



The CEO Water Mandate

WHITE PAPER

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

November 2010

The Human Right to Water:

Emerging Corporate Practice and Stakeholder Expectations

Written by Jason Morrison and Peter Schulte of the Pacific Institute, with input from CEO Water Mandate meeting facilitator, Rob Greenwood of Ross & Associates

Copyright © United Nations Global Compact, Pacific Institute
(year 2010)

Cover Photo: © Samrat35 / Dreamstime



**PACIFIC
INSTITUTE**



Introduction

In July 2010, the UN General Assembly (UNGA) recognized access to safe drinking water and sanitation as a human right. Two months later, the UN Human Rights Council (UNHRC) affirmed this right by a consensus resolution. Even before these UN actions, many governments, NGOs, academics, and companies alike have acknowledged this human right to water and sanitation and sought to find solutions to help realize it on the ground. Further, a number of initiatives have emerged that have attempted to elucidate what this right means for a number of different actors, including companies.

Recognizing such solutions as a core part of corporate water stewardship, the CEO Water Mandate has identified exploring corporate practice and enabling solutions on this issue as one of its three core focus areas. Indeed, this focus has been based on the belief that the six core elements of the CEO Water Mandate are in line with and support the human right to water. As part of this workstream, the Mandate has featured facilitated discussions at several of its semiannual working conferences among endorsing companies and key stakeholders focusing on emerging corporate practices and policies, as well as stakeholders' expectations regarding the role of business in realizing the human right to water. These conversations have focused almost entirely on the role of *large-scale private sector water users* relating to this issue, recognizing that role and expectations of *private water service providers* has some fundamental differences that need to be addressed separately. In early 2010, the Mandate Secretariat also conducted interviews with almost two dozen endorsers regarding their current and emerging practice relating to water and human rights, what it means in practice to "respect" the right to water, their thoughts on the boundaries of corporate responsibility in acting consistently with this right, and other important questions. These Mandate discussions and endorser survey took place prior to the UNGA and UNHRC resolutions on the human right to water.

This white paper is designed to provide information that will inform both how individual companies can respect the human right to water, as well as how the Mandate itself can meaningfully contribute to business' ability to effectively address this issue. Specifically, it sets out to:

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

Situating the Mandate's work on the human right to water within a broader context

In the past few years, a number of public policies and frameworks have emerged that inform or attempt to better define business responsibilities regarding the right to water. Understanding these initiatives is critical to understand what is currently expected of companies, as well as how the Mandate can best contribute to this space. This section will identify some of these policies and frameworks and discuss their key objectives and progress to date.



UN General Assembly and Human Rights Council resolutions

After many years of being recognized as a fundamental part of the attainment of existing internationally accepted human rights, such as the right to life, health, and food, as well as being incorporated into a number of national constitutions, the UN General Assembly in July 2010 formally acknowledged water and sanitation as a human right. A September 2010 resolution by the UNHRC clarified the foundation for recognition of this right and the related legal standards, demonstrating it is legally-binding and equal to all other human rights.

The UNHRC resolution also reaffirmed that the primary responsibility to protect and fulfill the human right to water and sanitation resides with the State, even in cases where States delegate water service delivery to private entities. Though the resolution outlines States obligations with respect to private *water service providers*, it does not explore the responsibilities of private *large-scale water users* in realizing the human right to water and sanitation.

The Ruggie Framework

In 2005, John Ruggie, a Professor of International Affairs at Harvard University's Kennedy School of Government, was appointed as the UN Secretary-General's Special Representative for Business and Human Rights. His mandate included, among other things, that he identify and clarify international standards on the human rights responsibilities of companies and elaborate the role of States in regulating and adjudicating corporate human rights behavior. Since his appointment, Ruggie has consulted widely with stakeholders across the world and conducted various research projects identifying, clarifying, and investigating the key legal and policy dimensions of the role of business in human rights issues.

Ruggie's first major report¹ to the UNHRC, entitled "*Protect, Respect, and Remedy: A Framework for Business and Human Rights*," was released in April 2008. The report offers a policy framework that establishes companies' minimum responsibilities in ensuring human rights are realized and provides guidance to businesses, governments, and other relevant actors. The framework is built around three core components:

1. Governments' **duty to protect** against human rights abuses by third parties, including businesses;
2. Businesses' **responsibility to respect** all human rights; and
3. The need for more effective **access to remedies** for people affected by corporate related human rights abuses.

The UNHRC welcomed the framework and extended Ruggie's mandate for an additional three years with a view to further "operationalize" its concepts. This work resulted in a report released by the Special Representative in April 2009,² as well as a third report in April 2010,³ both further articulating business actions that constitute "respecting" human rights. Ruggie specifies that the responsibility to respect requires companies to "do no harm" and to ensure so by undertaking an ongoing, proactive due diligence process. Such a process establishes internal mechanisms that allow a company to identify, prevent, and mitigate adverse human rights impacts throughout the extent of its operations. Ruggie also

¹ To see Ruggie's "Protect, Respect, and Remedy" report in full, go to: <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>

² To read Ruggie's April 2009 report in full, go to: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>

³ To read Ruggie's April 2010 report in full, go to: <http://www.reports-and-materials.org/Ruggie-report-2010.pdf>



describes four steps that comprise an effective due diligence process: establishing a human rights policy, assessing human rights impacts of company activities, integrating those values and findings into corporate culture and management systems, and tracking and reporting performance.⁴ This process must consider the political and societal context in which companies operate, the company's impacts within that context, and whether the company contributes to abuse through commercial relationships (e.g., supply chain) connected to their activities.

Framework for good practice in realizing the right to water and sanitation – UN Independent Expert

In 2008, the UNHRC appointed Catarina de Albuquerque as Independent Expert to explore human rights obligations related to access to safe drinking water and sanitation. Her mandate is to identify good practices, clarify the nature of obligations, and recommend strategies to realize related Millennium Development Goals. Although her mandate does not expressly cover large-scale private water users, her work has produced some insights on respecting the human right to water for such actors. Further, her most recent report to the UNHRC⁵ explicitly states that private water and sanitation service providers have certain human rights responsibilities, though states are ultimately accountable. In particular, the Independent Expert's recommendations addressing non-State water service providers include:

(f) All instruments for delegation, including contracts, must be in line with human rights standards, contribute to the realization of the rights to water and sanitation and guide the activities of non-State service providers;

(g) Non-State service providers should exercise due diligence to ensure they comply with human rights standards throughout the process, from the bidding over entering into agreements with the State to the operation of services. They are encouraged to proactively engage with the State to detect potential human rights abuses and find solutions to address these;

(h) States should carry out human rights impact assessments before and throughout the process, building these into the process of deciding on the means of service provision as well as a monitoring provision to determine the actual and potential impact on the realization of human rights, including the rights to water and sanitation. They are encouraged to adopt legislation that imposes obligations on service providers to also carry out human rights impact assessments. Service providers should undertake such assessments as part of exercising due diligence to become aware of the actual and potential impact of their activities on the realization of the human rights to water and sanitation;

(m) To ensure accountability, States and other actors involved should clearly designate roles and responsibilities;

(p) Non-State actors must not obstruct access to State-based mechanisms and should also provide grievance mechanisms.

The July 2010 report by the Independent Expert also establishes a framework for assessing good practices for water service providers from a human rights perspective. This framework is built upon ten criteria that signal good practice. Five of these criteria – availability, quality/safety, acceptability,

⁴ The UN Global Compact Office has developed a variety of human rights guidance material to aid business in this due diligence process, e.g. the Guide to Human Rights Impact Assessment and Management (<https://www.guidetohriam.org/welcome>). For a list of human rights tools available from the Global Compact, as well as tools developed by other institutions, see:

http://www.unglobalcompact.org/Issues/human_rights/Tools_and_Guidance_Materials.html

⁵ To see the Independent Expert's report in full, go to: <http://www2.ohchr.org/english/issues/water/ixpert/docs/A-HRC-15-31-AEV.pdf>.



accessibility, and affordability – are specific to the human right to water and sanitation, whereas the remaining five – non-discrimination, participation, accountability, impact, and sustainability – apply more broadly to the achievement of all human rights. This report defines “practice” broadly, referring to both policy and implementation. As such “good practice” can come in a broad array of forms, including international treaties, legislation at all levels, regulations, policies, strategies, institutional frameworks, campaigns, subsidies, and financing mechanisms, among many others.

The report asserts that both private water service providers and other businesses that may impact on the human right to water/sanitation can contribute by including the respect and realization of the right to water and sanitation in their core business operations and decision-making processes. A key component of this human rights framework is consultation with and accountability to communities on which companies might have an impact. Companies can also engage in initiatives that go beyond their responsibility to help realize human rights, given that they are consistent with human rights standards.

WaterAid / Institute for Human Rights and Business

WaterAid and the Institute of Human Rights & Business are working to develop a briefing note addressing what respecting the right to water means for companies (both water service providers and large-scale users). The paper (due to be published in December 2010) will clarify differences between “the right to water” and more general rights-based approaches and will outline how companies can respect the right. The briefing note will further explore the conditions under which private enterprise may engage in fulfilling the human right to water. It will outline the areas required for due diligence and highlight the necessity for meaningful dialogue between business, governments and civil society. The paper deliberately does not seek to find answers to the shared social, political, environmental, and economic risks facing civil society, companies, and governments but rather highlights critical issues and draws together some of the possible actions required to gain the commitment and action necessary to tackle shared risk and to prioritize people’s access to water and sanitation.

The contours of the CEO Water Mandate’s discussions regarding corporate responsibility on the human right to water

According to an August 2007 study by the UN High Commissioner for Human Rights, the human right to water entitles everyone access to a sufficient, safe, physically accessible, and affordable amount of water for personal and domestic uses.⁶ This access should be prioritized over other water uses – notably water for agriculture and industry – and should be non-discriminatory. Further, a rights-based approach to water means that priority should be given to those who do not have access and requires that individuals and communities have access to information, justice, and participation in decision-making processes concerning water. Under the human rights framework, governments/States are ultimately responsible for ensuring that the human rights of people living under their jurisdiction are realized. Consistent with the Ruggie Framework, it is also now widely accepted that private actors are responsible for actively ensuring that their operations do not infringe on the realization of human rights.

Dialogue at Mandate events has clearly indicated companies are committed to implementing a rights-based approach to water but strongly desire and need more guidance to create the solid footing that

⁶ To read the UNHRC report on safe drinking water and sanitation. Go to: http://www2.ohchr.org/english/issues/water/iexpert/docs/A-CHR-6-3_August07.pdf.



can support substantial progress in this area. Indeed, discussions over the course of three UN CEO Water Mandate working conferences – in Istanbul in March 2009, Stockholm in August 2009, and New York City in April 2010 – have revealed significant uncertainty about various aspects of corporate responsibility for private large-scale water users regarding the human right to water. Each meeting contained a mix of government agency, stakeholder, and corporate presentations regarding the human right to water and private sector behavior consistent with this right, as well as give-and-take discussions designed to reveal the range of expectations, concerns, commitments, and uncertainty attached to this still nascent topic.

Looking across these presentations and discussions (where debate was lively and consensus at times elusive), three themes emerge as central to understanding the key issues around corporate responsibility to respect the human right to water: a) the form and function of formal corporate policies on the human right to water, b) what it means to act consistently with and “respect” that right at an operational level, and c) the scope of aspirational corporate actions that exceed minimum responsibilities, particularly around “fulfillment” of the right to water.

A. Form and function of formal corporate policies on the right to water

Some companies have adopted and made public formal corporate policies that define their perspective on the human right to water and outline their associated commitments. Other companies have chosen to focus on aligning their operations with a rights-based approach, while forgoing a publicly stated policy while expectations for specific corporate behavior remain under development. The full implications of adopting such a formal corporate policy on the human right to water and how corporations can best publicly express their position on the topic has been one area of uncertainty and discussion at previous Mandate working conferences. Key questions explored during discussions include:

- What stakeholder expectations will be created by a company that adopts and publicly announces a human right to water corporate policy?
- Will the time spent developing and articulating a formal policy detract from arguably more important on the ground action?
- How critical is the adoption of a formal, publicly stated policy to the effectiveness of a company’s respecting the human right to water or implementing a rights-based approach?

Certain endorser and stakeholder perspectives indicated a strong belief that a formal corporate policy is a necessary cornerstone of a meaningful approach to addressing the human right to water. This perspective stemmed from a belief that such policies raise awareness and create accountability. This perspective was not shared by all Mandate endorsers, however, with several expressing the belief that an effective rights-based approach could be fully executed and a robust and actionable commitment maintained in the absence of a formal policy. Some believe that such policies detract from meaningful actions or could create unintended and unrealistic expectations of companies. The lists below summarize the “pros” and “cons” of such a corporate policy.

Pros of a formal corporate policy include:

- Facilitating internal alignment on values and approaches;
- Promoting internal and external accountability to meet rights-based commitments;
- Enhancing corporate reputation among affected communities, NGOs, and consumers;
- Encouraging stakeholder feedback on corporate commitments/actions in support of respecting the human right to water;



- Influencing other companies to act; and
- Raising global awareness.

Cons of a formal corporate policy include:

- Distracting from implementation of rights-based actions while corporate consensus is forged on the policy form and content;
- Creating unintended and difficult to meet expectations as the nature of the commitment and operational framework remain ill-defined;
- Experiencing difficulty demonstrating adherence to the policy due to lack of established and accepted benchmarks and review processes;
- Establishing a basis for civil litigation for failure to adhere to the policy (though discussions indicated, at least anecdotally, that such litigation has not emerged in the human rights space); and
- Making a commitment from which there is no turning back irrespective of result.

B. Acting consistently with and “respecting” the human right to water at the operational level

Another point of uncertainty relates to understanding the type and scope of on-the-ground, practical actions that represent acting consistently with the right to water. This question largely hinges on clarification on how to “respect” the right to water as defined by the Ruggie Framework. Good practice consistent with the responsibility to respect a human right involves five practice areas:

- Perform due diligence to identify, prevent, and mitigate the impact of activities on human rights (in the right to water context this focuses on investigating business activity impacts on human access to clean and safe water, adequate sanitation services, and ecosystem health);
- Make and state commitments and develop associated response strategies;
- Integrate response strategies throughout the company, including the full value chain;
- Establish and support an impacted community grievance mechanism; and
- Track and report performance.

Within this rights-based engagement framework, Mandate working conference discussions produced a substantial list of possible actions a company could take to respect the human right to water. The list has been sorted by the Mandate Secretariat into a set of baseline expectations and good practice based on these discussions.

Baseline expectations for action include:

- Comply with all relevant laws;
- Improve water use efficiency and reduce discharges in direct operations;
- Take no action that undermines government’s ability to protect;
- Establish business principles to guide corporate efforts to respect the human right to water;
- Conduct measurements and social impact assessments of water use and discharges in direct operations;
- Define the corporate “sphere of influence” as inclusive of supply chain and broader watershed and community considerations;
- Establish and/or strengthen relationships with local communities to understand and respond to concerns; and
- Engage with civil society and UN agencies to maintain an understanding of evolving human right to water expectations and associated actions.

Good practice includes:

- Develop an explicit and publicly announced corporate policy affirming the human right to water and committing to implementing corporate actions, establishing standards and measurement capabilities, and reporting publicly on progress;
- Conduct measurements and social impact assessments of water use and discharges in the supply chain;
- Establish full accountability (including grievance mechanisms and transparency of contracts and performance);
- Support empowerment of vulnerable communities to ensure meaningful participation in water management decision making with resultant equitable and adequate access to water;
- Employ an independent mechanism to monitor compliance with corporate commitments;
- Assess rights impacts in choosing suppliers, commercial partners, and facility locations;
- Encourage governments (through policy advocacy and capacity building) to strengthen water governance and improve access; and
- Where government capabilities are weak, act directly to improve access to safe and adequate water services.

While discussions at Mandate working conferences - as well as survey results (discussed below) - revealed broad comfort with the general obligations indicated by Ruggie's duty to "respect," there were numerous areas of operational uncertainty that may inhibit the private large-scale water users' ability to implement such an approach. Key areas of uncertainty include:

- The responsibility boundaries associated with each of the five practice areas (e.g., when conducting due diligence, how far into the supply chain must a company go and does impact assessment need to move beyond direct, localized, operational impacts; when establishing a grievance mechanism, which communities are included?);
- The absence of access, data, accepted analytical methods, and experience to support conducting due diligence, particularly throughout the supply chain;
- The lack of established performance expectations (e.g., water supply impact and mitigation benchmarks) to guide setting corporate commitments and associated operational actions;
- Questions about whether companies should be defining their own responsibility boundaries or wait to adhere to standards and protocols established by relevant bodies within the UN and/or other initiatives;
- 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);
- The degree to which the responsibility to "respect" will focus on corporate conduct rather than community and watershed outcomes, given that relevant business operations are often conducted in disabled policy and water resource management environments;
- The minimum commitments inherent in embracing the "do no harm" principle; and
- The extent to which the responsibility to respect extends beyond ensuring domestic water needs as a first priority to other water needs (e.g., agricultural uses for food production).

C. Aspirational corporate actions that exceed minimum responsibilities: fulfilling the right to water

The Ruggie Framework establishes an expectation that companies "respect" human rights, while States are responsible for "protecting" and "fulfilling" those rights. The Ruggie Framework also states, however, that it does not preclude private large-scale water users' going beyond their explicit due diligence responsibilities to support the actual fulfillment of human rights. Many companies have stepped into this role to stabilize watershed conditions, build or maintain trust-based relationships with

local communities, gain reputational benefits, and ultimately reduce water-related risk in a particular locale. Such actions might include treating drinking water at company facilities or installing bore holes or sanitation systems for domestic use. There is, however, considerable uncertainty and unease shared by companies and stakeholders alike regarding the appropriate extent of private efforts to support fulfillment of human rights, including the right to water and sanitation. Further uncertainty exists regarding the nature and long-term effectiveness of water and sanitation fulfillment strategies.

The potential for private large-scale water user action is met with encouragement and skepticism alike, often from the same stakeholders. Companies often have greater access to the resources and technology needed to provide water and wastewater services to communities (particularly in emerging economies/developing country contexts). Carrying out these responsibilities, however, can potentially result in perceived or actual policy capture and/or unbalanced corporate control. Key questions that require clarification on this matter include:

- Can companies undertake such actions without creating unintended expectations from stakeholders to continually go beyond their baseline responsibility to respect the right to water?
- What are ways in which companies can effectively support the delivery of or access to basic water and sanitation services for underserved communities?
- What are the conditions under which companies can support the fulfillment of the human right to water in a way that is acceptable to governments, communities, and other stakeholders?

Another key concern with such “fulfillment oriented” actions is that they might be perceived as inappropriate or unlawful by certain stakeholders due to concerns of policy capture. Policy capture exists where organizations unduly dominate policymaking or implementation processes to the extent that other stakeholder views tend to be excluded or subdued with the result that policy favors narrow vested interests to the detriment of the public good. Though the endorser survey discussed below did not pose the question of what constitutes acceptable corporate behavior on this issue, the *Mandate’s Guide to Responsible Business Engagement with Water Policy* features a number of principles and practices that could be applied to such a question, such as including governments and stakeholders in the development, design, and implementation of community projects; creating projects around pre-existing public policy objectives; partnering with stakeholders with legitimacy and credibility in this space; and maintaining transparency and accountability throughout the process.

Corporate policy on the human right to water, baseline actions to respect the right, and potential expectations to support fulfillment are inextricably linked. Private sector caution is related both to uncertainties within each area, as well as concerns that actions in one area will create spill over unintended and unpredictable expectations in other areas. For instance, hesitancy toward a formal corporate policy on the human right to water in many cases is driven by the ill-defined landscape of stakeholder expectations regarding what actions and outcomes will constitute a legitimate and fulfilled commitment to respect the human right to water. Similarly, going beyond responsibilities to respect into the realm of fulfillment may prove risky if doing so increases stakeholder expectations thus creating a slippery slope of ever increasing commitments. Uncertainty exists primarily in three core areas: the availability of tools and methods to support operational implementation; the effectiveness and perceived appropriateness of different potential actions; and, most importantly, the lack of a shared definition of the responsibility boundaries and baseline expectations related to Ruggie’s Framework.

Established and emerging endorser practice on the human right to water

In early 2010, the Mandate Secretariat conducted a survey of 21 Mandate endorsing companies to collect information on current corporate human right to water practices. This survey explored various topics related to the areas of uncertainty identified in the previous section, including: companies' understanding of responsibility boundaries and what it means in practice to "respect" and "do no harm"; the nature and role of formal corporate policies on the right to water; and current corporate practices and programs in this area. While many responses to these questions reflected a deep consideration of these topics by companies, other responses highlighted the still nascent understanding and practice in this arena. This section provides an overview of common trends and innovative practice drawn from the survey. Appendix A provides a numeric compilation of survey responses.

Given the sensitive nature of this topic and the fact that most companies are just beginning to understand this field and develop their policies and practice, non-disclosure agreements were signed to ensure that responses remain private. In response, this report presents broad trends and common practice in this report – and in some cases specific examples of innovative practice – but does not attribute such information to specific companies.

Form and function of formal corporate policies on the right to water

Though a recent analysis of Mandate endorser's Communication on Progress – Water (COP-Water) reports⁷ revealed that 67 percent of companies have formal policies on human rights generally, seven companies (33 percent of respondents) indicated that they have a formal publicly-available corporate policy specifically addressing the human right to water. Many companies indicated that they have internal policies that guide their practice related to water and human rights, but have not yet made those policies available to the public. Of those that articulated a corporate policy on this issue to the public, only two formally acknowledge the human right to water. The remaining corporate policies articulated a "rights-based" approach that outlines their commitment to support improved access to water services. A number of companies indicated that they are currently developing policies that outline their approach to contributing to universal access to water and sanitation services.

Those companies acknowledging the human right to water also recognized that company practice in this area was still largely undefined and underdeveloped. They did, however, underscore a number of steps and values that they believe are inherent to the realization of the right. Companies that articulated "rights-based" approaches took a different route, identifying specific actions they are committed to taking. In some cases, companies establish quantitative targets (e.g., regarding water savings or number of people with access to water services) as part of their commitments. The specific component actions in support of these policies are elaborated further in the following section.

The UN Global Compact has recently developed a *Guide on How to Develop a Human Rights Policy* that stands to inform and shape corporate practice on higher-level issues that might arise during this process in the future.⁸

⁷ For access to all COP-Water reports, go to:

http://www.unglobalcompact.org/issues/Environment/CEO_Water_Mandate/endorsingCEOs.html

⁸ To read the UNGC's *Guide to How to Develop a Human Rights Policy* in full, go to:

http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/How_to_Develop_a_Human_Rights_Policy.pdf

Acting to “respect” the right to water at the operational level

Questions exploring how companies implement a rights-based approach to “respect” the human right to water did not provide clarity on what a coherent package of actions consistent with the responsibility to respect looks like. The responses reinforce a sense that operationalizing this “respect” pillar of the Ruggie Framework with regard to water remains undefined, even among leading companies. Eight of the 21 companies surveyed indicated that they have worked to define what it means to respect and/or act consistently with the human right to water. Their responses, however, at times diverge from “respecting” actions as identified by external stakeholders at Mandate working conferences. For instance, they often simply consist of company perspectives on actions that could support the realization of the human right to water. In some cases these practices and actions have been articulated in formal corporate policies available to the public, while in others they are captured in internal corporate policy and/or standard operating procedures. Specific examples of actions companies are taking as part of their strategy to address the human right to water include:

- Reducing the water use and wastewater discharge of company facilities and suppliers;
- Engaging stakeholders and local communities to build a base of knowledge regarding company impacts and stakeholders needs;
- Assessing actual and potential impacts relating to company’s water use (i.e., investigate business activity impacts on human access to clean and safe water, adequate sanitation services, and ecosystem health and services);
- Making and stating commitments and associated response strategies, and integrating those response strategies throughout the company, including the full value chain;
- Establishing and supporting an impacted community grievance mechanism;
- Implementing sustainable product design that reduces/eliminates the need for water; and
- Raising consumer awareness on these issues.

Companies identified national legislation, the UN Global Compact principles, the Universal Declaration on Human Rights, the World Health Organization’s paper on the human right to water, and the UN General Comment 15 by the UN Committee on Economic, Social, and Cultural Rights as key initiatives or projects that have helped inform their strategies on the human right to water.

Three companies (14 percent of respondents) indicated that they have attempted to delineate the boundaries of corporate responsibility regarding the human right to water. These companies indicated a strong belief that there is not a company responsibility to fulfill human rights, while expressing firm support for the duty to “respect” as outlined in the Ruggie Framework. Examples of actions that the companies identified as within their responsibility boundaries included:

- Complying fully with related laws in countries where they operate;
- Avoiding any action that would undermine a State’s ability to fulfill its human rights obligations;
- Doing no harm to communities’ realization of their rights to water and sanitation; and
- Mitigating any company impacts on these rights.

In addition to these actions linked solely to the responsibility to respect, numerous companies did indicate a comfort with taking actions that support broader sustainable water management as part of an overall strategy to manage their water-related risks. On the other hand, some companies’ responses reflected a belief that minimizing water use and wastewater discharge from their operations sufficiently addressed their responsibility to respect the human right to water. The disparity in responses provides

further evidence that there is substantial uncertainty around responsibility boundaries and baseline expectations.

Questions related to what it means to “do no harm” also produced a wide range of responses, revealing an array of different perspectives on this issue even among businesses. In particular, responses indicated a lack of clarity of what “do no harm” means operationally, raised questions about the sufficiency of “do no harm” to meet the responsibility to respect, and raised questions about the relationship of “do no harm” to fulfilling the right. Lastly, some responses suggested that the lack of clarity from the Ruggie work on what “do no harm” means in practice and in a broader context than water makes it difficult to even respond to a survey question on this topic.

The Ruggie Framework and some companies’ responses indicated that social impact assessments are a core component of “respecting” the human right to water. The survey revealed that companies’ understanding and implementation of social impact assessments is still largely undeveloped. Eight companies responded that they have attempted to assess the social impacts of their water use and wastewater discharge. However, very few of these elaborated on the processes and criteria they use to assess impacts. Those that did identified the use of the WBCSD Global Water Tool and internal methods to assess local conditions (e.g., water quality, water availability, institutional water management capacity), as well as engagement with stakeholders (especially potentially impacted communities) as core components of these processes.

Supporting the fulfillment of the right to water

For years, some companies have willingly initiated projects (typically under the rubric of their CSR practices) aimed at improving community access to water services. Though such actions would seemingly fall outside the minimum “do no harm” obligations established in the Ruggie Framework, in many cases they are deemed of strategic value for companies, and are understood - at least by some companies - as necessary actions to support commitments relating to the human right to water. The survey revealed that some companies are actively engaged in projects that:

- Ensure that water used by the company is returned (of adequate quality) to support other uses;
- Provide infrastructure for key components of water services (e.g., purification, treatment, delivery);
- Educate local communities on water conservation techniques;
- Partner with international aid organizations to provide resources for existing charitable projects;
- Share watershed data with governments and communities to improve water management; and
- Support government capacity to provide water services to vulnerable communities.

The survey of companies conducted for this analysis reflected a belief by some that fulfilling human rights is a government, not a business, obligation, and a concern that action in this area may create expectations for companies in other areas (e.g., providing food for impoverished communities). Other companies expressed that such actions are a core part of their rights-based approach. The survey of companies did not delve into the question of how supporting the fulfillment of the right to water can be done without creating unintended expectations.

Options for CEO Water Mandate action

Mandate working conference discussions and the endorser survey reveal a large degree of uncertainty around the role of large-scale private sector water users in realizing the human right to water. This paper is intended to elucidate these points of uncertainty, as well as provoke thought on possible ways in which the Mandate itself can help clarify issues and support company practice on the issue moving forward. Below is a range of avenues that the CEO Water Mandate might pursue to achieve this end.

Option A: No action: The Mandate can decide this issue is either too nascent or already adequately addressed by existing initiatives to warrant further exploration/debate. In this case, the Mandate can conclude work on this front and devote attention on other focus areas.

Option B: Continue to convene endorser-stakeholder dialogues and/or engage related initiatives: It may be the case that the Mandate does not yet have sufficient grasp of the contours of uncertainty and debate in order for it to meaningfully contribute in this space. As a solution, it can continue to convene various stakeholders on this issue, in order to further explore the contours of the debate and arrive at a shared understanding of key issues and concepts. The Mandate can also contribute endorser perspectives/experience into parallel processes, such as UN Independent Expert, Catarina de Albuquerque's efforts to develop a compendium of good practice.

Option C: Conduct larger empirical assessment of corporate practice on the human rights to water and relevant government policy: Another means of better understanding this space would be to refine and/or expand the endorser survey to better reflect current questions and topics, and/or expand it to a larger array of companies and possibly other stakeholders. This would allow the Mandate to better understand corporate practice and perspectives on these issues. As part of this assessment, the Mandate could produce a compendium of national-level human right to water legislation in an attempt to shed light on some of the issues raised in this white paper, and also to help clarify corporate responsibilities in some domestic contexts.

Option D: Develop operational guidance on respecting the human right to water: Recognizing that this is an emerging issue with several points of uncertainty, the Mandate could endeavor to play a leading role in developing guidance on this issue that builds on the work of existing initiatives (e.g., Ruggie Framework, UN Independent Expert on Human Rights, Water, and Sanitation, WaterAid, IHRB etc.) to provide practical guidance for companies regarding measures they can take to "respect" the right to water and sanitation, and other actions that can be implemented in support of realizing the right. It is likely this option would benefit by being implemented in conjunction with part or all of Option C. For instance, the Mandate could conduct a systematic assessment of the emerging policy work and existing national legislation in this area and combine it with existing knowledge of baseline expectations, along with some further supplemental review of actual actions already being taken by companies. The goal would be to produce a refined and coherent list of baseline and aspirational practice that could be combined with information on the actual and potential responsibility boundaries of each, along with associated examples of actual practice.

Option E: Mandate position statement affirming the human right to water: Acknowledging the recent emergence of the explicit UN resolutions that affirm the human right to water as well as initiatives that attempt to define corporate responsibilities in this space, the Mandate could release a position statement, and/or undertake other policy advocacy that underlines endorser commitment to actions that advance the human right to water and/or the responsibility to "respect" it.

Appendix A: Compilation of Survey Results

Question	Response	#
2. Has your company attempted to define what it means to respect and/or act consistently with the “human right to water”? If yes, please describe this definition and whether it is informed by any existing definitions/approaches established by external parties.	Yes	8
	No	12
3. Does your company have a formal policy relating water and human rights/the human right to water? If yes, please describe this policy. Is it internal or external and what does it consist of?	Yes	7
	No	12
4. Has your company made public commitments to implementing actions, establishing measurement capabilities, and/or reporting publicly on progress regarding the human right to water? If yes, what are these commitments?	Yes	6
	No	12
5. Has your company established principles with respect to human rights? Focusing specifically on water? If yes, please describe.	Yes, but not specific to water	15
	Yes, water-specific	2
	No	2
6. Has your company conducted social impact assessments of water use/discharges in its direct operations and/or supply chain? If yes, please describe. What types of social impacts have you assessed and how?	Yes	8
	No	10
7. Has your company attempted to delineate the boundaries of corporate responsibility with regard to the human right to water? If yes, please describe. If yes, what were the outcomes of that exercise?	Yes	3
	No	15
8. Does your company have access to sufficient information regarding local water resources, human needs, and formal water policy around your operating plants to enable a good understanding of whether the activities of each plant infringe upon various needs/rights? If no, what key information is missing?	Yes	10
	No	7
9. Does your company deem “do no harm” sufficient to meet the corporate responsibility to respect the human right to water? If no, what proactive measures are being taken?	Yes	5
	No	9
10. What does your company consider the “responsibility boundaries” of the “do no harm” principle?	Open-Ended Response	
11. Has your company attempted to define/implement a human rights-based approach to its activities/practices? If yes, what does that entail? How does this differ, if at all, from explicitly acknowledging the human right to water?	Yes	9
	No	7
12. Does your company have any mechanism through which interested parties can express grievances with regard to the human right to water? If yes, please describe.	Yes	10
	No	8
13. Do you/your company believe the obligation to act consistently with a human right to water might differ between companies that use water and those that provide water services? If yes, explain how.	Yes	7
	No	6