

Improving the living conditions of communities affected by dam projects: proposals from West African stakeholders



On 21-23 January 2013, partners from ECOWAS, the Global Water Initiative, the International Union for the Conservation of Nature (IUCN) and the International Institute for Environment and Development (IIED) organised a conference in Ouagadougou, Burkina Faso.

It was attended by about 50 participants from West Africa representing civil society organisations, river users, state technical services, dam construction and management organisations, basin organisations, researchers, legal experts and regional and international organisations.

Large dams are seen as a means of providing cheaper energy than oil, and managing water in a way that can achieve food security and help reduce poverty, especially in the Sahel. However, large dam projects are often criticised for their impact on the sustainable development of the populations affected by such projects (PAPs). PAPs do not always participate effectively to receive the direct benefits of dams (electricity, drinking water, farmland, fisheries, etc.), and are often inadequately compensated for the material, cultural and intangible assets lost as a result of these projects. This raises the question of who can legitimately represent PAPs at the negotiating table when project agreements are signed. The answer lies in local discussion and consultation.

ECOWAS has been engaged in a regional dialogue on large water infrastructure in West Africa since 2009, through its Water Resources Coordination Centre (WRCC). The ECOWAS technical committee of water experts adopted guidelines on large water infrastructure development in West Africa, which were based on the work of a panel of independent experts and consultations with States, basin organisations and civil society. These guidelines include six priorities (Axes), 25 recommendations and 77 measures.¹ They are presented in the form of principles or products, but give little indication of who is to be responsible for defining them in detail, who will implement them and how. In order to consider how these guidelines will be put into practice, ECOWAS organised a conference on Priority 2: *'Integrate affected populations as actors, partners and project beneficiaries'* (see box for measures and their justification).

Drawing on the lessons learned from current practice in water infrastructure projects, the conference discussed a number of challenges in order to help the WRCC and countries in the region effectively implement selected recommendations and measures in the guidelines.

Local populations should directly benefit from dam projects

The conference was very clear that the direct benefits generated by dams should be shared, particularly electricity and land. This is seen as a mandatory and necessary condition of such projects. It is starting to happen in some countries, with initiatives to secure access to land and pay local governments some of the revenue generated by selling electricity. However, more needs to be done in this respect, by implementing the conclusions of this conference, presented here.

Provide compensation and/or compensation for the loss of traditional uses and intangible/religious/cultural assets?

Policies on expropriation in the public interest, resettlement and compensation in the context of large dam projects do not always recognise or systematically cover all traditional non-agricultural land uses (grazing, corridors, medicinal plants, timber, fisheries, non-timber forest products, etc.), or all the intangible and cultural assets concerned (mosques, churches and other places of worship, sacred places such as forests, hills or pools; cemeteries, rights of use, attachment to land, religious and customary ceremonies, festivals, etc.). Is it acceptable to ride roughshod over the beliefs and livelihoods of communities that rely on these assets.

The answer from the conference was No. Respect for human dignity and the rights of affected communities requires that all traditional uses should be included in resettlement plans from the outset of large dam projects. Participants also stressed the importance of implementing procedures for compensation and indemnification that guarantee the continuity of customary rites, by financing the necessary ceremonies,

offerings and celebrations involved in leaving one place and settling in another.

In Niger for example, the Kandadjii dam project covered the cost of organising a religious ceremony to say farewell to the dead, as requested by the displaced communities; while the authorities in Nigeria and Ghana have done the same for recent projects in Gurara and Bui. Resettlement processes also need to take account of affinities and social links established before the project through proximity or distance, in order to maintain feelings of security and solidarity between displaced communities. PAPs that have to change their production systems from rain-fed to irrigated crops, for example, should be given support to enable them to make the transition from traditional to modern production systems.

Negotiate and sign agreements with genuine and legitimate representatives of PAPs

Previous experience has shown that PAPs may be unforthcoming, and that this undermines agreements that may have been concluded with them. Some have also claimed, rightly or wrongly, that they do not recognise the origin or content of certain historic agreements. This raises several questions: who is competent to negotiate, make undertakings and sign agreements on behalf of affected communities? And what types of agreement are made between the State and affected communities?

Good sense and the law dictate that it should be up to the PAPs to decide who negotiates, signs and formalises these decisions in legal documents on their behalf (minutes, contracts, agreements, etc.).



1. See *Guidelines for the development of Water Infrastructure in West Africa*. Water Resources Coordination Centre (WRCC). ECOWAS, 2012. https://cmsdata.iucn.org/downloads/wrcc_ecowas_dams.pdf

Box: ECOWAS recommendations considered by the conference

Involve affected populations as project actors, partners and beneficiaries

Recommendations	
2.1 Involve affected communities as partners, and ensure that they benefit directly from the dam throughout its life cycle	
Measures	Rationale
2.1.1 Assign the direct benefits generated by the dam (agricultural land, electricity, drinking water, grazing areas, fisheries, etc.) to affected communities.	Ensuring that local people benefit directly from the project helps them to be seen as an integral part of the initiative throughout its lifetime, reduces the likelihood of it being rejected and avoids their dependency on the State, which may last for several generations.
2.1.5 Resettlement programmes should take account of intangible/cultural assets by recognising rights of access to land and ensuring that people are compensated in cash or kind for the loss of traditional land use.	The panel's analysis shows that people are not always compensated for the loss of these kinds of asset, despite the fact that they have real value for local communities, and that it is a requirement of donor procedures (such as the World Bank) to recognise their importance.
Recommendations	
2.2 Ensure that people's living standards are better than they were before the dam was constructed	
Measures	Rationale
2.2.2 Identify legitimate community representatives who are capable of leading negotiations and signing agreements.	In order to contractualise 'demonstrable agreements' (2.2.4), it is important to identify people who legitimately and legally represent the affected communities at the start of the ESIA, and determine the process that will be followed in order to obtain their agreement.
2.2.3 Negotiate and agree the content of each plan with representatives from affected communities. This process should specifically involve women and vulnerable groups.	Although most projects conduct consultations and information sessions on their plans, the formal agreement of local people is not always required. This negotiation, conducted by legitimate representatives of the population, will help local people take control of their own future and ensure that funds are allocated for actions that will meet the needs expressed by affected communities.
2.2.4 Contractualise plans through 'demonstrable' agreements between the project developer and representatives of affected communities, with possible recourse to a 'moral' guarantor (retired judge, religious or customary dignitary, State ombudsman, etc.) to execute them and identify the competent court to resolve any conflict that may arise.	Resettled populations often complain, rightly or wrongly, that the State has not kept its promises or fulfilled its commitments. Ensuring that representatives of local populations and the developer or the State are involved in formalising plans helps clarify commitments, set out each party's rights and responsibilities and establish them on a legal basis. Plans will no longer be considered as benefits unilaterally issued by the project developer, but as documents negotiated between partners whose respective responsibilities oblige them to abide by their provisions.

There could be several types of agreement and representative depending on the nature of the assets: for private goods such as houses, orchards or fields, the owner is the only person competent to represent him- or herself or mandate a representative through a legal document; for collective assets such as pastures, schools or cemeteries, all PAPs should be responsible for appointing their representative.

One measure that should be given particular attention from the outset of project design and financial planning is preparing PAPs for these operations. Affected communities should be properly informed so that they know how to choose sound representatives, and when to seek assistance from experts who can inform their decisions by taking all social and professional categories into account (including women, youth, nomadic groups and minorities). Those who are mandated to represent PAPs should also clearly explain any transactions with the State in order to avoid any surprises or challenges further down the line.

Formalise undertakings made by the State and PAPs, and give them legal value

The State makes commitments or promises that the process of displacing and resettling affected communities will improve their living conditions (building schools, recreation grounds, sacred places and health centres; promising access to new water and electricity services, etc.). These commitments form part of the resettlement plans and are often set out in project documents, but are not always honoured. There have also been cases where PAPs said that they will respect plans for protected areas, leaving a site, giving up certain rights, etc., and then withdrawn their agreement on the grounds that the State has not kept its promises or that they did not make certain commitments.

One way of resolving such differences would be to take these commitments out of project documents and formalise them, giving them the legal status of a contract or agreement, and establishing both parties' rights and responsibilities: i) for private assets there could be an agreement/contract between the State (represented by the Agency) and the affected individual; ii) for collective assets there could be an agreement/contract between the State and the local government

to implement environmental and social plans (basic services).

Specific measures should be taken to strengthen these agreements:

- i) ensure that all environmental and social impact assessments are accompanied by an environmental permit established prior to construction;
- ii) empower dam development agencies to respond to all social concerns and sign the necessary agreements/contracts;
- iii) where necessary, involve River Basin Agencies in signing agreements;
- iv) establish a local-level mediation/arbitration committee to settle disputes as quickly as possible.

In addition to this, it is important to explore the possibility of recourse to the ECOWAS community court of justice in cases where national processes contravene the law in force in the country concerned.

To ensure that the ECOWAS guidelines are put into practice and implemented effectively in each country, it is important to disseminate and discuss them so that concrete measures for their application can be presented to the decision makers who are responsible for social peace and improving people's living conditions.

