



The CEO Water Mandate

The Human Right to Water: Emerging Corporate Practice and Stakeholder Expectations

Jason Morrison

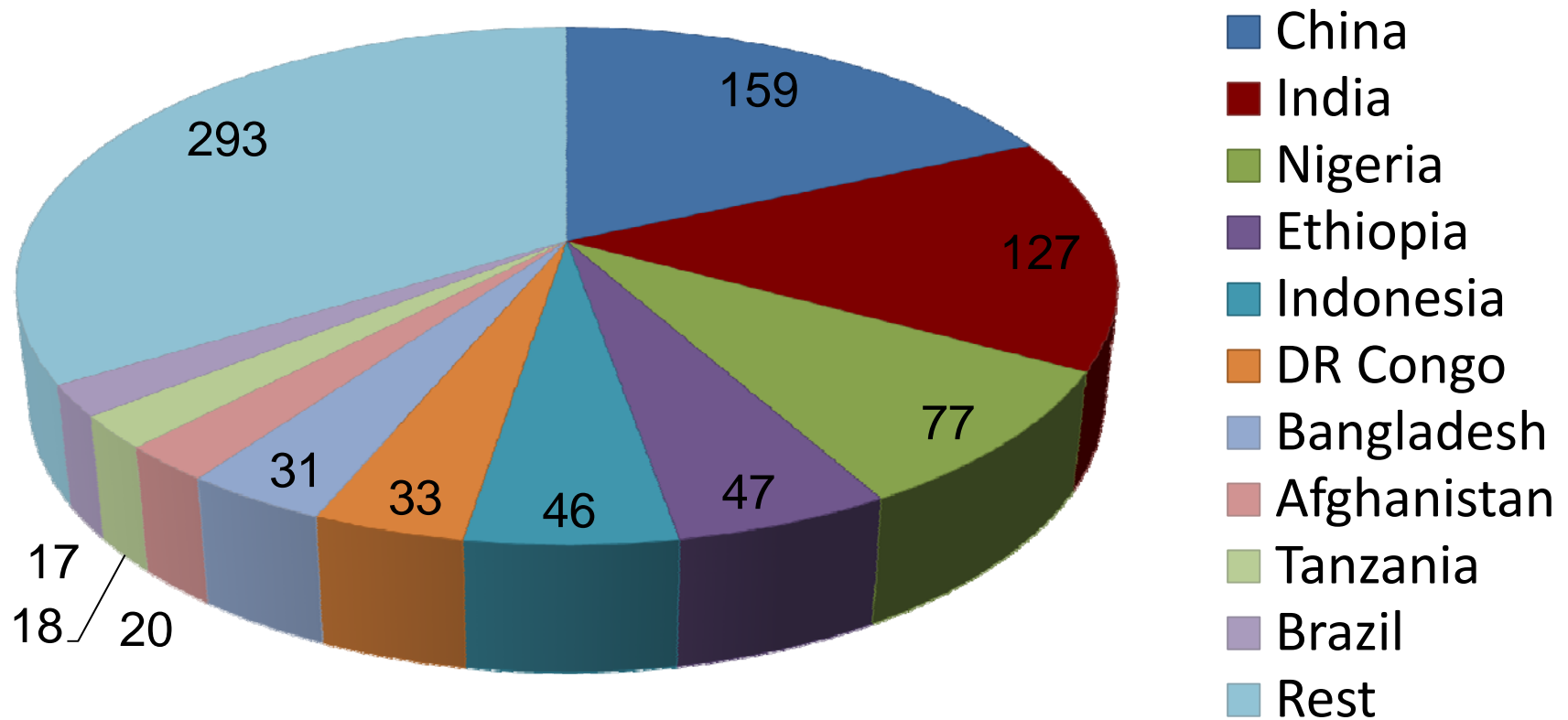
November 2010



**PACIFIC
INSTITUTE**

Research for People and the Planet

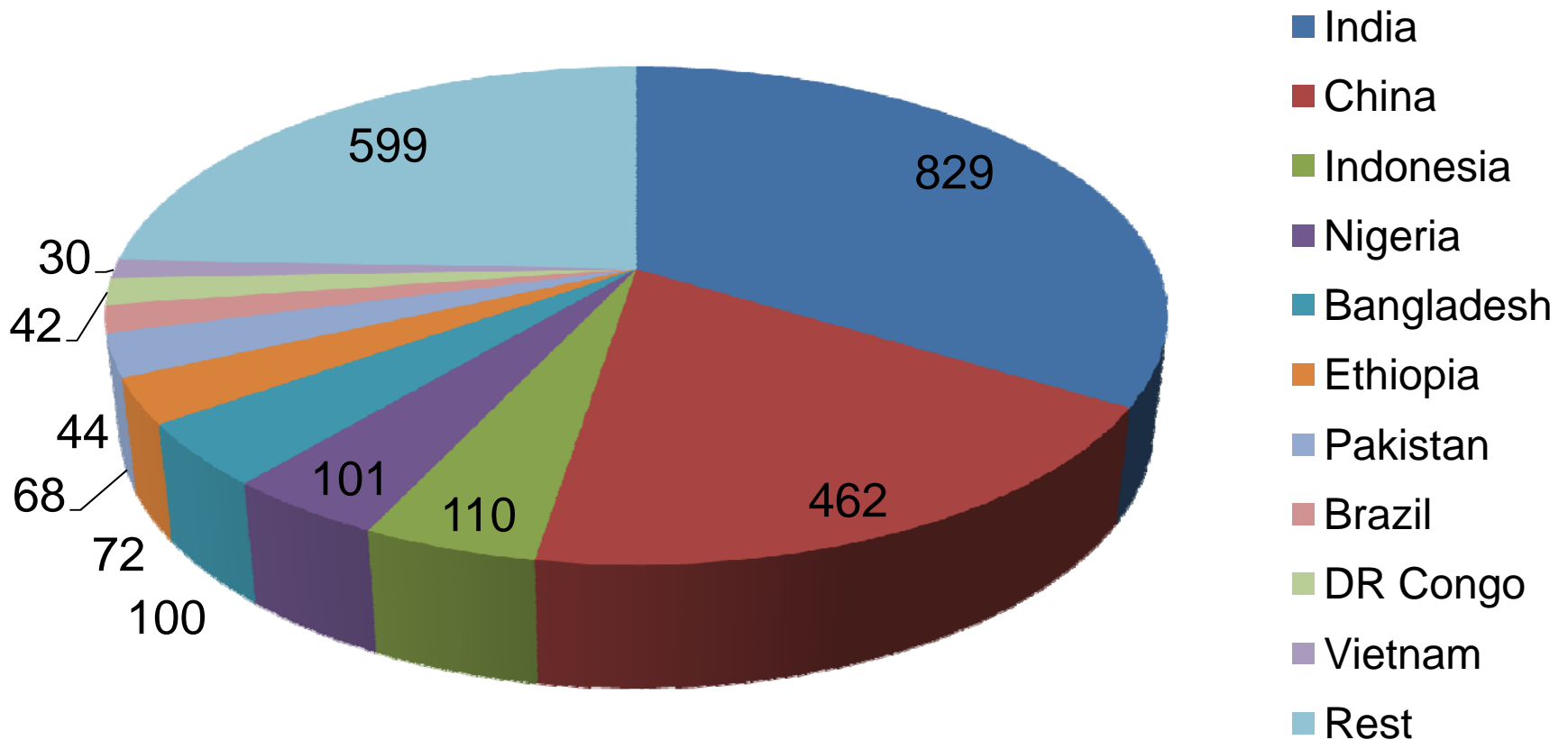
People without Improved Water Supply



Total is 867 million

Source: Paul Edwards, UNICEF 2008

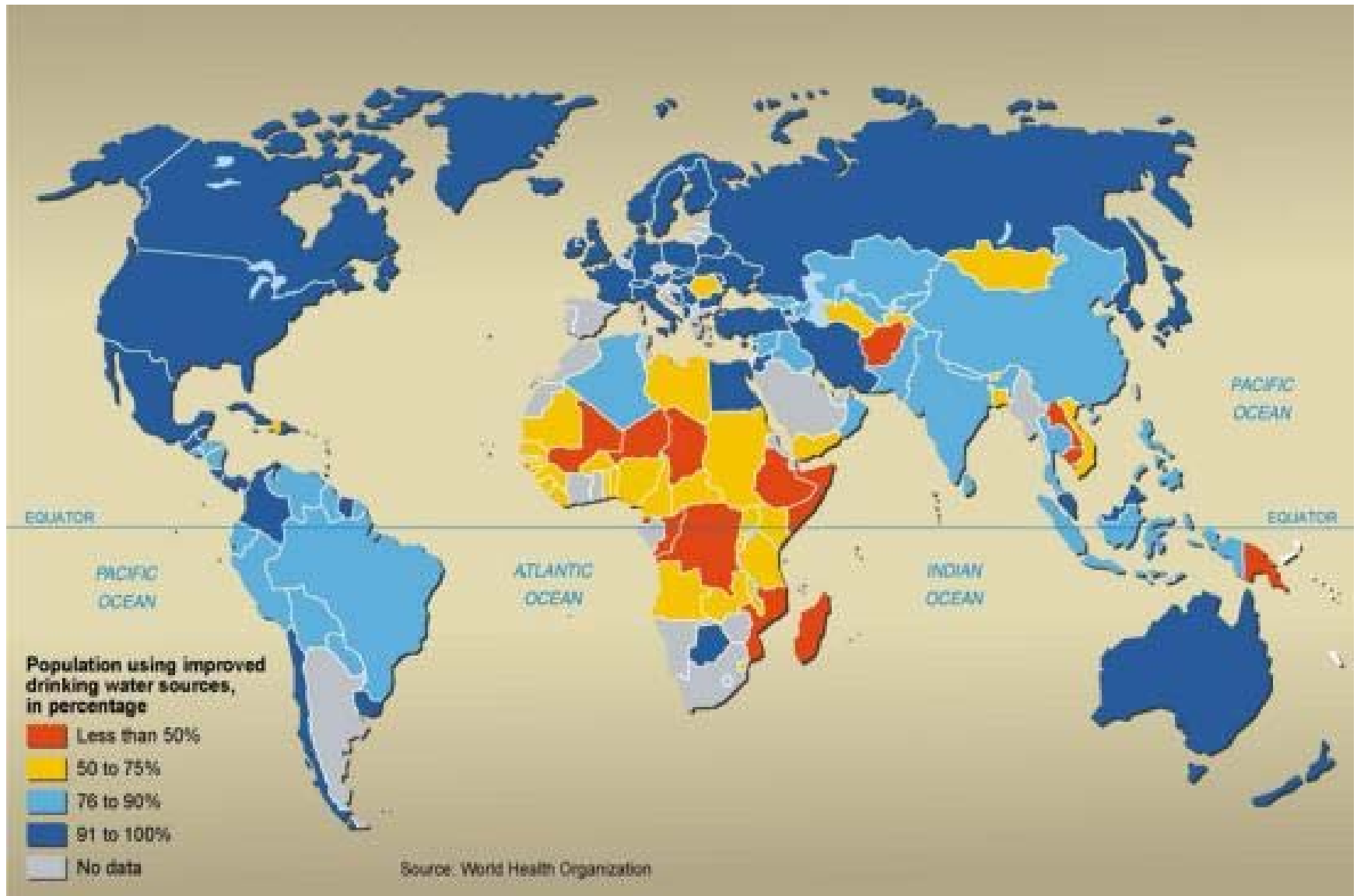
People without Improved Sanitation



Total is 2,457 million

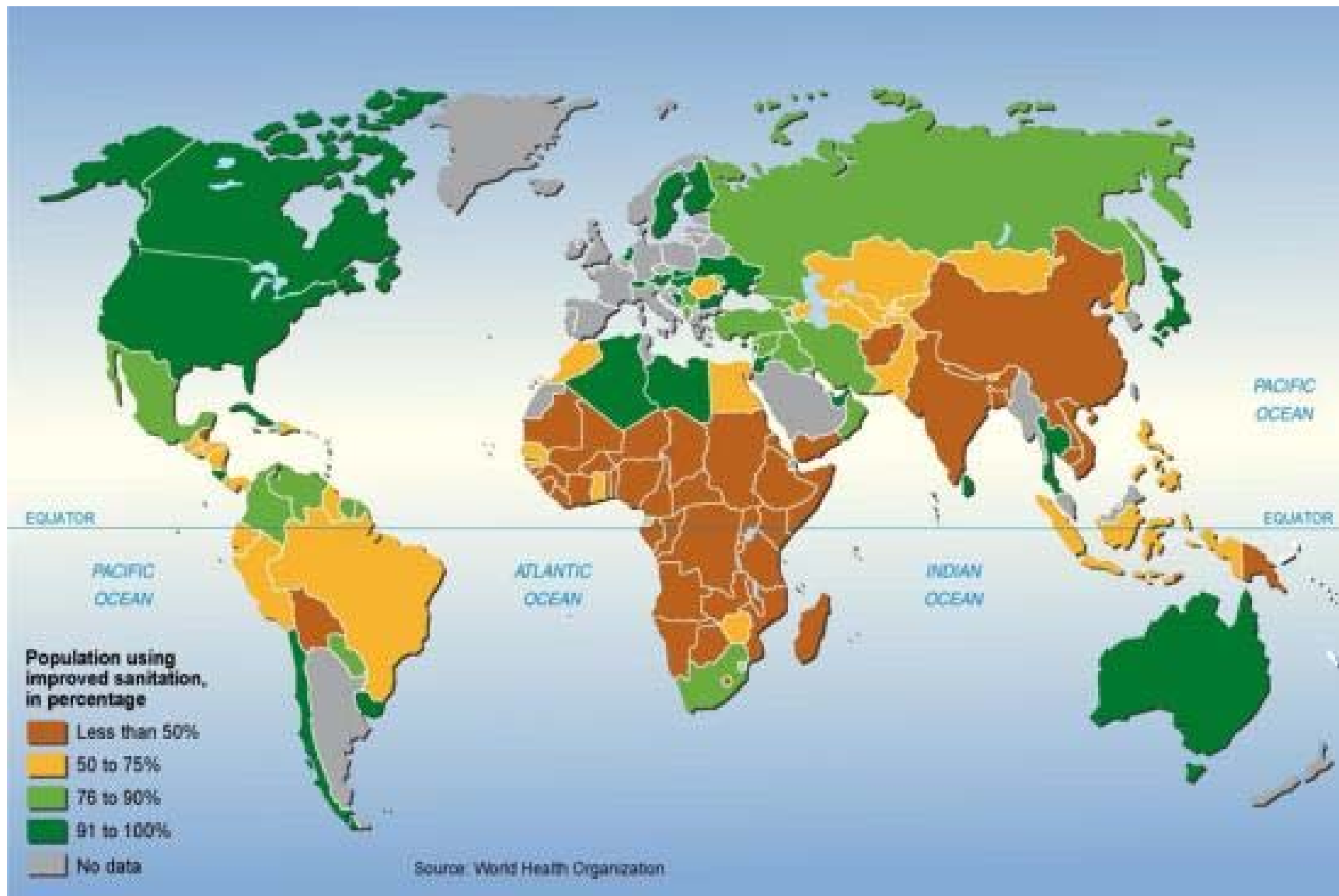
Source: Paul Edwards, UNICEF 2008

Global access to improved drinking water



Source: World Health Organization

Global access to improved sanitation



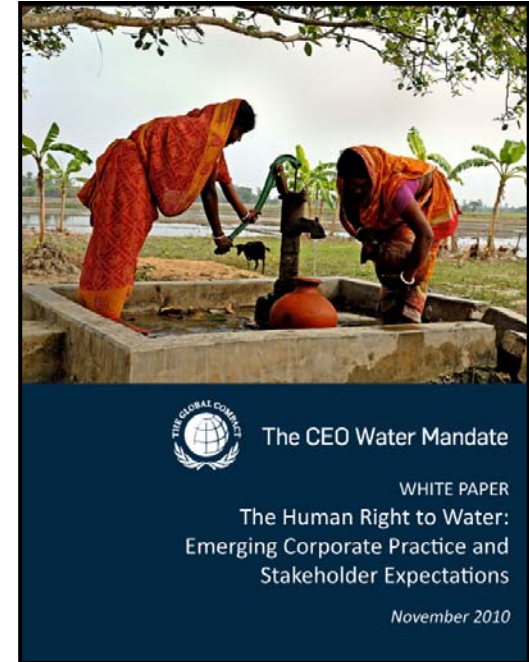
Source: World Health Organization

History of the human rights workstream

- In advance of its working conference in Istanbul, the Mandate released a discussion paper (with IHRB) that explored what it means to adhere to Ruggie’s “corporate responsibility to respect” principle in the context of water.
- Established Human Rights Working Group to further discuss and inform the Mandate’s work on this issue
- Early 2010, conducted endorser survey of company perspectives and practices regarding the human right to water
- Released the white paper *The Human Right to Water: Emerging Corporate Practice and Stakeholder Expectations* in November 2010.

Objectives of the white paper

1. Provide an overview of related public policies and emerging frameworks that establish expectations of companies on this issue;
2. Describe the contours of the debate regarding businesses respecting the human right to water;
3. Summarize the state-of-play with regard to business practice and illustrate examples of existing corporate policy and approaches on the topic; and
4. Identify options for how the CEO Water Mandate might advance this core focus area.



Emerging public policies and frameworks

UN General Assembly and Human Rights Council Resolutions

- In July 2010, the UN General Assembly formally acknowledged water and sanitation as a human right.
- In September 2010, the UN Human Rights Council reaffirmed this right and clarified its legal foundation, demonstrating it is legally-binding and equal to all other human rights.
- The UN HRC resolution also reaffirmed that the primary responsibility to protect and fulfill the human right to water and sanitation lay with the State, even in cases where governments delegate water service delivery to private entities.

The Ruggie Framework

The Ruggie Framework provides a conceptual and policy framework on the private sector's role in human rights. It is built around three core principles:

- The public sector is responsible for **protecting** against human rights abuses by third parties (e.g. corporations),
- The private sector is responsible for **respecting** human rights,
- There must be greater access for all to **remedies** when human rights abuses occur.

In this context, “to respect” means to conduct due diligence that ensures companies do not infringe on the rights of others.

Defining Ruggie's Responsibility to "Respect"

To "respect" means to **proactively** conduct an ongoing **due diligence** process that:

- Establishes a human rights policy
- Assesses human rights impacts of company activities
- Integrates those values and findings into the business' management systems and practices
- Tracks and reports performance

Defining Ruggie's Responsibility to "Respect" (2)

Due diligence considers three (and possible more) essential factors:

- The **political and societal context** in which companies operate
- The company's **impacts** within that context
- Whether the company **contributes to abuse** through relationships connected to their activities

Other key initiatives

UN Independent Expert on Human Rights and Water Services

UN CHR also nominated an independent expert – Catarina de Albuquerque - for human rights obligations in respect to access to safe drinking water and sanitation.

WaterAid / Institute for Human Rights and Business

Working to develop a briefing note – due for release mid-December 2010 - addressing what respecting the right to water means for companies

Contours of the debate

Key areas of discussion

1. Form, function, and value of formal corporate policies on the right to water
2. Acting consistently with and “respecting” the human right to water at the operational level
3. Aspirational corporate actions that exceed minimum responsibilities: fulfilling the right to water

Establishing a formal policy

Disagreement as to whether a formal (and public) corporate policy is a necessary to address the human right to water.

Pros:

- Internal alignment
- Enhanced reputation
- Creating accountability
- Encouraging action by other companies
- Raising awareness

Cons:

- Distracting from implementation
- Creating unintended expectations
- Difficulty demonstration adherence to policy
- Providing basis for litigation
- No turning back

Existing corporate policies vary greatly, ranging from explicit acknowledgements of the right to water to descriptions of “rights-based approaches”.

Understanding “respect” – Assessment

The Ruggie Framework includes proactive affirmation that the company “does no harm”; social impact assessments as a component of company’s human rights due diligence process.

General acceptance of this concept, but several areas of uncertainty on specifics, including:

- The lack of available data on local conditions and established methods for assessing the impacts of the company’s water use and wastewater discharge
- Degree to which companies are responsible for assessing the impacts associated with indirect water use (i.e., suppliers, partners)

Operationalizing “respect”

Implementing actions on the ground

Uncertainty on what actions can be implemented on the ground to eliminate these impacts

Some specific concerns regard:

- Minimum expectations for assuring “do no harm” on the ground
- Degree to which responsibility to respect focuses on corporate conduct rather than community and watershed outcomes
- Extent to which responsibility to respect extends beyond ensuring domestic water needs as a first priority to other water needs
- The lack of guidance on how to balance trade-offs with respecting other economic, social, and cultural human rights (e.g., food production and economic livelihood).

Going beyond responsibility / Fulfilling the right to water

Though companies widely affirmed that the obligation to fulfill rights resides with governments, many acknowledged that working to fulfill the right to water can be of strategic interest to companies.

Willingness and ability of companies to pursue such actions can be impeded by uncertainty regarding:

- Whether such actions will create unintended expectations from stakeholders
- The specific actions they can effectively support the delivery of or access to basic water and sanitation services for underserved communities
- The conditions under which such actions will be acceptable and supported by communities and other stakeholders

Corporate perspectives on key issues

Survey on endorser practice

Mandate Secretariat conducted a survey of 21 endorsing companies to collect information on current state of practice and perspectives on areas of Mandate discussion.

Key findings include:

- **Willingness to “respect”:** Many companies expressed firm support for the duty to “respect” as outlined in the Ruggie Framework, while underscoring their belief that the duty to fulfill rights resides with governments.
- **Lack of understanding on key concepts:** However, responses indicated a lack of clarity of what “do no harm” and “respect” mean operationally.
- **Underdeveloped methods:** The survey revealed that companies understanding and implementation of social impact assessments is still largely undeveloped.
- **Lack of formal policies:** Most companies do not have a formal policy committing to “respecting” the human right to water or process for implementing it into their operations.

Degrees of corporate action

Responses and Mandate working conference discussions suggest three spheres of action, while providing some initial ideas of what might fall under those categories.

Abuse

- Immediate harm from corporate activities
- Complicit in actions that infringe on rights
- Block stakeholder participation

Ruggie Compliance

- Due diligence / “Respect”
- Proactively assess and manage impacts
- Transparency

Beyond responsibility

- Community projects
- Policy engagement
- Advocacy

Options for Mandate Action

Option A: No action

Option B: Continue to convene endorser-stakeholder dialogues and/or engage related initiatives

Option C: Conduct larger empirical assessment of corporate practice on the human rights to water and relevant government policy

Option D: Develop operational guidance on respecting the human right to water

Option E: Mandate position statement affirming the human right to water



**PACIFIC
INSTITUTE**

Research for People and the Planet

Jason Morrison

Pacific Institute
654 13th Street
Oakland, California 94612
(510) 251-1600

www.pacinst.org