action, World Conference on Human Rights, U.N. Doc. A/CONF.157/23).

UN Development Assistance Framework, agreed by all the major UN development agencies, has also put into place guidelines for implementing a rights-based development agenda.²⁵

- Respect for human rights forms one of the fundamental pillars of the **European Union**.²⁶ EU governments are bound under the European Union Treaty to “define and implement” a foreign policy to “develop and consolidate [. . .] respect for human rights and fundamental freedoms.”²⁷
- The **UK government** places the proactive promotion of human rights “at the heart” of foreign policy.²⁸ That commitment is also reflected in the ECGD’s commitment to ensuring that its activities “take into account the government’s international policies on human rights” and in the Department for International Development’s 1997 White Paper on International Development.²⁹

A rights based approach also underpins best practice in the hydro sector:

- The **WCD**’s recommendations are firmly grounded in “a rights based approach”³⁰ based on “the framework of internationally accepted norms on human rights, the right to development and sustainability.”³¹ The report is explicit on the implications: “Reference to the human rights framework means those policies that deny the rights of some to fulfill those of others cannot be adopted.”³² The WCD’s proposed decision-making framework is thus aimed at identifying and bringing together rights holders – and those whose rights are at risk – “as the basis for negotiated decisions on dams and their alternatives.”³³
- Respect for human rights is also embedded in the corporate policies of a number of major hydro-industry companies and underscores the guidelines developed by industry and governments under the **International Energy Agency (IEA)’s Hydropower Agreement**, a working group established under the framework of the OECD.³⁴ The IEA Agreement states: “Sustainable development as a recognized principle of human activity requires that equal consideration be given to the protection of human rights, the right to economic development and the protection of the environment.”³⁵

By contrast, whilst the **World Bank** acknowledges the importance of human rights,³⁶ it “has no formal, written policy on human rights, either in terms of the Bank’s role, or lack thereof, in promoting and requiring respect for human rights in its operations or internally in terms of its policies.”³⁷ Its ten safeguard policies make no reference to human rights and there is no requirement for Bank-funded projects to comply with international human rights norms and obligations. As Fergus MacKay of the Forest Peoples’ Programme notes: “While the Bank asserts that its operations contribute to the enjoyment of economic, social and cultural rights, it maintains that its Articles prohibit even

²⁵ The United Nations Development Assistance Framework, <http://www.un.org.in/undaf.htm>.

²⁶ Article 6, para 1 of the *Treaty of the European Union* states: “The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.” See: Consolidated Version of the Treaty of the European Union, http://europa.eu.int/eur-lex/en/treaties/dat/C_2002325EN.000501.html.

²⁷ Consolidated Version of the Treaty of the European Union, Title V, Article 11, http://europa.eu.int/eur-lex/en/treaties/dat/C_2002325EN.000501.html.

²⁸ www.fco.gov.uk/servlet/Servlet?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1028302591712

²⁹ Department for International Development, *Eliminating World Poverty – A Challenge for the 21st Century*, White Paper on International Development 1997, p.7. The White Paper commits the UK to “giv[ing] particular attention to human rights”. It also speaks of the UK’s commitment to “protect[ing] and promot[ing] the full enjoyment of human rights” (p.69) and of the promotion and protection of human rights being “integral to all our programmes of humanitarian assistance” (p.70).

³⁰ World Commission on Dams, op. cit. 18, p.198.

³¹ Ibid.

³² World Commission on Dams, op. cit. 18, p.200.

³³ World Commission on Dams, op. cit. 18, p.198.

³⁴ International Energy Agency Implementing Hydropower Agreement for Hydropower Technologies and Programmes, *Hydropower and The Environment – Present Context and Guidelines*, Annexe III, Volume 2 Main report, p.158. <http://www.ieahydro.org/Environment/HyA3S5V2.pdf>. The study was conducted over a five year period by government regulatory organizations, research organizations, and utilities in six member countries (Canada, Finland, Japan, Norway, Spain and Sweden), and 112 international experts from 16 different countries have participated in meetings and workshops.

³⁵ International Energy Agency Implementing Hydropower Agreement for Hydropower Technologies and Programmes, *Hydropower and The Environment – Present Context and Guidelines*, Annexe III, Volume 2 Main report, p.119.

³⁶ See, for example: World Bank, *Development and Human Rights: The Role of the World Bank*. Washington D.C., 1998.

³⁷ MacKay, F., *Universal Rights or a Universe unto itself? Indigenous Peoples’ Human Rights and the World Bank’s Operational Policy 4.10 on Indigenous Peoples*, November 2001, Forest Peoples Programme, http://www.forestpeoples.org/Briefings/Indigenous%20Rights/universal_rights_nov01_eng.htm

discussion of human rights labelled as political rights. Pursuant to its Articles it further maintains that it not only has no obligation to respect human rights, but that it is legally precluded from addressing many human rights at all.”³⁸ Moreover, despite promises from its former President, James Wolfensohn, that the Bank would develop “a human rights strategy”, the strategy has yet to appear.³⁹ Similar undertaking from the International Finance Corporation have also failed to materialise.

Gaining Public Acceptance

The principle that dams and other water and energy infrastructure development should enjoy public acceptance is increasingly widely accepted, both on practical grounds (experience shows that public acceptance is essential if the outcome of development projects is to be equitable and sustainable) and as a central concomitant of a rights based approach to development. For indigenous peoples, free, prior, informed consent to developments that affect their lands is now firmly entrenched in international law and recognised as such by the UN.⁴⁰ Although both industry guidelines and the World Commission on Dams recommend a consensual approach to dam building based on negotiation, with accompanying procedures to ensure that the most vulnerable stakeholders are actively engaged in decision-making, the World Bank lags far behind, emphasising mere “consultation” over consent.

The **World Bank** safeguard policies require the project sponsors to *consult* with affected communities over both the Environmental Impact Assessment and, where displacement is involved, the Resettlement Action Plan. The safeguards do not require the sponsors to involve rights holders (or those whose rights are at risk) in decision-making and there is no requirement to demonstrate acceptance of the project. Although the latest version of the Bank’s Indigenous Peoples’ policy requires “free, prior informed consultation” resulting in “broad community support”,⁴¹ the policy falls far short of meeting the rights of indigenous peoples under international law, which requires consent.⁴²

By contrast:

- The **International Commission on Large Dams (ICOLD)**, an industry grouping, requires that “all projects have to be planned, implemented and operated with the *clear consent* of the public concerned.”⁴³
- The **Dublin Principles**, drawn up in 1992 by “five hundred participants, including government-designated experts from a hundred countries and representatives of eighty international, intergovernmental and non-governmental organizations” goes beyond merely recommending consultation and stresses the need for the *active involvement of the water users in decision-making*. “Water development and management should be based on a participatory approach, involving users, planners and policy-makers at all levels.” “The participatory approach involves raising awareness of the importance of water among policy-makers and the general public. It means that decisions are taken at the lowest appropriate level, with full public consultation and involvement of users in the planning and implementation of water projects.”⁴⁴
- The **International Energy Agency (IEA)’s Hydropower Agreement** emphasises participatory decision-making as a key requirement and states: “Minimising [the adverse social impacts on vulnerable minority groups] requires that local communities be willing partners in the development of a hydropower project . . . [I]t also requires that local communities be given sufficient lead time to assimilate or think through the consequences of such a project and to define on a consensual basis the conditions in which they would be prepared to proceed with the proposed development.”⁴⁵

³⁸. Ibid

³⁹. Goodland, R., *Prior, Informed Consent and the World Bank Group*, Paper presented at American University/ Centre for International Environmental Law/ Washington College of Law conference on Prior Informed Consent, 2 March 2004.

⁴⁰. Most recently, in July 2005, the UN Commission on Human Rights’ Sub-Committee on the Promotion and Protection of Human Rights Working Group on Indigenous Populations accepted the principle of FPIC in international law. See: UN Economic and Social Council, *Legal Commentary on the Principle of Free Prior Informed Consent*, 21 June 2005, E/CN.4/Sub.2/AC.4/2005/2.

⁴¹. World Bank, Indigenous Peoples Policy, OP 4.10, <http://wbIn0018.worldbank.org/Institutional/Manuals/OpManual.nsf/0/0F7D6F3F04DD70398525672C007D08ED?OpenDocument>

⁴². Forest Peoples’ Programme, *Critique of the World Bank’s December 2004 Draft Revised Policy on Indigenous Peoples*, December 2004, http://www.forestpeoples.org/Briefings/World%20Bank/wb_ip_dft_pol_4_10_dec04_eng.htm

⁴³. International Commission on Large Dams (ICOLD), *Position Paper on Dams and Environment*, 1997, p. 13, <http://www.icold-cigb.org/chartean.html>

⁴⁴. *The Dublin Statement on Water and Sustainable Development*, International Conference on Water and Environment, Dublin 1992, <http://www.wmo.ch/web/homs/documents/english/icwedec.html>

⁴⁵. International Energy Agency Hydropower Agreement, op. cit. 35, p.103

- The **World Commission on Dams**' (WCD's) strategic priorities specifically aim to ensure that dams enjoy *demonstrable public acceptance* and, in the case of indigenous communities, *free prior informed consent*, through transparent, participatory decision-making processes. Contrary to assertions by the World Bank, this recommendation would not give veto rights to individuals: "Where independent review and mediation fail to foster an agreement, alternative options should be considered or the project should go to arbitration . . . Where a settlement does not emerge, the State will act as the final arbitrator, subject to judicial review."⁴⁶

Outside of the hydro sector, there is also a growing consensus on the need for projects to enjoy demonstrable public acceptance, in order both to respect human rights and to ensure that project sponsors secure their "social licence to operate". The World Bank's recent Extractive Industries Review,⁴⁷ for example, recommended that all projects should be premised on "free, prior, informed consent".

Decision-Making through Multi-stakeholder Process

Experience shows that in the formal political process, poor and politically marginalized communities (such as those who have historically been most affected by large dams) are often excluded from the decision-making process. International good practice is based on addressing the imbalances of power relations that lead to such exclusion and ensuring that all stakeholders are equally involved in decision-making

The **United Nations Development Assistance Framework**, adopted by 18 UN Agencies, views participation in decision-making as a right and states: "[S]upporting policies and legislation that protect and promote the rights of local communities to participate in the processes are essential. . . ensuring full participation of all groups in the development process are priorities."⁴⁸

Whereas the decision-making process under the **World Bank**'s safeguards requirements is restricted to the *host government*, the *financing agencies* and the *project sponsors*, the **WCD** broadens the process to include all *affected rights holders* operating through a *multi-stakeholder forum*, consisting of affected communities, government and industry. Under the WCD, the stakeholder forum would have the right to "participate fully and actively in the decision-making process and be party to all negotiated agreements throughout the process."

The **IEA Hydropower Agreement** also favours a multistakeholder process: "Stakeholders should establish an equitable, credible and effective environmental assessment process that considers the interests of people and the environment within a predictable and reasonable schedule."⁴⁹ The IEA stresses that "stakeholders must be treated in an equitable manner" and that there should be "established rules and clear responsibilities for all stakeholders."⁵⁰

ICOLD and the **Dublin Principles** both stress the need for full participation in decision-making but, unlike the WCD, do not articulate a mechanism for achieving this. **The Dublin Principles** do however underline the need for investment "in building the capacity of people and institutions to plan and implement those projects."⁵¹

Strategic Review through Options Assessment

Development needs are frequently taken as a given and dealt with in the aggregate rather than being broken down, assessed and matched to the best options for meeting them. The World Bank's safeguard policies do not require such a needs and options assessment. Both the WCD and industry guidelines address the issue directly.

The World Bank safeguards require the project sponsor to assess *project alternatives*, including the "no project option". In practice, Environmental Impact Assessments tend only to compare technical issues, such as different dam locations, dam types and so on. There is no requirement for a strategic review of development needs, although the **European Bank for Reconstruction and Development** (whose standards are listed amongst the Common Approaches benchmarks) requires a *strategic environmental assessment*.

⁴⁶. World Commission on Dams, op. cit. 18, pp.210 and 281

⁴⁷. World Bank, *Striking a Better Balance*, Final Report of Extractive Industries Review, December 2003. <http://www.eireview.org/>

⁴⁸ The United Nations Development Assistance Framework, <http://www.un.org.in/undaf.htm>, p.10

⁴⁹. International Energy Agency Hydropower Agreement, op. cit. 35., 158.

⁵⁰. Ibid.

⁵¹. The Dublin Statement, op. cit. 43, "Action Agenda – The Enabling Environment"

The **WCD** requires a *participatory, comprehensive* assessment, undertaken through the multi-stakeholder Forum, in which development needs and objectives are clearly formulated and evaluated in order to ensure the *best match* between *project options* and *development priorities*.

The **UK government** has consistently supported a move from project based assessments of alternatives to a wider strategic assessment of upstream policy options⁵² and that it has stated its willingness to “consider requests from Least Developed Countries to support options assessment processes” within the WCD framework.⁵³

The **International Hydropower Association**, a leading industry grouping, “encourages countries to have in place national and/or regional energy policies” that clearly set out their energy development strategy. “National and/or regional energy policies should include a Strategic Assessment (SA) process that includes assessment of cumulative impacts, determination of land use and environmental priorities, as well as goals for poverty alleviation and economic growth. The policies should be framed in the context of the global need to reduce greenhouse emissions. They should also incorporate the three elements of sustainability -- economic, social and environmental -- in energy planning.”⁵⁴ Regional and country level assessments, including a comprehensive review of energy options, should be made prior to the assessment of specific projects.⁵⁵ If the decision is taken to develop hydropower, then sustainability criteria must be available to provide an effective comparison of hydropower project alternatives. Where projects present significant threats to vulnerable social groups “they should be avoided if the threats cannot be mitigated.”⁵⁶

The **International Energy Agency Hydropower Agreement** endorses strategic assessment involving public participation, citing processes in Nepal, The Netherlands, Norway and Canada as examples of good practice.⁵⁷ The Agreement stresses the need to “ensure public involvement in determining policy orientation.”⁵⁸

Addressing the Legacy of Existing Dams

The WCD stresses the need for programmes to restore, improve and optimise benefits from existing large dams. This is not required under the World Bank’s safeguards policies.

The **WCD** makes funding for new dams conditional on improvements to the *efficiency of existing dams* having been fully assessed and implemented. No such requirement exists under the World Bank’s safeguard policies

The **International Hydropower Association** underlines that refurbishment and upgrading of existing facilities should be the first priority in the assessment of hydropower alternatives⁵⁹ and that the development of sites on already developed river basins should be prioritized over undeveloped basins,⁶⁰ a recommendation also endorsed by the **International Energy Agency’s Hydropower Agreement**.⁶¹

Approach to Environmental Assessment

Many environmental impacts of large dams are irreversible and the WCD knowledge base has clearly shown that mitigatory approaches often do not work. The WCD and a range of industry guidelines require adherence to the precautionary principle, whereby the avoidance of potential impacts is prioritised over mitigation even where conclusive scientific evidence as to damage is not available. The World Bank does not require a precautionary approach. The Bank also adopts a more limited approach to the impacts that it requires to be assessed and the means by which such assessment is undertaken.

⁵². Secretary of State for International Development, *The UK Government’s Submission to the World Bank’s Extractive Industries Review*, September 2003: “Project level social and environmental impact assessments and management will be relatively limited in their influence and value if they are not framed by up-stream strategic assessment of policy options.”

⁵³. World Commission on Dams – Towards a UK Position, Consultation Draft, 12 July 2002.

⁵⁴. International Hydropower Association, *Sustainability Guidelines*, February 2004, para 3.2

⁵⁵. *Ibid*, para 2.2.2

⁵⁶. *Ibid*, Table 2, point 5.

⁵⁷. International Energy Agency Hydropower Agreement, *op. cit.* 35, p.124

⁵⁸. *Ibid*.

⁵⁹. International Hydropower Association, *op. cit.* 53, February 2004, Table 2, point 1.

⁶⁰. *Ibid*, Table 2, point 3.

⁶¹. International Energy Agency Hydropower Agreement, *op. cit.* 35, P.163

The **World Bank**'s Environmental Assessment safeguard policy "favours *preventive* measures over mitigatory or compensatory measures *whenever feasible*" (emphasis added). The **WCD** goes further and grounds environmental assessment in the *precautionary approach*, whereby the *avoidance* of impacts is prioritised over mitigation. The precautionary approach is also endorsed by the **International Hydropower Association** ("A precautionary approach is one of the underlying values guiding efforts to achieve more sustainable outcomes for new and existing developments"⁶²) and the **International Energy Agency Hydropower Agreement**,⁶³ which states, "impact avoidance is always more effective than applying mitigation measures".⁶⁴

Although the World Bank requires downstream impacts to be assessed, there is no requirement for a basin-wide assessment. By contrast, the **WCD** requires *two levels* of assessment. First a basin-wide assessment of ecosystem function and livelihoods is to be undertaken prior to any decision on development options. Second, an assessment of specific project-related impacts. The **International Energy Agency Hydropower Agreement** also requires basin-wide assessment.⁶⁵

The World Bank merely requires *consultation* with NGOs and affected communities on environmental assessment. The **WCD** requires *participatory* assessment of impacts through the multi-stakeholder forum. The **International Energy Agency Hydropower Agreement** likewise stresses participation and recommends that downstream flow requirements "should be discussed, accepted and managed by a stakeholder committee."⁶⁶

Securing Entitlements and Ensuring Compliance

The WCD knowledge base confirms that past projects have "often impoverished adversely affected people".⁶⁷ The principle that affected peoples are entitled to benefit from dam projects – and that their entitlements must be secured – is thus increasingly accepted as a pre-requisite for successful implementation of dam projects. The World Bank's safeguards, however, makes no requirements for mechanisms to be put in place that would secure project affected peoples' entitlements. By contrast, both the WCD and a number of industry guidelines address the issue directly, requiring procedures, such as legally-binding agreements, to ensure compliance and redress grievances.

Industry groups increasingly recognise the need for affected peoples to benefit from projects. The **International Energy Agency Hydropower Agreement** states: "Proponents must ensure that hydropower projects result in improved standards of living for affected people."⁶⁸ The **International Hydropower Association** also calls for "providing affected communities with improved living conditions" and "improving public health conditions for impacted communities."⁶⁹ **ICOLD** likewise states that "resettlement must result in a clear improvement of their living standards",⁷⁰ stressing that "the people directly affected by a project should always be the first to benefit instead of suffering for the benefit of others"⁷¹ The **WCD** also requires that "adversely affected people [be] recognised as *first among the beneficiaries* of the project." By contrast, the **World Bank** does not require that livelihoods be improved by dam projects, merely that they are restored.⁷²

The Bank also lags behind international good practice in requiring legally-binding mechanisms for securing project affected peoples' *entitlements*. Under the **WCD** recommendations, such mechanisms include the requirement that a Mitigation, Resettlement and Development plan be agreed with the *affected people* and formalised through *mutually agreed* and *legally enforceable* contractual agreements, setting out development and resettlement entitlements. By contrast, under the **World Bank**'s guidelines, affected communities are excluded from the legal agreements for the project, including the resettlement agreements, whose terms are enforced through *loan conditions* agreed between the

⁶². International Hydropower Association, op. cit. 53, para 2.2.2

⁶³. International Energy Agency Hydropower Agreement, op. cit. 35., p.133 and p.153. The Agreement states (p.133): "Prudence and control are recognized as basic principles of responsible environmental management and should be integrated into the decision-making process."

⁶⁴. Ibid, p.163.

⁶⁵. "Measures to optimize the regional benefits of hydropower include . . . The design and implementation of river basin management plans that take into account the water needs of concerned stakeholders, in the reservoir area and downstream", International Energy Agency Hydropower Agreement, op. cit. 35, p.105-6.

⁶⁶. Ibid, p.96.

⁶⁷ World Commission on Dams, op. cit.18, p.240.

⁶⁸. International Energy Agency Hydropower Agreement, op. cit. 35, p.149.

⁶⁹. International Hydropower Association, op. cit. 53, paras 6.2.1 and 6.2.2

⁷⁰. International Commission on Large Dams, op. cit. 42, p.13

⁷¹. Ibid, p.13

⁷². World Bank, *Involuntary Resettlement*, OP 4.12, para 2 (b)

financing agencies and the *project sponsors* or *borrowers*. The Bank does not require that project affected communities have a decisive voice in drawing up resettlement plans, merely that they are informed of their rights, consulted and provided “opportunities to participate in planning and implementing resettlement programs”.⁷³

The Bank’s safeguard policies also require lower standards of *accountability* and *redress* than those of the WCD and industry. The **WCD** stipulates that mechanisms for “hearing and settling grievances” must be put in place as part of the negotiated agreements reached with project affected communities.⁷⁴ Grievance committees are also required under the **International Energy Agency’s Hydropower Agreement’s proposed** “accountability guarantees”.⁷⁵ However, whilst the **World Bank** supports grievance mechanisms, it does not require them at the project level unless involuntary resettlement is involved.⁷⁶

Finally, whilst the Bank requires an assessment of the institutional capacity of project developers to comply with its guidelines, it does not require that funding be rejected where the assessment is negative. Other institutional actors, such as the **Inter-American Development Bank’s** Blue Ribbon Panel on the Environment, recommend that “Procedures should explicitly preclude investments where there is a high sustainability project risk and the client cannot demonstrate the commitment, capacity, and track record to adequately implement [the project].”⁷⁷

5. Support for Stronger Standards

From the comparison above, it is clear that the World Bank standards lag behind current good practice, as exemplified by the World Commission on Dam’s Policy Principles, the International Energy Agency’s Hydropower Agreement, the International Commission of Large Dam’s Position Paper on the Environment, the International Hydropower Association’s Sustainability Guidelines, the UN’s Development Assistance Framework and other guidelines.

Of these, the WCD’s policy principles are the most comprehensive, being drawn from best practice examples in the hydropower sector from around the world.

Although implementing any set of good practice standards is undoubtedly challenging, many institutions have already risen to that challenge. Significantly, the majority have opted for compliance with the WCD core values and strategic priorities, whose recommendations are now widely accepted as formulating international best practice for developing water and power projects.

Moreover, the seven strategic priorities set out by the WCD have been widely accepted by governments, financial institutions, the dam industry, and civil society. The UK government, for example, is on record as stating that it is already “implementing the recommendations of the WCD”, not least “through the ECGD which has already introduced procedures to take account of environmental and social criteria in its case analysis process, including consideration of trans-boundary effects.”⁷⁸ In addition, the UK is taking an active role in promoting the WCD internationally and in seeking to “[encourage] the multi-lateral agencies to help countries develop a consistent position on the WCD report and to implement its recommendations.”

Significantly, the European Commission, which originally proposed the increased subsidy for dams, has also stated that it expects projects supported under the new Arrangement to comply with the recommendations of the World Commission on Dams (WCD).⁷⁹

⁷³. Ibid

⁷⁴. World Commission on Dams, Op. cit. 18, p.218: “Demonstrating public acceptance, and upholding negotiated decisions, is best achieved through binding and formal agreements. They must include mechanisms for hearing and settling subsequent grievances.”

⁷⁵. International Energy Agency Hydropower Agreement, op. cit. 35, p.154.

⁷⁶. The Bank’s own Inspection Panel serves as the main mechanism to hear grievances in projects where the Bank is involved, but it can only address a limited number of complaints and is not responsive to the majority of the concerns of affected populations.

⁷⁷. Inter-America Bank, *Blue Ribbon Panel on the Environment, Final Report of Recommendations*, 23 February 2005, p.9.

⁷⁸. World Commission on Dams – Towards a UK Position, Consultation Draft, 12 July 2002, <http://www.fco.gov.uk/environment/wcdreport>.

⁷⁹. Letter from Pascal Lamy to FERN, 19 November 2004. Lamy writes: “I can confirm that to our opinion the formulation chosen does indeed in an appropriate way include all relevant international standards and, more specifically, the WCD recommendations.”

A number of other agencies and institutions have already conditioned support for dam projects on the WCD or endorsed the seven strategic priorities:

- The **US Overseas Private Investment Corporation (OPIC)**'s environmental assessment procedures require compliance with WCD.⁸⁰
- **US Ex-Im** states: "Project participants also are encouraged to address, to the extent practical, relevant principles contained in the final report of the WCD".⁸¹
- Switzerland's Export Credit Agency **ERG**: "In the case of hydroelectric power stations it should also be demonstrated to what extent the recommendations made by the World Commission on Dams will be met".⁸²
- France's **COFACE**: "All reference, target and best practice criteria are therefore derived from a qualitative approach. These criteria are in particular based on the work of ICOLD, the IEA, the WCD and Operational Directives of the World Bank."⁸³
- Member states of the **European Union** are required to ensure that the WCD's guidelines are respected when approving carbon credits for dams under the EC Linking Directive (2004/101/EC) on greenhouse gas emission trading.⁸⁴
- **HSBC**, one of ECGD's major potential clients and a bank which is active in financing hydropower development in China,⁸⁵ has endorsed the WCD in its new Water Policy.⁸⁶
- **International Hydropower Association**: While there is disagreement on some aspects relating to its detailed recommendations, there is clear acceptance of the WCD core values. In addition, there is broad agreement on the objectives of the report's strategic priorities. The IHA Sustainability Guidelines provide a framework for good practice which is in accordance with these values.

On the ground, many governments and institutions are also involved in implementing the WCD's decision-making framework. In Nepal, for example, the government has undertaken a review of the country's legislation and water policies to assess the legislative changes that will be required to comply with the WCD's strategic priorities. In South Africa, a "Multi-stakeholder Initiative on the WCD" has already been successfully convened to make recommendations on the WCD's implementation⁸⁷ and similar roundtable dialogues are taking place in other countries including Argentina, Indonesia, Sri Lanka, Thailand and Vietnam.⁸⁸ The UK-supported Dams and Development Unit of UNEP has also been set up in order to "promote improved decision-making, planning and

⁸⁰. OPIC, *Environmental Handbook*, http://www.opic.gov/Publications/envbook_2004.htm "OPIC applies screening and environmental assessment criteria that incorporates core values and strategic priorities identified in the report of the WCD."

⁸¹. Exim, *Environmental Guidelines: Table 9 – Hydropower and Water Resources Management (Dams and Reservoirs)*, www.exim.gov/products/policies/environment/envtbl9.html

⁸². ERG, *ERG Guidelines for assessing environmental and social issues*, <http://www.swiss.erg.com/downloads/merkblatt/e/Leitlinienumwelt04e.pdf>

⁸³. COFACE, *Environmental Guidelines*, 2003, <http://www.coface.com/docs/barragesgb.pdf>.

⁸⁴. *Directive 2004/101/EC of the European Parliament and of the Council*, Article 11 (b) para 6: "In the case of hydroelectric power production project activities with a generating capacity exceeding 20 MW, Member States shall, when approving such project activities, ensure that relevant international criteria and guidelines, including those contained in the World Commission on Dams November 2000 Report "Dams and Development — A New Framework for Decision-Making", will be respected during the development of such project activities."

⁸⁵. "Foreign Banks to invest in more than 20 projects in China", *Asia Pulse*, 3 August 2005, <http://au.news.yahoo.com/050803/3/vcp5.html>. HSBC is one of a number of banks and Hong Kong-based investment companies participating in a joint investment package worth \$2.3 billion in western China. The Shaanxi Ankang Xunyang Hydropower Plant forms part of the investment.

⁸⁶. HSBC, *Fresh Water Infrastructure Guidelines*, May 2005. The Guidelines state: "In particular, we will not provide facilities and other forms of financial assistance, including any involvement in debt and equity capital markets activities and advisory roles, to: Dams that do not conform to the WCD Framework."

⁸⁷. South African Multi-stakeholder Initiative on the World Commission on Dams, *The World Commission on Dams and South Africa: Substantive Report*, 26 November 2004, available from <http://www.unep.org/dams/>

⁸⁸. Dams and Development Unit, *Promoting Dialogue*, <http://hq.unep.org/dams/documents/Default.asp?DocumentID=349&ArticleID=4185>

management of dams and their alternatives building on the [WCD's] core values and strategic priorities and other relevant reference materials . . .”⁸⁹

Given the above, and particularly the UK's positive response to the WCD, it is to be hoped that the ECGD will take a leadership role in pressing for any concessional terms for dams agreed under the OECD arrangement to be linked to compliance with the WCD's decision-making framework. Any other position would appear to be inconsistent with the ECGD's commitment under its Business Principles to “ensure [its] activities take into account the Government's international policies”.

6. ECA Check list

Non-Governmental Organisations fully understand that the involvement of ECAs in projects frequently comes at a late stage in project development. Nonetheless, if the adverse impacts of dams are to be avoided in the future, it is imperative that ECA support for hydro projects be conditioned on international good practice.

It is clear from the above review that the World Bank's environmental and social policies fall far short of such good practice and that other guidelines, notably the WCD, provide a more stringent and contemporary framework for safeguarding both the environment . . .”⁸⁹ and the rights of affected communities.

Criteria for assessing a project's compliance with international good practice are already available and could be employed by ECAs without imposing an undue bureaucratic burden. The WCD report, for example, provides a compliance checklist⁹⁰ which could easily be incorporated into the existing environmental assessment procedures of ECAs.

In order to ensure that the key policy principles embodied in the rights based guidelines that currently represent good international practice are adhered to in future dam projects, we would recommend, at a minimum, that the following questions are incorporated into the ECGD's environmental impact assessment questionnaire:

1. Does the project have a multi-stakeholder forum empowered to participate fully and actively in the decision-making process and be party to all negotiated agreements throughout the project cycle, from options assessment to final implementation, operation and monitoring?
2. Does the multi-stakeholder forum include all those rights holders whose rights are at risk from the project?
3. Does the project enjoy the demonstrable public acceptance or, where indigenous peoples are affected, their free prior informed consent?
4. Has an Options Assessment been undertaken at a sectoral level and has a river basin approach been taken in the assessment of environmental and social impacts?

Where compliance cannot be demonstrated, the ECGD should refuse support to hydro projects. In addition, The ECGD should press other Participants to the OECD Arrangement to adopt similar measures.

⁸⁹. Dams and Development Unit, *Vision*, <http://www.unep.org/dams/>

⁹⁰. World Commission on Dams, op. cit.18, p.264 ff.

ANNEXE 1:**SUMMARY COMPARISON OF INTERNATIONAL STANDARDS RELATING TO DAMS**

	The Issue	World Bank	WCD	Other Institutions
Respecting Human Rights	Respect for human rights is central to the stated aims of the majority of national governments. It is also a pre-requisite for just and sustainable economic development, as recognised increasingly in the policies adopted by bilateral, European and UN development agencies.	No formal, written policy on human rights, either in terms of the Bank's role, or lack thereof, in promoting and requiring respect for human rights in its operations or internally in terms of its policies	Firmly grounded "a rights based approach" ⁹¹ based on "the framework of internationally accepted norms on human rights, the right to development and sustainability." ⁹²	International Energy Agency (IEA)'s Hydropower Agreement: "Sustainable development as a recognized principle of human activity requires that equal consideration be given to the protection of human rights, the right to economic development and the protection of the environment." ⁹³
Multi-stakeholder decision-making	Experience shows that poor and politically marginalized communities have historically been most affected by large dams. As such, they are often left out of the formal political process, and are excluded from decision-making.	The decision-making process is limited to host government, financing agencies, and project sponsors.	All affected rights holders should have access to the decision-making process through a multi-stakeholder forum that includes affected communities, government, and industry. This forum would "participate fully and actively in the decision-making process and <i>be party to all negotiated agreements.</i> "	The IEA Hydropower Agreement states that the "assessment and licensing of hydropower projects should be based on a credible and effective decision-making process, with established rules and clear responsibilities for all stakeholders."
Gaining Public Acceptance/ FPIC	In an environment of unequal power relations, people need rights to ensure that their interests are safeguarded. Without demonstrable public acceptance, the rights of affected communities are likely to be overlooked in such a way that they do not reap fair and adequate benefits from the sacrifices forced upon them.	Project sponsors must <i>consult</i> with affected communities over the EIA and the Resettlement Action Plan.	Dams must enjoy <i>demonstrable public acceptance</i> , and provide FPIC in the case of indigenous peoples. "Decisions should be made following a process of good faith negotiations that allows for the effective representation of the peoples' concerned, including genuine attempts to reconcile differences through the <i>mutually agreed</i> dispute resolution process." "A clear agreement with the affected people on the sequence and stages of resettlement will be required <i>before</i> construction on any project preparatory works begins."	ICOLD asserts that all "projects have to be planned, implemented and operated with the <i>clear consent</i> of the public concerned" ⁹⁴ The yet-to-be implemented Extractive Industries Review calls for the recognition of the right to Free Prior Informed Consent.

⁹¹. World Commission on Dams, *Dams and Development*, Earthscan, London, 2000, p.198

Room Document Title	Issue 2	World Bank	WCD Consultation between CSOs	Institutions / Participants
Involuntary Displacement/ Benefit sharing/ securing entitlements	All voluntary risk takers involved in a project (the companies, the government and the financiers) will insist on legally enforceable contracts. Involuntary risk bearers (those impacted by the dam) oftentimes lack legally enforceable rights and entitlements, making it unlikely that they will have leverage to ensure they share in the benefits.	The World Bank requires that affected peoples are <i>informed</i> of their rights and <i>consulted</i> on resettlement, but does not require that affected communities be party to the Resettlement Action Plan, whose terms are agreed between the <i>financing agencies</i> and the <i>project sponsors</i> or <i>borrowers</i> .	WCD requires that affected people are provided with <i>legal support</i> in negotiating <i>mutually agreed, formal and legally-enforceable</i> Mitigation, Resettlement and Development entitlements WCD requires that “adversely affected people [be] recognised as <i>first among the beneficiaries</i> of the project.” “Involuntary risk bearers must have the legal right to engage with risk takers in a transparent process to ensure that risks and benefits are negotiated on an equitable basis.”	3 October 2005 IEA Hydropower Agreement: Proponents must “adopt a code of basic procedural rights for public meetings or hearings to ensure that all stakeholders are treated fairly and that their roles are clearly set out... ensur[ing] that hydropower projects result in <i>improved</i> standards of living for affected people.” ⁹⁵ ICOLD: “resettlement must result in a clear <i>improvement</i> of their living standard, because the people directly affected by a project should always be the first to benefit instead of suffering for the benefit of others.” ⁹⁶ International Hydropower Association calls for improving the public health conditions of affected communities, and providing affected communities with <i>improved living conditions</i> in general.
Options/ Needs Assessment	Development needs are frequently taken as a given and expected positive outcomes dealt with in the aggregate rather than being broken down, assessed, and matched to the best options for meeting them.	The World Bank safeguards require the project sponsor to assess <i>project alternatives</i> , including the “ <i>no project option</i> ”. There is no requirement for a strategic review of development needs.	The WCD requires a <i>participatory, comprehensive</i> assessment, undertaken through the multi-stakeholder Forum, in which development needs and objectives are clearly formulated and evaluated in order to ensure the <i>best match</i> between <i>project options</i> and <i>development priorities</i> .	International Hydropower Association calls for “a statement of objectives, including clear targets and proposed indicators for success.” The UK government has consistently supported a move from project-based assessments of alternatives to a wider strategic assessment of upstream policy options ⁹⁷ . It has stated its willingness to “consider requests from Least Developed Countries to support options assessment processes” within the WCD framework. ⁹⁸
Environmental Assessment: EIAs and SEAs	While environmental assessment has become a universally accepted concept whose importance is generally recognized among international financial institutions, there is some variation in the process of assessment and response to the risks assessed. Negative outcomes are systematically underestimated, while mitigation measures are often developed with an optimism that contradicts historical experience.	The World Bank “favours preventative measures over mitigatory or compensatory measures <i>whenever feasible</i> .”	Explicitly grounds environmental assessment in the precautionary principle, where avoidance is prioritized over mitigation. Requires basin-wide impact assessment, including stakeholders directly affected by impoundment, as well as downstream.	IEA Hydropower Agreement: promotes life-cycle analysis, precautionary approach, strategic or sectoral assessment. International Hydropower Association states “projects that present significant threats to vulnerable social groups <i>should be avoided if the threats cannot be mitigated</i> .” ⁹⁹ The European Bank for Reconstruction and Development (whose standards are listed amongst the Common Approaches benchmarks) requires a <i>strategic environmental assessment</i> .

⁹⁵. International Energy Agency Implementing Hydropower Agreement for Hydropower Technologies and Programmes, *Hydropower and The Environment – Present Context and Guidelines*, Annexe III, Volume 2 Main report, p.119.

⁹⁴. International Commission on Large Dams, *Position Paper on Dams and Environment*, page 13

⁹⁵. International Energy Agency Implementing Hydropower Agreement for Hydropower Technologies and Programmes, *Hydropower and The Environment – Present Context and Guidelines*, Annexe III, Volume 2 Main report

⁹⁶. International Commission on Large Dams, *Position Paper on Dams and Environment*, page 13

⁹⁷. Secretary of State for International Development, *The UK Government’s Submission to the World Bank’s Extractive Industries Review*, September 2003: “Project level social and environmental impact assessments and management will be relatively limited in their influence and value if they are not framed by up-stream strategic assessment of policy options.”

⁹⁸. *World Commission on Dams – Towards a UK Position, Consultation Draft*, 12 July 2002.

⁹⁹. International Hydropower Association, *Sustainability Guidelines*, p. 8

	The Issue	WB	WCD	Other Institutions
Existing Dams	New dam projects often go forward without a strategic review of how existing dams could be restored or retrofitted to produce some of the same irrigation, power generation, and flood control benefits. Such a strategic review could avoid the impacts of developing "pristine" water ecosystems.	The World Bank has no policies concerning the strategic assessment of potential development benefits from the upgrading of existing dams.	WCD stresses the need for programmes to restore, improve, and optimize benefits from existing large dams. Funding for new dams should be conditional on full assessment of possible improvements to the efficiency of existing dams .	IEA Hydropower Agreement calls for prioritizing alternatives on already developed river basins. International Hydropower Association calls for prioritizing upgrading existing facilities.
Governance Assessment/ Ability to Implement Effectively	While economic viability has been mainstreamed and up-streamed in the project approval process, indicators of sustainability and adequate governance (both important for the project's long-term acceptance and success) are not properly integrated. While ECAs are correct in claiming pro-poor development effectiveness is not part of their mandate, there must be clear criteria for the "no project option".			Inter-American Development Bank Blue Ribbon Panel on the Environment: "Procedures should explicitly preclude investments where there is a high sustainability project risk and the client cannot demonstrate the commitment, capacity, and track record to adequately implement [the project]."

ANNEXE 2**PARTIAL LIST OF ECA-FUNDED DAM PROJECTS**

ARGENTINA YACYRETA	LESOTHO LESOTHO HIGHLANDS WATER PROJECT
BRAZIL ITAIPU	MALI MANANTALI
CHINA THREE GORGES ERTAN XIAOLANGDI	MALAYSIA PERGAU
CHILE PANGUE AND RALCO	NEPAL KHIMTI KHOLA
COLOMBIA URRÁ I	NIGERIA KAINJI
GUATEMALA CHIXOY, GUATEMALA	PAKISTAN TARBELA GHAZI BAROTHA
INDIA NATHPA JHAKRI TEHRI	THE PHILIPPINES SAN ROQUE
INDONESIA MRICA KEDUNG OMBO	TURKEY ATATURK BIRECIK ERMENEK KONAKTEPE
KASHMIR KISHEN GANGA URI	UGANDA BUJAGALI
KENYA THE TURKWELL GORGE , KENYA EWASO NGIRO, KENYA	VENEZUELA CARUACHI
LAOS HOUAY HO, LAOS THEUN HINBOUN, LAOS NAM THEUN 2, LAOS	VIETNAM SON LA

ANNEXE 3:**ECGD-FUNDED LARGE DAMS AND THEIR IMPACTS**

A complete list of ECGD-funded dams is not currently available.¹⁰⁰ The following are examples of the impacts of the major projects known to have been funded.

KAINJI, NIGERIA

ECAS INVOLVED: ECGD

COMPANIES INVOLVED: *Impregilo, Lahmeyer International, Voest-Alpine*

The Impregilo Group was involved in building the 760 MW Kainji dam on the Niger river. The project was funded by the World Bank, the UK Export Credit and Guarantee Department, the Netherlands government and the US Agency for International Development. Voest-Alpine MCE supplied turbines for the dam. Lahmeyer International won a contract to refurbish the dam.

The project forced 44,000 people off their land to make way for the reservoir. Hundreds of thousands more people were adversely affected as their grazing and agricultural lands are no longer irrigated by the river's annual flood.¹⁰¹ Completed in 1968, the project included a huge lock served by a 6 kilometre-long canal capable of holding four 5,000 tonne barges at a time. According to a 1994 report, no barge had ever used the lock in almost three decades since it was installed.¹⁰²

Heavy flooding in October 1998, resulted in 15 villages being swept away around the dam and along the river Niger.¹⁰³ The following year, at least 39 people were killed and thousands were left homeless after floodgates were opened to release rising floodwaters at the Kainji, Jebba and Shiroro dams. More than 210 villages were flooded or washed away.¹⁰⁴

THE TURKWELL GORGE HYDRO-ELECTRIC POWER STATION, KENYA¹⁰⁵

ECAS INVOLVED: ECGD

COMPANIES INVOLVED: *Knight Piesold*

In August 1986, the ECGD issued a guarantee of £17.5 million (\$28 million) to a British consulting company, Watermeyer Lesse Piesold and Uhlmann (WLP), subsequently renamed Knight Piesold (and now called Scott Wilson Piesold), to act as second consultant and assistant employer on the Turkwell Gorge Hydro-Electric Dam in Kenya. Despite evidence to the contrary, the ECGD denied supporting Turkwell in the UK Parliament until 2001 when it finally admitted publicly that it had backed the project. Turkwell has become a by-word in Kenya for corruption and mismanagement.

The Turkwell Gorge project was conceived in the 1960s. From the beginning, concerns were expressed that it would be problematic. The dam was to be built on a major earthquake fault, even though other more suitable and cheaper

¹⁰⁰. Corner House requested a complete list of ECGD-funded dams. However, the ECGD's electronic databases only hold information going back to 1st April 1991 and "it would take considerable time and recourse to try to dig out files before this date".

¹⁰¹. Ibid, p. 68. (Ibid refers to what?)

¹⁰². Ibid, p. 152.

¹⁰³. *Power Shift at the Dam: A looming national disaster*, Environmental Rights Action (Friends of the Earth Nigeria) Field Report no. 19, website: <http://lists.essential.org/shell-nigeria-action/msg00152.html> accessed 4 December 2001.

¹⁰⁴. Coulson, E. (1999), "Dozens die after missing Nigerian dam warnings", *Mail and Guardian*, Johannesburg, 30 September 1999.

¹⁰⁵. For further details and citations, see See Hawley, S., *Turning a Blind Eye: Corruption and the UK Export Credits Guarantee Department*, Corner House, June 2003, <http://www.thecornerhouse.org.uk/item.shtml?x=52007>, from which this case study is drawn.

sites had been identified. Initial feasibility studies raised questions about the reliability of the seasonal flow of the Turkwell river, possible siltage problems and potential detrimental environmental impacts downstream, particularly to forests that sustained local people. The Kenyan government repeatedly postponed carrying out a study funded by the Norwegian government's aid department, Norad, into the effects of the dam on the Turkana people living in the area.

In a March 1986 internal memo leaked to the *Financial Times*, the European Commission delegate to Kenya, Achim Kratz, stated that the dam was "extremely disadvantageous for Kenya. Allegations of bribery have been consistently raised in the Kenyan media. The World Bank, rival Scandinavian and British companies, and the British government itself raised further criticisms of the deal at the time.

The Turkwell Gorge Dam eventually cost \$450 million (£285 million) to build, three times the initial estimate and nearly twice the contract price. Soon after it was completed in October 1993, the critics' predictions started to come true. The dam was meant to produce 160 MW of electricity, but produced only 85 MW because of low water levels. By 1998, the river Turkwell's flow had fallen by 13%, and by 2000, the dam was producing 80 MW, with its reservoir nearly 50 metres below its full supply level.

Because of the corruption surrounding Turkwell, a 1991 Consultative Group meeting of donors to Kenya, including the World Bank and IMF, imposed a full aid embargo on Kenya. International donor aid to Kenya's energy sector was frozen until late 1996. The British government, however, did not participate in this aid embargo, and it was not until 1998 that the ECGD responded to corruption concerns by reducing its liabilities on other projects in Kenya.

Some 800 people were displaced by the Turkwell dam, compensation for whom was slow and inadequate. "Community projects" to lessen the impact of the project were poorly designed. A hospital and school were built too far from where people lived. As soon as the dam had been completed, the drugs in the hospital ran out. Untreated water from the dam was blamed for an outbreak of typhoid at the local hospital. During construction, school attendance dropped sharply as children took unskilled jobs on the site; prostitution became rampant; and 12 people died and 50 were injured as a result of working on the dam.

Longer-term damage to the environment and local people is only just coming to light. In early 2001, the United Nations Environmental Programme started a five-year study on the rehabilitation of rangelands in African arid zones. It stated that the main threat to indigenous species of plants – the main food sources for humans and livestock – was "the effect of the dam on the Turkwell River which has changed flood patterns and threatened fauna habitats."

Kenya, a drought-prone country, has been crippled by energy shortages since it became dependent on hydro-electric power. Two-thirds of its power comes from hydro-electric stations, which in 2000 were producing only one-quarter of their average production capacity

EWASO NGIRO HYDROPOWER SCHEME, KENYA¹⁰⁶

ECAS INVOLVED: ECGD

COMPANIES INVOLVED: Knight Piesold

In June 1990, the ECGD backed 85% of Knight Piesold's involvement in another hydro-electric project in Kenya, the Ewaso Ngiro Hydropower Scheme, with an export credit of £37 million (\$59 million). Knight Piesold conducted feasibility studies and environmental impact assessments for the scheme that proposed to build three dams for \$350 million (£220 million) in total by the year 2007.

In 1992, a World Bank study team criticised the £38.1 million (\$60 million) contract awarded by the Kenyan government to Knight Piesold as being "five times what such services would normally cost." ECGD supported the project despite the furore over the Turkwell Gorge Dam (*see above*) and the imminent aid embargo on Kenya and despite the murder five months earlier of the Kenyan foreign minister, Robert Ouko, who had been looking into allegations of corruption against senior government ministers.

¹⁰⁶. For further details, see Hawley, S., *Turning a Blind Eye: Corruption and the UK Export Credits Guarantee Department*, Corner House, June 2003, <http://www.thecornerhouse.org.uk/item.shtml?x=52007>, from which this case study is drawn.

Knight Piesold's partners in the Ewaso Ngiro Hydropower Scheme were the Kenya Power Company (KPC) and the Ewaso Ngiro South Development Authority. Both bodies have since been criticised by the Kenyan Auditor-General for Corporations for failing to keep adequate accounts and to prepare proper budgets.

Among the concerns raised by the Maasai Environmental Resource Coalition (MERC) about the hydroelectric scheme are that the local Maasai population would lose land and that compensation will not adequately address or reflect the current communal ownership of land. MERC has also criticised the project for not holding meaningful consultations with local Maasai communities and for failing to disclose information about the project to these communities.

The project would divert water away from the Masarua Swamp, a key water resource in Tanzania's famous Serengeti National Park, and would increase water flow into Lake Natron, also in Tanzania. The increase of water into Lake Natron might flood the principal breeding and nesting grounds of the lesser flamingo.

In March 2000, the Kenya Power and Lighting Company (the successor to the Kenya Power Company) downgraded the project's priority in its annual Least Cost Expansion Plan. According to the World Bank in Nairobi, the scheme "may reappear in the future, there is no guarantee that it won't."

The ECGD has paid out claims of £8.12 million (\$13 million) with regard to Ewaso Ngiro.

PERGAU, MALAYSIA¹⁰⁷

ECAs INVOLVED: ECGD

COMPANIES INVOLVED: Balfour Beatty

The Pergau dam, built on the Malaysian-Thai border, has become a byword for patronage politics and the illegal use of UK aid money. The ECGD backed the project with three guarantees, issued in 1991 and 1992 for a total of £600 million. The contracts for the dam were awarded jointly to Balfour Beatty — a company with close links to the then governing British Conservative Party — and Cementation International, a company which employed Prime Minister Margaret Thatcher's son as an advisor.¹³ ??

Britain's aid agency, the Overseas Development Administration (ODA), opposed the funding of Pergau. However, Thatcher made an oral offer to fund the dam during a visit to Malaysia in 1989, conditional on a full economic appraisal. In 1990, an ODA review of Malaysia's power sector identified a number of alternative projects and concluded that Pergau would not be an economic proposition until the year 2005 at the earliest.¹⁵ ?? Nonetheless, the government agreed to fund the project in February 1991.

Documentary evidence subsequently revealed that the aid package was linked in writing to a reciprocal arms deal whereby the Malaysian government agreed to buy over £1,000 million worth of British military equipment in return for the UK funding Pergau. A judicial review brought by a British NGO, the World Development Movement, against the Foreign Office led to a High Court ruling that aid for Pergau was in violation of the 1966 Overseas Aid Act, which forbids British aid money being used for the purchase of arms. Conservative ministers in parliament had consistently denied the link between aid for the dam and arms.

¹⁰⁷ There would appear to be a need for a footnote here

LESOTHO HIGHLANDS WATER PROJECT¹⁰⁸**ECAS INVOLVED:** Coface (France), Hermes (Germany), SACE (Italy), ECGD (Britain)**COMPANIES INVOLVED:** *Coyne et Bellier, Acres International, Balfour Beatty, Impregilo, Spie Batignoles, Sogreah, Sir Alexander Gibb, Kier International, Sterling, Kvaerner Boving Ltd, Hochtief, Bouygues, Group 5, Concor, Lahmeyer.*

The Lesotho Highlands Water Project is the biggest water scheme of its kind in the world. The £5.5 billion (\$8.7 billion) project, which is due to be completed in 2020, is designed to divert water from the mountains of Lesotho through a series of dams and tunnels to South Africa's industrial province of Gauteng. ECGD involvement in the project was through four guarantees dating from 1993 through to 1997 for the Muela dam.

Some 27,000 people have lost their farms or access to grazing pastures as a result of the first two dams (Katse and Muela) to be built (five or six are envisaged in all). About 2,000 people have been resettled. Many of these people believe that they have not received fair compensation, and mass demonstrations against the project have taken place. At one demonstration in 1996, prompted by the sacking of 2,300 workers for striking, five people were killed and 30 injured.

Suspicious of bribery first surfaced in 1994. In 2002, Masupha Sole, the former chief executive of the Lesotho Highlands Development Authority, was found guilty of receiving nearly £3 million (\$5 million) worth of bribes over the course of a decade from companies involved in constructing the project.

The Judge found that one of the consortiums involved, the Lesotho Highlands Project Consortium (LHPC), in which British company Balfour Beatty had a 16% share, had made payments totalling £33,904.96 (\$50,870.59) to Masupha Sole. The charges laid before the court also showed that a subsequent joint venture involving four companies from the Lesotho Highlands Project Consortium and called the Muela Hydropower Project Contractors (MHPC) won two contracts in 1994 in contentious circumstances. The ECGD says that it is monitoring developments in the Lesotho court cases and that it has "sought and received assurances from [the companies involved] that they had no involvement in any unlawful conduct and [that it has] been provided with no information to suggest that they were involved in corruption." This does not suggest that the ECGD has instigated a thorough investigation of the corruption charges. Moreover, the ECGD seems to have made no effort to contact the prosecuting authorities in Lesotho to find out details of the charges.

It is clear that the ECGD was negligent with regards to irregularities both in the Lesotho Highlands Development Authority (LHDA) and in the tender processes on the Muela dam. The ECGD was alerted to irregularities at the LHDA in 1994 and should have been aware of concerns raised by the African Development Bank and the European Commission also in 1994 about tender processes on the Muela dam. But the ECGD continued to back British companies on the project after this date.

NATHPA JHAKRI, INDIA**ECAS INVOLVED:** ECGD, Eksportfinans (Norway)**COMPANIES INVOLVED:** Electrowatt Engineering, ABB, Sulzer Hydro (now part of VA TECH) Siemens and Kvaerner (now GE), Siemens

In 1996/97, the ECGD provided £22.8 million in loans to back Kvaerner Boving Ltd involvement in the 1500 Megawatt run-of-the-river Nathpa Jhakri dam on the Satluj river in northern India.¹⁰⁹ The dam was co-funded by the World Bank (\$437 million), India's Domestic Power Finance Corporation (\$239 million) and Germany's KfW (\$70

¹⁰⁸. For further details, see Hawley, S., *Turning a Blind Eye: Corruption and the UK Export Credits Guarantee Department*, Corner House, June 2003, <http://www.thecornerhouse.org.uk/item.shtml?x=52007>, from which this case study is drawn.

¹⁰⁹. "Nathpa Jhakri Power Project, India", Power Technology, www.power-technology.com/projects/nathpa/, accessed 3 October 2002.

million),¹¹⁰ with further loans of some \$175 million from a number of European banks and financial institutions. Norway's Eksportfinans also supplied export credits.¹¹¹

It took 13 years for the project to gain approval: nonetheless, it was not until after the clearances had been given that it was discovered that the level of the bottom of the dam wall was two metres below the figure given in the design for the dam. In addition, it was found that the local State Electricity Board had also miscalculated the height of the dam by two metres. As a result, the dam will be only be able to generate its peak output continuously for about half the time anticipated, thereby failing to meet peak demand in the region. Heavy rain and floods in 2000 caused further delays to the project¹¹² and, in 2001, work on the project was reportedly stopped again by the courts due to serious and continuous violations of both the Forest Conservation Act and the Environment Act.¹¹³

Resettlement of those impacted by the dam has also been dogged by problems. Initially, the World Bank estimated the number of affected families at 73: the actual figure for 480. Many of the affected families were evicted from their homes without being offered resettlement or rehabilitation.¹¹⁴

In 2002, following major delays in the project and concerns over its impacts, the World Bank withdrew from the project. According to the ECGD, "Repayment of the ECGD backed loan was an obligation of the Indian Government and, following the withdrawal of the World Bank from the project, the Indian Government decided - at an early stage - to fully repay the partially drawn loan. Full repayment was duly received by the UK lending bank and ECGD has had no further involvement in the project since."

The dam was inaugurated in July 2005.¹¹⁵

¹¹⁰. "Nathpa Jhakri project delayed by another two years . . .", *International Water Power & Dam Construction*, March 2001.

¹¹¹. Bosshard, P. (2002), *Power Finance: Financial Institutions in India's Hydro Power Sector*, South Asia Network on Dams Rivers and People, Urgewald, International Rivers Network, p.101.

¹¹². "Nathpa Jhakri project delayed by another two years . . .", *International Water Power & Dam Construction*, March 2001.

¹¹³. Singh, P. (2002), "Work on Nathpa-Jhakri project stops", Tribune News Service, 16 December.

¹¹⁴. Schneider, A. K, *The World Bank's legacy of funding hydropower projects in India: Nathpa Jhakri*, www.irm.org/programs/india/index.php?id=NathpaJhakriReport.html

¹¹⁵. Alstom, Hydro News, <http://ems6.net/a/?E=XTC-GNX-DL8VM-DD-DQ2NU>