

THE L'EAU RIVER DAM

A FICTIONAL MEGAPROJECT CYCLE CASE STUDY

In this case study, you will be asked to apply the megaproject cycle framework to a fictional dam project. For each step, you will be asked to consider specific issues that arise, and roleplay as different stakeholders in the project, with one aim: to identify how a human rights framework can be integrated into megaprojects life cycles.



WATERTOPIA

Watertopia is a country with a population of 50 million people. It is located on the (fictional) continent of Aquarius, which has a total of 20 countries. Watertopia is on the east coast of Aquarius facing the (fictional) Sea of Titan. About 90 percent of Watertopia's people are of Watertopian ethnic descent. They speak the Waterenian language and, for the most part, worship traditional Waterenian deities. About 8 percent of the Watertopian population descend from a tribal ethnic group called the Droplets. Unlike the Watertopians, Droplenians speak a different language (Droplenots) and practice the Drople religion. In the practice of Droplism, Droplenians worship only one god, who is not on the list of Waterenian deities. As well, they believe that the water of the L'eau River is sacred and use it for their cultural and religious practices. The remaining 2 percent of the Watertopian population descend from a variety of ethnic groups, with no one group predominating.

The territory of Watertopia includes one large island, Rivens, located about 32 kilometers (20 miles) due east from its coast, in the Sea of Titan. Rivens has 1.5 million people, 90 percent of whom are Droplenian. The largest city on the island, known as Rivens City, is the third largest port in the country.



SANITANIA

Just to the south of Watertopia on the continent of Aquarius is another country, Sanitania, with a population of 30 million people. The L'eau River serves as the border between Watertopia and Sanitania. The L'eau River provides all the water for drinking and sanitation to the Droplenian people on its border. Sanitania has several ethnic groups, one of which, making up about 35 percent of the total population, is Droplenian. Living mainly in northern Sanitania, the Sanitanian Droplenians speak the same language, worship the same deity, and generally share the same culture as the Droplenians in Watertopia. People of Watertopian descent make up less than 1 percent of the Sanitanian population.

GEOGRAPHICAL BACKGROUND



LEGAL BACKGROUND

Watertopia and Sanitania have ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). As well, the two countries belong to a regional human rights treaty, called the Treaty of Aquarius. The Treaty of Aquarius states:

“Everyone has the right to water and sanitation. This right shall include access to safe and clean drinking water that is potable. As well, this human right includes the right to sanitation facilities and methods that are not burdensome or unduly in nature.”

The Treaty of Aquarius was entered into force in 2007. Sanitania deposited its instrument of ratification in 2009, and Watertopia deposited its instrument of ratification in 2010.

POLITICAL BACKGROUND

Relations between Watertopians and Droplenians in Watertopia were cordial. However, as the minority population on continental (mainland) Watertopia, Droplenians are marginalized and disadvantaged. For example, Droplenians are required to attend public schools and learn the Waterenian language. As well, Droplenians do not hold any public offices, except the Governor’s office in Rivens. This marginalization has resulted in the enforcement and development of laws that favor the Watertopians. However, no restrictions are placed on the Droplenian’s freedom of religion.

However, the Droplenian culture flourishes on the island of Rivens, where nearly 1.35 million of the 1.5 million Droplenians live. On Rivens, public signs (e.g., names of public buildings and transportation signs) are required to be in both Waterenian and Droplenots, and public offices are required to provide information in either language upon request. Although Rivens is the only province to routinely have a Droplenian governor, Droplenians do not hold any other high offices in the government of Watertopia.

PROJECT PROPOSAL: L'EAU RIVER DAM

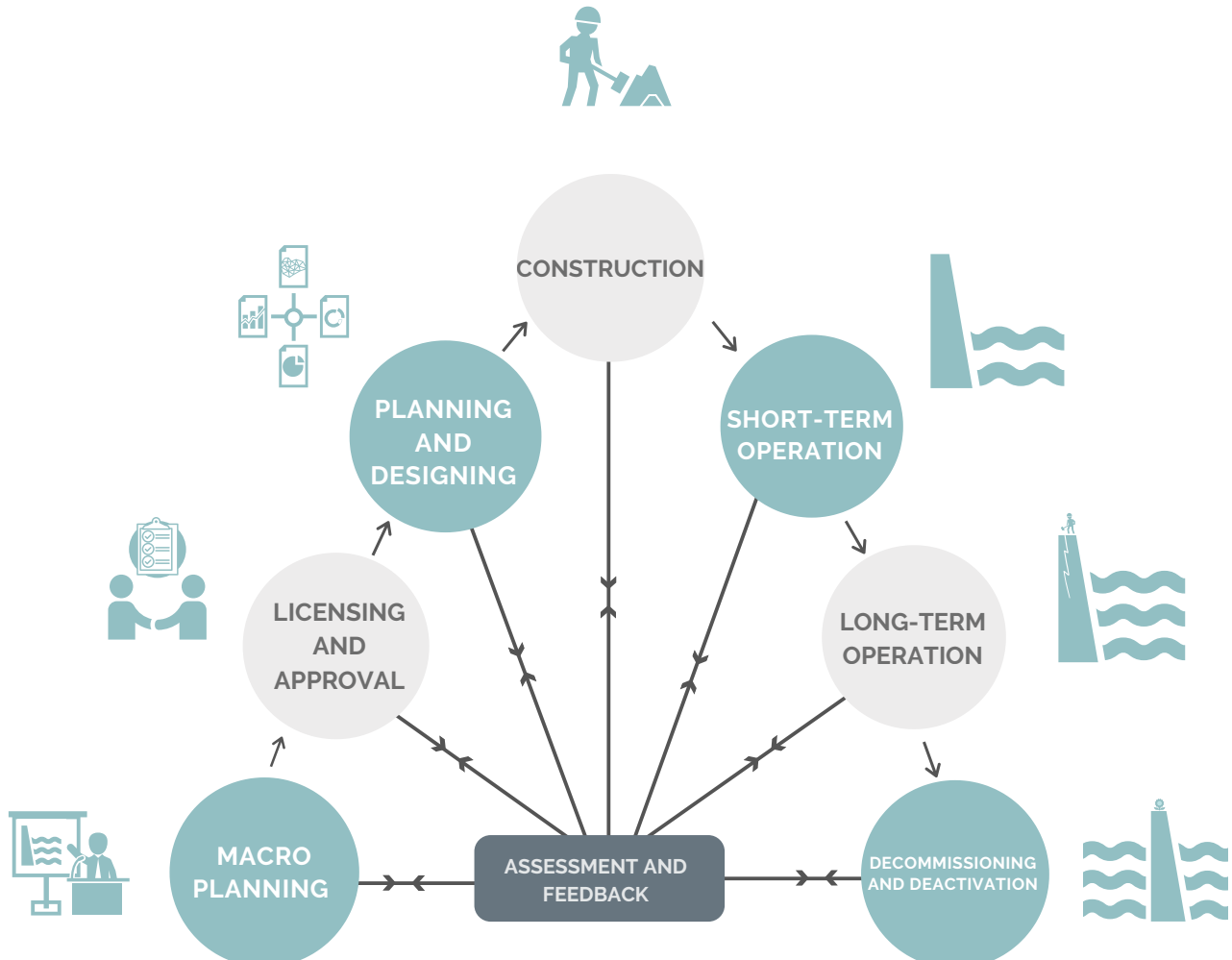
WATERTOPIA

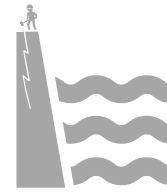
Proposed
project
location

SANITANIA

In 2017, the Governments of Watertopia and Sanitania began negotiations to enter into an agreement (“Treaty of the L’eau River Dam”) to contract and build a dam on the L’eau River. The purpose of this dam is to generate hydroelectricity and produce more “green” and clean energy for Watertopia and Sanitania. According to the agreement, the Government of Watertopia is providing both financial and technical resources for the construction of the dam, and in return, the Government of Sanitania has allowed unlimited access to its natural resources to be used for the construction including extraction of water from the L’eau River. Angered by the possible destruction and pollution of the L’eau River, the main source of water for drinking, sanitation, and Droplonian religious practices, Droplenians in the area began to peacefully protest. They fear that the construction of the dam will possibly re-route their primary water source and will disrupt their practices, way of life, and ability to use this water for drinking and sanitation.

As a result of the concerns raised in relation to the project, the Governments of Watertopia and Sanitania formulated a seven stage mega-project plan to mitigate the human rights impacts, particularly the human rights to water and sanitation, arising from the dam’s construction and the seven stage mega-project plan on the Droplonian people.





MODULE 1 MACRO PLANNING

Watertopia proposes using an impoundment facility and turbines for the construction of the dam. It purports that hydroelectricity will be produced when water passes through the dam and causes the turbines to spin. Watertopia claims that this construction method will provide clean and pollution free energy.

However, Sanitania proposes an alternative plan. In its plan, Sanitania wants to divert a portion of the L'eau River through a canal or penstock. Rather than using an impoundment facility, the hydropower will be created through a pump storage model that works like a battery. In essence, it will store the electricity generated for later uses.

After seeing news reports about these two competing plans, the Droplonian prefer Watertopia's plan. They fear that Sanitania's river diversion plan will cause the water to be inaccessible and infringe upon their human rights to water and sanitation. Moreover, although Sanitania has assured that they will mitigate all human rights impacts by providing water for drinking and sanitation purposes through relief efforts to the Droplonian population, the Droplonians still favor Watertopia's dam construction proposal because their water source will remain readily available.

Exercise 1: **Describe the macro-planning stage and relevant human rights concerns.**

Exercise 2: **You are a Droplonian living on the Watertopian side of the L'eau River border. After reading the briefing note published by the Sanitanian Government's Ministry of Infrastructure, you still remain concerned about the future dam construction plans on the L'eau River. You use the water from the L'eau River for drinking and washing, and most importantly, for the practice of your religion. You are outraged that no one asked for your opinions about the dam construction mega-project, despite the briefing note asserting that consultation with the Droplonian community is paramount. You want to become more involved in the negotiations of the Treaty of the L'eau River Dam.**

Describe the steps you should take.



MODULE 2 LICENSING AND APPROVAL

In the course of Watertopia's and Sanitania's negotiations to enter into the Treaty of the L'eau River Dam, the Droplonian people allege that Watertopia and Sanitania are violating the national and international laws of their respective governments. In particular, the Droplenians claim that the construction of the dam conflicts with their human rights under the Treaty of Aquarius to water and sanitation.

The Droplenians assert that Watertopia's and Sanitania's digging plans will destroy the banks of the L'eau River, thereby, impacting Droplenian's access to their primary water and sanitation source. Furthermore, the Droplenians claim that Watertopia and Sanitania are breaching their obligations under the International Covenant on Economic, Social and Cultural Rights.

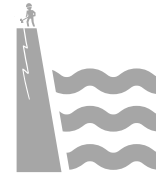
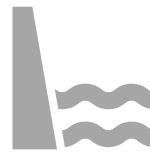
After consulting the Droplonian people about the plans for the dam construction, the Governments of Watertopia and Sanitania have developed a joint Environmental and Social Impact Assessment, specifically addressing the human rights impact of the dam construction, to acquire licensing or approval for their project. The Governments of Watertopia and Sanitania submitted their application to the L'eau River Council. The L'eau River Council is the chief body of review for all mega-projects on the L'eau River. This Council is tasked with reviewing Watertopia's and Sanitania's applications, issuing all licenses and permits, and granting approval for the dam construction mega-project. As part of their work, the L'eau River Council reviews all mega-project requests to ensure that construction of the dam mega-project will not infringe upon the human right to water and sanitation under the Treaty of Aquarius, the ICESCR, and the ICCPR.

Exercise 3: Describe the the licensing or approval stage and the human rights issues relevant to the stage.

Exercise 4: You are a civil servant working in the Sanitanian Government's Ministry of Infrastructure. You have received complaints from the Droplenians that the construction of the dam will pollute their primary water and sanitation source, the L'eau River, which they use for drinking, sanitation, and religious practices. You have been instructed by your supervisors to provide a briefing note which sets forth steps to be taken to address the situation. What will your briefing note include? Describe its contents.

Exercise 5: You are an independent expert appointed by the Dropleniens to oversee the dam construction process . You have been assigned to examine Watertopia's and Sanitania's application for the dam construction mega-project. You are aware of the recent Dropleniens protests and the public's concerns. Describe the steps you should take to prepare your assessment of the application.

Exercise 6: You are a member of a Dropleniens civil society association living near the proposed construction site of the dam. You are very worried that the dam construction will cause the water of the L'eau River to become polluted and unsafe for drinking, bathing, and practicing your religion. At the licensing or approval stage, what can you do as a concerned citizen? Please discuss.



MODULE 3

PLANNING AND DESIGNING

After reviewing Watertopia's and Sanitania's mega-project licensing application, the L'eau River Council granted approval for the mega-project's construction. The next step for Watertopia and Sanitania is to plan and design the dam. Watertopia and Sanitania have hired the Dam Corporation, a business that is incorporated along the L'eau River in Sanitania, to help with the planning and designing of the dam. While planning and designing, the Dropleniens assert that Watertopia and Sanitania are not incorporating their ex-ante impact assessments, nor allowing their participation at this stage. As such, the Dropleniens believe that their right to water and sanitation will be infringed upon, and fear that the construction of the dam will displace their community along the L'eau River. They urge Watertopia and Sanitania to implement mitigation and preventive measures. However, the Dropleniens' requests are met with resistance by the Governments of Watertopia and Sanitania.

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Exercise 7: You are the head member of the Watertopian and Sanitanian Governments' joint task force. This task force is assigned to plan and design the dam construction mega-project. What should you consider when planning and designing the dam? Please discuss.

Exercise 8: As the head member of the task force, you are asked to respond to the Dropleniens' complaints regarding the task force's failure to incorporate ex-ante assessments during the planning and designing stage. To respond, you are tasked to publish a newsletter on both the Watertopian and Sanitanian Governments' websites. This newsletter will address the Dropleniens' allegations. Describe what your newsletter should include.

Exercise 9: You are the head of Dam Corporation's planning and designing team. As the head of this team, you are also a member of the task force. After the release of the task force's newsletter, the head of the task force asks whether the Dam Corporation is also required to incorporate and implement its ex-ante impact assessment at the planning and designing stage. Explain how you would respond to the task force's inquiry.

Exercise 10: You are a member of a Droplonian Civil Society Organization and are worried that you, your family, and community may be displaced if the dam is constructed on the L'eau River. You are frustrated that the task force ignores your requests to participate in their meetings. However, you know that participation is a human right. Explain what you should do.

Exercise 11: How should the Watertopian and Sanitanian Governments address the possibility of displacement of the Droplonian communities? What risks do the Droplonians living along the L'eau River face if they are displaced? Discuss.

Exercise 12: Explain why, generally, it is important to have mitigation and preventive measures included at the planning stage?



MODULE 4 CONSTRUCTION

Fulfilling their human rights obligations, Watertopia and Sanitania have solicited the input of Dropleniens in the planning and designing stage. These states have incorporated their ex-ante impact assessments successfully into their plan and have created mitigation and prevention measures to address potential Dropleniens community displacement.

The Dam Corporation is now ready to begin construction. The Dam Corporation outsourced the construction to another local company, Digging Masters, which is incorporated in Watertopia. The Dropleniens are concerned that Dam Corporation's and Digging Masters' human rights obligations and responsibilities are vague and unclear. As such, the Dropleniens fear that the Dam Corporation and Digging Masters will violate their human rights to water and sanitation because their human rights obligations may be lacking or unclear. Due to these concerns, human rights defenders in the Dropleniens communities begin to riot and protest along the L'eau River. There have been reports of Dropleniens damaging construction tools and instruments, throwing garbage at the construction workers, and orchestrating sit-ins at the mega-project site.

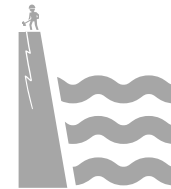
Exercise 13: Describe the construction stage of the mega-project cycle the human rights issues relevant to the stage.

Exercise 14: You are the CEO of Dam Corporation. Due to the recent protests, there have been several stories alleging Dam Corporation's non-compliance with human rights obligations and its non-observation of the safeguards in the previous stages of the mega-plan in the national and international news. The Dropleniens are urging that Dam Corporation's human rights obligations be transparent and known to the public. Describe how, as the CEO, you should make Dam Corporation's human rights obligations to the Dropleniens clear.

Exercise 15: The CEO of Dam Corporation recently published a press release detailing its human rights obligations to the Dropleniens under Principle 11 of the Guiding Principles on Business and Human Rights. As a sub-contractor, the CEO of Digging Masters is curious as to whether he needs to make Digging Masters' human rights obligations transparent. You are head of Digging Masters' Legal Affairs Department. Describe the advice you should give the CEO of Digging Masters regarding whether the company's human rights obligations should be transparent and publicly known.

Exercise 16: You are a member of the affected Droplonian community. You are worried that construction of the dam will result in unsafe water and sanitation for you and your community. How may the construction stage affect you and the Droplonian population directly? Discuss.

Exercise 17: Tensions between Droplonian human rights defenders and the construction workers at the dam construction site are growing. You are the head of the task force created by the Watertopian and Sanitanian Governments. In light of the social conflict, you have been assigned to mitigate the tension between the Droplenians and Dam Corporation and Digging Masters. Describe the measures you should take to ensure that the Governments of Watertopia and Sanitania address and mitigate the social conflicts between Dam Corporation and Digging Masters and the Droplenians effectively.



MODULE 5

SHORT-TERM OPERATION

Two years have passed since construction began on the mega-project. The dam construction is completed and the dam is ready for operation. After the Dam Corporation, through Digging Masters, finished the construction in accordance with the Treaty of the L'eau River Dam, the Governments of Watertopia and Sanitania contracted Aqua Infrastructure to oversee the operation of the dam. During the first month of its operation, the Droplenians living along the L'eau River noticed that their drinking water was polluted. They suspect that the dam is the source of the pollution and think that the turbines are collecting residue and releasing this waste into the water as it spins to produce hydroelectricity. After addressing their concerns with the Governments of Watertopia and Sanitania, the Dam Corporation, and Aqua Infrastructure, the Droplenians were assured that this problem will be resolved quickly. However, the Droplenians are unpersuaded because it is not clear which actor is responsible during this short-term operation stage.

Exercise 18: **Describe the short-term operation stage and the human rights issues relevant to the stage.**

Exercise 19: **Explain why, in general, it is important that actors', such as governments, corporations, and individuals, human rights obligations and responsibilities are clear at the short-term operation stage?**

Exercise 20: **As the head of the task force, what responsibilities do the Watertopian and Sanitanian Governments have during the short-term operation stage? Discuss.**

Exercise 21: **You are the CEO of Aqua Infrastructure. Explain what responsibilities, as the short-term operator of the dam, Aqua Infrastructure has during the short-term operation stage.**

Exercise 22: **As a member of the Droplenian community, you are worried that you will be displaced if Aqua Infrastructure cannot solve the water pollution problem. What methods of recourse do you and the Droplenian community have at the short-term operation stage if the water pollution problem cannot be solved? Discuss.**



MODULE 6

LONG-TERM OPERATION

Fortunately, Aqua Infrastructure was able to fix and resolve the water pollution problem affecting the L'eau River. The Dropleniens are very pleased by Aqua Infrastructure's prompt response. A decade has passed since the completion of the dam's construction, and last week, in Watertopia's and Sanitania's national news, it was broadcasted that Aqua Infrastructure would no longer be managing the operations of the dam mega-project. The Governments of Watertopia and Sanitania have entered into a contract with another corporation, HydroEnergy, which will be managing the mega-project. Recently, the Dropleniens saw cracks on the dam and are concerned whether the dam is safe.

Exercise 23: Explain why the long-term operations of mega-projects need to be carefully considered.

Exercise 24: Generally, why should the human rights obligations and responsibilities of actors be clear at the long-term operation stage? Discuss.

Exercise 25: As the head of the task force, you are responsible to write the contract between the Governments of Watertopia and Sanitania and HydroEnergy. Explain the terms the Governments of Watertopia and Sanitania should include in their contract with HydroEnergy?

Exercise 26: As the long-term operator, what are HydroEnergy's responsibilities? Should HydroEnergy conduct an assessment of the human rights, in particular, on water and sanitation? If so, why? Please discuss.

Exercise 27: You are one of the Dropleniens that saw the cracks on the dam's surface. After alerting your community, many of the Dropleniens in the area are concerned about the cracks, the safety of the dam, and the L'eau River as a water source. Explain who you should bring your concerns to.



MODULE 7

DECOMMISSIONING AND DEACTIVATION

For the next five years, HydroEnergy successfully managed the long-term operations of the mega-project. However, due to a lack of maintenance by HydroEnergy, the dam collapsed and ceased to function. Due to this disaster, the Dropleniens living near the dam lost their homes and are displaced. As well, the water of the L'eau River is no longer safe for drinking and sanitation. Unfortunately, the dam was damaged and could not be repaired. As a result, HydroEnergy has entered into the final stage of the mega-project – decommissioning and disaster management. HydroEnergy has hired Disaster Relief, a consulting firm that specializes on the decommissioning of mega-projects after natural disasters, for help.

Exercise 28: You are the head of Disaster Relief's response and mitigation team. In responding to the earthquake and its effects, what are some challenges you, on behalf of Disaster Relief, may face at the decommissioning stage? Please discuss.

Exercise 29: Describe what, overall, is a way to prevent and mitigate the impact of non-compliance with decommissioning.

Exercise 30: On behalf of Disaster Relief, what should your assessment of the human rights impact, in particular on water and sanitation, at the decommissioning stage include? Please describe.

Exercise 31: Should the Governments of Watertopia and Sanitania have implemented preventive measures and compensation, redress, and reparation procedures at the planning and designing stage to facilitate the decommissioning process in the event of a natural disaster? Explain why/why not.

The Special Rapporteur thanks Ms. Henna Shah (HennaJShah@gmail.com) for her contribution to the training material during her internship with the Special Procedures Branch of the Office of the High Commissioner for Human Rights