Training Tool: Access to water

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Human Rights and Business Dilemmas Forum

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The relationship between business and human rights
In 2011, the Human Rights Council approved the **UN “Protect, Respect and Remedy” Framework** which set out the boundaries of human rights responsibility for businesses globally from all industries. Under the Framework:

- Companies have a responsibility to **RESPECT** human rights – i.e. by not infringing on human rights and by addressing any negative impacts on human rights in which they are involved.

- Both govt.’s and companies should provide **ACCESS TO REMEDIES** – incl.:
  - For govt.’s: Appropriate/effective judicial and non-judicial mechanisms
  - For companies: Enable access to appropriate grievance mechanisms through which stakeholders can seek redress should their rights be undermined by a company’s activities
The **Guiding Principles for the Implementation of the UN “Protect, Respect and Remedy” Framework** give guidance on how businesses can operationalise their responsibility to respect human rights. It is focused on three key elements:

- **Implement a human rights policy**: This should include embedding their responsibility to respect human rights through a corporate policy statement that is supported by guidance as to the specific actions to be taken to give this commitment meaning.

- **Apply human rights due diligence**:
  - Periodic assessment of actual and potential impacts of company activities/relationships
  - Integration of the findings from impact assessments across relevant internal functions and processes, and the taking of appropriate action
  - Tracking of human rights performance
  - Communication of human rights performance (formal reporting where impacts are significant)

- **Provide for remediation**: Where companies have caused or contributed to negative impacts, they should provide for or cooperate in their remediation
About access to water and human rights
How can business affect access to water?

For the purposes of the dilemma, ‘access to water’ refers to both the quantity and quality of water available to communities. While companies may represent a significant source of jobs and revenue for local populations, industrial and/or agricultural operations can consume large volumes of water and result in water pollution – leaving local people without adequate or safe supplies. Some sectors have encountered particular difficulties in this respect, including:

- **Agriculture**: Farming is traditionally water-intensive – with large-scale agro-businesses sometimes competing with smaller local farms for scarce water. The use of fertilisers/pesticides can present additional risks of water contamination.

- **Beverages**: Water makes up around 94% of the content of beverages – with production processes also using large volumes. In addition, beverages such as beer, wine and soft drinks rely on water-intensive crops for their input materials.

- **Mining**: Although some mines are net water producers (i.e. from groundwater), many are large net users (e.g. for mining processes, cooling, processing, etc.). Furthermore, mining and the waste it produces can present significant pollution risks to both ground and surface water.
Potential contextual factors

Multi-national companies (MNCs) seeking opportunities in the developing world potentially risk undermining (directly or indirectly) the human right to water, as recognised under UN General Assembly Resolution A/RES/64/292. The risks are exacerbated by the following factors:

- **Existing water stress** – with some countries in North Africa, the Middle East, Central Asia and South Asia posing particular challenges, for example

- **Community reliance on farming** – resulting in more intensive competition for water and potentially severe impacts for those reliant on subsistence farming

- **Weak water infrastructure** – forcing local populations to rely on natural and/or untreated water supplies that are particularly vulnerable to company impacts

- **Poor governance** – heightening the risk of public mismanagement of water, unlimited commercial water use and inadequate laws to ensure equal access

- **Population density** – with high concentrations of people (e.g. in certain farming or urban areas) resulting in water stress and sensitivity to additional demand

In the long term, these challenges are likely to be exacerbated by global population growth and associated economic activity – as well as the potential impacts of climate change.
## Other rights that might be impacted by water use

<table>
<thead>
<tr>
<th>Right</th>
<th>Reference</th>
<th>Description</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Right to life</strong></td>
<td>UDHR, Article 3 / ICCPR, Article 4</td>
<td>Commercial activity may result in severe water shortages/pollution which results in deaths – esp. if water infrastructure is weak</td>
<td>An industrial accident results in the poisoning of a river – resulting in deaths among the local population</td>
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<tr>
<td><strong>Right to health</strong></td>
<td>UDHR, Article 25 and ICESCR, Article 11</td>
<td>Human health is highly reliant on the availability of sufficient, clean water – both for consumption and sanitation</td>
<td>Industrial water use results in inadequate water for washing and sanitation – leading to higher levels of disease in the community</td>
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<td>Right</td>
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<td>Description</td>
<td>Examples</td>
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<tr>
<td>The right to adequate housing</td>
<td>UDHR, Article 25 and ICESCR, Article 11</td>
<td>CESCR Gen. Comment No.4 notes the right to housing includes “sustainable access to... safe drinking water... sanitation and washing facilities”</td>
<td>Communities relocated as a result of the establishment of a major new operation are moved into new accommodation that lacks adequate water supplies</td>
</tr>
<tr>
<td>Right to adequate and accessible food</td>
<td>UDHR, Article 25 and ICESCR, Article 11</td>
<td>The right to adequate and accessible food may be undermined where there are insufficient volumes of good quality water to grow crops or keep animals</td>
<td>The construction of a large hydro-electric dam restricts water access for downstream subsistence farmers – resulting in inadequate food supplies for their families</td>
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Risks posed to business

The undermining of the right to water can result in a number of risks for companies, including:

- **Legal liability**, with the right to water integrated into national law in, for example, countries such as South Africa, Kenya, Sri Lanka and Brazil – all of which actively enforce citizens’ right to water.

- **Loss of ‘social licence’**, with water quality and availability typically being an extremely sensitive issue for communities – particularly in rural areas where people may rely on untreated water sources and/or farming for their livelihood.

- **Reputational damage**, due to negative publicity and activist campaigns resulting in reduced sales and/or divestment. Shareholder advocacy is increasingly being used to advance greater corporate disclosure on water practices and performance.

- **Operational disruption**, with companies competing with local communities over scarce water resources likely to be subject to regulatory restrictions aimed at ensuring adequate supplies for local people.

These and other water-related business risks are further examined under the **CEO Water Mandate** – a public/private initiative backed by the UN.
Case study boxes

Coca-Cola faces legal challenges over alleged water misuse (India)
In 2003, Kerala’s High Court upheld the decision of the Plachimada village council to refuse to renew Coca-Cola’s operating licence. Villagers complained that Coca-Cola’s operations had led to water shortages and water pollution – allegedly endangering lives and undermining livelihoods. Further legal actions culminated in the Kerala government banning the manufacture and sale of Coca-Cola within the state, based on allegations that the product contained harmful pesticides and chemicals. The company firmly refuted the charges and the ruling was later overturned by India’s High Court. In 2011, the state passed a law allowing people to seek compensation from the firm where there was evidence of Coca Cola over-exploiting ground water.

Shell subsidiary held to account for oil spills (Nigeria / Netherlands)
In January 2013, a Dutch court found a subsidiary of Royal Dutch Shell partially responsible for the pollution of farmland in the Niger Delta, Nigeria. The suit was filed in 2008 by Nigerian farmers and the international NGO Friends of the Earth, in relation to a series of oil spills that contaminated groundwater and land in the Ikot-Abasi area of Akwa Ibom state. People living in the Niger Delta – a third of which is made up of wetlands – are largely dependent on the natural environment for food and water resources. Activists said the ruling was a step towards holding extractive companies to account in their home jurisdictions for causing environmental damage.
Suggestions for responsible business
Suggestions for responsible business

The following slides include a non-exhaustive list of suggestions as to how companies might avoid, minimise or mitigate the negative impact of their operations on both water quality and availability:

I. Develop a specific company policy on water
II. Assess the operating context regarding water impacts
III. Engage with local stakeholders over potential water impacts
IV. Reduce water intensity and/or dependency on freshwater
V. Manage the quality of water discharges
VI. Improve access to water for local communities
VII. Cooperate with others to address potential/actual water impacts
VIII. Communication and reporting around water impacts
IX. Provide remedies (where adverse impacts have been caused or contributed to by the company)

The CEO Water Mandate sets out a range of additional tools and actions on water-related business risks – including its Water Action Hub and Guide to Water-Related Collective Action
Suggestions for responsible business (continued)

I. Develop a specific company policy on water

Companies can embed their responsibility to respect water rights through the development of a dedicated, rights-focused water management policy. This might commit them to (amongst other things):

- **Respecting the human right to water** including amongst local community members – e.g. through appropriate due diligence and remediation measures

- **Reducing water use** where commercially viable and possible – including, for example, through the use of less water-intensive input materials

- **Adhering to international best practice standards** in terms of the quality of water discharges (e.g. through enhanced treatment) – including, for example, the application of relevant World Health Organization standards

- **Cascading your policy commitments** through your supply chain to help promote improved water management practices more widely

- **Reporting on your water management activities and performance** in a comprehensive and transparent way
II. Assess the operating context regarding water impacts

Companies will need to assess the local context to determine how their operations might negatively affect local water availability and quality. Issues to consider:

- **The external environment**: Including (for example), the local regulatory system; the distribution of local water resources; the distribution of local water users; and surface and groundwater use (including both volume and purpose)

- **The potential for contributing to cumulative impacts** (for example where other actors are already negatively impacting local water quality or availability)

- **Impact of final products/direct operations**: Including the water required for a company’s own operations and output – as well as relevant impacts on water quality

- **Relationships with business partners**: Including, for example, the relevant water intensity of input materials provided by suppliers; the quality of suppliers water discharges; and compliance by contractors with water-related regulations and/or best practice
III. Engage with local stakeholders over potential water impacts

Companies should try to address the legitimate concerns of local stakeholders regarding the potential water impacts of new and existing commercial projects. A responsible company might, for example:

- Provide stakeholders with information describing the water intensity of a proposed project, as well as the adverse impacts it could have on water availability/quality for the local community – and how the company intends to address them.

- Provide stakeholders with information on the water impacts of any alternative options that have been considered for the project – and a clear explanation of the reasons why the final option was chosen.

- Engage local stakeholders to better understand the company’s positive and/or negative impacts on local water quality/availability and – ultimately – to gain insight into the degree to which it is affecting the right to water.
IV. Reduce water intensity and/or dependency on freshwater

Responsible companies can consider – in the context of their potential/actual water impacts – reducing the water intensity of their operations. This might include:

- Employing water conservation equipment and techniques
- Developing alternative products that are less dependent on water
- Increasing the water efficiency of production, which in turn may reduce operating costs
- Reusing processed water where possible – or using untreated or sea water instead of freshwater
- Encouraging managers to improve water management through the application of performance incentives
V. Manage the quality of water discharges

A responsible business might – in the context of their potential/actual water impacts – address its impacts on local water quality by:

- **Reducing potential pollutants**: This involves committing to cleaner production. Efforts could include the adoption of ‘cleaner’ industrial processes (e.g. reduced solvent use) or the application of agricultural practices that are less harmful to local water supplies (e.g. reduced reliance on chemical pesticides, etc.)

- **Managing potential pollutants**: This includes measures taken *after* production, such as effective and safe wastewater storage and treatment, as well as the responsible transport of hazardous waste

- **Mitigating pollution incidents**: Where pollution does take place (for example through unplanned discharges), procedures should be in place to minimise their impacts (e.g. warnings to communities, chemical treatment, containment, etc.)

Companies can also work with communities to monitor local water quality on a ‘joint’ basis – thereby increasing transparency, trust and protecting their ‘social licence’
VI. Improve access to water for local communities

Where demand for potable water exceeds locally available resources, companies may choose to proactively invest in infrastructure to deliver enhanced supplies of safe water to communities. This could involve (depending on the nature of the company’s water impacts – or its appetite for proactively supporting the right to water where it has no such impacts):

- Provision of water barrels to collect rainwater
- Drilling of community boreholes to create reliable water sources
- Implementation of treatment technology to produce potable water
- Construction of pipeline infrastructure to deliver clean water from rural springs or underground water sources to local communities

Where a company needs to charge for improving community water provision, it might engage with the local or national government to see if some of these costs can be publicly subsidised. This can help ensure that the potable water made available by the company is affordable for local people.
VII. Cooperate with others to address potential/actual water impacts

In addition to engaging with local communities, collective actions with other stakeholders may help companies to mitigate water-related impacts (potential or actual). For example companies might consider:

- Supporting the activities of NGOs, especially where these organisations are looking at more water efficient ways to run local businesses or grow crops
- Raising awareness amongst other local water users (including peers and suppliers) on how to reduce their water use and pollution
- Work with the host government to formulate a water policy that prioritises water efficiency, equitable distribution and the minimisation of pollution
- Work with peer companies and external organisations to share experiences/best practices (see below)

The CEO Water Mandate is a UN-backed public-private partnership designed to assist companies in the development, implementation, and disclosure of water sustainability policies and practices.
VIII. Communication and reporting around water impacts

Companies should maintain an ongoing dialogue with affected stakeholders regarding their water impacts – and how they are addressing them. Companies may also consider publicly reporting on the same. Key elements that any public reporting should ideally address include the following:

- **Assessment/response**: What the company and its business partners are doing to understand their impacts, and processes in place to address such impacts.
- **Direct operations**: Companies should consider disclosing relevant data on water use and quality with respect to their own operations.
- **Supply chain**: Where feasible, companies should report on water use and discharges from their supply chain.
- **Collective action**: Companies can give details of any collaboration with civil society and other businesses facing the same challenges.
- **Public policy**: This might include details on a company’s participation in public debates, public policy formulation or advocacy with respect to water management.
- **Community engagement**: Companies might report how they have mitigated their negative water impacts – or proactively enhanced water availability and quality.
IX. Provide remedies (where adverse impacts have been caused or contributed to by the company)

Grievances (gathered, for example through formal grievance mechanisms) should be investigated and, where they are credible, remedied – either on a unilateral or cooperative basis, as appropriate. Priority should be given to the avoidance (and then the mitigation) of the impact itself, including by – for example:

- **Reducing water use** by the company’s operations (e.g. via less water-intensive processes, water recycling and the use of more water-efficient equipment)
- **Improving the quality of the company’s discharges** (e.g. through cleaner industrial processes and the enhanced treatment of discharges)
- **Enhancing supplier management**, incl. the tightening of contractual terms with suppliers requiring them to apply enhanced water management practices

Where this is not possible (and restoration is also not an option), companies may instead offer **compensatory measures**, including (for example), the provision of:

- Alternative sources of clean water
- Cash payments to address relevant impacts on health and livelihoods
Scenario exercise:
Reacting to social / political opposition
to perceived water impacts

Photo: Jo Kent
The situation

Reacting to social and political opposition to your company's perceived impacts on water availability / quality in a fragile operating environment

- **Location**: South Asia

- **Context**: You are the country manager of a beverage company that has established a major new production and bottling plant in an emerging market, promising high financial returns. The plant (located on the outskirts of the fast growing city of Vimala – a thriving market for your products) requires large amounts of water for its operation and production. Vimala is characterised by high population density, widespread poverty and growing water demand (both domestic and industrial). Furthermore, the local watershed serves a surrounding rural population that is largely dependent on water-intensive subsistence farming. Although the area receives heavy rainfall during the monsoon, water availability can be limited for much of the year. In theory, additional water could be piped in from the less populated, water-rich region of Droseni in the north, but this would be prohibitively expensive.

- **Demand to cut off services**: The local government (which is perceived to be relatively corrupt) is initially supportive of the establishment of the manufacturing and bottling plant – as it will create hundreds of jobs and boost local revenues. However, it soon becomes clear that the plant’s water needs conflict with rising demand from Vimala’s inhabitants and local farms. Your environmental manager acknowledges the region faces growing challenges around water availability – but insists that the plant’s water consumption is relatively modest compared to the collective needs of the local population. Nonetheless, you are largest single consumer in the area (as well as a recognised international brand) and have become a target of local protests, which include both local farmers and some Vimala residents. As regional elections approach, the local government changes its stance and demands that you help finance a new water pipeline from Droseni otherwise it will terminate your operating license by the end of the year.
Initial issues to consider

Before any action is taken, you should consider some immediate questions with respect to what should guide you in this situation – and who you should inform about it.

Questions to consider include the following:

- What are my immediate priorities in this situation?
- What internal guidance should I apply in this situation?
- Who are the internal stakeholders I should contact about this?
- Who are the external stakeholders I should consider contacting about this?

Note: Suggestions on next slide
Initial steps to consider (continued)

Potential immediate priorities

- Maintaining operational continuity of the bottling plant, where possible
- Avoiding any undue impacts on the right of local people to water
- Avoiding potential legal liability for the alleged depletion of local water sources
- Ensuring any mutually acceptable solution to the situation is commercially feasible and does not result in the ultimate closure of the plant

Potential internal guidance

- Principles / values
- Policies / procedures (Environment Policy, Human Rights Policy, Stakeholder Engagement Policy, etc. – plus relevant procedures around water management)

Anyone other priorities?  Any other guidance?
Potential internal stakeholders to contact

- In-country technical/environmental managers
- In-country external relations manager
- In-country legal counsel
- Group water/environment experts
- Group legal counsel
- Group external relations manager

Potential external stakeholders to contact

- Peer companies that may have experienced similar water-related situations in Vimala and beyond
- The national ministry for the environment (and national water regulator if it exists)
- Civil society groups in and around Vimala
- International water-focused NGOs (e.g. Water for People, Water Aid) and water experts

Anyone else to contact internally?

Anyone else to contact externally?
In addition, when framing your decision-making you need to take into account the different stakeholders involved in the situation. Questions to consider include the following:

- Who are the key stakeholders in this situation?
- What are the priorities of each of these stakeholders in this situation?
- What risks do each of these stakeholders pose in this situation?

Note: Suggestions on next slide
<table>
<thead>
<tr>
<th>Stakeholders</th>
<th>Stakeholder priorities</th>
<th>Associated risks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vimala residents</td>
<td>❑ Access to affordable water for domestic consumption and economic activities</td>
<td>❑ The plant may indeed be undermining citizens’ right to water</td>
</tr>
<tr>
<td></td>
<td>❑ Job creation and secondary economic benefits from the bottling plant</td>
<td>❑ Protests may result in operational interruption and reputational harm</td>
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<td></td>
<td>❑ Exertion of pressure on local govt. to take visible action against the plant</td>
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<td></td>
<td>❑ Closure/relocation of the plant likely to result in negative socioeconomic impacts for residents</td>
</tr>
<tr>
<td>Local employees</td>
<td>❑ Maintaining job security</td>
<td>❑ Relocating the plant will result in local retrenchments</td>
</tr>
<tr>
<td>Local farmers</td>
<td>❑ Access to affordable water for consumption and the maintenance of their livelihoods</td>
<td>❑ If the plant is excessively restricting local water supplies, you may indeed be seriously undermining the fundamental human rights of local farmers</td>
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## Potential stakeholders (continued)

<table>
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<tr>
<th>Stakeholders</th>
<th>Stakeholder priorities</th>
<th>Associated risks</th>
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</thead>
<tbody>
<tr>
<td>Vimala government</td>
<td>❑ Victory for the ruling party in the municipal elections</td>
<td>❑ Non-compliance with local govt. demands may lead to plant closure</td>
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<td></td>
<td>❑ Maintaining the bottling plant to generate jobs and revenues</td>
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<tr>
<td>Group management</td>
<td>❑ Protection of people and assets</td>
<td>❑ Compliance with local govt. demands regarding a new water pipeline from Droseni is economically unfeasible</td>
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<td></td>
<td>❑ Operational continuity</td>
<td>❑ Non-compliance with local govt. will result in closure and pot. legal liability</td>
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<td></td>
<td>❑ Avoidance of allegations of complicity</td>
<td>❑ Closure/relocation will result in significant costs and reput. damage</td>
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<tr>
<td>Investors</td>
<td>❑ Assurance re project continuity</td>
<td>❑ Possible divestment if you get the balance wrong (e.g. expenditure on pipeline vs. possible closure vs. avoidance of complicity)</td>
</tr>
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<td></td>
<td>❑ Assurance re responsible human rights practices</td>
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**Anyone else?**

**What are their priorities and what risks do they represent?**

Next, you need to consider the respective opportunities and risks with respect to each of the following courses of action:

- **Option 1**: Comply – pledge to build a water pipeline from Droseni, although call on the Vimala govt. to help subsidise the costs

- **Option 2**: Make a counter-offer – suggest that your company instead supports a programme to promote more water-efficient use in the region

- **Option 3**: Refute the allegations – and run a pre-election publicity campaign based on available water data, insisting that your company is not the main cause of local water shortages

- **Option 4**: Relocate – allow the operating license to expire and relocate to another region of the country
<table>
<thead>
<tr>
<th>Option</th>
<th>Implications</th>
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</table>
| **1: Comply – pledge to build a water pipeline from Droseni (with govt. help)** | **Opp.:** Ensures the continued operation of the bottling plant, whilst significantly bolstering the company’s ‘social licence’ – and helping safeguard local people’s right to water by increasing supply.  
**Risk:** An extremely costly and time-consuming option – that could outweigh the commercial benefits of having the plant in Vimala in the first place. Furthermore, there is no guarantee the local govt. will contribute funds – or that the pipeline will prevent future protests as regional water needs continue to grow in future. |
| **2: Negotiate – offer to supports a programme to promote more efficient regional water-use** | **Opp.:** May alleviate local govt. pressure in the short-term – and could help safeguard local people’s right to water by decreasing collective demand (e.g. through the promotion of more water efficient forms of irrigation, domestic water use, etc.).  
**Risk:** May be perceived to be shifting responsibility for the problem to others – making it unlikely (in the short-term, at least) that the protests (and thus govt. pressure) will end. This is particularly the case as the benefits of such a programme would take some time to become apparent. |
## Analysis of potential reactions (continued)

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<th>Option</th>
<th>Implications</th>
<th>Opp.</th>
<th>Risk</th>
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<tbody>
<tr>
<td>3: Refute the allegations – and run publicity campaign insisting your company is not driving local water shortages</td>
<td><strong>Opp.</strong>: Will help educate the population about <em>collective</em> water demand – so your plant’s neg. impacts (e.g. indiv. water demand) and pos. impacts (e.g. employment creation) can be seen in context. Likely to help alleviate popular pressure on the local govt.</td>
<td><strong>Risk</strong>: Does not address local people’s right to water – or provide solutions. Local govt. may regard this as political interference, whilst citizens may resent shift of focus onto <em>their own</em> water use.</td>
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<tr>
<td>4: Relocate – allow the operating license to expire and relocate the plant elsewhere</td>
<td><strong>Opp.</strong>: Stops any claims that you are impacting on local people’s right to water – and reduces exposure to associated political risk.</td>
<td><strong>Risk</strong>: May only have a minor impact in terms of bolstering local people’s right to water – whilst destroying much needed employment. Also likely to prove very expensive, operationally disruptive and potentially damaging to your reputation.</td>
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**Any other options?**

**What are the risks/opportunities?**

What precautions could have been taken before this situation arose to ensure that you were not placed in this dilemma in the first place?
Potential retrospective good practice might include:

- Thorough collection of water data collection prior to establishment of the plant:
  - For: Better insight into current/future water needs of plant, community and farmers
  - Against: Time and expense

- A formal agreement with the local govt. (and / or nat. authorities) that sets out in advance limits on the plant’s water consumption:
  - For: Allows for the appropriate design of the plant and its processes; helps inform the initial investment; provides a clear set of performance standards; and offers protection against any future water-related claims
  - Against: No guarantee the agreement will be accepted by local people – or that it will prevent the plant from undermining the right to water (e.g. if restrictions on the plant’s water demand specified in the agreement are inadequate)

Any other options? What are their respective strengths and weaknesses?
Continue the discussion at:
http://human-rights.unglobalcompact.org