

Chapter 7:

Enhancing Human Development: Rights, Risks and Negotiated Outcomes



T*o improve development outcomes in the future we need to look at proposed water and energy development projects in a much wider setting – a setting that reflects full knowledge and understanding of the benefits and impacts of large dam projects and alternative options for all parties. It means that we have to bring new voices, perspectives and criteria into decision-making, and we need to develop a new approach that will build consensus around the decisions reached. This will result in fundamental changes in the way decisions are made.*

The debate about dams is a debate about the very meaning, purpose and pathway of development as well as the role that the state plays.

This chapter proposes a new basis for assessing options and reaching decisions on water and energy resources development. It links our review of past experience contained in the Global Review chapters with the WCD's framework for future practice elaborated in chapters 8 and 9. In developing this framework the Commission found that applying the lessons learnt does not merely imply a change in process and procedure. The fault lines of the dams debate run far deeper and touch upon many of the fundamental norms and values that affect our lives as citizens and communities.

In moving forward the Commission recognises that the dams debate is rooted in the wider, ongoing debate on development. The emerging global vision of equitable and sustainable development provides the foundation for the Commission's findings and recommendations. This foundation relates to:

- the framework of internationally accepted norms on human rights, the right to development, and sustainability
- global trends and the emerging development paradigm; and
- a rights based approach where recognition of rights and assessment of risks provides the basis for negotiated decisions on dams and their alternatives.

From Global Review to Future Practice

Along with all development choices, decisions on dams must respond to a wide range of needs, expectations, objectives and constraints. As matters of public choice and policy they will always reflect competing

interests and require negotiation. Reconciling competing needs and entitlements is the single most important factor in addressing the conflicts associated with development projects and programmes – particularly large-scale interventions such as dams.

Access to water provides a graphic illustration of such competing needs and development objectives and the reason why equity and justice considerations emerge as key issues. Riparian communities with long-standing use rights and economies that depend on local resources have an immediate interest in maintaining current use patterns and assuring fulfilment of their future needs. However, in the context of national policies, meeting development needs may require sharing water resources. To balance these needs societies will have to negotiate a framework for equitably sharing the resource. History shows that this can be done successfully provided a transparent and legitimate process is followed.

Dams have often been seen as an effective way of meeting water and energy needs. However, the Global Review has emphasised the wide range of problems associated with them. The Commission acknowledges that today's perspective on development reflects the benefit of knowledge that may not have been available to past decision-makers. Nonetheless, it is clear that the positive contribution of large dams to development has, in many cases, been marred by significant social and environmental impacts which are unacceptable when viewed from today's values.

The debate about dams is a debate about the very meaning, purpose and pathway of development as well as the role that the State plays in both protecting the rights of

its citizens and responding to their needs through development policies and projects. The WCD Global Review showed clearly that large-scale infrastructure projects such as dams can have devastating impacts on the lives and livelihoods of affected communities and ecosystems, particularly in the absence of adequate assessments and provisions being agreed to address these impacts. During its regional consultations and through the WCD Case Studies the Commission was confronted with accounts by communities and individuals on the nature and extent of these impacts. These accounts give rise to fundamental concerns about the way governments and their agencies have exercised their role and responsibilities in the development process.¹

Improving the development process and its outcomes must start with a clear understanding of the shared values, objectives and goals of development and their implications for institutional change. The Commission grouped the core values informing its understanding on these issues under five main headings:

- Equity
- Efficiency
- Participatory decision-making
- Sustainability
- Accountability

These five values run through the entire report and are the focus of concerns raised by the evidence presented in the Global Review. Applying these values to the evidence it has collected, the Commission believes that negotiated outcomes using a rights-and-risks approach will deliver the most favourable development results. Reference to these values enables all stakeholders to test decisions relating to water and energy development. If the report

advances these values significantly, we will emerge at our destination – improved decision-making processes that deliver improved outcomes for all stakeholders.

In the following sections the Commission presents a new policy framework for decision-making on water and energy development options that can be applied in national and local contexts. To improve development outcomes, ensure public acceptance and reduce future controversy, this new basis for judgement needs to win the support of the full range of key stakeholders. It suggests that decision-making on water and energy management will align itself with the emerging global trends on equitable and sustainable development.

Sustainable Human Development – A Global Framework

What are these trends, and how firm is their direction and force? What do they imply for decision-making? What do they say about the rights that societies, communities and individuals within societies, are entitled to and the responsibilities that accompany these rights?

There is a globally accepted framework for setting universal goals, norms and standards. The foundations of the framework are the United Nations Charter (1945) and the

Box 7.1 Shared values and institutional practices – the UN Millennium Report

“The economic sphere cannot be separated from the more complex fabric of social and political life and sent shooting off on its own trajectory. To survive and thrive, a global economy must have a more solid foundation in shared values and institutional practices– it must advance broader and more inclusive, social purposes.”

Source: Annan, 2000

Universal Declaration of Human Rights (1947) (see Annex VI for full texts).²

In the last two decades of the 20th century the United Nations General Assembly reinforced this framework with the UN

Declaration on the Right to Development (1986) and the Rio Declaration on Environment and Development (1992) (see Annex VI for full texts). Taken with the earlier covenants and conventions on human rights, they cover a broad spectrum ranging from human rights,

through social development and environment, to economic co-operation.

A rights based approach provides a principled basis for mediating development choices among competing interests.

Human rights

Reference to the framework of human rights adopted by the international community in 1948 advances the process of planning and decision-making in important ways. It articulates such rights as self determination and the right to consultation in matters that affect people's lives, the right to democratic representation of people's views on such matters, the right to remedy and the right to an adequate standard of living, freedom from arbitrary deprivation of property, freedom from violence, freedom of thought, conscience and religion and freedom of opinion and expression. More generally it includes the right to a social and international order in which these rights can be fully realised.

All people are accorded human rights without discrimination by virtue of their humanity. Reference to the human rights framework means those policies that deny the rights of some to fulfil those of others cannot be adopted. Thus any policy or law adopted must contain the intention to respect the rights and entitlements of all.

The application of a rights based approach recognises the indivisibility of civil, political, economic, cultural and social rights. It broadens the range of basic human rights beyond the socio-economic sphere of needs to include rights to life, health care, education, shelter, food, water, remedy, security, subsistence and livelihood.

Unlike needs, which are expressed as aspirations for benefits, rights and entitlements are expressed in law, allowing for their attainment or redress through the justice system. A country may use its legislative process to ensure that appropriate rights-based policies are given legal expression and to establish institutional mechanisms to uphold rights. The legal system also provides a means for resolving potential conflicts in cases where rights give rise to competing entitlements. A rights based approach thus provides a principled basis for mediating development choices among competing interests.

The right to development

In 1986 the UN General Assembly adopted the Declaration on the Right to Development (DRD).³ It marked a significant step by the international community in developing a normative framework that specifies responsibilities in applying a human rights approach to development. It moved beyond the sphere of individual human rights to address relationships between different interest groups in society and their interaction with the state.

The Declaration on the Right to Development sets out a number of relevant concepts:

- Development is a comprehensive process aiming at the constant improvement of the well-being of the entire population;

it affects economic, civic, social, cultural and political rights.

- The promotion of, respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms.
- The creation of conditions favourable to the development of peoples and individuals is the primary responsibility of their States.
- National development policies aiming at the constant improvement of the well-being of the entire population and of all individuals should be formulated on the basis of their active, free and meaningful participation and fair distribution of benefits resulting therefrom.
- The right of peoples to exercise full and complete sovereignty over all their natural wealth and resources.
- The right to self determination.
- Equal opportunity for access to food and housing.

The DRD sought to clarify the role of the State in exercising its rights, responsibilities, duties and obligations in planning and implementing national development policies and programmes. It reflects the recognition that every society acts as an organised polity in which the State is accorded powers and responsibilities. At the same time States are subject to conditions that can be summarised under the heading of good governance criteria, such as those in the Declaration on Human Rights including the rule of law, accountable bureaucracies and freedom of information. The legitimacy of the State in exercising its role is premised on the assumption that it acts in accordance with these criteria. Without good governance, the legitimacy of the State and ultimately its ability to take decisions are compromised.

State authority may also be limited through adherence to the framework of international conventions that, in certain circumstances, supersedes strict sovereignty.

Sustainable Development – the Rio Principles

The Declaration of the United Nations Conference on the Human Environment (Stockholm, 1972) for the first time accepted that the environment was fundamental to human well-being, and that its management and care in the interest of advancing wider human goals was a central task of States and the international community. Articulation and codification of environmental rights took somewhat longer. The United Nations Conference on Environment and Development adopted the Rio Declaration on Environment and Development in June 1992. The Declaration contains 27 principles, usually known as the Rio Principles⁴. Several of these are of immediate relevance to water and energy resources management.

- Principle 1 states that ‘Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature’.
- Principle 3 recognises the right to development, but insists that it be met in an equitable way that considers future generations as well as present participants in development.
- Principle 4 insists that sustainable development requires environment to be integrated with the development process and form a central feature of the aims of that process. Environment, on its own, is an insufficient goal.



- Principle 10 underlines that all concerned citizens must be involved in handling environmental issues, and must participate in the decision-making process. This participation must be accompanied by effective access to relevant information and by opportunities to seek redress and remedy in case agreements are not respected.
- Principle 13 states that States shall ensure compensation for victims of environmental damage and give priority to the further development of law regarding liability in such cases.
- Principle 15 states that the precautionary approach shall be widely applied by

States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

- Finally, Principle 22 recognises the vital role of indigenous people and other local communities in environmental management and development, and entrusts states with ensuring their effective participation in the achievement of sustainable development.

The Rio principles in conjunction with Agenda 21 thus highlighted not only the linkages between environment and development but also the importance of local communities having a significant role in shaping national development strategies.

The Global Review provided extensive evidence to illustrate that governments, in constructing dams, have often found themselves in conflict with basic principles of good governance that have been articulated in the three international instruments referred to above. This situation still prevails today. The level of conflict surrounding large dams, yesterday and today, is sufficient to illustrate that dams frequently trigger disagreements about the respective rights of governments and their citizens.

The UN Declaration of Human Rights, the Right to Development and the Rio Principles together make up an internationally accepted framework of norms empowering a concept of development that is economically viable, socially equitable, and environmentally sustainable. It is a powerful framework with a central bearing on the dams debate. Figure 7.1 illustrates how the Commission draws on these internationally accepted norms in the remainder of this

Figure 7.1 The WCD policy framework



report to develop a new policy framework and corresponding guidance for water and energy resources development.

Trends and Challenges in Applying the New Development Framework

When invoking this emerging universal normative framework, one must not overstate its completeness, its complete acceptance, or the ease of applying its provisions in practice. Nevertheless, recent trends in global public policy suggest that increasing attention is being paid to the gap between aspiration and realisation. It is significant that the focus of the United Nations Development Programme's (UNDP) Human Development Report 2000 is on human rights and human development (see Box 7.2). The framework also strengthens the notion, now gaining currency in a variety of arenas, that there is a body of common concerns based on a range of international conventions and accords that transcend national sovereignty.

The adoption of a rights based approach does not on its own resolve the practical challenge of meeting human needs. During its regional consultations the Commission listened to a wide range of views and reasoning on this matter. Meeting rapidly growing needs for water and energy – particularly in the developing economies of the South – imposes difficult choices on governments. Failure to respond to these needs carries significant economic and political risks. Food security, blackouts, empty water taps and floods are among the most immediate and sensitive public service issues for which society holds government accountable. In the past, large-scale dam projects seemed to offer both apparently straightforward and highly visible options for responding to these pressures.

At the same time, the decision criteria used by governments do not always match those of organised groups of citizens. Governments are too often inclined to invoke urgent development needs as a reason for restricting rights, while civil society groups believe that full respect for rights and the search for alternatives represents the surest way of promoting equity and justice in development.

For many parts of the developing world, access to capital, technology and development opportunities determines the extent to which local and national economies are able to develop. Similarly the political economy of power, vested interests and access to resources that characterise each society have a large influence on its commitment to equitable and sustainable development.

This is not to suggest that the problems reside in the poorer countries. Pressure for water and energy development – in both

Box 7.2 Human rights and human development

The UNDP Human Development Report 2000 focuses on human rights as the fundamental framework within which human development must be pursued. It contends that societies are on the threshold of a significant advance in the recognition of, and respect for, human rights. But this will require six fundamental shifts from the thinking that dominated the 20th century:

- From state-centred approaches to pluralist, multi-actor approaches – with accountability not only for the State but also for media, corporations, schools, families, communities and individuals.
- From national to international and global accountabilities – and from the international obligations of States to the responsibilities of global actors.
- From the focus on civil and political rights to a broader concern with all rights – giving as much attention to economic, social and cultural rights.
- From a punitive to a positive ethos in international pressure and assistance – from reliance on naming and shaming to positive support.
- From a focus on multiparty elections to the participation of all through inclusive models of democracy.
- From poverty eradication as a development goal to poverty eradication as social justice, fulfilling the rights and accountabilities of all actors.

Source: UNDP, 2000

North and South – is not only caused by the imperative of meeting basic human needs, but is also driven by wasteful consumption in the richer countries or among the well-off in the poorer countries⁵.

Whatever judgement is made, it is a reality that governments face very real dilemmas in trying simultaneously to satisfy urgent needs and advance the realisation of fundamental rights, even if the goal of fulfilling all people's needs and entitlements is not questioned. Notwithstanding this, the

Governments face very real dilemmas in trying simultaneously to satisfy urgent needs and advance the realisation of fundamental rights, even if the goal of fulfilling all people's needs and entitlements is not questioned.

Commission believes that fulfilling development needs requires respect for fundamental rights, and not a trade off between them. We believe that an equitable and sustainable approach to development requires that a decision to build a dam or any other options must not, at the outset, sacrifice the rights of any citizen or group of affected people.

In developing its framework and recommendations the Commission has sought to draw on the broader trends and developments that reflect the changing context and international development discourse. Not all countries will recognise themselves in these statements and the trends are far more advanced in some areas than in others. Nevertheless, the Commission believes that the trends described below are not limited to any one region or group of countries, but have broad relevance. From the perspective of this shared experience we draw attention to the following elements of the evolving development paradigm:

- The world appears set to move beyond the growth paradigm, which judged progress largely in narrow economic terms, putting a strong premium on

activities that offered a clear economic return. This does not mean that economic viability is no longer seen as important. If anything it has greater weight along with a greater sanction on poor economic performance at company or country level. But we are giving greater value to non-monetary or non-monetised aspects of development such as the need to conserve biological diversity, protect cultural values, or consider the needs of future generations.

- We are moving from assessing public interest in general terms to a focus on improving equity in the spread of costs and benefits from development. The growing disparity between rich and poor within and across many nations has fuelled doubts about traditional development paths.⁶ The emerging consensus on the need for greater transparency and participation in development decision-making is likely to speed up this transition considerably. The focus on equity extends to recognising intergenerational equity as an important factor in dealing with resource access and use.
- An increasingly robust foundation of international covenants, charters, declarations and conventions supports the sharpening focus on equity and confirms the growing importance of equity considerations in development. In particular, a body of international instruments relating to human rights is emerging, together with institutions to oversee their further development and application. This will strengthen arguments in favour of greater transparency, participation in decision-making and accountability for compliance. Pressure from the human rights community has had an impact on governments and more recently on corporations.

- The definition of public interest is shifting from one that placed a premium on overriding interests of economic growth to one that places more weight on the rights and interests of people and communities affected by a development. The level of sacrifice that affected people are expected to endure for an often ill-defined notion of the greater public good has been increasingly challenged. Similarly, the recognition that affected communities, through their sacrifices, are in fact contributors to development projects implies a shift in focus from compensatory approaches to establishing equitable benefit sharing mechanisms.
- We have also witnessed a shift from technology-driven development choices towards a more integrated approach to managing scarce resources with technology being but one factor among others in managing demand and supply of services more effectively. Furthermore, the recognition that traditional practises and technologies can achieve great levels of efficiency in meeting local needs coupled with the advent of new technology options has increasingly challenged the notion that large and centralised systems are always the most effective and efficient way of meeting demands for water and energy.
- The emerging paradigm provides a new basis for governance and democratic decision-making. This stems from a substantial redistribution of roles and responsibilities in the public and private sectors and civil society. Many parts of the world have seen a considerable migration of national government authority, in three directions: upward to regional superstructures or international bodies, downward to provincial and local government; and outward to the private

sector and civil society. This is not to say that the role of governments has become less important; but it has changed and continues to change, with implications for the way decisions are taken and implemented.

- The private sector has, by contrast, considerably expanded its role, undertaking functions that were until recently the exclusive remit of government. Apprehensions about this trend are sharp in some parts of the world and reflect growing concern about the diminishing power of citizens to control corporate activity through local and national institutions. Pressure is therefore growing on corporations to become more accountable to widely supported standards of social and environmental behaviour. Such pressure is likely to mean that corporations will face steadily rising costs and risks if they fail to comply with existing rules, regulations and standards.
- The role of civil society organisations has also expanded and their legitimacy in representing and defending interests, in participating as full actors in decision-making on development and in monitoring compliance is increasingly accepted. Civil society organisations are playing an increasingly important role in influencing public opinion and mobilising it against infringement or non-compliance with new and emerging standards of behaviour, especially on the social and environmental front.

This changing context implies a broadening range of concerns that have a legitimate right to be considered and, therefore, of





actors involved in reaching key development decisions. It will be increasingly difficult to take decisions on the narrow basis of the needs of infrastructure development. Instead, such projects need to be considered as part of the broader process of economic, social and environmental transformation.

Rights and Risks – an Improved Tool for Decision-Making

Both the findings of the WCD Global Review and the implications of the normative framework summarised in this chapter demonstrate that the traditional ‘balance sheet’ approach of assessing costs and benefits of a project is an inadequate tool for effective development planning and decision-making. The case of dams clearly illustrates that development choices made on the basis of such trade-offs neither capture the complexity of considerations involved, nor can they adequately reflect the values societies attach to different options in the broader context of sustainable development.

Given the significance of rights-related issues as well as the nature and magnitude of potential risks for all parties concerned, the Commission proposes that an approach based on ‘recognition of rights’ and ‘assessment of risks’ (particularly rights at risk) be developed as a tool for guiding future planning and decision making (see Figure 7.2). This will also provide a more effective framework for integrating the economic, social and environmental dimensions for options assessment and the planning and project cycles.

Rights ...

The Global Review highlighted the need for a more practical and specific approach to addressing the five values of equity, efficiency, participatory decision-making, sustainability and accountability. These values form the foundation of a rights-based approach to equitable decision-making about water and energy resources management.

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.

This approach highlights the range and complexity of relevant rights and responsibilities and the reality that rights intersect and overlap. Mechanisms for conflict resolution, adjudication and independent arbitration must begin with the assessment of these rights, entitlements and claims. This approach assumes that at the assessment stage, all claims are subject to a fair, open and transparent review. It is based on an understanding that no party’s rights will extinguish another’s. In fact, where rights compete or conflict, negotiations conducted in good faith, offer the only process through which various interests can be legitimately reconciled. This suggests an approach to

water and energy policy that provides for negotiated processes within a legal and procedural framework, including arbitration, recourse and appeal mechanisms to ensure equitable adjudication in cases where negotiated settlements are not achievable or are contested.

Clarifying the rights context for a proposed project is an essential step in identifying those legitimate claims and entitlements that might be affected by the proposed project – or indeed its alternatives. It is also the basis for effective identification of stakeholder groups that are entitled to a formal role in the consultative process, and eventually in negotiating project-specific agreements relating, for example, to benefit sharing, resettlement or compensation.

...and Risks

The notion of risk adds an important dimension to understanding how, and to what extent, a project may impact on such rights. Traditional practice is to restrict the definition of risk to the risk of the developer or corporate investor in terms of capital invested and expected returns. These voluntary risk takers have the capacity to define the level and type of risk they wish to take and explicitly to define its boundaries and acceptability. By contrast, as the Global Review has shown, a far larger group often have risks imposed on them involuntarily and managed by others. Typically, they have no say in overall water and energy policy, the choice of specific projects or in their design and implementation. The risks they face directly affect individual well-being, livelihoods, quality of life, even their spiritual world view and very survival.

This has often led to conflict because it ignores the principle that those with a

legitimate stake in a decision are best placed to assess the risks they are prepared to take to achieve a benefit. Such conflicts are exacerbated by the absence of an agreed

Box 7.3 Voluntary risk takers and involuntary risk bearers

Public and private developers of large dam projects have long understood that the sector involves managing risks of a technical, financial and even political nature. Decision-makers have not always acknowledged the differences between 'taking risk' and 'imposing risk' and between voluntary risk takers and involuntary risk bearers. The private sector regards dams as high-risk projects. As 'voluntary risk takers', private companies manage their increased exposure to risk by requiring higher financial rates of return. Their risk management procedures are relatively highly developed, using contractual agreements and sophisticated third party recourse and arbitration mechanisms.

Governments and regulators plan and manage the provision of services to the nation, and therefore also take risks. They must weigh the risks inherent in undertaking dam projects against the risks of not undertaking them. There are risks attached to other options, and to the 'do nothing' option, given growing demand for power or food, and societies are constantly balancing these different risks and opportunities.

There are those, however, on whom risk is imposed. The 'involuntary risk bearers' who are forced to bear risks include people to be displaced by the project. These people may face years of uncertainty and direct risks to livelihood even before the project is approved and before resettlement or land purchase. They may be unable to obtain finance for investments in farm infrastructure or equipment, and local government may not maintain or develop services for communities on the verge of displacement. The risks to displaced communities are compounded in cases where they have no say in the decisions but are obliged to bear the consequences. In these circumstances they often depend entirely on the capacity of government or the developer to manage the resettlement or compensation process on their behalf.

Indigenous peoples face specific cultural, social and livelihood risks. Evidence collected by the Commission illustrates that they often bear disproportionate risks associated with projects, as they were not included in decision-making processes concerning resettlement, let alone the earlier processes of assessing needs and selecting options. Downstream communities that depend on existing river flows to maintain their resource base are also often not given any say in deciding the nature of projects. Yet they face the risk of losing access to resources, or having their capacity to maintain a sustainable livelihood undermined. Often these communities do not have access to information on the nature of the risks that they face until the project is approved or completed.⁷

The case of future generations and the ecosystem is somewhat different. These 'risk bearers' cannot speak for themselves, even if the risks they face are acknowledged. Future risks can be linked to present risks. The loss of natural resources can undermine livelihood opportunities for both current and future generations. Similarly, the loss of biodiversity in the present means that it is either not available or diminished for future generations. The lower priority generally accorded to these types of risks is compounded by the absence of tangible safeguards, or the failure to implement and enforce those that do exist. In such cases, as with other involuntary risk bearers, adopting a precautionary approach is particularly relevant in order to avoid impacts. It is also essential to identify appropriate inputs by interested parties to the options assessment process and to the planning and project cycles.

The precautionary approach articulated in the Rio principles forms part of a structured approach to the analysis of risk, and is also relevant to risk management. Decision-makers faced with scientific uncertainty and public concerns have a duty to provide answers where risks and irreversibility are considered unacceptable by society.

approach and process for assessing and negotiating acceptable project outcomes – outcomes that include rejecting a dam in favour of a more acceptable alternative. Where unequal power relationships prevail and no process for good-faith adjudication among competing interests exists, the result is often protracted conflict, escalation and, eventually, ‘win-lose’ outcomes in which less privileged groups are further disadvantaged. This all-too-common reality points to a serious failure of the options assessment and planning process to protect and further basic human and development rights.

Dealing with risks cannot be reduced to consulting actuarial tables or applying a mathematical formula. In the end, as in the case of rights and entitlements, they must be identified, articulated and addressed explicitly. This will require the acknowledgement of risk to be extended to a wider group than governments or developers in order to include both those affected by a project and the environment as a public good (see Box

7.3). Most important, 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 a more equitable basis. To that end, a framework is required that permits a transparent, balanced and participatory process of decision-making relating to key stages in the planning process. In chapters 8 and 9 we develop the practical application of this approach in greater detail to illustrate how this can be achieved at the different stages of assessment, planning and implementation.

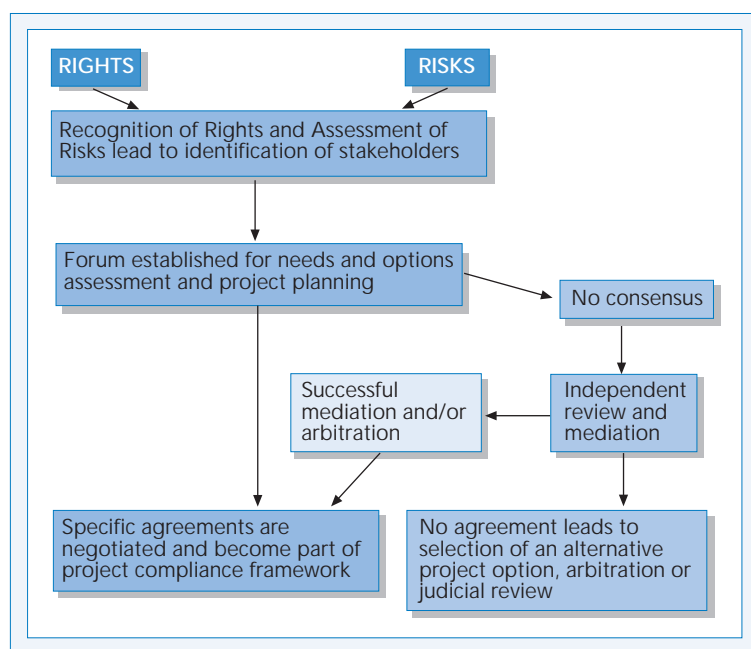
It must, however, be stressed that not all countries possess the full range of legal and institutional structures, nor sometimes the human and financial resources, to implement such a participatory approach to decision-making effectively. It becomes, therefore, a high priority to assist those countries and communities to put the necessary structures in place and to develop the necessary capacity.

Negotiating Agreements on the Basis of Rights and Risks

In its Global Review the Commission encountered considerable experience and good practice in implementing a rights-based approach, with examples from many countries. It is also clear, however, that the approach requires a legal and procedural framework that provides for a free and informed negotiation process. This framework must provide for arbitration, recourse and appeal mechanisms to ensure equitable adjudication in cases where negotiated settlements are not achievable.

While it is easy to point to negotiated solutions as the answer to sound decision-making or to avoiding dam related conflict,

Fig 7.2 From rights and risks to negotiated agreements: a framework for options assessment and project planning



a range of difficult challenges remains to be faced. Structuring a negotiation process that will lead to an optimal and widely supported decision on an option for water and energy development involves answering three questions:

- Who should participate in the decision-making process?
- What decision-making processes should be followed?
- What criteria can be applied to assess the process and its outcomes?

Who should participate?

The rights-and-risks approach is both an entry point to the options assessment process and a basis for the subsequent development of specific project options. The recognition of rights and the assessment of risk identify the interested and affected parties who possess rights or entitlements as well as risk takers and bearers. This opens the way for a negotiated approach that enables the decision-making process to assess options and reach project agreements. Those whose rights are most affected, or whose entitlements are most threatened, have the greatest stake in the decisions that are taken. The same applies to risk: those groups facing the greatest risk from the development have the greatest stake in the decisions and, therefore, must have a corresponding place at the negotiating table.

What type of process?

This chapter has suggested that global trends are increasingly leading us to decision-making based on transparent processes, full access for affected parties to relevant information, identification and empowerment of key stakeholders, and their adequate participation in the decision-making process. At the same time, the Commission

recognises there is no universal formula. The most appropriate decision-making process will depend to an extent on the type of development under review, the political and cultural setting of the development, and other constraints relating to the urgency of the need and the likelihood of negative impacts.

On the other hand a process that is too complex can needlessly delay decisions and deprive potential beneficiaries of the fruits of any of the development alternatives under consideration. The goal must be a process that gives all key stakeholders a voice and a full opportunity to participate in decision-making, seeks the broadest reasonable consensus, and is transparent in the criteria used for reaching a decision. Such a process is likely to ensure the demonstrable public acceptance that projects require if they are to achieve development. However, no process will work unless all of the parties enter the negotiation in good faith. Without this there is the danger that any attempt to make the process more inclusive will end up being a recipe for stalemate, putting the achievement of needed benefits at risk.

Negotiated outcomes do not replace government decision-making: on the contrary, they rest on the State actively fulfilling its role as planner and enabler of development choices, as well as its responsibility to provide services and safeguard entitlements. When

Box 7.4 Good governance and the UN Millennium Report

“Good governance comprises the rule of law, effective state institutions, transparency and accountability in the management of public affairs, respect for human rights, and the participation of all citizens in the decisions that affect their lives. While there may be debates about the most appropriate forms they should take, there can be no disputing the importance of these principles.”

Source: Annan, 2000



a negotiation process results in a full agreement among the parties, the government (as one of the parties) need only endorse it. There will always be cases, however, where a concerted effort of all parties acting in good faith has brought agreement closer but left it unattainable. Where independent

review and mediation fail to foster an agreement, alternative options should be considered or the project should go to arbitration. All decisions must be taken within the framework set by constitutions and national legislation as well as international conventions, and remain subject to a citizen's right to challenge them in the courts (see Figure 7.2).

Assessing the Process and its Outcomes

The purpose of engaging in a participatory process for decision-making is to deliver better decisions than would otherwise emerge. The proof of a decision-making process resides both in the process used, and in the outcomes delivered. A process may be deemed successful if it has been, and has been seen as:

- *Fair*: all key stakeholders perceive the process and outcomes to be fair and legitimate.
- *Wise*: the process is fully-informed, making best use of available knowledge, and continuing to make best use of knowledge over time.
- *Efficient*: the process and the solution are both cost- and time-effective, making best use of available resources.
- *Stable*: the agreement is likely to endure and can be adapted – a sign that it maintains its legitimacy.⁸

In Chapter 9, the Commission develops criteria and guidelines to illustrate how this can be achieved at the different stages of assessment, planning and implementation.

Conclusion

Large dams have increasingly been characterised by bitter conflict and deep feelings of resentment and injustice. Beginning to correct this situation will require not only new processes for taking decisions, but building confidence in these processes and their ability to deliver genuinely better outcomes for water and energy resource development. In seeking to build this confidence we do not, in many cases, begin with a clean slate, but with a difficult legacy that needs to be recognised. This legacy can only be overcome if there is a rapid investment of confidence in the legitimacy of the processes that are put in place.

This Chapter has defined the interaction between the Commission's findings and the global development debate. It has pointed out that the debate on large dams is not taking place in isolation from the broader debate on the purposes and pathways of development. It can clearly be situated within a framework relating to human rights, the right to development, and the imperative of sustainability.

Further, the Commission has sought to demonstrate that an approach based on the recognition of rights and assessment of risks can lay the basis for greatly improved and significantly more legitimate decision-making on water and energy development. This is an effective way to determine who has a legitimate place at the negotiation table and what issues need to be included on the agenda.

Finally, it has concluded that only decision-making processes based on the pursuit of negotiated outcomes, conducted in an open and transparent manner and inclusive of all legitimate actors involved in the issue, are likely to resolve the many and complex

issues surrounding dams. While presenting greater demands at early stages of options assessment and project design, such processes lead to greater clarity, certainty and legitimacy for subsequent steps in decision-making and implementation.



Endnotes

- 1 The WCD received submissions from a wide range of interested parties, which have been listed on the WCD web site. A number of these were presented at the four regional consultations, which the Commission held in Colombo, Sao Paulo, Cairo and Hanoi.
- 2 UN, 1947.
- 3 UN, 1986.
- 4 UNCED, 1992.
- 5 Recent reports summarising the implications of high levels of consumption on the natural resource base include the Report of The World Commission on Water (World Commission on Water in the 21st Century, 2000), the World Energy Assessment (UNDP et al, 2000) and The World's Water (Gleick, 2000).
- 6 An overview of this discourse can be found in Sen, 1999. Current data and evolving policy frameworks for addressing poverty and equity issues have also been reviewed in the latest World Development Report (World Bank, 2000) which focuses on poverty and development.
- 7 Cernea, 2000, has developed a detailed assessment of these risks. The 'Impoverishment Risk Analysis' approach is referred to in greater detail in Chapter 9.
- 8 Susskind and Cruikshank, 1989.