Addressing Outstanding Social Issues
Abbreviated Report

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Introduction
One might ask whether it is in view of the ongoing enhancement of environmental and social planning frameworks and mitigation measures still necessary to establish right from the beginning mechanisms to address those social issues, which might not be solved within the first planning and negotiation processes; thus assume that some mitigation measures don’t work and/or that the public participation and consultation process doesn’t address all social issues. But while this assumption might be justified in a perfect world, comprehensive assessments of dam projects made clear that in all surveyed projects outstanding social issues occurred (World Bank 1996a, WCD 2000, Scudder 2005). Scudder (2005) was even able to show that those projects, which addressed successfully the magnitude of outstanding issues, were significantly more often considered as overall successful projects. In sum, this study on mechanisms to address outstanding social issues is relevant for all stakeholders of existing dams as well as for stakeholders of new dams.

Methodology
As a contribution to the UNEP-DDP Compendium on relevant practices the report uses a descriptive ("how it has been done") rather than a normative ("how it should be done") form of presentation and draws its conclusion from 10 examples from all over the world, of which only 5 are presented in this abbreviated report. In line with the ToRs the consultant had:
1. identified key issues in addressing outstanding social issues,
2. assessed potential sources of information within the public domain,
3. identified, acquired and documented examples of how relevant mechanisms were used to address outstanding social issues (The examples were selected in a four step process: a) some were suggested by DDP in the TORs and b) some used in the literature [incl. policies, frameworks etc.]. c) On this base a preliminary list was prepared & send to the DDP secretariat, the team, the steering committee members and experts on social issues; d) and updated based on their recommendations. In total 27 examples were screened in detail)
4. elaborated a final report (~ 100 pages) and this abbreviated report on the base of comments made by the DDP secretariat, the Government Advisory and Consultation Group and the Steering Committee of the UNEP-DDP.

Limitations
The time allocated for this study was very limited (40 days - 20 days for start up and round up meeting, administration etc.) = 2 days to identify, research and summarize one example. At the same time, a lot has been written on outstanding social issues, not much on how outstanding social issues have been addressed and hardly anything on the outcomes of this process. On top, excluded the methodology of the compendium (focus on examples well documented in public available sources) new mechanisms and those examples of relevant practices, which have not yet been described comprehensively in the public domain. In sum, the findings outlined here are merely an introduction to this new topic.
What are outstanding social issues?
Outstanding social issues are those social issues related to a) the economic, institutional and socio-cultural sustainability of involuntary physical & economical resettlements, b) loss of cultural heritage assets, c) boomtown formation incl. problems to integrate construction townships into the regional development process, d) long term liability, e) changes affecting downstream populations, and f) other issues, which were 1) addressed in the Environmental and Social Management Framework (ESMF), but where the mitigation measure didn’t work out, 2) not addressed in the ESMF, but which are claimed based on evidences, 3) not addressed in the ESMF, but which are claimed without providing evidences, 4) which have not been addressed and not been claimed, but which could be verified.

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

2. To comply with the right to remedy, which goes back to § 8 of The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which declares that “each State (…) ensures that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity” and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law.

In the case of dams, the right to remedy is triggered when a project oversteps its obligations established in project funding agreements, international laws and/or standards. There are three forms of remedy: a) Restitution is designed to put the offended party back in the position it would have been, if the violation had not occurred. An example from South Africa shows how land, which had been expropriated under apartheid rules - thus in violation of international laws --, have been returned to their original owners. b) Compensation involves the payment of money to the offended party for any lost profit, value or property. In the PR China, Guatemala, Pakistan and Thailand financial institutions and national governments made available remedy funds to address unsolved social issues of earlier projects, while the US government only provided funds, when it was requested to do so through a legal verdict. c) Satisfaction includes almost every other form of reparation and is meant to address any nonmaterial damage through formal apologies etc.
How are outstanding social issues addressed in dam and development projects?

1. **Through remedy funds and other forms of compensation** the right to resettlement with development and/or livelihood restoration - agreed on in all contemporary resettlement plans and social impact assessments – are extended also to those issues, which were not addressed in the plans. As all stakeholders agree that nobody should be negatively affected by a dam or any other development project, it seems logic to provide the necessary funds to ensure this also for those cases, which have not been addressed in the original compensation and mitigation plans.

   A shortcoming which has been voiced by affected peoples and NGOs, is the fact that the affected people have to claim compensation from the funds and to provide evidences to receive remedy; thus they are forced to request something from the project, while it was in the first place the project, which had requested something from them and didn’t fulfil its obligations (UNEP-DDP 2004). Due to that, NGOs claim that addressing outstanding social issues should not limit itself and base itself upon claims of the affected people, but based on a more effective monitoring and evaluation system, which independently verifies whether compliance has been achieved or whether additional outstanding social issues need to be addressed before the construction/implementation process can officially be closed. The example from Germany (see detailed discretion with references in chapter 4.2.3. of the full report) documents that a pro-active grievance process in which an Ombudsman is also able to address outstanding social issues, which have not been claimed, might be able to mitigate this negative aspect. Remedy funds are merely implemented through three forms:

   a. **Cash compensation (lump sum).** The examples document that a lump sum payment is easier to manage, has low transaction costs, and provides the recipient with the freedom to use the funds at his will, but in turn it embodies the risk that the funds are unsustainable used and/or might not guarantee the long term economic and social wellbeing of all project affected people; thus creating its own outstanding social issues. While some lump sum payments are made to the individuals (examples/chapter 4.3.3, 4.4.1. 4.4.2. & 4.4.3), others are handed over to organisations of the project affected people (example 4.2.1), commissions of all stakeholders (4.2.3), local governments (examples 4.2.3 & 4.2.4), or national governments (4.3.1). But there is no one-fits-all solution: The case of the Pak Mun dam (4.4.3) documents, that the payment of lump sum settlements for reduced income due to shrinking fish stocks was well perceived when the Thai economy boomed, but heavily criticised when investments made with the cash compensation did not provide long term incomes. Due to that, most policies and legal frameworks advise against lump sum compensations.

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

c. Support to livelihood systems. All policies and frameworks underline that a compensation land-for-land etc. - i.e. the rehabilitation of livelihoods -, is the preferred choice, which has been also adopted as principal tool to address outstanding social issues. In the examples, most outstanding social issues occurred when a project or government was unable to compensate land-for-land, fishing/hunting-ground-for-fishing/hunting-ground etc. The problem is that all examples document that it is getting in a more developed world more and more difficult to find land, forests, rivers etc. to rehabilitate the livelihoods of farmers, hunters and fisherfolk without affecting other people negatively. This transforms the rehabilitation of livelihoods from a technical problem (how to find similar assets) to a more complex issue as it requests the project affected people to change their livelihoods, which in many examples did not work out; thus creating secondary and third level outstanding social issues. In developed countries this method seems to collide more often with the variety of interests of the project affected people. While in Norway (4.2.2) voluntary cash compensation has entirely replaced the rehabilitation of livelihoods, the project affected people in Germany (4.2.3) need to appeal to a commission, if they don’t want to benefit from the collective mitigation measures and receive individual cash compensations to avoid that in the end the rehabilitation of livelihoods don’t work out, because the dynamic elements of the resettled communities have disappeared in the resettlement process, leaving the vulnerable groups behind.

2. Grievance process. To provide separate mechanisms to address grievance outside projects and legal frameworks has been introduced by policies (World Bank, Asian Development Bank etc. [Personal Communication Cernea]) and normative frameworks (resettlement regulations of RWE [Bezirksregierung Köln 2004], Hydro Québec [Personal Communication Roquet] etc.) in the last years as it became obvious that legal frameworks are to slow and complicated to provide timely results and that projects mostly don’t have the capacity to reflect critical their own work and offer a fair judgement on claims. As most project are older, only one example (4.2.3.) documents how an effective grievance process – in this case independent ombudsmen at community level – are able to address outstanding social issues even before they are considered outstanding and enhance the frequency and quality of discussions between the stakeholders. The concept of “ombudsmen” originated in Sweden in the early 19th century and has been copied in various forms all over the world. The ombudsmen are commissioners to investigate citizens' complaints and
recommend solutions. To install ombudsmen to evaluate and discuss outstanding social issues of projects is one form of establishing an independent grievance process as suggested in the Operational Policy of World Bank on involuntary resettlement and other similar guidelines. The ombudsman receives complaints and takes up some of his own volition. The idea is that an independent person is better positioned to communicate with the citizens and to discuss complaints. He could solicit clarification and helps the aggrieved person to explain his grievance intelligibly. In giving advice, the ombudsman provides legal aid in the administrative sphere - an area of the law in which such assistance has otherwise been lacking. By assisting project affected people to voice their grievance in the required format and at the relevant structures, the requirement that all responses need to be cleared by him and the option to investigate independently issues and cases, the mechanism ‘Ombudsman’ encourages, facilitates and speeds up the addressing of outstanding social issues and enhances the communication and understanding of the different stakeholders, which also makes it more likely that the other is not perceived as enemy, but merely as part in a joint undertaking.

3. Restitution. Restitution in its original sense is in dam projects only feasible after the decommissioning of the dam and its reservoir. It requires a significant will of a government to carry out restitutions as in most cases, it is difficult to establish a clear cut-off line and it embodies a strong commitment to declare in public that a decision has been wrong. The example from South Africa (4.3.2) is certainly a special case, but it also challenges our understanding of compensation and benefit sharing as the people of Makuleke have been restored as legal owner of their land, while a project (in this case the Kruger National Park) continues to uses this land and shares benefits with the land owning community. If one transfers this mechanism to dam projects, the project affected people would be the owner of the dam and reservoirs and entitled to receive rent from the project for this land during the entire project period before receiving the land back after the dam is decommissioned. Nevertheless, no example could be found where land restitution was used in the context of hydro-power projects, but it might be worth to consider it as a model in which land is not expropriated but leased out for the entire duration of a project.

4. Legal process. The chance to get a legal opinion on whether an individual or an group has a right to remedy for outstanding social issues is a fundamental right, but the example from Canada (4.2.1.), the USA (4.3.3.) and Germany (4.2.3) document that this is a very slow process. It is certainly a fall back position, which can be used if all other mechanisms fail, but to wait 10-40 years for a final judgement will either calls an end to all sorts of projects (if all claims have to be addressed before a project can be implemented) or provides the ground for social insecurity of the affected people and will lead in most cases to resistance and conflicts. On the other hand, it also has to be said that legal processes don’t always solve outstanding social issues, as they are more a compliance mechanism to ensure that agreed standards are applied than an tribune to discuss what the right to livelihood restoration means in practice.
Examples of relevant practices to address outstanding social issues

<table>
<thead>
<tr>
<th>Dam/Project</th>
<th>Remedy fund</th>
<th>Grievance Processes</th>
<th>Restitution Processes</th>
<th>Legal Processes</th>
<th>Satisfaction</th>
</tr>
</thead>
<tbody>
<tr>
<td>James Bay Complex</td>
<td>Remedy fund for indigenous communities</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Glommen’s and Laagen’s Dam</td>
<td>Remedy Fund</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Three Gorges Dam</td>
<td>Later Stage support fund</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Danjiangkou Dam</td>
<td>Post Resettlement &amp; Rehabilitation Fund</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pak Mun Dam</td>
<td>Remedy fund</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chixoy Dam</td>
<td>Remedy fund</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tarbela Dam</td>
<td>Remedy fund</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Garzweiler</td>
<td>Ombudsmen</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kruger National Park</td>
<td>Restitution of land titles of Makuleke community</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grand Coolee &amp; Columbia River</td>
<td>Verdict on claims by native Americans</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. The remedy fund of the James Bay Project (Canada)

The state-owned electricity company Hydro-Québec did in line with their 1970 policies not provide any specific measures for indigenous populations when they started to develop the various dams and reservoirs of the James Bay Hydropower Complex. This resulted in significant outstanding social issues. The most significant outstanding issues are reduced incomes from hunting and fishing due to hindrances for gooses, caribous and fish to migrate freely (International Energy Agency 2005; DIAND 2003b). Based on the belief that mutual public acceptance is in the interest of the company, Hydro-Québec negotiated with the Cree, Inuit and Naskapi (in total around 20,000 people) of the James Bay in 1975 a comprehensive remedy fund to address among other topics these outstanding social issues. It embodies a lump sum cash compensation of US$ 234 Million, an annual compensation of around US$ 2 Million and additional support to education, health care, social security and upgrading of communal infrastructure (DIAND 1993). This remedy fund is considered by all stakeholders as a landmark agreement (Courcelles 2003; Denis 2000; Dewar 2000; DIAND 2003b). It transfers the responsibility to address outstanding social issues to the affected communities and provides them with the funds to do so; thus it empowers the communities of the affected people (Roux & Seelos 2004; DIAND 2003a).

2. The Later Stage Support Fund of the Three Gorges Project (PR China)

In 1991 the government of the People’s Republic of China announced that all new Hydropower and Water Conservancy Projects will need to establish a Later Stage Support Fund (LSSF) at project level to address outstanding social issues. The budget of the LSSF is determined by the number of resettlers multiplied by an amount from US$ 30-50 per year for each resettler and stocked by a special tax on electricity consumption (Egré
et al 2002, Jun Jing 1999, 2001). In September 2006, a new legislation increased this amount to US$ 75 per year and resettler and extended the duration of the fund to 20 years (personal communication Shi). In the case of the Three Gorges Project the LSSF was used to address the fact that the resettlement of one third of the 1.2 million resettlers didn’t provide them with enhanced living conditions as it is guaranteed by law (Heggelund, 2004, Wei Yi 1999, Zhang 2000). Chinese sources claim that the LSSF solved most of these outstanding social issues in Chongqing municipality and the Hubei province (personal communication Shi), but there isn’t any information available in non-Chinese publications or from independent sources (Heggelund 2004).

### 3. The Post Resettlement and Rehabilitation Fund for Irrigation Projects as applied for the Danjiangkau Dam (PR China)

In 1986 a Ministry of Water Resources circular allocated a lump sum of US$ 240 million for a 10 year period to deal with ‘leftover’ problems of reservoir resettlements. In the case of the Danjiangkau Dam, which has been implemented between 1958 and 1974 by the Chinese government, the remedy fund has been used to address the fact that long after project completion more than 5,000 resettled households didn’t have access to safe drinking water, 18,000 people didn’t have access to electricity and that 35,148 resettlers (12.5 %) lived below the poverty line due to lack of land (Yun Ying 1999). Independent evaluations are missing (Heggelund 2004, Jun Jing 1999, Scudder 2005, Zhang 2000), but official sources from China report that most problems have been solved (personal communication Shi). This view is supported by Scudder (2005) on the base of a rapid assessment.

### 4. The Grievance Process of the lignite opencast mining in Garzweiler (Germany).

The position of an Ombudsman for resettlement issues had been created in 2001 by the provincial government in all project affected communities following the request of the operator of the opencast mine (Rheinisch-Westfälische Elektrizitätswerk) to serve as independent mediator between company and the affected populations. The Ombudsman receive funds from a remedy fund and interacts closely with the hardship commission, which is managing this fund to address the outstanding social issues and grievance voiced by the 7,600 resettlers. The position of the Ombudsmen embodies to be available for the resettlers whenever they need assistance and to provide independent advice on all relevant matters in general and all form of grievance in particular (Bezirksregierung Köln 2004, Metzger 2002). It seems as if the majority of the population is more or less satisfied with their Ombudsmans, while environmental NGOs, which have been against the project on ecological ground, perceive the introduction of the ombudsmen as an instrument to split the resistance movement, which earlier united those protesting due to environmental and social concerns (Heckelmann 2004, Westdeutscher Rundfunk 2004, Ökoinstitut 2004, Büro für Stadtplanung und Stadtforschung 1990, 1999).
5. The legal claims against the Grand Coulee Dam and the Columbia River Basin (USA)

When the US Army Corps of Engineers constructed the Grand Coulee Dam and the Columbia River Basin between 1933 and 1955 they didn't realize the magnitude of impacts on fish migration and/or the importance of Salmon for the Native Americans and Canadian First Nations living upstream of the dams. In result, the production of Salmon and other fish dropped by 50% (WCD 2000c, p.50-58) and caused the loss of access to all or most of anadromous fish, which are the centrepiece of indigenous economy and culture in this area (Beaty et al 1999, Cohen 1986, Mathews et al 2000, Spokane Tribe of Indians 1995, Watkins 2000). In turn, the Colville Confederated Tribes filed in 1951 a suit against the USA. The Indigenous Claim Commission ruled in 1978 – 27 years after the claim has been filed - that the tribes were entitled to a full compensation for all income losses associated by the dam. The government provided in total US$ 66 million to compensate past losses of income and subsistence between and an annual payments of US$ 15 million to offset the ongoing reduced income opportunities (WCD 2000c, p.78-79, WCD 2000d, Mathews et al 2000, Watkins 2000). Most stakeholders and scientist are of the view that the Grand Coulee documents that to solve outstanding social issues through courts takes too long, places the need for documentation on the affected people; thus does not enhance the acceptance of dams and hydropower and irrigation projects (Beaty et al 1999, Cohen 1986, WCD 2000cd, Mathews et al 2000, Watkins 2000).

Conclusions & Recommendations

Policy and normative framework prescribe to use a combination of the mechanisms outlined here to address outstanding social issues: Grievance mechanisms to make outstanding social issues visible as early as possible and remedy funds to provide the means to address them, while the right to get a legal ruling on a project is a fundamental right, which serves as a fall-back position if all other mechanisms don’t work out. To enhance the effectiveness and efficiency of a right based approach, which guarantees for each project affected person livelihood restoration and/or resettlement with development, the comprehensive approach to address outstanding social issues through this set of mechanisms should and could be further strengthened by the inclusion of an efficient long term monitoring and evaluation system, which identifies outstanding social issues and that they are solved.

As the approach to address outstanding social issues through a set of distinct mechanisms is rather new, our knowledge base is weak and should be enhanced through additional research, which should

a) identify and assess additional examples,

b) evaluate the outcomes of the Chixoy, Tarbela and Pak Mun remedy funds,

c) assess independently the Post Resettlement & Rehabilitation Fund & the Later Stage Support Funds in the PR. China,

d) study the relation/importance of project affected people, governments & financial institutions in addressing outstanding social issues,

e) evaluate the outcomes of new mechanisms proposed to address outstanding social issues (restitution processes, Ombudsmen etc).
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