

The International Network on Displacement and Resettlement (INDR) Response to the [UN Questionnaire on the Impacts of Megaprojects on the Human Rights to Water and Sanitation](#)¹

General Comments

INDR formed an Ad Hoc Commission² to respond to the Special Rapporteur's questionnaire for civil society organizations to help inform the thematic report on the impact of megaprojects on the human rights to water and sanitation.

Our major conclusions are:

- If a megaproject provides the benefits of water and sanitation, but they are unequally distributed among the project affected peoples, including those involuntarily displaced to permit the construction of the project itself, then the megaproject has created increased inequality and social differentiation, a potential human rights differential and possible violation. A field investigation is required.
- The socio-cultural and economic impacts of megaprojects are not limited to the project cycle, as constrained by the format of this questionnaire. The human rights and socio-economic impacts begin BEFORE the project cycle and continue long after the completion of the infrastructure. From the human rights perspective, it is an error to artificially confine responses to the project cycle.
- The SR's 31 questions are, in fact, clusters of, often redundant questions linked to the project cycle. Most of these questions ask respondents to provide case studies and examples - basically a comprehensive desk review - which may suggest options and risks, but are rarely transferable between specific contexts. We are puzzled. An opportunity for a richer, global, in depth dialogue was lost. Within these constraints, we offer our response.
- The UN's strength and weakness is that it deals with broad principles. INDR is concerned that the human rights approach taken in this questionnaire is overly broad and vague and

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² The International Network on Displacement and Resettlement's **Ad Hoc Commission on the Forced Displacement Impacts of Megaprojects on the Human Rights to Water and Sanitation**. Members [*in alphabetical order*]: Emma Banks, Jennifer Day, Claudio Gonzalez Parra, Susanna Price, Indrani Sigamany, Jeanne Simon and Margaretha Wewerinke-Singh. David B. Halmo, Chair. Ex-officio member - Theodore E. Downing, INDR President. president@displacement.net

does not address a set of ideas that may be operationalized on the ground or in legislation or procedures. The SR questions gloss over the diversity of legislation, policies, histories and institutions that must be navigated to protect the rights of those in need of water and sanitation. Solutions are crafted at the local, not the international level.

Response to SR Questions

Q1. Please provide information on the role and responsibility of your organisation in monitoring mega-projects, preventing, redressing or advocating against their negative impacts or promoting their positive impacts particularly on the human rights to water and sanitation.

The International Network on Displacement and Resettlement (INDR, www.displacement.net) is an incorporated (2004) not-for-profit, international professional group initially organized in 2000. Our members work in all aspects of development-induced displacement and resettlement (DIDR) ranging from on-the-ground managers of displacement projects to socio-economic project designers, evaluators, policy developers, lawmakers focusing on takings, and more. INDR's members have over five decades of researching, designing, supervising, and monitoring the impacts of megaprojects on the involuntary resettlement of peoples. Consequently, our members are internationally experienced in mitigating, managing, monitoring, evaluating, and assessing frameworks and on-the-ground situations of peoples threatened with human rights violations. Our primary concern is for people who are "in the way" of development and desire to prevent, avoid or mitigate the predictable but preventable negative outcomes.

From the outset, INDR is concerned with the idiosyncratic definition of megaprojects proposed for this exercise. The SR states that megaprojects are *"projects that causes [sic] significant impacts on the human rights to water and sanitation and on other related rights and that meet at least one of the following criteria: (1) wide land use and/or large modification of water resources; (2) long implementation period."*

This definition confuses the exercise: a megaproject is, by definition, assumed to have significant human rights impacts. This definition of a megaproject is also misaligned with the decades old, standardized definition of megaprojects.

Megaprojects are clearly defined in Flyvbjerg's *Oxford Handbook of Megaproject Management* (2017) and Hirschman (1995)³. Megaprojects are large-scale, complex ventures that typically

³ Hirschman, A. O. (1995). *Development Projects Observed*. Washington, DC: Brookings Institution. First published 1967. Bent Flyvbjerg. 2017 *The Oxford Handbook of Megaproject Management* (Oxford Handbooks) (p. 18). OUP Oxford. Kindle Edition. Flyvbjerg, B. (2011). "Over budget, over time, over and over again: Managing major projects," in P. W. G. Morris, J. K. Pinto, and J. Söderlund (eds.), *The Oxford Handbook of Project Management*. Oxford: Oxford University Press, pp. 321–44. Flyvbjerg, B. (2012). "Why mass media matter, and how to work with them: Phronesis and megaprojects," in B. Flyvbjerg, T. Landman, and S. Schram (eds.), *Real Social Science: Applied Phronesis*. Cambridge: Cambridge

cost \$1 billion or more, take many years to develop and build, involve multiple public and private stakeholders, are transformational, and impact millions of people.

Failure to disarticulate opens the option for projects to make *a priori* claims that they do not have a human rights impact and are excluded from the UN criteria. On the ground investigations, not definitions, are used to determine whether or not there will be significant impacts. Starting from this standard definition, the Special Rapporteur may then narrow interest to those impacting water and sanitation. Then, their human rights impacts and management issues can be empirically assessed.

Q2. What are the main positive and negative impacts, assessed by your organization, that mega-projects have on the normative content of the human rights to water and sanitation (quality and safety, accessibility, availability, acceptability, affordability, dignity and privacy) and human rights principles (access to information, participation, equality and non-discrimination)?

Assuring safe water and sanitation for displaced people is unquestionably a fundamental element. This must include improved access to improved systems of domestic water supply and sanitation (WSS) in collaboration with those physically and economically displaced.

Megaprojects, almost by definition, displace millions of people every year, whether physically or economically or both.⁴ Some safe water and sanitation megaprojects may even displace people, especially in urban areas. Some megaprojects may improve safe water and sanitation. Others have minimal or no impact on this fundamental right. All megaprojects merit an appraisal of their potential and actual impacts on human rights, especially those megaprojects that physically and/or economically displace people. A WSS project is not exempt from an appraisal simply because it provides WSS benefits. It may unnecessarily harm those displaced. Those responsible for financing and/or implementing these projects have a responsibility and obligation to avoid and minimise displacement; and, where unavoidable, to improve the lives, livelihoods and living standards of those displaced.⁵ Over sixty years of research and experience by INDR specialists

University Press, pp. 95–121. Flyvbjerg, B. (ed.) (2014a). *Megaproject Planning and Management: Essential Readings*, vols. 1–2. Cheltenham, UK, and Northampton, MA: Edward Elgar. Flyvbjerg, B. (2014b). “Introduction,” in B. Flyvbjerg (ed.), *Megaproject Planning and Management: Essential Readings*, vols. 1–2. Cheltenham, UK, and Northampton, MA: Edward Elgar, pp. xiii–xxxiv.

⁴ INDR responses focus on forced displacement. There are a also number of ways in which megaprojects can cut off or contaminate WSS without other impacts on people affected. The groundwater loss or contamination is obviously a major one, and these impacts might not show up for some time. Downstream impacts of reservoirs include water flows. We have other cases of projects cutting people off from their WSS, either by disturbing existing pipe systems temporarily during construction or permanently; or disturbing stream flows, etc. In so far as these may influence the human rights of others, they merit inclusion in the report.

⁵ These objectives extend beyond the routine exercise of government responsibilities to their citizens and corporate social responsibility. Improvement and mitigation steps address the psychological, social, cultural and economic disruptions of the megaproject to project affected peoples.

document that those displaced are at risk of human rights violations from the very outset of projects which continue throughout and beyond the project cycle. People displaced by megaprojects often lose access to valuable assets⁶. They may face a risk of contamination of water supplies and/or reduced/terminated flows.

Health risks may include loss of water quality (waterborne diseases through microbiological or chemical contamination); water quantity (water hygiene diseases); water vector or contact diseases; excreta disposal diseases; and water aerosol diseases. Megaprojects may also exacerbate pre-existing WSS difficulties, as over 40 percent of people around the globe live in areas of water stress. While access to improved water sources has increased significantly over the past 25-plus years, 666 million people throughout the world did not have access to improved water sources in 2015. Data for that same year indicated that 2.39 billion people did not have access to improved sanitation (<https://ourworldindata.org/water-use-sanitation>).

Positive impacts occur when all displaced populations gain improved access to safe drinking water and sanitation resulting from these being built into project design and financing from the outset in collaboration with those to be displaced and resettled. The likelihood of this outcome increases when it includes resettlement site selection in collaboration with displacees, fair and just compensation for loss of access to both surface and groundwater and sanitation facilities, spatial arrangement of water and sanitation infrastructure according to cultural preferences in terms of access and privacy, hydrogeological surveys to determine quality of groundwater, and monitoring of downstream river water quality, which is often adversely affected by dam construction and mine tailings in the case of mining projects.

International human rights law requires that water and sanitation infrastructure be designed in a culturally and socially sensitive manner, but this is not always done in practice. Access to water takes on critical, social and cultural dimensions that may be disrupted by megaprojects with otherwise positive outcomes. Human rights issues are prevalent among projects impacting indigenous and tribal groups. In the Bujagali Dam case, resettlers petitioned the World Bank Inspection Panel in order to mitigate access to the Bujagali falls, a sacred site fundamental to the Busoga tribe's social organization - for an area far beyond the project infrastructure.⁷

Negative impacts result from design and financing failures. There may be no provision for safe water supply and sanitation (WSS) at all following displacement. Four examples follow (Box 1).

⁶ Including access to water sources, whether surface or groundwater. These include access to rivers, streams, ponds and community water infrastructure such as rainwater harvesting, public or private wells, and toilets or latrines.

⁷ See Theodore Downing, Annex C and Chapter VIII of The World Bank's Inspection Panel, The [Bujagali Investigation Report](#) of The Inspection Panel (2008).

Box 1. Impact Examples

Example 1. Resettlers in the Theun-Hinboun Dam Project in Laos were required by the private power company implementing the project to buy into a latrine construction program in the new villages in order to receive, gravel, sand, cement, piping, a toilet and septic tank components, implying that they were to build their own household systems. They then had to pay back the company for the materials by depositing money into “village funds.” No resettled individual or household should be required to “buy into” any program for sanitation or wells which, by virtue of the project, were inundated or otherwise lost in the original communities. It is the responsibility and obligation of the project to provide infrastructure for and access to safe water and sanitation systems in the new communities in collaboration with the affected people; moreover, these should be improved systems in that resettlement operations should be designed from the outset as development interventions.

Example 2. In southern Mexico, sanitation campaigns and educational programs were among the objectives for development in resettled Mazatec indigenous communities displaced by the Miguel Aleman Dam. Water systems were to have been provided in each community and self-maintenance expected to be achieved after a generation. Groundwater wells were dug by the government in some communities as part of the resettlement package; several communities never received the promised systems, and there is no evidence that the improved sanitation or education programs were ever introduced. Thirty years following the resettlement, many communities still had no potable water supply, the well water of those households with wells was contaminated by surface water runoff carrying fecal matter because no protective measures in the form of walls lining well pits to divert runoff were made, and both adults and especially children carried heavy parasite loads which adversely affected their ability to work and/or perform adequately in school. Pit latrines dug by the few Mazatec families who chose to do so themselves were located relatively close to the river and open defecation was common among small children, resulting in contamination of both groundwater and river water.

Example 3. Even when wells are dug in resettlement communities as compensation for lost access, such as in Cambodia’s Lower Sesan 2 Hydropower Project, field studies have demonstrated that water from the new wells is dangerously contaminated with arsenic, which is common in aquifers above 60 meters in depth.

Example 4. As part of the 180 MW Bajoli Holi Hydroelectric Project in the northern Indian state of Himachal Pradesh a fifteen-kilometre-long tunnel would be built. The tunnel threatened to dry up the Ravi River on which communities depended for water and eventually displace the community. During a peaceful protest against the hydroelectric project, thirty-five Gaddi tribal women from Holi village of Chamba District were arrested in March 2014. The women, had been protesting against the proposed hydroelectric project that would decimate the dense forests they inhabit and result in the loss of their homes. The project’s plans have been promoted since 2012 by a private company called GMR. The project involved the diversion of seventy-five hectares of rich Himalayan forests and the removal of

almost 5,000 trees. The initial plans for the project had called for construction on the bank of the river Ravi where there were no forest villages. The Ministry of Environment & Forests (MoEF), however, gave consent to GMR to shift the project to the opposite riverbank where several tribal forest villages were situated. This consent was given despite an evaluation report by the Himachal Pradesh State Electricity Board, which examined technical, social, environmental and economic issues in making a recommendation against the shift from one river bank to another. Police and local contractors tried to intimidate the women and threatened them by arresting them in attempts to force the women to cease their protests. These actions did not comply with international standards concerned with violence against women.

Negative impacts also result from a focus on consulting only with community leaders, who tend to be male, to the exclusion of women. This is especially unfortunate regarding the issues of water and sanitation, domains which tend to be the responsibility of women.

Positive and negative impacts on gender must not be excluded. Water quality, access, and affordability are critical among poor women who are primarily responsible for collecting water. Women are for the most part in charge of cooking, cleaning, and usually looking after domestic animals. In some cases, replacement water sources are required for new communities in reservoir areas and downstream that meet international standards in terms of safety. Women and girls may spend a considerable number of hours per day collecting water; the question of the impact of megaprojects on WSS availability and on this workload is of critical importance therefore for women's work and wellbeing and girls' schooling, and beyond these to the health, wellbeing and productivity of the entire household. Safety is also a critical concern. When water must be gathered from isolated locations, women and girls are more vulnerable to attack.

Dams may introduce complex management issues which may improve or threaten downstream access to water. Significantly, not only those displaced and resettled may suffer loss of access to water. In the case of dams, downstream residents may experience more unpredictable and extreme flooding cycles (more diurnal as opposed to seasonal before the dam) as a result of dams, adversely affecting their access to surface water for drinking, bathing, washing and cooking. This results from inconsistent releases of water from dams in response to fluctuating energy demand for electricity, much of which is exported. Overall, there is less flow available to downstream users, but with periodic, unpredictable flooding due to unannounced releases of increased amounts of water from dams. In addition, water released from dams tends to be of lower quality, often contaminated and containing algae that is harmful to human health. The

human rights to WSS depends on complex negotiations on such issues as the volume and timing of controlled releases rather than just the assertion of normative rights.

Water management routinely requires restriction of water access and affordability. Sometimes this may trigger human rights issues, particularly among inefficient and corrupt corporations of governments who avoid investment in water infrastructure. Such situations illustrate a power imbalance in which local people have to petition the same actor that has damaged the quality and quantity of their water sources in order to get water in their communities.

Beginning with the World Bank, it has long been established by multilateral development banks policies that resettlement of displaced people should be financed and implemented as *development* projects, designed in collaboration with project-affected people to improve the living standards of those displaced and resettled. Resettlement as development must include improved access to improved systems of domestic water supply, improved water quality, and sanitation systems in collaboration with those displaced. The human right to safe water supply and sanitation is often neglected in the design of megaprojects, leading to the loss of WSS for people affected through carelessness or neglect.

Loss of WSS may be so severe that otherwise unaffected, displaced households may face particular hardship that makes it difficult to remain in place. They become major unplanned casualties of the megaproject. Strenuous efforts to avoid and reduce displacement must include thorough review of the likely impact on WSS as well as other impacts, whether through initial design or subsequent implementation and operation phases of the megaproject. Failure to take empirically-based knowledge and experience into account will likely result in the unnecessary violation of multiple human rights, including those to safe water and sanitation, of those displaced and resettled as a result of a project.

Displaced peoples who are not properly resettled tend to move to public lands and water sources, including those near public water sources, threatening quality. Such “squatters” may become victim to repeated displacement. This human rights problem is exacerbated in urban areas.

Q3. In your experience, what challenges do human rights defenders, community leaders or affected populations face when protesting against the negative impacts of mega-projects on the human rights to water and sanitation?

Those who vocally and vigorously protest the negative impacts of megaprojects are generally ignored by project officials and/or government, and may become subject to harassment and even arrest by project officials and/or local or higher authorities (see, for example, the Bajoli Holi Hydroelectric Project case mentioned in response to Q#2, example 4 above). In still other cases, activists and protesters have encountered worse fates.

The Narmada Valley Projects in Western India, for example, involved the construction of several large irrigation and hydroelectric multi-purpose dams, which would facilitate distribution of water and electricity to Gujarat, Maharashtra, Rajasthan and Madhya Pradesh states. Plans began in the 1960s and the project was initially funded by the World Bank. The controversy over the project initiated by massive protests on the part of NGOs and project-affected people triggered several legal cases in the Supreme Court of India between 1999 and 2003. The "Save Narmada Movement," known in India as Narmada Bachao Andolan, gained international recognition for its efforts at protecting human rights. The protests highlighted the violation of both social and environmental responsibilities and rights, and specifically those of indigenous communities. An independent review of the project ultimately resulted in the withdrawal of funding by the World Bank when it became clear that the resettlement operations were an abject failure. To date, resettlement and rehabilitation of project-affected people has still not been completed.

Projects financed by multilateral development banks (MDBs) routinely incorporate “grievance mechanisms” ostensibly for addressing complaints by project affected people and their advocates to avoid lengthy controversy, negative publicity and litigation. Such mechanisms have generally not been very effective. In many cases, displaced people are not even informed of the existence of such a mechanism. In the Theun-Hinboun and Nam Theun 2 cases, most resettled villagers did not even know of a grievance procedure; many thought there was a time limit for expressing complaints.

Dismissing the complaints of people who protest negative project impacts may not always be a product of malicious intent. Work in Australia has shown that “project mentalities” can emerge during a project. When this happens, people who are working on the project become so personally invested in the project going forward, that they have difficulty imagining a scenario where the project does not occur or is significantly changed. They begin to see people with legitimate protests as unnecessarily blocking the project from proceeding. In eagerness to move the project forward, decision makers and managers truncate process and exclude the public from critical phases of decision-making. The work speaks to the narrow, project-forward mentalities that occur for people who are managing megaprojects. For projects where there are significant WSS implications, project mentalities could mean that the critical development components are overlooked in the zeal to move the project forward. It is important to note that project mentalities may go unnoticed by project planners – so, they are an issue that is unmanageable from “inside” the project.

Q4. Please provide cases where advocacy strategies or efforts of the affected populations against the negative impacts of mega-projects led to an improvement or guarantee of the protection, respect or fulfilment of the human rights to water and sanitation.

INDR notes that this is not a question, but a request for case studies and desk reviews. As a professional association, we feel that the Special Rapporteur should understand the limits of professional associations and the civil sector to respond to such a pro bono request.

Stage 1: Macro-planning (Q2 to Q8)

Q5. During the macro-planning phase (the stage when mega-projects are identified as part of the national development agenda of a country), what are the legal, policy and institutional gaps that may result in negative impacts on the human rights to water and sanitation? What are effective safeguards to minimize and prevent those impacts?

We address this question within the scope of the impacts of forced displacements that are the consequence of megaprojects with WSS benefits or which have WSS impacts. As each megaproject occurs within specific legal, policy and institutional frameworks, the question is not answerable with specifics. We are, therefore, forced to respond generally.

Most countries and private sector megaproject owners work within legal, policy and institutional frameworks. Whether they are comprehensive in terms of human rights to water and sanitation is a matter for individual, case by case assessment. Which legal, institutional and accountability framework is applicable to a megaproject depends on the project's financing and jurisdiction. Few can be said to have comprehensive national legal, policy, regulatory and safeguard frameworks or system and enough trained personnel with the experience and expertise to implement resettlement operations..

Certainly the UN is aware of the near-comprehensive set of safeguard policies adopted by all multilateral and many private sector lenders, OECD countries and corporations that have existed in the past. These policies, which are no longer binding upon the World Bank staff and borrowers, are still binding upon staff and borrowers of most other MDBs, including ADB, IDB, AfDB, EBRD and OECD countries. Until recently, the World Bank safeguard policies were binding upon the borrower. These safeguards, once the international model, have now been replaced by much weaker, non-binding, voluntary "performance standards" which serve merely as guidelines to which borrowers and lenders may or may not adhere. This places, in the case of World Bank megaprojects, and on any other megaproject financed domestically and/or internationally by a lender without an internationally recognised involuntary resettlement standard, greater focus and attention upon the country standard of laws, regulations, institutional and operational arrangements for addressing displacement.

The UNEMG's proposed draft model approach to environmental and social standards for UN programming appears to have followed suit by adopting "standards" terminology and making alignment with the draft model approach voluntary among UN entities. China's policy banks, the

China Development Bank and the Export-Import Bank of China, now provide as much financing to developing countries as the World Bank does, and without international policy coverage on involuntary resettlement; this does not include Chinese bilateral development finance arrangements which also lack such standards. INDR professional's experience demonstrates that even binding policies have historically been agreed to in principle and then routinely violated and subverted by both lenders and borrower governments as well as private companies.

Another gap. Borrowers who felt too constrained by the requirements of safeguard policies then in place simply walked away from the proposed loan agreements (binding in themselves) and sought out lenders with less restrictive or no policies. One could argue that the same has been done regarding human rights law. The problem, in short, is that megaproject proponents are more concerned with the construction and operation of the physical infrastructure than the social and environmental impacts of the project on affected people. The tendency has been, and continues to be, ignoring or subverting existing national and international laws and safeguard systems designed to protect the rights of affected people and mitigate adverse impacts.

There also tends to be a gap between the enactment of law and on the ground implementation of the law. In India, for example, the struggle by indigenous communities and by civil society organisations in solidarity with them resulted in the passage of the Forest Rights Act of 2006. The Forest Rights Act has occasionally had a positive impact on human rights to water. It has provided access to justice which in some cases has been positive, and in other cases, has not been successful. The implementation of the law in this case is partly the responsibility of the Forest Department under the Ministry of Environment and Forests. The Forest Department, created by the colonial government in the 1800s in India, has always enjoyed territorial responsibility over forest and forest rivers. They have, and continue to, resist community legal rights over land and water. Evidence indicates a pattern of consistent heavy handedness, administrative injustice, and routine violation of both the letter and spirit of the law.

Q6. How and in which forms should the human rights-based approach be introduced in national policies integrating mega-projects, to protect, promote and fulfil the human rights to water and sanitation?

Human rights protective mechanisms are enhanced when they are enshrined in legislation in the form of law, regulations, and procedures. They are further enabled when they are institutionalized, routinely funded, enhanced when found to be in need of enhancement and routinely folded into projects, large or small. And they are buttressed by pre-project benchmark studies, including social, environmental, health and human rights impact assessments, and binding safeguard policies and resettlement action plans, including those regarding the rights to safe water and sanitation, with severe penalties for non-compliance. Finally, legislation must

clearly define megaprojects (size, costs, etc.). It may be wise to avoid limiting human rights protections to megaprojects, however defined, as it opens up the potential for human rights abuses in projects that do not reach this threshold. Legislation is also jurisdictional and funding source specific, dictating that human rights protections must be formulated at many levels. This is a game of meters, not centimeters.

Q7. What type of participatory processes have been or should be implemented to inform the public and the affected population and to facilitate the discussion on the option to include or not include mega-projects in national development policies?

“Meaningful participation/consultation” has generally come to mean project authorities scheduling meetings with affected people and simply telling them that the project will happen and how it will proceed and what it entails. Having done that, the assumption is made that the affected people have been informed and consented to the project. Affected people rarely, if ever, are educated about or provided with paper copies of relevant national laws, relevant human rights documents and lender safeguard policies so that they are better prepared to negotiate the conditions under which their rights are to be protected during the project, register any complaints during the project cycle and beyond, and collaborate in mitigating adverse impacts. INDR has concluded, and other professional associations have concurred, that failure to provide such information to affected people at the outset is by itself a human rights violation, and has strongly recommended that formal legal representation for affected people by an objective party be adequately financed as part of the project budget.⁸

Another issue is in the format and inclusion designed into community consultations. When communities are consulted, it is often the case that project implementers seek the easiest path of consultation. In our experience, this can lead to some populations – women, youths, people with disabilities – being excluded from consultations. This can happen inadvertently, when male community leaders are seen by outside planners as having authority to make decisions on behalf of the community. It can also happen intentionally, when some community leaders who support the project position themselves as the authoritative voice, or when project planners working under a “project mentality” seek or hear only the positions that support the project.

India, for example, has a history of overriding free and prior informed consent (FPIC), especially in the the context of large dam projects. Against the stated wishes of local communities, large dams such as Narmada were built with funding from the World Bank, which cancelled the loan when the human rights violations became widely publicised. Affected communities were not only overridden in the inception phase, but were excluded during the

⁸ American Anthropological Association. 1998. The Pehuenche, the World Bank Group and ENDESA S.A. Report of the Committee for Human Rights. By Barbara Rose Johnston and Terrence Turner.

project building phase. No local participation has been allowed and affected communities have never been allowed to share in the benefits from the profits of hydroelectric projects.

Key questions include: What are the project's social, cultural and economic boundaries? Who are project affected peoples? To what is consent being given? The project itself? The impacts? What information is provided? The timing of the consent? The language? The method for confirming consent? The method for being informed? How are internal difference among the affected populations to be resolved? And more. Megaprojects often impact many different groups within and outside of project-defined boundaries to which FPIC must be sought. Each group must be informed independently.

Q8. What challenges exist to ensure transparency and participation as well as to access to information in the macro-planning stage? How have they been addressed and guaranteed, if any?

See response to Q#7 above.

Stage 2: Planning and designing (Q9 to Q14)

Q9. What are the challenges faced during the planning and designing stage to respect, promote and fulfil the human rights to water and sanitation? How have they been addressed and overcome?

See responses to Q#5-8 and footnote 1 above, as well as the following:

The challenges are formidable. INDR identifies four gaps and four solutions.

Policy Gaps. Powerful interests can bias selection of projects, including megaprojects, in ways that may result in externalizing costs, access, and contamination to lower income and powerless users, particularly those displaced. A few countries have approved high level policies on involuntary resettlement but these are generally not legally enforceable.

Legal/Regulatory Gaps. The WSS sector may be subject to laws and regulations beyond WSS, such as health, irrigation, power, etc. Water sources may cross country boundaries with another jurisdiction that makes decisions which determine water quality and quantity. Megaprojects may exploit gaps in legal protection for WSS that heighten risks for those to be displaced.

Expropriation laws and regulations restricting access rarely require full and complete remedy for those displaced. They rarely specify loss of WSS as a cost to affected people, so this loss may be overlooked, ignored, or differently interpreted when land is acquired for megaprojects, as might eligibility for compensation, particularly in cases where the people affected have no formal title to the land on which WSS facilities are located. Few country legal frameworks require

resettlement and rehabilitation, leaving it unclear as to whether replacement WSS is provided to affected peoples. Compensation, if paid at all, may be based on less than the full cost of replacement.

Laws and regulations may lack clarity in assigning responsibility for repairing project-related damage to water lines or sewerage lines into houses, whether on the household property or outside its boundaries, as happened in an Indonesian roads project, where households lost essential WSS for extended periods, and faced high costs of buying in water, which were uncompensated. Negotiations prior to, during or instead of expropriation might ignore the cost of WSS losses to affected households and their follow on impacts on loss of health and productivity. Laws and regulations may lack provision for accessible appeal or grievance redress.

Institutional Gaps. Megaprojects may exacerbate impacts arising from weaknesses in implementing laws protecting WSS from encroachment, pollution, and diversion, especially where there is increasing competition for water. WSS sector institutions may be dominated by technical people especially where there are large dams that supply water systems, with little thought for social distributional issues, including the displaced, nor for responsive complaints mechanisms. People without formal land title in particular may be at the mercy of highly priced illegal operators for WSS.

Urban Planning Gaps. There is also a notable absence of discussion of displaced urban populations in the urban strategic planning documents that often articulate the need for megaprojects. Many countries have both national guidance on urban planning and individual strategic planning activities for individual cities and sub-areas of cities. In urban areas, many countries' national guidance – and many cities' urban comprehensive and strategic plans – do not contain provisions and plans for resettlement. Rather, they tend to identify lands as available which may actually contain settlements. Once lands are designated as available, the people living on them become slated as being in the way.

These WSS sector problems may compromise WSS solutions to overcome these gaps for the displaced.

Policy Solutions. Strengthen transparency and accountability in development priority-setting and selection of projects, including megaprojects; strengthen public information policies and media/civil society freedoms to participate in and report on the project selection process; strengthen publicly reported progress towards the Sustainable Development Goals (SDGs) and human rights targets including WSS targets and expected positive and negative contributions or otherwise of all megaprojects, subject to public scrutiny and based on on-going, publicly released research.

Legal/Regulatory Solutions. Require public reporting on progress towards SDGs and human rights, including WSS, in laws and regulations. Set legal requirements to weigh up displacement costs in megaprojects, including potential loss of WSS with resulting health, wellbeing and productivity costs and include these costs in decision making for megaprojects, as is required, for example, in India's *Land Acquisition Resettlement and Rehabilitation (LARR) Act* as approved 2013. Strengthen laws on eminent domain to address the full risks and impacts to those displaced. Offer a legal framework for negotiated settlements with people to be displaced in advance of or prior to involuntary displacement that explicitly includes access to WSS facilities; in which the people to be affected have full information and legal protection prior to, during and after negotiations; and for which delivery of negotiated conditions is monitored and enforced. Require free, prior, informed consent of a significant majority people to be affected by private and public-private megaprojects as in the India LARR.

Institutional Solutions. Establish transparent and accountable macro-planning systems; together with consultative and participative processes; provide skilled personnel, sufficient budget and other resources for monitoring and evaluation (M & E) for progress towards the Sustainable Development Goals (SDGs) and human rights targets.

Urban Planning Solutions. Requirements should be established for comprehensive urban planning processes that treat lands inhabited by people as part of the planning process, regardless of tenure arrangements, rather than as vacant lands to be cleared. This should include acknowledgement of the need for large resettlement efforts that are developmental, rather than displacements.

Q10. What legal and policy framework is in place to clarify the roles and human rights obligations and responsibilities of actors involved in the planning and designing stage? What legal and policy framework is in place to regulate actors to perform in accordance with human rights obligations and responsibilities and to conduct human rights assessments of impacts of such projects?

See response to Q#5 above. This is a poorly framed question. Whose framework? Where? Legal and policy frameworks in place depend on the borrowing country and who is doing the financing. If the SR had laid out all the frameworks on the planet on the table, then what?

While States have certain obligations to protect human rights under international law, each has their own laws, policies, regulations and adjudication. For example, if the question were to reference policies on lending for megaprojects, then legal, policy and safeguard frameworks are generally negotiated among project proponents as part of the loan agreement for a project. The World Bank's official position on human rights has been for decades a political one, viewing

them as sovereign national issues, and therefore prohibits Bank involvement as interference in national affairs as stated in its Charter/Articles of Organization. The International Finance Corporation (IFC) employs a non-mandatory risk assessment due diligence process that includes a free-standing human rights impact assessment during the early stages of the project cycle.

The World Commission on Dams (WCD) adopted and ratified a Rights and Risks approach to assessing large dam projects, which was largely rejected by the World Bank and others, i.e., the hydropower industry, despite having ratified the WCD approach. The financial industry has put forward benchmark principles for determining, assessing and managing environmental and social risks in projects known as the Equator Principles (EP, version III, 2013). The EP Association has begun a targeted review of the Principles with the aim of bolstering thematic areas. Most relevant here is that one of the thematic areas being targeted is “Social Impact and Human Rights.” The UN issued Guiding Principles on Business and Human Rights, which were endorsed by the Human Rights Council in 2011. None of these, however, have the force of international law.

At the national level, India’s Forest Rights Act of 2006, for example, has stipulated clear substantive and procedural rights for participation of Gram Sabhas (village councils) in the decision making for how forest lands (and rivers and other water bodies) are used.

INDR prefers to identify gaps and propose solutions with reference to the specific human rights issue of involuntary displacements resulting from megaprojects, including those for WSS.

Policy Gaps. Pressures from powerful megaproject developers may undercut bidding process for feasibility, planning and design contracts; may also undercut time and resources for planning effective, participative measures to avoid, minimise and mitigate displacement; and for effective environmental and social impact assessment (EIA/SIA), including, importantly, identifying likely future WSS impacts eg. on groundwater, streamflows, reticulated systems, etc; and their potential to heighten displacement risks.

Legal/regulatory Gaps. There tends to be an absence of transparent bidding requirements for planning and design work; and /or weak EIA/SIA legal and regulatory requirements. This may undermine planning integrity and identification of full costs of megaprojects for affected people including loss of their access to WSS. Less than effective laws and regulations may result in poor resettlement planning; absence or weak governance in WSS sector may translate into poor planning for access to WSS facilities among affected /relocated people or lead to additional, unforeseen and unnecessary displacement impacts. There may be inadequate legal/regulatory sanction on forced evictions, with people being evicted without appropriate resettlement sites equipped with WSS facilities, leading to high costs to households and the economy overall in lost health, wellbeing and productivity. Lack of recognition of differentiated social roles may penalise certain groups eg. women may be particularly disadvantaged in view of their typical role in managing household water collection and use.

Administrative Gaps. Lack of monitoring, regulation and enforcement capacity and budget; lack of understanding of social & gender issues in WSS access and displacement risks and impacts.

Policy Solutions. Increase transparency through public reporting on letting contracts for feasibility assessment, planning and design of megaprojects. Set Terms of Reference (TORs) for all contractors fully and comprehensively to assess displacement impacts and WSS risks during feasibility, planning and design stages; and to present options for avoiding, minimising and mitigating those impacts. Ensure all contracts require reporting on full EIA/SIA implications plus implications for progress toward SDGs and human rights targets. Ensure public reporting and hearings as integral part of EIA/SIA process.

Legal/regulatory Solutions. Laws and regulations to mandate public reporting and consultation on bidding process, including decision making criteria and reasons for award of winning bid. Laws and regulations to require all feasibility and design studies to demonstrate how displacement impacts and adverse impacts on WSS are to be avoided and minimised, choosing least disruptive design options. Laws and regulations should require comprehensive EIA and SIA as part of the feasibility and design process which ensures displacement risks and impacts are also identified explicitly and fully addressed in countermeasures (eg Resettlement Plan). Ensure that laws and regulations explicitly ban forced evictions; displacement to occur without violation of human rights, subject to the law and with provision of alternative sites with secure tenure and adequate WSS for those displaced lacking legal or legalizable title. Ensure laws and regulations that govern the planning and design of megaprojects give sufficient time for addressing displacement risks and give visibility to WSS risks in displacement. Laws and regulations to establish clear and unambiguous social and environmental criteria for addressing displacement risk that all feasibility and design work must meet prior to approval of megaprojects; and require public reporting and consultation on these criteria. This would include efforts to avoid and minimise displacement; and where unavoidable, replacement level compensation and other assistance to rebuild lives and livelihoods. Incorporate clear requirements to consider and address human rights eg. to WSS and other rights and SDGs also, including for those to be displaced, in the megaproject approval process.

Administrative Solutions. Build capacity for monitoring and regulation of planning and design contractors on all above named requirements. Build in public information and consultation processes.

Q11. How has the framework on the human rights to water and sanitation been successfully integrated into the planning and designing phase and particularly in environmental and social

impact assessments? How could impact assessments be improved to take into account the impacts on and protection of the human rights to water and sanitation?

Evidence is hard to find of a successful framework on the human rights to water and sanitation, per se, being integrated into the planning and design phase for any megaproject. Impact assessments are essentially recommendations to the project proponents and financiers. The relevant dimension is the next step: its successful implementation. Developments in the field of social impact assessment have increasingly brought to the forefront the urgent need to include health impact assessments (which would incorporate issues regarding WSS) and human rights impact assessments of projects at the earliest possible stage of the project cycle, in addition to the social and environmental impact assessments.

Q12. Please provide examples of ex-ante impact assessments where the human rights framework, particularly the rights to water and sanitation, has been successfully or unsuccessfully integrated into the planning and designing phase.

Again, this request (not a question) demands a desk review beyond the amount of time and resources a voluntary Ad Hoc Commission has to adequately respond. See response to Q11.

Q13. What outcomes do ex-ante impact assessments revealed in terms of the potential impact on the realization of the human rights to water and sanitation? In case negative potential impacts were identified, what corresponding preventive and mitigation measures have been included in the project?

The megaprojects literature is rife with examples of inadequate, incomplete, and/or seriously flawed social and environmental impact assessments at this stage of the project cycle. There is evidence of instances in which project proponents have altered conclusions of EIAs and SIAs, as well as evaluations, which are contrary to those of the proponents. Findings of negative impact have been altered or deleted altogether to paint a more positive picture of projected outcomes. In worst-case scenarios, such reports are simply rejected or ignored and consultants let out of their contracts. In a couple of cases, independent reviews have also been so treated (i.e., Narmada in India, the Pangu dam in Chile). Occasionally in response to pressure from CSOs and others, project lenders have commissioned additional, presumably more objective, EIAs and SIAs. Ex-ante impact assessment may be ignored.

Q14. What challenges exist to combat corruption and to ensure the active, free and meaningful participation of affected populations in consultation and participatory processes during the planning and designing stage?

See response to Q#7 above.

Stage 3: Licensing and approval (Q15 to Q16)

Q15. What actors are involved in granting licensing or approval for mega-projects and how do the existing procedures related to licensing and approval of construction and operation incorporate a human rights perspective?

Government authorities, lenders, and/or corporate officials and lawyers have primary responsibility for granting licensing and approval of construction and operation. A widespread misunderstanding has emerged concerning what is called a social license, which to some means a “consultation” meeting has confirmed that those in the way agree to the infrastructure project. Caution! This may be misinterpreted to mean that project affected peoples consent to the negative impacts of the project, including being involuntarily resettled or having their human rights violated. This is not free, prior and informed consent. If permission is sought and obtained without fully informing those consenting to the psycho-socio-cultural, health and economic risks and mitigation options, if any, the procedure for obtaining a social license may be a human rights violation. Equally risky is a decision that government agencies are empowered to consent on behalf of those in the way. Again this may quickly turn into a human rights violation. The core issue is to what are project affected people giving their consent? And are they informed, including potential human rights violations. Checking off a box that a “social license” has been obtained, without substantial consultation on the ground, detailed explanation of impacts of the project on affected peoples, and proof that culturally appropriate consent was obtained borders on a human rights violation itself. INDR stands willing to work with the SR to define the steps necessary to avoid a human rights violation in claims that a project has obtained a social license.

Q16. What guarantees, safeguards or monitoring measures are in place to ensure that human rights framework is reflected in the licensing agreement?

Provisions regarding the human rights of project-affected people should be built into national legal, policy, regulatory and safeguard frameworks or systems as a matter of course, and must also be part of the loan agreements that govern the project. See responses to Q#6-7 and Q#10 above.

Policy/legal/regulatory/administrative Gaps. High risk of elite capture in bidding for megaprojects construction and operation contracts; unclear conditions and standards for licensing and approvals with respect to displacement and WSS human rights; no effective sanctions for disregarding resettlement planning requirements nor of damage to or loss of WSS access by people in the megaproject zone of impact.

Policy/legal/regulatory/administrative Gaps. In addition to what is stated in response to Q15, no megaproject licensing nor approval without a) clear resettlement provisions and/or plans based

upon full information to, consultation with and agreement by those people to be affected; b) full disclosure of WSS risks and impacts in the megaproject zone of impact together with countermeasures to ensure continued WSS access including by those people who are displaced. Ensure laws and regulations contain clear requirements for all compensation and other assistance to be provided to those people who will be displaced before their displacement, with strong and effective enforcement, for example, no letting of contracts for civil works of any kind before full resettlement implementation.

High risk bidding for construction and operation contracts can be reduced by: increasing transparency in bidding process; publicly releasing bidding documents; strengthening legal & regulatory requirements for role of monitors and regulators; research and publish reports on governance failings and corruption. Provide incentives to staff (awards, commendations, pay increase, bonuses, etc.) to improve governance; and protecting whistleblowers.

Stage 4: Construction (Q17 to Q18)

Q17. What are the specific impact of mega-projects on the human rights to water and sanitation when mega-projects are in construction? What measures are in place to prevent, mitigate and monitor those impact?

Adverse impacts begin even before construction. It has been repeatedly documented that, among a panoply of changes, project affected communities are discouraged or cease to plan for the immediate future. What lies ahead is uncertain. Our professionals have three theoretical frameworks and scores of cases that explain this process. Those in the project's path cease or are discouraged from planting crops, making any repairs or improvements in village infrastructure, among many other things, because the land will soon be inundated (in the case of dams). Government and local authorities cease to make any improvements in local infrastructure (road maintenance, improving buildings such as schools and clinics and the like) in the project area designated to come under construction. To the extent that they or local villagers have responsibility for maintaining domestic water infrastructure (wells, pumps, piping, etc.) upkeep and functioning of domestic water supply may begin to erode even before project construction begins due to government/administrative neglect or villagers being discouraged from such maintenance in the advent of being resettled.

In the case of large dams, downstream residents will begin to experience changes in river flow, and their access to surface water, as construction commences due to diversion caused by coffer dams to accommodate construction of the main dam.

These problems become especially acute if, for various reasons, project construction is delayed for any substantial period of time.

Moreover, it is well established that the social, cultural, economic and environmental impacts of megaprojects routinely extend outside of the physical project's boundaries. Consequently, megaproject planning and financing are obligated to adjust to their real temporal and spatial footprints. As affected communities are resettled, displacees often find that new houses and other infrastructure (schools, clinics, wells, etc.) that have been promised pre-resettlement are either incomplete or non-existent, necessitating building of temporary shelter while at the same time preparing new fields, assuming land that has been promised is actually acquired and arable. It is incumbent upon project proponents or provide adequate food and water aid during this period until the resettlers have re-established themselves and new water infrastructure is completed in the new communities.

Q18. Please specify challenges faced or good practices adopted by actors involved in mega-projects to ensure the human rights to water and sanitation of affected populations when mega-projects are in construction.

It is well documented that as soon as a given project is approved, most if not all attention and funding is focused on the physical infrastructure and its construction according to schedule and budget, while the social and environmental impacts, as well as resettlement of project-affected people, becomes of secondary importance at best. The challenges faced by project personnel tasked with managing the latter components include: lack of adequate funding to successfully carry out and monitor resettlement and rehabilitation operations, lack of adequately trained staff and field personnel to ensure adequate replacement land is acquired and infrastructure built in a timely manner prior to resettlement, inadequate compensation for lost assets, lack of collaboration with project-affected people, and conflict with the engineers and others tasked with the construction of the project infrastructure and its operation. In the best case scenarios, all of these issues have been addressed in terms of adequate funding and staffing, and binding provisions in project loan agreements to guarantee that resettlement and rehabilitation operations are conducted in an appropriate and timely fashion in collaboration with those displaced by the project and without having to be concerned that budgetary shortfalls in other areas will be transferred from the social, environmental and resettlement programs as a matter of course.

Q19. What legal and policy framework is in place to clarify the roles and human rights obligation and responsibilities of actors involved in the construction phase? What legal and policy framework is in place to regulate, oversight and monitor their performance from a human rights perspective?

This is the same question asked in Q10 and Q23, but for the construction and operations phases? Distinct legal and policy frameworks are rarely prepared for each project phase. It can generally be expected that the legal, policy and safeguard framework at project inception will remain largely intact, with the possible exceptions of amendments to the loan agreement as problems and other issues are encountered. Why waste respondee's time?

Following previous sections, we concentrate again on gaps and solutions in the construction phase.

Policy/legal/regulatory Gaps. Construction timetables may be driven by elite interests and may move too fast to allow participative resettlement planning and implementation ahead of construction.

Laws may take account only of loss at the time of expropriation, rather than any subsequent loss or displacing impact arising from project activity, for example, loss or contamination of groundwater sources arising during the construction and/or operations phases, as is often the case for mining projects.

Lack of clarity on responsibility for collateral WSS damage in construction may put at risk otherwise unaffected or minimally affected households; and exacerbate risks for the already affected.

The legal/regulatory framework may be ineffective to control elite capture, corruption, etc. in bidding and contracting, and in monitoring contractors.

Institutional Gaps. Institutional mandates may be unclear on who is responsible to rectify damage during construction. Compensation and resettlement budgets may be diverted. Contractor supervision may be ineffective – for example in Solomon Islands environmental monitoring capacity from government and from customary landowner groups is not adequate to stop or ensure rectification of damage around water courses and water sources by logging contractors thereby risking community water supplies and in some cases raising questions over continued community viability.

Policy/legal/regulatory Solutions. Laws and regulations to prohibit approval for construction commencement until all mitigative WSS and resettlement measures are independently verified as implemented; later displacing impacts are fully addressed and affected person's complaints and grievances are addressed to their satisfaction. Laws and regulations to ensure independent monitoring and enforcement for civil works contracts, taking account of complaints and grievances from affected persons.

Administrative Solutions. Strengthen regulatory bodies and their capacity for enforcement for resettlement, social and environmental provisions to ensure continued access to WSS both by displaced/resettled people and by people generally in the megaproject zone of impact.

Q20. What procedures and aids to access remedy are available when negative impacts of mega-projects in construction stage amounts to violation or abuse of the human rights to water and sanitation?

Project affected people must be informed in writing, preferably in their own language, or by an objective translator and/or formal legal representation funded by the project, of the safeguards in place and the existence of grievance mechanisms, both nationally and by international lenders (i.e., World Bank Inspection Panel, IFC Office of Compliance Advisor Ombudsman) and educated as to how to properly file a claim for redress and/or remedy.

Another obstacle to human rights complaints has been the claims by MDBs that they are immune from lawsuits. There is now litigation in the US courts has opened another possibility for displaced people to seek remedy if the megaproject has financing from The World Bank group. The US Supreme Court ruled on February 27, 2019 that the International Finance Corporation, and by extension the World Bank Group, does not have blanket immunity and can be sued in US courts (*Jam et al. v. International Finance Corporation*, Case No 17-1101), reversing the decision of the US Court of Appeals for the DC Circuit and remanding the case back to the Circuit Court. The suit was brought by farming and fishing communities whose livelihoods were severely damaged by construction of the coal-fired Tata Mundra power plant on the Gujarat coast. Most relevant here, damage included loss of access to drinking water from groundwater wells, which were contaminated by salt water intrusion as a result of plant operations. The complainants first filed their grievance through the IFC's CAO office, who investigated the case and found the IFC liable. IFC management rejected the findings of the CAO investigative and audit reports, citing immunity, which led to further litigation and ultimately the Supreme Court filing.

There must be built into the project loan agreements binding provisions for an objective, fair, effective grievance mechanism to handle complaints by project-affected people. At the outset of the project, affected community members should be informed in writing, preferably in their own language, or by an objective translator, about the existence of the grievance mechanism procedure and educated about how to properly register any complaints, and every effort must be made to resolve such complaints or mitigate any negative impacts in a timely manner.

Stage 5: Short-term Operation (Q21 to Q24)

Q21. What are the specific impact of mega-projects on the human rights to water and sanitation when its construction is completed and operation has commenced? What measures are in place to prevent, mitigate and monitor those impact?

In cases of megaproject-forced displacement and resettlement, every effort must be made to complete resettlement operations *prior to* completion of construction and commencement of operation. Ideally, new lands, housing, infrastructure, roads, and safe domestic water supply and sanitation systems should already be in place, having been chosen in collaboration with those displaced by the project. The WSS systems should be functioning at or before the time the displacees arrive, and such systems should be improvements over the systems left behind in the original communities. When necessary, resettlers should also be provided from project funds with affordable, efficient water treatment technology (filtration systems, filters) at both the household and community levels, preferably both. Training programs should be implemented concerning the maintenance and repair of the new WSS systems. Continuous, consistent periodic field monitoring of conditions in each of the new communities should provide the measures by which negative impacts are prevented and/or mitigated. In the cases of WSS, this must include water quality monitoring as well as monitoring the condition of the infrastructure itself. This kind of monitoring program should be built into the loan agreements and resettlement action plans and adequately funded throughout and beyond the project cycle.

Q22. Please specify challenges faced or good practices adopted by actors involved in mega-projects to ensure the human rights to water and sanitation of affected populations when mega-projects have been operational for short-term.

See response to Q#18 above. The question asks respondents to compile a guidebook and case studies. It appears at this point that the SR is more interested in producing a handbook, with specific case studies, rather than a thematic report.

Q23. What legal and policy framework is in place to clarify the roles and human rights obligation and responsibilities of actors involved in the operation phase? What legal and policy framework is in place to regulate, oversight and monitor their performance from a human rights perspective?

See responses to Qs #10 and Q #19 above.

Q24. What procedures and aids to access remedy are available when negative impacts of mega-projects in short-term operation stage amounts to violation or abuse of the human rights to water and sanitation?

See response to Q#20 above.

Stage 6: Long-term Operation (Q25 to Q28)

Q25. What are the specific impact of mega-projects on the human rights to water and sanitation when mega-projects have been in operation for an extended period? What measures are in place to prevent, mitigate and monitor those impacts?

Impacts can be expected to continue well after the megaproject has begun operation. Continuous, consistent periodic field monitoring of conditions in each of the new communities should continue to provide the measures by which negative impacts are prevented and/or mitigated. In the cases of WSS, this must include water quality monitoring as well as monitoring the condition of the infrastructure itself. As mentioned in response to Q#21 above, this kind of monitoring program should be built into the loan agreements and adequately funded throughout and beyond the project cycle.

Q26. Please specify challenges faced or good practices adopted by actors involved in mega-projects to ensure the human rights to safe drinking water and sanitation of affected populations after the mega-project has been in operation for an extended period.

See response to Q #18 above.

Q27. What legal and policy framework is in place to clarify the roles and human rights obligation and responsibilities of actors involved in the long-term operation phase? What legal and policy framework is in place to regulate, oversight and monitor their performance from a human rights perspective?

See response to Q#19 above. As before, we identify gaps and propose solutions.

Policy/Legal/Regulatory Gaps. Policy, laws and regulations may be ineffective to contain corruption in contracting and management of WSS systems upon which displaced people may depend for continued affordable and accessible service. Systems for uptake, treatment, testing, storage, distribution of water and of sewerage/sanitation disposal may be investment- and technology-intensive and facilitate elite capture and corruption around work contracts, repairs of systems and outlets, connection fees, etc, which disproportionately penalise poorer and more marginal groups, including the displaced, and especially women and girls.

Institutional Gaps. Poor governance may constrain provision and operation of WSS for people displaced. It may limit service provision especially in construction of accessible and affordable public standpipes, public WCs; it may limit cleaning, operation and testing of WSS schemes leading to health problems, with associated developmental and productivity costs at household and national levels. Non-existent or non-responsive complaints mechanisms may provide little scope for redress. Poor governance and corruption can mean distorted priorities in service

provision, connection fees. If the poor cannot access the WSS system they may face having to pay more to illegal providers the quality of whose WSS may be even more risky. Or they may face having to walk further to obtain suitable water or find suitable sanitation facilities with consequent impacts for workloads, health, wellbeing and productivity. Women and girls may face particular difficulties in terms of privacy, safety, time spent, musculoskeletal and/or other health impacts arising from carrying heavy loads of water.

Policy/Legal/regulatory Solutions. Strengthen laws where necessary for continued M&E for displaced people, including for access to WSS, requiring gender disaggregation of data; strengthen regulatory mandates; require development of responsive citizen complaint mechanisms, with public promotion and reporting. Continue M&E generally among people to assess their access to WSS in the mega-project zone of impact. Publicly release the reports.

Administrative Solutions. Strengthen capacities, skills for regulation and enforcement; provide sufficient time and budgets for monitors; enforcers; build receptivity of WSS complaints staff. Extend gender-disaggregated monitoring and evaluation amongst displaced people to ensure their continued access to suitable standard, affordable WSS, with remediation and corrective action where required.

Q28. What procedures and aids to access remedy are available when negative impacts of mega-projects in long-term operation stage amounts to violation or abuse of the human rights to water and sanitation?

See response to Q #20 above.

Stage 7: Ex-post assessment (Q29 to Q31)

Q29. How are ex-post impact assessments of mega-projects carried out in practice? Are they required by law or regulations?

Who does the assessing is important. In-house ex-post assessments, for the most part, tend to be watered-down and incomplete, emphasizing the positive outcomes while only casually mentioning the negative ones. The most informative and effective ex-post assessments are those conducted independently and objectively by such entities as the World Banks' IEG, other MDBs, or internationally recognized NGOs. In worst-case scenarios, consultants hired to conduct ex-post assessments of projects have had their findings altered, text re-written or redacted by officials when their findings are in conflict with how funding/government agencies seek to portray the outcomes of a particular project (e.g., Nam Theun 2 and several others). The terms of reference must assure that the findings are not redacted, released in a timely manner, and made

public. They should be mandatory and codified into law at the national level and built into project loan agreements as a binding obligation. As people recover from an involuntary displacement and resettlement it may take years or decades and mitigation may require downstream adjustments in socio-economic and environmental actions. Provisions should be made for long-term assessments and monitoring by international panels of experts (now quite common). Good examples of how this works may be found in the action plans used by the MDB accountability mechanisms, such as The Inspection Panel of the World Bank.

Q30. What human rights elements have been incorporated in ex-post impact assessments conducted shortly after the construction, at the commencement of operation or during long-term operation? What measures could be adopted to improve the successful integration of human rights approaches in such impact assessments?

It is critical that due diligence include human rights risk assessment at the very outset and to adopt, adapt and make binding the World Commission on Dams' Guiding Principles, the Equator Principles, requirements for free-standing health and human rights impact assessments and the UN Guiding Principles on Internally Displaced Peoples and Business and Human Rights to other sectors of public and private megaproject financing as applicable throughout and beyond the project cycle. As stated in our response to Q29, special provisions must be made for the continuing socio-economic and environmental adjustments that follow the disruption of an involuntary resettlement. Success has been found using a combination of 1) annual investigations/assessments involving 2) active participation of the displaced, followed by 3) specific action plans and 4) reviews by international expert panels. All five steps must be independent and transparent, but with the cooperation of the project owner and financiers.

Q31. What role does ex-post impact assessments have as a learning process and a feedback mechanism to provide guidelines for other similar projects?

Unfortunately, the record indicates that ex-post assessments have very little role in serving to provide lessons learned and a feedback mechanism to guide other similar projects moving forward. The record also indicates that the same mistakes and omissions occur over and over and over again in virtually every project. It is a sad fact, well documented by decades of on-the-ground research and experience, that megaprojects, much more often than not, violate human rights and further impoverish millions of people displaced by those projects.

Once more, we identify some gaps and possible solutions.

Policy/Legal/regulatory/administrative Gaps. Laws and regulations rarely require an ex-post assessment of health, wellbeing and/or livelihoods of people displaced by development projects that might illuminate success or failure of resettlement measures and any change, whether positive or negative, to their WSS status.

Policy/Legal/regulatory Solutions. Laws and regulations to require ex-post assessment drawing upon M&E of outcomes of displacement and of WSS in particular, for those affected, with reports to be released publicly. Ex-post assessment to include reports on progress to achieve SDGs and human rights, including right to WSS. Laws and regulations to require effective remediation where outcomes fall short of intended targets.

Administrative Solutions. Skilled personnel and budgets are required for M&E & reporting, and, where necessary, for identifying and delivering appropriate remediation measures. A wide range of administrative options are available in the literature, project reports, and accountability investigations.⁹

Who pays the tuition for lessons learned? A final, important observation. Ex-post assessments are, in our professional judgement, substandard and incomplete unless they calculate and disclose the socio-cultural and economic costs to peoples who were in-the-way and suffered harm from the project. Guidelines for similar projects are always useful. Without reparations and actions taken to correct harms, the cost of lessons learned is borne by affected people on-the-ground, who lose.

⁹ The World Bank's Inspection Panel has conducted over 100 inspections, including for water and sanitation projects (www.inspectionpanel.org).