

PROPOSAL FOR SIDE EVENT AT THE UNITED NATIONS 2022 SOCIAL FORUM
WATER AND HUMAN RIGHTS UNLOCKED: A Guide for Water-intensive Industries
Theme: Water for Human Rights and Sustainable Development

Overview:

The proposed Side Event introduces a framework - commissioned by the global mining company BHP and developed by an interdisciplinary team of academics and practitioners at the University of Notre Dame - that builds the capacity of industrial actors to diagnose water-related human rights risks and internalize human rights implementation in project designs. The framework is especially pertinent for water-intensive sectors such as beverage, garment, mining, and agriculture. This framework was recently unveiled at the **2022 World Water Week**. The framework has also been privately discussed with experts in peer institutions, such as Special Rapporteur Professor Philip Alston at New York University Law, and Professor James Silk, Director of the Schell Center for International Human Rights at Yale Law School, ACQUAS (the International Water Program of the Institute for Global Dialogue and the Culture of Encounter (IDGCE) that collaborates with UN Water on training water regulators, water sector providers, and water community stakeholders in Latin America). The framework has received favorable responses from such peer institutions – especially at World Water Week which specifically spotlighted this framework in their People and Development Focus Area - for its dynamic responsiveness to the challenges of designing human rights implementation in operational contexts, taking into account the evolutive and interdependent nature of the human right to water with all other related rights, such as the recently recognized human right to a healthy, safe, sustainable, and clean environment.

The Side Event will support the Human Rights Council’s contribution to the International Decade for Action’s “Water for Sustainable Development” initiative by offering new perspectives and guidance on how water-intensive industries can contribute to sustainable industrial development through better implementation of the human right to water. It aims to provoke conversation on the importance of an implementation-based, human rights strategy for water stewardship in industry; the necessity of an interdisciplinary approach to the human right to water; and the opportunities for the private sector to contribute to the sustainable management of water resources.

The objectives of the Side Event are:

- **To introduce strategies for building the capacity of industrial actors to implement the human right to water and other interrelated rights**, using a prevention-based model grounded in the input of affected communities, as part of the Human Rights Council’s contribution to the International Decade for Action
- **To raise awareness of the transformative potential of an implementation-based human rights approach for improving industry behavior and the existing demand by industrial actors** for a model that can strengthen good action in water-intensive sectors
- **To consider new ways of strengthening private sector and government policies**, by analyzing the critical components of the human right to water across three key perspectives: water

security, water governance, and human rights law

- **To share industry perspectives and promote constructive engagement across private-public sectors** towards the full realization of the human right to water and interrelated rights in water-intensive industries
- **To strategize on feasible and operational initiatives** to implement human rights strategies for water-intensive industrial actors, which is currently a significantly underdeveloped field

Presenters:

- **Prof. Dr. Diane Desierto**, Professor of Law and Global Affairs and LL.M. Faculty Director, Notre Dame Law School, Keough School of Global Affairs, University of Notre Dame, and Member, UN Expert Group on the Right to Development
- **Prof. Dr. Marc Muller**, Assistant Professor, Department of Civil and Environmental Engineering and Earth Sciences, University of Notre Dame
- **Prof. Dr. Ellis Adams**, Assistant Professor of Geography and Environmental Policy, Keough School of Global Affairs, University of Notre Dame
- **Dr. Leonardo Bertassello**, Postdoctoral Research Associate, Environmental Change Initiative, University of Notre Dame
- **Elizabeth Dolan**, Pulte Institute for Global Development, University of Notre Dame
- **Jed Youngs**, Practice Lead Water Stewardship, BHP
- **(virtual) Irit Tamir**, Director, Private Sector Department, Oxfam America
- **(virtual) Prof. Dr. Luis Liberman**, Director, Instituto Universitario del Agua y el Saneamiento, Argentina
- **(virtual) Prof. Gabriela Sacco**, Executive Director, Instituto para el Diálogo Global y la Cultura del Encuentro

Format:

The 1 hour 45 minute presentation will begin with a thematic discussion on the issue of human rights implementation and the role of the private sector, through a reflection by the right to water expert Diane Desierto. Representatives from BHP will then provide an industry perspective on how a human rights lens can strengthen their water stewardship approach and why they think industry actors will inevitably shift operational strategies toward embedding human rights implementation. This will be followed by a presentation of the framework and its purpose and potential applications. Professors Muller and Ellis will discuss the proposed framework and then hand over to Dr. Leonardo Bertassello, who will demonstrate how the framework can be applied to 5 real case studies. Irit Tamir, Professor Liberman, Professor Sacco, and Jed Youngs will broaden the conversation to reflect on the importance of a human rights implementation approach within the realm of water stewardship and the extent to which such approaches can contribute to the International Decade for Action on water. The last 30 minutes will be reserved for interactive dialogue with the audience.

Side Event Outcomes

Through a discussion on how to create enabling conditions for industrial actors to *proactively* implement the human rights to water as part of their sustainable water management strategy, this Side Event will promote discussion on the specific challenge of implementing the universal principle of the human right to water in specific operational contexts. In that light, the framework presents a novel articulation of the human right to water in relation to observable water security and governance dimensions, which would benefit from the community's feedback. The anticipated outcomes of this discussion include:

- **Dissemination of a novel approach to water-related human rights implementation that can promote the sustainable development of water-intensive industries** such as the beverage, garment, mining, agricultural, and hydropower sectors.
- **Strengthening of the UN's human rights contribution to the 2023 midterm review of the International Decade for Action, "Water for Sustainable Development,"** through reflections that explore the private sector's role in promoting a human rights agenda
- **Enhanced understanding of the human right to water through a new articulation of the right** that enfolds the latest approaches to water security and water governance
- **Raised awareness of the critical need within water-intensive industries for practical approaches** that can help companies sustainably pursue their operations in accordance with the human rights of local communities impacted by operations
- **New suggestions for how to strengthen water governance policies at the local, national, and regional levels, as well as policies internal to business enterprises,** so that these policies best promote the human right to water and interrelated rights in industry settings
- **Establishment of a preliminary platform for dialogue between policymakers, scholars, civil society organizations, and the private sector on human rights and sustainable management in heavy industries.**

Audience:

This presentation will be tailored to a high-level audience of human rights experts, member state representatives, international organizations, and non-governmental organizations. Our goal is to inform this audience about the framework and the capacity gap it seeks to address, and to provoke a broader discussion on implementing the human right to water in industry as one solution towards sustainable water management.

Background and justification

A key objective of the International Decade for Action's "Water for Sustainable Development" initiative is to advance sustainable development and integrated management of water resources, including through the cultivation of public-private and multi-stakeholder partnerships to advance science, research, and innovation. As part of this, the initiative aims to strengthen the capacity of "sustainable industrial development."

Strengthening sustainable industrial development is a multidisciplinary challenge. Answers to questions of access, quantity, and quality within the context of water-intensive industries like mining, textiles, agriculture, and paper are not straightforward. Each of these industries operates in a context in which there are competing claims on water from diverse stakeholders---native populations, agriculturalists, urban settlements, public utilities et al. Which of these different groups have primacy of claim and on what legal, ethical or normative basis? What set of principles should be used to guide decision-making and operational processes involved in implementing the right to water and related human rights among different constituencies affected by water-intensive industrial activities? How should these rules or principles be enforced and sustained on an ongoing basis? Is there some universal set of principles that might be applied across different national contexts to guide such decision-making?

Today, human rights questions around water have become critically important as many companies find themselves challenged by rights claims from native populations for whom access to a particular hydrological system has both livelihood and cultural significance. It is increasingly recognized that local communities or stakeholders asserting rights claims to water will likely become even more common in coming years as scarcity accelerates across the globe.

A comprehensive UN approach to water for human rights and sustainable development will need to anticipate and incorporate the challenge of human rights within water-intensive industrial spaces. The approach will need to build the capacity of private sector actors, not just state actors, to proactively facilitate the realization of human rights and to join in conversation on good water stewardship measures that can advance industry needs while achieving sustainable outcomes. The proposed Side Event directly engages key experts from the private and public sectors on the above critical components of the International Decade for Action's agenda. The framework presented, which has been commissioned by one of the world's largest mining companies (BHP), is an attempt by an interdisciplinary team at the University of Notre Dame to look at water stewardship through a human rights lens and offer a practical approach to the implementation of a rights-based approach to water stewardship. The framework aims to increase industrial stakeholders' capacity for understanding context-dependent challenges to the right to water and communities' needs of water. This allows them to proactively ensure sustainable and ethical practices in their industrial operations.

Novelty

The framework contains several unique and critical qualities.

1. **First, the framework introduces proactive and preventive incorporation of human rights implementation into industrial operations, rather than focusing on dispute resolution and remediation as a result of the failure of implementation of human rights in business operations.** In essence, the framework equips industrial actors with the ability *to ask the right questions about human rights implementation, contextualized to local conditions*, for the purpose of achieving better risk assessment and customization of the project, program, and

operations design in water intensive industrial activities towards internalized human rights implementation. While previous research has focused on checklists and indicators that prescribed or anticipated common problems in large water-intensive industrial projects, those predetermined methodological parameters constrain the ability of industrial actors to adapt to situations on the ground and individualize their risk assessment approaches in tandem with the implementation of the human right to water and related rights. There is no good strategy yet for ensuring legal adherence, encouraging ethical behavior, or locating ways in which a company can go above and beyond to expand the enjoyment of the right to water. This framework is a modest attempt to try to address

that gap, keeping in mind that industrial actors operate within a diverse set of regulatory, governance, environmental, social, and hydrological contexts.

2. **Second, the framework embraces the independent and interdependent nature of the human right to water by going beyond prescriptive and limiting data collection and data analysis strategies (e.g. checklists, indicators, the AAAQ framework focusing on adequacy, availability, accessibility, and quality as normatively set by the UN Committee on Economic, Social and Cultural Rights on the right to water) that do not adapt to operational realities facing water intensive industries, regulators, and communities.** The framework produces a sequenced set of inquiries that rely on both qualitative and quantitative strategies to produce an understanding that incorporates the multi-dimensional nature of the human right to water, its cross-cutting obligations and its inter-related human rights.
3. **Third, because the framework has been produced by an interdisciplinary team that spans the social, policy, environmental and legal sciences, it moves beyond the siloed nature of most contemporary approaches to water and human rights.** The framework uniquely blends/links the most recent scholarship on hydrological systems, water governance, and human rights jurisprudence into a unified approach.