REALIZING HUMAN RIGHTS: AN INTEGRATED FRAMEWORK FOR IMPLEMENTING THE RIGHT TO WATER

An Information Brief on a New Innovative Framework by the Pulte Institute for Global Development

There is no life without water. A threat to water security is a threat to health, economic expansion, livelihoods, ecological resilience, resource sharing, and, above all, fundamental human dignity. After a history of undervaluing and mismanaging water resources, the world is now approaching the harsh reality of a 40% water deficit between supply and demand of water availability by 20301 alongside a drastic upick from three billion to five billion people who will suffer from seasonal water insecurity by 2050.2 The realization of projections like these will provoke cascading effects across all aspects of human life. There is urgency for solutions that protect economic security, the environment, and the global population alike.

We believe that solutions to water security challenges, and related water governance policy issues, must integrate the consideration of water as a human right. Water resource precarity has an undeniably negative impact on the ability of the most vulnerable to exercise their right to water use across multiple dimensions of hydration, sanitation, cultural expression, agriculture, and more.

This is especially true within water-intensive industrial spaces, where sectors such as garment, mining, hydropower, and agriculture can dramatically change the hydrological landscape of local communities. There is great need for human rights approaches that can 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 achieve sustainable outcomes while advancing industry needs.

Currently, however, stakeholders in water-intensive industries find it difficult to meaningfully understand and act upon their responsibilities to the human right to water in a given context or lack the will to do so, which results in projects and policies that fail to uphold stakeholders’ duties. In the face of complex and changing environmental conditions, these stakeholders need an approachable, practical way to diagnose human rights risk and generate a nuanced understanding of the right in a given political, social, and environmental context.

Yet, even though guiding documents like the CEO Water Mandate’s Guidance for Companies on Respecting the Human Rights to Water & Sanitation or the ICMM’s Voluntary Principles on Security and Human Rights stress the importance of conducting a proactive assessment of human rights risk, 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. Until now, the

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strategy for managing the human right to water has always engaged enterprise and industry-adjacent actors too late, with most indicator-based assessments focusing on measuring violations ex-post. Further, 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.

In response to these gaps, a multidisciplinary team at the University of Notre Dame has produced a framework that supports stakeholders’ ability to proactively implement the right to water in their project designs and policies. The framework aims to equip 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.

The framework takes into account the expansive multi-dimensionality of human rights associated with water access, use, and governance. It is uniquely informed by the union of academic expertise in hydrological systems, water governance, business ethics, and international human rights.

The framework begins by diagnosing key water security challenges associated with the inadequate availability of accessible water of sufficient quality. The assessment involves identifying key stakeholders involved in the water resource of interest, the hydro-industrial processes that one is planning to implement, and the corresponding types of water inadequacies that might arise. These water inadequacy categories take into account the established paradigms of green and blue water footprints and virtual water flows, as well as emerging paradigms of economic water scarcity and hydrosocial cycles to define five dimensions -- or shades -- to evaluate water (in)adequacy with an eye on human rights.

The framework then employs a governance assessment to identify any critical governance failures or gaps in the location. This assessment, consisting of six overarching questions, produces information on four broad indicators: power asymmetries, level of participation, transparency and accountability, and threats to hydrosocial (livelihood, cultural, religious) relations. These indicators represent a consolidated list of considerations from the 12 principles of effective water governance outlined in the Organization for Economic Co-operation and Development.

Finally, the framework takes all concerns flagged in the water inadequacy and governance assessments and explores these concerns through a legal lens that incorporates local and international jurisprudence. The framework points to the first three requisite elements of adequacy, multidimensionality, and sustainability; followed by a wide-lens examination of cross-cutting obligations (self-determination, non-discrimination, free disposition of natural resources subject to mutual benefit and international law,
non-deprivation of means of subsistence, and equal enjoyment of human rights); onwards to a more localized analysis of the interrelated rights that are specifically implicated when the elements of adequacy, multidimensionality, and sustainability are investigated in water inadequacy situations and water governance issues. The final outcome is a matrix of highly specific questions that, when answered, flag for industrial actors the situations in which the combination of particular hydro-industrial processes, stakeholder groups, and governance structures might cause a violation of the human right to water.

Through the knowledge generated by this approach, the framework enables States and business enterprises to incorporate the evolving ethical and legal understanding of the human right to water into their regulatory and operational processes. Policymakers might use it to guide their effort to set water allocation plans and project approval requirements in a manner that balances social, environmental and economic needs. Companies can use it as a way of asking the correct contextual questions to understand their obligations and risks associated with human rights in a given location. The framework might flag high-risk and low-risk locations, communities that will be most impacted and therefore should be the most engaged, and context-specific enabling and disabling governance structures. Companies might also use the framework to identify opportunities to set new standards of ethical and sustainable business practices, particularly in jurisdictions where governance failures exist and legislation is weak.

Because there can be no life without water, the world must rise to meet the great challenges of this era with regard to water insecurity and the interrelated issues of climate change, resource scarcity, food insecurity, and population growth. This framework is a modest attempt to move the field towards human rights realization in industry as part of a response to these challenges. Though the pathway towards resolution may feel endless, critical actors – equipped with a framework that guides them in the proactive pursuit of upholding the right to water – have the ability to take a step forward.

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