Gaining Public Acceptance: A Critical Strategic Priority of the World Commission on Dams

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ABSTRACT: Gaining Public Acceptance (GPA) was a strategic priority recommended in the final report of the World Commission on Dams (WCD). GPA remains a central, thorny challenge for all parties interested in how society makes decisions about the development of water resources, the provision of energy, and the maintenance of ecosystems, whilst striving for social justice. The WCD's GPA is largely about issues of procedural justice (e.g. inclusion and access) and proposes process-related principles. Distributional justice is also important (e.g. equitable sharing of benefits; and, avoiding unfair and involuntary risk-bearing).

Several key lessons are emerging from past initiatives to gain public acceptance through participatory exercises. Differences in development and sustainability orientations are obvious in debates on dams and need to be explicitly considered and not glossed over. Politics and power imbalances pervade participatory processes, and require much more attention than they receive. Ultimately, the accountability and legitimacy of state and non-state actors are crucial but complex as there are many ways to build public trust.

To earn legitimacy and more likely acceptance of important public decisions we suggest a comprehensive set of 'gold standard' state-society attributes for improving governance. Multi-stakeholder platforms (MSPs) can help deliberation to become routine, enabling complex water issues to be more rigorously examined. The combination of increased public trust, earned by the state, and high-quality MSPs to assist more informed negotiations, we see as being key to the gaining of public acceptance.

KEYWORDS: World Commission on Dams, gaining public acceptance, public participation, procedural justice, distributional justice, multi-stakeholder platforms

INTRODUCTION

The World Commission on Dams (WCD) had several objectives. It sought to undertake a global review of the development effectiveness of large dams, and assessments of alternatives. It wanted to create a framework for assessment of options and decision-making processes. It also wanted to identify internationally acceptable criteria and guidelines for planning, designing, construction, operation, monitoring and decommissioning of dams. The commissioners produced a consensus report (WCD, 2000), a negotiated opinion, which was launched in a blaze of publicity in 2000 and has since been analysed by those exploring what can be learned from the process (e.g. Bradlow, 2001; McCully, 2001; Bandyophadhyay, 2002; Brinkerhoff, 2002; Fujikura and Nakayama, 2002; Fujikura and Nakayama, 2009).

The report articulated a decision-making framework for large dams, or large water projects and water-related energy projects. It was a guide, not a blueprint, offered by the commissioners as their contribution to the ongoing, worldwide debate over this type of development project. Of course, there

are other valuable viewpoints being expressed by governments, scholars, activists, developers and funders. Some of these have been used to strengthen and build upon the framework offered by the WCD.

This paper concentrates on gaining public acceptance (GPA), the first strategic priority recommended in the WCD's final report (WCD, 2000). The core idea is that "public acceptance of key decisions is essential for equitable and sustainable water and energy resource development". GPA remains a central, thorny challenge for all parties interested in how society makes decisions on the development of water resources and the provision of energy. The paper will remind readers of the WCD conceptualisation of GPA, and various critiques. It is meant to assist the debate on large dams move forward with the GPA concept by acknowledging and unpacking different points of view and suggesting other ways to pursue reasonable acceptance. The intention is to transcend differences, and see if substantial agreement can be forged. Where there is agreement, we aim for it to be genuine. Where differences will remain, we aim for these to be clearly identified and understood.

GAINING PUBLIC ACCEPTANCE

The WCD formulation of GPA

The WCD (2000) report argued that public acceptance of key decisions is essential for equitable and sustainable water and energy resources development. Acceptance emerges from recognising rights, addressing risks, and safeguarding the entitlements of all groups of affected peoples, particularly indigenous and tribal peoples, women and other vulnerable groups. Decision-making processes and mechanisms are used that enable informed participation by all groups of people, and result in the demonstrable acceptance of key decisions. Where projects affect indigenous and tribal peoples, such processes are guided by their free, 'prior and informed consent' (FPIC). The supporting policy principles and guidelines for GPA in the WCD Report are outlined in box 1.

In our view, the label 'gaining public acceptance' is, to some extent, unfortunate. In English, it can have the connotation of convincing the public to accept a predetermined option or selling an option or marketing a done deal. This was not, however, the intention of the WCD commissioners. The GPA strategic priority and the rest of the framework are intended to promote participatory and fair decision making throughout a typical planning and project cycle, including the early steps when choices are being made about development directions and the option set to be considered.

GPA has important relationships to other WCD Strategic Priorities (figure 1). Two examples serve to illustrate this point. First, how and when benefit-sharing mechanisms are debated, explored, negotiated and possibly agreed upon, is key to GPA. The importance of benefit-sharing is recognised by the WCD strategic priority 'recognising entitlements and sharing benefits'. What should be the relationship between how benefits are shared and the process by which public acceptance is gained?

Second, broadening the scope of risk assessment is also key to GPA. Risk assessment should not be seen as a purely technical exercise. The aggregation and high level of simplification needed for technical risk analysis necessarily leaves many factors out, opening the door for bias and vested interests. Hence, the need, as Rayner (2003) and others argue, for assessment through a political process, where risk is not permitted to be reduced to a set of formulae. Whilst risk assessment should be part of comprehensive options assessment it is also integral to GPA. Is risk analysis consistently factored into a transparent stakeholder analysis undertaken as a part of GPA? If not, why?

Box 1. GPA policy principles and guidelines.

Policy principles

Recognition of rights and assessment of risks are the basis for the identification and *inclusion of stakeholders in decision making* on energy and water resources development.

Access to information, legal and other support is available to all stakeholders, particularly indigenous and tribal peoples, women and other vulnerable groups, to enable their informed participation in decision-making processes.

Demonstrable public acceptance of all key decisions is achieved through agreements negotiated in an open and transparent process conducted in good faith and with the informed participation of all stakeholders.

Decisions on projects are guided by adherence to the principle of *free, prior and informed consent (FPIC) of affected indigenous and tribal peoples* achieved through formal and informal representative bodies.

Guidelines

Stakeholder analysis explains that such an analysis should recognise existing rights and those who hold them, identify those at risk – distinguishing between voluntary risk takers and involuntary risk bearers – and identify constraints to establishing a level playing field for stakeholder involvement.

Negotiated decision-making processes articulate the attributes of a process which should enable stakeholders an equal opportunity to influence decisions, even if not actually making the decisions.

FPIC of indigenous and tribal peoples explains that this is conceived of as a continuous, iterative process of communication and negotiation spanning entire planning and project cycles.

Source: WCD, 2000.

Figure 1. Relationship of GPA to other WCD Strategic Priorities.
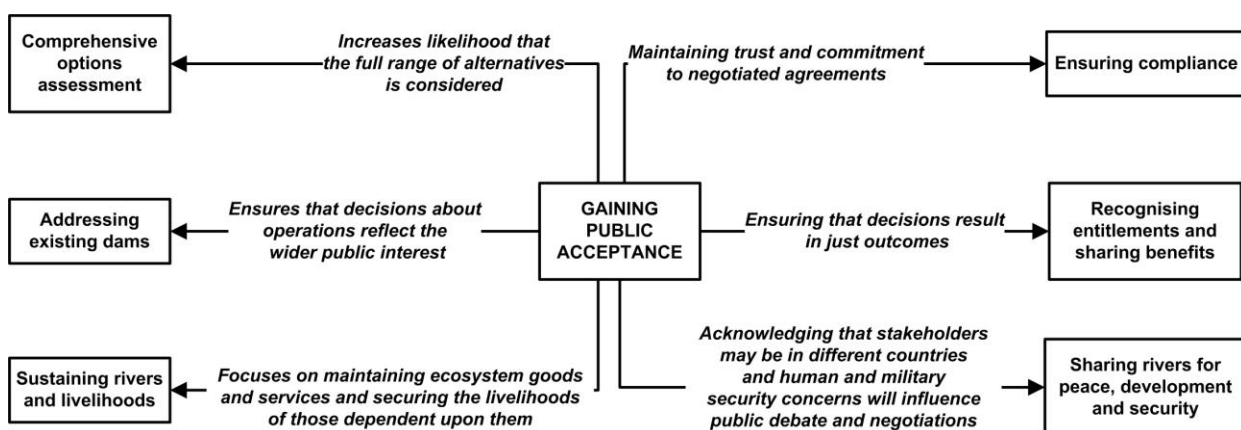
Dams and Development Project

Post-WCD GPA remained a contentious issue and the Dams and Development Project (DDP) sought to provide more clarification and ideas to move forward. This paper was originally drafted as a background paper to underpin an October 2005 multi-stakeholder GPA workshop in Nairobi (DDP, 2005) that eventually fed into the principal DDP output, a "compendium of relevant practices" that explored not

only GPA – re-labelled as stakeholder participation – but also options assessment, benefit-sharing, compensation, social and environmental assessment, compliance and international policy (DDP, 2007).

Despite the best efforts of the WCD and DDP, it seems to us that the WCD version of GPA requires further reflection and strengthening. To do just that, in the next sections we will unpack public participation, provide an expanded set of justice principles and see how these could improve GPA and governance more broadly.

MEANINGFUL PUBLIC PARTICIPATION

Integral to any analysis of GPA is the issue of public participation, one of the processes that can help attain public acceptance of a particular development proposal. Unpacking public participation is necessary if we are to better understand GPA. In this section, we address some of the key GPA issues that preceded WCD or have since emerged. In some places this draws on analysis submitted to the WCD that we consider deserved more attention and prominence in the final report produced by the Commissioners.

Which decisions are open to public participation?

Assuming a decision-making process permits public participation, many government agencies, private-sector stakeholders, civil society and analysts have focused on who participates and at what level. Less attention has been placed on what part of an agenda is voluntarily offered up for debate. For example, Petkova et al. (2002), in a nine-country review of environmental governance found that participation opportunities were usually "concentrated in the middle of the decision-making cycle… tended to occur too late to meaningfully affect the scope and nature of the decision, and did not continue through the implementation phase of the decision-making cycle". The WCD commissioners' conception of GPA suggests in different parts of their report (e.g. in the FPIC guideline) that communication and negotiation should span entire planning and project cycles.

Who is a stakeholder?

As already mentioned, the WCD Report recommended an approach based on recognition of rights and assessment of risks to identify stakeholders, and subsequently analysing and debating their interests. For large water and energy projects, many kinds of rights are likely to be relevant, from customary rights, to rights of developers and investors, through to property and constitutional rights (WCD, 2000). Assessment of rights, entitlements and claims that may be affected by a project or its alternatives should be an early key step and the basis for identifying and engaging with stakeholders.

Hemmati (2002) equates stakeholders with individuals or organisations: "who influence a decision, or can influence it, as well as those affected by it". This is a highly inclusive interpretation, with which we agree, provided that the different stakes of actors are clearly brought out in the open via some type of stakeholder analysis. The WCD Report clearly acknowledged that actors have different stakes:

> 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 risks from the development have the greatest stake in the decisions and, therefore, must have a corresponding place at the negotiating table (WCD, 2000).

It is important in a stakeholder analysis to clarify the many, often competing, interests of stakeholders. Care needs to be exercised in making simplistic categorisations. For example, gender, ethnic or spatial (upstream, downstream, dam area) groupings assume a relative homogeneity of interests within these categories. State procedures of measurement and assessment are invariably homogenised and simplified (Scott, 1998). Those left out of these simplified portrayals of reality may well be exactly those whose voices need to be heard.

Different degrees of participation

Participation in (dams and) development can be undertaken for quite different purposes and unfold in very different ways. There are several conceptualisations of what public participation constitutes. Central to them is the idea that people outside the bureaucratic structures of the state have a stake or mandate to get involved in governance processes. Participation is recognised as ranging in degree, typically reflecting the extent to which power over decisions, and responsibility for the management of development, are shared (Arnstein, 1969; Clayton et al., 1997; IAP2, 2000).

Arnstein's original ladder of participation (1969), described the climb from *manipulation* and *therapy* (non-participation) to *informing*, *consultation*, *placation* (degrees of tokenism) through to *partnership*, *delegated power* and *citizen control* (degrees of citizen power). Clayton et al. (1997), in work widely disseminated by the United Nations Development Programme, presented an expanded notion of the ladder. The base was again *manipulation*, where participation is seen as an opportunity to indoctrinate. One-way provision of *information* may then improve to *consultation*. Climbing higher, there may be interactive *consensus-building* approaches, possibly even *collective decision making*. Even higher, there may be *risk-sharing, partnerships*, and *self-management*. Another example, from the International Association for Public Participation is also useful (IAP2, 2000), and uses a spectrum instead of a ladder, but the key points remain the same. That is, there is a continuum from the nominal (token) to transformative (empowerment).

Why be participatory?

The rationale for using participatory approaches varies enormously (Leeuwis, 2000; Rowe and Frewer, 2000). Some arguments are primarily *instrumental*, for example, focused on securing information or solving a problem. Others promote participatory approaches on *normative* grounds, for example, due to the belief that actors have a right or duty to be actively engaged. A *political* rationale can also be invoked, for example, to (positively) empower disadvantaged actors, or (negatively) dis-empower oppositional actors, perhaps by diluting their voice or in other ways weakening them. Participatory efforts instigated by state actors often reflect an instrumental rationale. Arguments are made that public participation leads to efficiency, fewer conflicts, and more and perhaps better option formulation. Civil society voices, on the other hand, have often argued from a normative standpoint, demanding greater participation as a right of citizens or project-affected peoples.

Many participatory techniques originated as a response to inadequate research, planning and decision-making processes. Practice can be problematic, however, and threats of a 'tyranny of participation' (Cooke and Kothari, 2001) have been well documented, for example, by Hildyard et al. (2001) who argued that participatory development processes risk merely providing opportunities for the more powerful if they do not take into account relative bargaining powers.

When considering issues of GPA and public participation, it is a common failing to inadequately recognise the importance of the relationships between actors and institutions, which may empower some, and suppress or inhibit others. A draft of the WCD thematic review of participation, negotiation and conflict management was rightly criticised for the absence of this type of analysis. For example, Hildyard (2000) was concerned about "the structural, institutional and other barriers – such as the privileging of certain types of expertise over others – that curtail, restrict or deny a space to marginalised groups for negotiation". Hildyard also referred to institutionalised racism, the pressure to lend, career incentives, gender imbalances, lack of accountability of some decision makers, and the everyday hassles related to the language and tools of formal decision making, some combination of which can often diminish so-called participatory processes. The final thematic report still barely addressed these subjects, other than including the comments as appendices. Echoing these concerns, in the final WCD Report, one commissioner insisted on noting that "even with rights recognised, risks assessed and stakeholders identified, existing iniquitous power relations would too easily allow developers to dominate and distort" decision-making processes (Patkar, 2000). She went on to caution

against granting "undue legitimacy" to particular actors, rather than respecting the "sovereignty of both people and the nation-state". The types of structural barriers, raised by Hildyard, and the power imbalances cited by Patkar, often require an oppositional civil society to create more equitable negotiation spaces.

Seeking agreement or local empowerment?

Participatory techniques have often been employed in development projects as a way to persuade project-affected people to agree with plans. Guttal, in submissions to the WCD, described this as "solutions backward" – drawing upon the case of the Nam Theun 2 dam in Lao PDR – where, in her view, the state assumed at the outset that it had a robust solution, and hence, participation was then a troublesome but necessary step backwards in order to convince the citizenry, funders, etc. that the project was a good idea and that a credible process has been followed. She cautions that these types of participatory processes are likely to be devoid of "authentic debate" about future options as the objective – project implementation – is already largely fixed, at least in the eyes of the dominant decision makers (Guttal, 2000).

For others, the emphasis of public participation in development is enabling participants to have greater control and influence over their own present and future circumstances – an example of a normative rationale in action. In this view, participation has the goal of empowering people in terms of their acquiring the skills, knowledge and experience to take greater responsibility for their development (Clayton et al., 1997) and proactively influence decision making.

Development participation does not have to be one or the other. Parfitt (2004) argued that it is difficult for participatory processes not to have an emphasis on agreement-seeking about a particular option when there is a specific project proposal being considered. But, he noted the challenge is to ensure there is a countering emphasis on empowerment, to ensure more genuine deliberation about options.

Self-exclusion from public participation

Public participation is a part of democratic process, may be a part of negotiation, and can lead to the gaining and sharing of information, the building of understanding and trust, and wiser decisions. In order to prise or keep open some situations, however, it is often the case that some actors stay outside, or in Dryzek's (2000) words, choose to "remain passively exclusive and so off-limits to inclusion". This may be for any of the following reasons: not wishing to legitimise what they perceive as an inadequate or unjust process. For example, Rosien (2010) describes a consultation boycott by NGOs of a Safeguards Policy Review by the Asian Development Bank (ADB) driven by concerns about the review process. Disengagement registered the objection, led to significant change in process and content of the review and arguably contributed positively to the final policy rewrite. Alternatively, actors may have concerns that joining will deplete the ranks of oppositional civil society (Dryzek, 2000) and that by engaging in a process and accepting the responsibilities which follow, public awareness may be reduced and their own influence diminished. Or, actors may be concerned that the politics is such that participation will serve no useful purpose as deals are already done.

In many places, exclusion from public decision making – chosen or forced – has led to the creation of resistance movements which have been shaped by, and in turn, have often changed, political configurations of their place. This can be due, partly, to reconceptualising participation and moving explicitly towards negotiation (Leeuwis, 2000) of which resistance is a part. Positive forms of expressing resistance include peaceful protest, lobbying, selective and limited participation, parallel forums, engaging policy compliance and accountability mechanisms, invoking action from ombudsman offices, pursuit of mediation or taking a case to the courts for arbitration and judgement. More active dissent and suppression, regrettably sometimes aggressive or violent, are also part of a more complete ladder or spectrum. Understandably, resistance actors, operating in diverse circumstances, have diverse

operating strategies in order to influence – or at least navigate – safely through the politics of their situation. Withdrawing from negotiation can also be part of a strategy. All of this is GPA context.

LESSONS FROM PRACTICE

Several key lessons are emerging from past initiatives to gain public acceptance through participatory exercises. Differences in development and sustainability orientations are obvious in debates on dams and need to be explicitly considered and not glossed over. Politics and power are not eliminated by participation, and require much more attention than they receive. Ultimately, the accountability and legitimacy of state and non-state actors are crucial but complex as there are many sources from which to draw upon to build public trust.

Development and sustainability

The importance of differing beliefs and values about development and sustainability should not be underestimated. Understanding the range of views is critical to understanding the motivations of many actors in highly political decision making on dams and associated public/stakeholder participation. Major areas where differences are apparent include assessment of the merits of different energy options, the extent of perceived threats to ecosystems from dam development, attitudes to the substitutability of natural capital, the primacy given to coarsely measured economic growth, inter-generational equity, intrinsic rights of nature, aesthetics, and the rights to be afforded to entrenched cultural practices.

Actors in the politics of dams display a wide range of orientations. These include: where short-term financial reward is paramount in decision making; weak sustainability leanings where economic concerns still dominate, but with some priority given to ameliorating social and environmental impacts; and, where there is an acceptance of trade-offs with high priority given to each of economic, social and environmental issues and there is support for attempting a balanced approach. Some actors also prioritise ecosystems, arguing that it is essential to integrate ecological considerations into all social and economic planning. Others are more anthropocentric and privilege cultural values. The point is that these simplified orientation categories are substantively different and drive human behavior.

Politics and power

When reflecting on GPA it is also necessary to consider politics and power explicitly. Miller (1962) described politics as "a natural reflex of the divergences between members of a society… [where]… there is a variety of perpetual disagreements which arise from fundamental differences of condition, status, power, opinion, and aim". Given the just-discussed differences in development and sustainability orientations that dams are political is no surprise. What is important is how the politics plays out: fairly, unfairly, wisely or less so.

Power is an elusive concept but we favour the approach of Hay (1997) who thinks of power as being "about context-shaping, about the capacity of actors to redefine the parameters of what is socially, politically and economically possible for others". Having power is not the same as having legitimacy. Powerful vested interests often control states, agenda-setting, preference-shaping and decision making. Many decisions, which impact many publics, remain outside the sphere of public decision making.

There is a political and power context that pervades public participation and decision-making processes, which cannot be avoided and is integral to GPA. For example, the blurry nature of public-private partnerships in China's energy industry post-break up of the State Power Corporation (Dore et al., 2007), in the USA energy industry, and elsewhere with transnational water utilities – often make it difficult to discern whether public or private interests are receiving priority. Opaque hydropower concession and approval processes in many countries also come to mind. Critiques exploring such

sensitive issues are often unwelcome. Transparency and access to information are widely held as being desirable attributes of any good governance regime to ensure that politics and power are able to be scrutinised.

Accountability and legitimacy

The previous discussion on politics and power brings us to accountability. In the frame should be decision makers, decision funders, decision finders (advisers, facilitators and negotiators), decision influencers, decision recipients – whether governments, bureaucrats, project-affected people, NGOs, developers, builders, financiers or general citizens.

Accountability is a broad concept which refers to the extent to which people are answerable for their own behaviour and actions. All actors in the politics of dams have at one time or another had their accountability questioned. Many are taking steps to improve their accountability mechanisms. For example, the Asian Development Bank established a new system to replace its reactive inspection panel mechanism (ADB, 2003), found wanting in the case of Samut Prakarn, a waste water treatment plant scandal in Thailand. The panel mechanism was replaced by an Office of the Special Project Facilitator which equates to a relatively weak ombudsman's office and a Compliance Review Panel. The first real test for the new institutional arrangement was not directly related to water infrastructure but dealing with conflict surrounding a transport development project in Sri Lanka. A problem is that often by the time the ombudsman is activated a project is well and truly committed and so the GPA context is already very difficult. In any event, these mechanisms were created in response to various criticisms, such as the following:

> Large-scale dams tend to be implemented over decades but, typically, staff in government institutions, private companies, consultancies and banks may only work on one project for a few years or even a few months. Yet the contents and consequences of their reports and decisions may not show up until months or years later (Colchester, 2000).

Legitimacy is hard won, by any actor. For governments and their public sector (ministries, departments, etc) to obtain and retain legitimacy, they need to demonstrate good governance practice by, for example, clearly explaining and seeking feedback on their government and development agenda, and disclosing complete information, and allowing it to be independently contested. For many commentators, actor legitimacy is closely linked to whether they are formally accountable to, and represent stakeholders. Agents of the state have a formal constituency which they can usually claim to represent. Similarly, company executives are, or should be, accountable to shareholders they are entrusted to represent. This framing is, however, often used to deny bestowing legitimacy on other actors who do not claim to represent others, whose status as a stakeholder may be contested, but who have much to offer in improving the quality of, and ownership in, public decisions. Civil society groups are often challenged in this way. The concept of responsibility offers a way forward through any impasse. In the context of advocacy-oriented transnational NGOs, it has been suggested that:

> Political responsibility is a commitment to embrace not only goals in a campaign but to conduct the campaign with democratic principles foremost in the process. Political responsibility is a normative concept that differs slightly from accountability in that accountability has formal obligations embedded within its definition (Jordan and Van Tuijl, 2000).

The NGO Focus on the Global South (FOCUS) is an illustrative example. FOCUS is neither bound nor empowered by an external mandate. For that matter, neither was the WCD. In the absence of a formal legitimising mechanism such as membership endorsement, they have to be clear about the interests they support. FOCUS's commitment to addressing the marginalisation of large numbers of people throughout the South has defined their constituency; however, they do not claim to represent these

diverse peoples, as they recognise they have no such mandate. A formal accountability mechanism to a constituency, however, is not essential to legitimacy if the following argument is accepted:

> … the right to speak claimed by NGOs is not necessarily derived from a strict or formal notion of direct representation of particular group interests but rather from a commitment to a set of values and insights which form the basis for an analysis of particular situations and a strategy to act on that analysis… there would be no inherent contradiction for an NGO to make submissions and arguments relating to a proposed big dam even when no local group shares those views – the arguments should be taken up in public debate and dealt with on their own merits… (Greeff, 2000).

Ultimately, public legitimacy of the wide range of state or non-state actors is based on the establishment and maintenance of public trust via transparency, accountability, responsible behaviour and competence.

EXPANDED JUSTICE PRINCIPLES

The WCD's GPA is largely about issues of *procedural justice* and proposes process-related principles. But GPA should also encompass *distributional justice* and outcome-related principles. In figure 2 we put forward an expanded view of GPA.

Figure 2. Justice principles for gaining public acceptance.
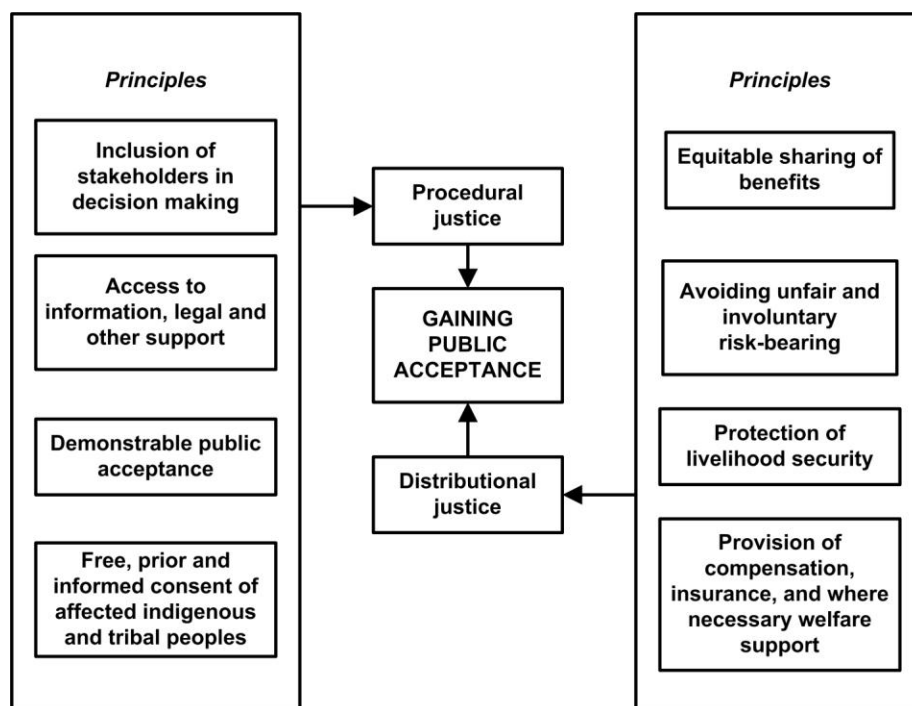
Source: Procedural principles from WCD 2000, distributional principles proposed by authors.

Procedural justice

Inclusion of stakeholders in decision making

The principle of inclusion is intended to foster the protection of the rights of affected people and make them net beneficiaries rather than just bearers of social or environmental costs. Consistent with human rights norms established in existing international agreements, the WCD Report proposes an approach

to GPA based on the recognition of *rights* and assessment of *risks*. Those with rights or bearing risks are considered stakeholders and should be included, or have their interests genuinely represented and considered, in decision making. These include rights to: self-determination; consultation in matters that affect their own or other peoples' lives; democratic representation of peoples' views on such matters; remedy or compensation; 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 (WCD, 2000).

Access to information, legal and other support

Access to information, legal and other support is crucial. It is recognised that affected groups have often been disadvantaged and unable to access relevant information or other support to enable informed participation and exercise their rights. For example, some groups have been unaware of the extent of their customary and constitutional rights (Goodland, 2004). Questions of credibility of information and knowledge also arise (Cash et al., 2003). For example, in the case of EIA, studies have been directly commissioned by project proponents without really engaging many other affected and interested parties. Moreover, there is a difference between making information accessible and then ensuring that this can become shared knowledge and understanding, even if not agreement. Those from different cultures, comfortable in different languages, have often been placed at a disadvantage.

The WCD was not alone in pushing for increased access. For example, this issue was prominent in the *Rio Declaration on Environment and Development*, emanating from the UN conference in Rio de Janeiro: "Principle 10. States shall facilitate and encourage public access to information, awareness of environment and development issues and participation in decision-making by making information widely available. Access to judicial redress and remedy shall also be provided (UN, 1993)".

There have been many countries that have embraced Principle 10, but many more that have not. The Aarhus Convention is a particularly notable, positive example which aims to implement access principles:

> The Aarhus Convention is an environmental treaty that turns the 1992 Rio Declaration's vague commitments to the principles of access into specific legal obligations… The Convention not only recognizes the basic right of every person of present and future generations to a healthy environment but also specifies how the authorities at all levels will provide fair and transparent decision-making processes, access to information, and access to redress (UNDP et al., 2003).

Demonstrable public acceptance

The WCD (2000) argued that negotiations should result in "demonstrable public acceptance of binding formal agreements…" achieved via "an open and transparent process". For the WCD, a negotiated agreement presupposes a decision-making process that arrived at a consensus: "All stakeholder forum members should share a genuine desire to find an equitable solution and agree to be bound by the consensus reached".

The discourse surrounding WCD often conflates consensus and negotiated agreement. These are not the same. What matters is the outcome of negotiations, the details of any agreement and whether this agreement has sufficient or demonstrable public acceptance. The WCD sought consensus, at least between the commissioners, driven by a common view that "without consensus, a commission will be seen to have reproduced divisions among stakeholders, rather than transcending them" (Dubash et al., 2001). If it is accepted that consensus is by definition "unanimous agreement not just on a course of action, *but also on the reasons for it*" (Dryzek, 2000) then this is a misrepresentation of consensus. Dryzek (2000) contends that: "In a pluralistic world consensus is unattainable, unnecessary and undesirable. More feasible and attractive are workable agreements in which participants agree on a course of action, but for different reasons". Following this logic, failure to reach a consensus should not be seen as failure. Although the ideal of a consensus is sought, a negotiated outcome in a complex

situation implies compromise, and will not reflect total consensus. Too great a focus on consensus-seeking can have undesirable effects, such as difficult issues being ignored in order to manufacture a pseudo-consensus.

Free, prior and informed consent by indigenous and tribal peoples

The principle of *free, prior and informed consent* (FPIC) is being increasingly reflected in contemporary international agreements, if not law, which explicitly recognises indigenous peoples' rights to participate in decision making and to give or withhold their consent to activities affecting their land, territories, resources or their bundle of general rights. The principle of FPIC holds that consent must be freely given, obtained prior to implementation of activities and be founded upon an understanding of the full range of issues implicated by the activity or decision in question (MacKay, 2004). In MacKay's view, articulated in a briefing note for the World Bank's extractive industries review, but applicable also to the water and energy resources development debate:

> Decisions about when, where and how to exploit natural resources are normally justified in the national interest, which is generally interpreted as the interest of the majority. The result is that the rights and interests of unrepresented groups, such as indigenous peoples and others, will often be subordinated to the majority interest: conflict often ensues and the rights of indigenous peoples are often disregarded (MacKay, 2004).

While the measured support by WCD for FPIC was significant, it was also controversial:

> WCD has restricted its attention only to the groups which are adversely affected by a dam. It has failed to appreciate that there are much larger sections of society for whom the dam and the water supply flowing from the dam are nothing short of a life line… WCD's obsessive concern for preserving the rights of affected local peoples makes it distrust the entire public set up, even the legal framework of the country to which these people belong (Mr Gopalakrishnan, from the Central Water Commission of the Government of India, WCD Forum member, February 2001, quoted in Dubash et al., 2001)

Bird (2002) – himself, a former member of the WCD secretariat – has commented that recognition of the special rights of indigenous peoples was not intended by the WCD commissioners to bestow a veto right to individuals or groups and that the WCD's position was that the state should still have the final say. This may have been the majority view of the WCD commissioners, but it is not the view of many FPIC supporters, who do not have confidence in either the willingness or ability of state representatives to take adequate account of indigenous peoples' priorities and concerns.

Use of the term GPA and its final drafting into the WCD Report represented a compromise by the commissioners and a restriction of the FPIC principle. There was extensive lobbying for FPIC to be even more concretely embedded (Dubash et al., 2001). Inevitably, differences of opinion remain about this and other elements of the GPA strategic priority. It is unlikely there will ever be consensus to operationalise FPIC across the board. It remains a controversial element of GPA, as it was during the WCD learning and report preparation period. Claims of *ancestral domain* (i.e. seeking to establish or privilege indigenous peoples' rights) continue to usually remain subordinate to government claims of *eminent domain* (i.e. the right of a government to appropriate private property for public use, usually with compensation to the owner). Understandably, governments invoke eminent domain to justify making decisions on behalf of their citizens. This is not incompatible with recognising indigenous rights, but it is incompatible with committing to always privilege the local or indigenous over the national.

Distributional justice

If a decision-making process is seen to be fair, then people may be willing to accept a future scenario that is sub-optimal to their own interests. Promises are, however, sometimes not kept and things do not always unfold as expected. In large and complex water infrastructure projects, impacts are often

not well understood or anticipated. With climate change, aggregate changes in land use in a basin, shifts in economic structures, and uncertainties with respect to benefits, risks and livelihood security may be increased further. Acceptance of decisions by the public can be lost without adherence to additional principles related to *actual outcomes* or distributive justice.

Equitable sharing of benefits

Large water infrastructure projects are built because they promise a stream of benefits, for example, securing water supply for rapidly growing industry and urban areas, helping store water for irrigating agriculture during seasonally dry periods, or diverting and controlling monsoonal flood waters, and producing electricity. Projects also provide employment opportunities during construction and, to a lesser extent, during operation. During construction, concessions for timber logging can be lucrative – who gets them? This principle argues that these benefits should be shared equitably rather than being captured by a small subset of stakeholders. If, for example, the water captured, and electricity produced, are for use in a distant location then these resources themselves or some of the taxes and fees should go to more local uses as well. The principle should apply both within and across borders (see Varghese, 1997).

Lack of perceived fairness in the distribution of benefits can make finding a procedural solution to conflicting interests and values over projects very difficult. Examples abound, such as that analysed by Muradian et al. (2003) who recount the case of an ecological distribution conflict between a Canadian transnational mining company and a rural population in Peru.

Although this principle of equitable sharing of benefits overlaps with the WCD strategic priority on recognising entitlements and sharing benefits, it should be considered a component of GPA. Successful implementation of benefit-sharing mechanisms, including innovations as revenue distribution oversight committees, is difficult but not impossible. Slack (2004) remains optimistic about the potential after reviewing experiences in Ecuador, Peru and Bolivia. In recent years benefit-sharing has become a prominent part of the dams' discourse, invoked by a range of actors, from multilateral development banks, governments, and local and international NGOs (for example, see: Sadoff and Grey, 2005; DDP, 2007).

Avoiding unfair and involuntary risk-bearing

Regarding risk, the WCD insisted on clearly distinguishing between voluntary risk-takers (e.g. private companies) and involuntary risk-bearers (e.g. displaced people) (WCD, 2000). The WCD noted that conventional practice has been to restrict risk assessment to that being borne by developers, investors and states in terms of threats to expected (or hoped for) returns on investments. Generally, these actors are voluntary risk-takers, although it is recognised that some states involuntarily shoulder more risk than they would prefer, as a forced condition of external financing. A significant step by WCD was to push for risk- assessment to be extended to include the wider involuntary risk-bearing group upon whom risks have been imposed. Risks for this latter group may include threats to livelihoods and well-being for myriad reasons.

The involuntary risks people are exposed to when a dam is constructed may be catastrophic, relating to dam failure and associated flooding, or operating errors as in the case of Vietnam's Yali Falls dam (Hirsch and Wyatt, 2004), none of which were foreseen or included in the planning, design and management regime established for that hydropower facility. For many communities and ecosystems downstream of dams, substantial flow fluctuations become normal as its generation is linked to delivery schedules that focus on supplying high-value power at times of peak demand. Also common are seasonal flow changes and reduced sediment delivery that affect flood-plain replenishment, wetland productivity, water-borne diseases, bank and bed erosion, flooding and nutrient supplies to ocean fisheries. Projects must make information on these risks available to all and do as much as possible to

ensure that they avoid unfair and involuntary risk-bearing with likely negative consequences, especially to the poor and vulnerable.

As noted above, risks may be transferred to ecosystems. Values attached to these vary greatly, depending on perspectives. There is no single set of universal green values (Hunold and Dryzek, 2002), however, where interests in conservation or recognition of livelihood dependence is high, even if the values attached are diverse, and ecosystem impact considerations also often become an important factor in gaining and maintaining public acceptance.

Protection of livelihood security

It is acknowledged that large infrastructure projects invariably, through changes in land use, water flows and the creation of new job opportunities, alter the context within which livelihoods are conducted, the entitlements on which the poor rely, and the diversity of livelihood options that they can take advantage of. The changes wrought by a project should not, however, be allowed to undermine livelihood security (for a discussion of the concept, see Chambers and Conway, 1991; Scoones, 1998). At a bare minimum, livelihood security implies that a population has secure and continuous access to the natural resources, ecosystem and other services required to maintain a living.

Those whose livelihood security is diminished as a consequence of a policy or project should be prioritised when it comes to taking advantage of the new opportunities emerging as a consequence of the project. Differences in culture, skills, capacities and social discrimination mean that protecting the livelihood security of project-affected people is far from straightforward and often requires substantial expenditure in education, training and enterprise development.

In cases where it is hard to uphold the previous three principles of distributive justice, there should be some kind of a safety net made available. Compensation for lost livelihoods, property and benefit streams may have to be transferred from the newly created winners to the losers. Insurances and welfare support may also be necessary, and just. The DDP follow-up to WCD did some work on this topic but more needs to be done.

ASPIRATIONS FOR IMPROVED GOVERNANCE AND GPA

The previous examination of public participation, distillation of lessons and expansion of justice principles lead us to this section that focuses on aspirations for improved governance and GPA.

State actors, institutions and drivers

An ideal state-society complex is conducive to just and effective GPA (figure 3) where there is a high level of public trust between state authorities and the people they govern. Transparency, accountability and competency are all attributes which contribute to trust-building and enhance the legitimacy of authorities.

Institutions have a clear role to play. Critical rule-based foundations, relevant to GPA, are institutions such as constitutions, courts, and laws related to a huge range of issues from public safety through to media ownership and operation, international agreements, independent auditors, minimum standards, and so on. In all functioning states, there is a raft of government and bureaucratic organisations involved in policy creation, administration and implementation of the state-society agenda. The better this is functioning, the more likely that public acceptance will be gained for public decisions. For water and water-related energy projects, this invariably involves an array of state organisations with responsibilities for construction, operation, energy, irrigation, impact assessment, monitoring, etc.

Figure 3. Ideal state-society elements conducive to GPA.
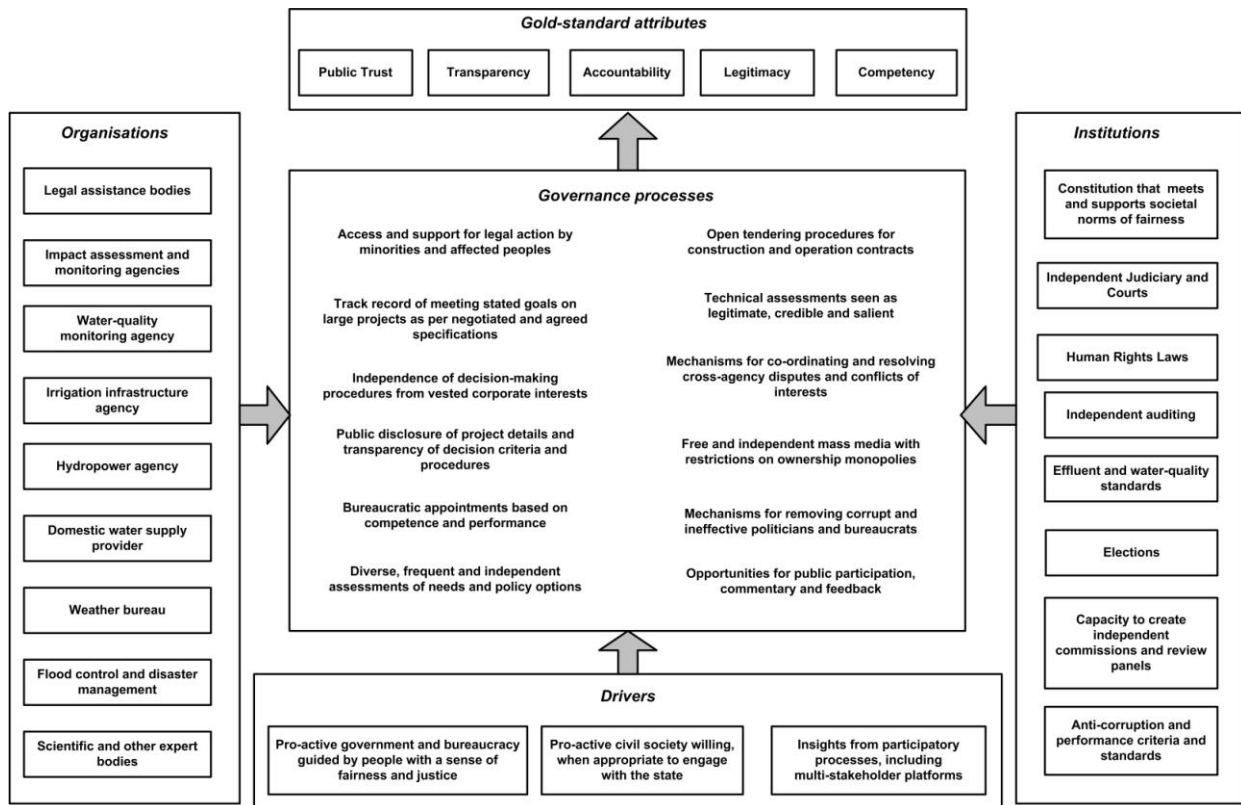
It is important to acknowledge the driving forces behind the attainment of the 'gold standards'. Our argument, encapsulated in figure 3 is underpinned by the assumption that for governments and their associated bureaucracy to fulfil their potential requires them to be proactive, guided by leaders with a sense of justice and fairness. Linked and complementary to this is a proactive civil society that is willing to constructively engage and negotiate with state representatives. This complementarity can be further enhanced by insights that emerge from constructive engagement.

Multi-stakeholder platforms

The WCD was a Multi-Stakeholder Platform (MSP). MSPs are an approach for constructive engagement and learning about complex problems where facts and values may be in dispute. MSPs are just a part of governance in which different stakeholders are identified, and usually through representatives, invited and assisted to interact in a deliberative forum that focuses on sharing knowledge and perspectives, generating and examining options, and informing and shaping negotiations and decisions (Röling, 2002; Warner, 2007; Dore, 2010). In the decade since WCD, there have been many more creative MSPs not only in the water resources domain but also in other sectors. Examples are the Millennium Ecosystem Assessment and the Comprehensive Assessment of Water Management in Agriculture on the international level. At the national level, we have seen initiatives such as the civil-society-led dialogue on river-linking schemes in India, the WCD follow-up processes in Nepal and Africa, and the consensus-building process on the Everglades in South Florida. We can learn from the successes, difficulties and failures of such processes.

MSPs can add value by the quality of their deliberation and discursive processes if they are inclusive, information-rich and flexibly operated, and actively promoting analysis of different views. In this ideal type, participants are open to changing their opinions through persuasion, but are not pressured or

coerced into a manufactured consensus, manipulated or in various ways deceived. Such platforms would also be characterised by respect, sharing of information and allowing all actors the freedom to participate and capably communicate their views (Dryzek, 2000).

A recent study of water-related negotiation (Dore et al.; 2010) provided the following key messages:

- Setting up an MSP requires good design and process led by credible and competent convenors.

- High-quality process, enabling effective deliberation, increases the legitimacy of MSPs.

- Practical steps for organising an MSP must keep in mind the final goal of producing workable recommendations for forward action.

- MSPs help deliberation to become routine, enabling complex water issues to be more rigorously examined in better informed negotiations.

We see MSPs as having an important role to play in GPA, but MSPs are seen by some as disrespectful of, and at times subversive to, existing public decision-making structures. Both WCD and other MSPs – particularly processes led by civil society – have been accused of being undemocratic, and too empowering of interest groups with policy positions which may differ from dominant policy positions within state governments or parts of their associated bureaucracies. Advocates claim the opposite, that in fact these types of processes are complementary to formal state decision-making processes and deepen democracy. To overcome some of these tensions, the relationship between MSPs and wider issues of democratic governance need to be more adequately addressed if MSPs are to create and maintain wide credibility.

CONCLUSION

It is no surprise that differences of opinion remain in the debate on large dams. As Klaus Töpfer, UNEP's former Executive Director, stated "we should not be so naïve as to expect all divisions will be washed away" (DDP, 2003) by any single commission or its follow-up. Key issues remain, and ways forward continue to be sought. Given the complexity surrounding the WCD subject matter, we clearly see the need for pluralism as society experiments with, and sometimes learns, better ways to communicate with mutual respect, shared knowledge, and negotiating key decisions.

The discussion in this paper has focused on GPA issues, distilling lessons from public participation, and proposing both justice principles and ideal state-society elements conductive to GPA. But, of course, there must still be outcome targets to ensure the 'gold standards' do not lose sight of their purpose. Using the case of the Traveston Crossing dam in Australia, Wasimi (2010) has used the three lenses of economic development, social equity and environmental sustainability to analyse a proposed large dam project in rural Queensland. Using the WCD and DDP guidance as a point of departure, Wasimi examines the contested facts and values surrounding the project that are similarly contested in countless other places around the world. He observed how semi-structured multi-stakeholder engagement has enabled the clearer articulation of very different perspectives and the overall quality of constructive engagement to be lifted. This may be more democratic and potentially just, but it is still a difficult GPA road.

In conclusion, with constructive intent, the following ideas are offered as examples of the actions required to move forward with GPA. First, recognise that there is no single correct way for GPA and, therefore, encourage further experimentation and learning with governance processes, such as MSPs. Openness, transparency and fairness are best achieved through multiple avenues, by creating multiple arenas for dialogue and debate and channels for public input on decision making. However, it must also be recognised that the capacity and experience of personnel in all sectors is limited, and it is therefore essential in many places to build the capacity of both state and non-state actors to co-design, use, fund, participate in, and monitor MSP inputs to, aid decision making.

Second, we need to dispel the myth that public participation is wasteful of resources by highlighting the rights to participation, and demonstrating the value of genuine public participation to affected peoples, the general citizenry, investors, credit providers, and state agencies. This requires more sharing of GPA experiences from fields other than large-scale water and water-related energy policy, planning and projects.

Third, we need to create incentives for effective partnerships to be reproduced, by praising and rewarding state agencies and other actors that effectively use process-based and distributive justice principles when consulting the public.

Finally, we suggest effort be made to deconstruct the assumption (by some) that know-how about processes of governance, including for GPA, is centred in so-called mature economies and, therefore, encourage more openness to learning lessons of good practice from developing countries.

DISCLAIMER

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