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Nestlé and the Right to Water

M'Ballou Yacine Sanogho¹

INTRODUCTION

Water scarcity is a significant social and environmental challenge that the world is facing today and which shows no sign of going away anytime soon. According to the Joint Monitoring Program (JMP) of the World Health Organization (WHO) and the United Nations Children's Fund (UNICEF), "26% of the global population or 2.0 billion people lacked safely managed drinking water."² According to the California's Bureau of Reclamation, Water covers about 71% of the earth's surface.³ 97% of the earth's water is in the oceans. However, this water is too salty for drinking, crops, and most industrial uses, except for cooling. Thus, 3% of the earth's water is fresh drinkable water. However, 2.5% of this freshwater is unavailable for human consumption because it is locked up in glaciers, polar ice caps, atmosphere, soil, highly polluted, or lies too far under the earth's surface for human extraction at an affordable cost.⁴ Therefore, only 0.5% of the earth's water is available fresh water for human consumption. In other words, "[i]f the world's water supply were only 100 liters (26 gallons), the world's usable water supply of freshwater would be only about 0.003 liters (or one-half teaspoon). That amounts to an average of 8.4 million liters (or 2.2 million gallons) for each person on earth"⁵ (excluding wildlife and plants).

The three main issues facing the world's 0.5% useable freshwater are climate change, environmental pollution, and multinational corporations. First, climate change and ecological pollution stress the world's useable freshwater. "Rivers, lakes, and aquifers around the globe [are] drying up or becoming too polluted to use."⁶ Also, "[m]ore than half of the world's wetlands had

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² "Water Supply, Sanitation and Hygiene Monitoring," World Health Organization (World Health Organization), accessed May 10, 2022, <https://www.who.int/teams/environment-climate-change-and-health/water-sanitation-and-health/monitoring-and-evidence/water-supply-sanitation-and-hygiene-monitoring#:~:text=The%20JMP%202020%20update%20estimated,not%20always%20available%2C%20or%20unsafe>.

³ Central California Bureau of Reclamation, "Water Facts - Worldwide Water Supply," U.S. Bureau of Reclamation, April 11, 2020, <https://www.usbr.gov/mp/arwec/water-facts-ww-water-sup.html#:~:text=0.5%25%20of%20the%20earth's%20water,for%20each%20person%20on%20earth>. [hereinafter: Central California Bureau of Reclamation, *supra* note 1].

⁴ *Id.*

⁵ *Id.*

⁶ Dan Mitler et al., "What Is Water Worth? Nestlé Walks a Fine Line," *W.D.I. Publishing* W94C15 (February 27, 2015): pp. 1-12, at pp. 5. [Hereinafter: Dan Mitler et al., *supra* note 4]

disappeared, and climate change [has altered] weather patterns and water system around the world, causing shortages and droughts in some areas and floods in others.”⁷ Second, food and beverage companies, such as Nestlé and Danone, are aggressively monopolizing public water resources such as pristine springs across the world and are profiting from “what should have been considered a common good”⁸ by selling to consumers bottles of water. This corporate business model is even more alarming for many stakeholders because 884 million people do not have access to clean drinkable water.⁹ In contrast, these companies have an ecosystem that provides fresh water for their operations.

Therefore, countries worldwide mobilized under the United Nation’s banner to adopt international treaties to address these three main issues (i.e., climate change, environmental pollution, and business enterprises’ social and environmental footprints) and minimize the negative impact on the environment, including human impact on useable water. This global mobilization also called on business enterprises to adopt sustainable and socially responsible policies to reduce their environmental footprints and respect and protect internationally proclaimed human rights.¹⁰ Today, numerous stakeholders are pressuring corporations, such as Nestlé, to change their business model regarding the sale of bottles of water and demand that these corporations respect the right to water.

Accordingly, this paper attempts to answer the following questions: Does Nestlé have a social obligation to respect the stakeholders’ rights to water? And if so, what does it entail? What actions must Nestlé undertake to ensure that it respects the right to water? Part I describes Nestlé’s position in the water capital market. This section highlights Nestlé’s water consumption in crucial market sectors compared to the world water consumption. Part II highlights the various international treaties on the human right to water. Part III analyzes how these international treaties on water rights apply to business enterprises like Nestlé. Finally, the paper highlights Nestlé’s responses to these laws on the right to water. This paper focuses solely on international treaties, European Union’s laws, French laws, and the United States laws.

⁷ *Id.*, at 5.

⁸ *Id.* See also, Thomasson, Emma. “Insight—At Nestlé, Interacting with the Online Enemy.” Reuters. 26 Oct. 2012.

⁹ “Global Wash Fast Facts,” Centers for Disease Control and Prevention (C.D.C., December 8, 2021), [https://www.cdc.gov/healthywater/global/wash_statistics.html#:~:text=The%20latest%20published%20information%20on,have%20safe%20water%20to%20drink](https://www.cdc.gov/healthywater/global/wash_statistics.html#:~:text=The%20latest%20published%20information%20on,have%20safe%20water%20to%20drink.). [Hereinafter: C.D.C., *supra* note 7]

¹⁰ “The Ten Principles: UN Global Compact,” UN Global Compact, accessed March 24, 2022, <https://www.unglobalcompact.org/what-is-gc/mission/principles>. [hereinafter: UN Global Compact, *supra* note 8].

I. NESTLÉ'S WATER USE IN THE GLOBAL MARKET

Nestlé S.A. is a Swiss multinational food and drinks processing corporation headquartered in Vevey-Vaud, Switzerland.¹¹ It is the world's largest food and beverage company in terms of sales, followed by Coca-Cola, Danone, and PepsiCo.¹² It has more than 2000 brands operating in 187 countries.¹³ A steady water supply is critical for Nestlé's business model because it uses water in many beverages and manufactures various products such as confections, ice cream, and foods. Nestlé Water owns about 80 bottled water brands, which include Nestlé S. Pellegrino, Pure Life, Poland Spring, Deer Park, Vittel, Perrier, and Acqua Panna.¹⁴ In 2019, Nestlé generated over \$92 billion in total global sales.¹⁵ The company's bottled-water franchises generated the bulk of its profits with around four and a half-billion dollars in sales in the United States and Canada alone. Its total water sales amounted to almost eight billion dollars that same year.¹⁶ The company's most significant water market is in North America at 57 percent sales, followed by Europe at 23 percent sales, and the rest of the world at 20 percent sales.¹⁷ The average American consumer drinks roughly 40 gallons of bottled water. According to a 2018 report, about 21% of Americans consumed bottled water, while about one in ten Americans drank tap or filtered water.¹⁸ "Consumers were willing to spend 2,000 times more for bottled water than tap water."¹⁹ According to the Beverage Marketing Corporation (BMC), the average wholesale price per gallon of bottled water was \$1.17 in 2020, while tap water had an average cost of \$0.96 per cubic meter.²⁰ San Francisco is the most expensive city for tap water in the United States, at \$6.07 per cubic meter.

Powdered and liquid beverages accounted for 22.6% of Nestlé's sales in 2020.²¹ In 2020, the soft drink market decreased in revenue growth due to the Covid-19 pandemic.²² However, the global

¹¹ Carbon Disclosure Project (C.D.P.), "Nestlé - Water Security 2021," pp. 1-48, pp. 5.

¹² Caroline Winter, "Nestlé Makes Billions Bottling Water It Pays Nearly Nothing For: The Company's Operation in Michigan Reveals How It's Dominated the Industry by Going into Economically Depressed Areas with Lax Water Laws," Bloomberg.com (Bloomberg, September 21, 2017), <https://www.bloomberg.com/news/features/2017-09-21/nestl-makes-billions-bottling-water-it-pays-nearly-nothing-for>.

¹³ Carbon Disclosure Project (C.D.P.), "Nestlé - Water Security 2021," pp. 1-48, pp. 5.

¹⁴ "Nestlé Waters - Company Profile, Information, Business Description, History, Background Information on Nestlé Waters," Reference for Business, accessed May 5, 2022, <https://www.referenceforbusiness.com/history2/47/Nestl-Waters.html>.

¹⁵ M. Ridder, "Sales of Nestlé Waters Worldwide by Region 2019," Statista, January 27, 2022, <https://www.statista.com/statistics/268906/sales-of-nestle-waters-worldwide-by-region/>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ M. Ridder, "Bottled Water Volume in the U.S. 2020," Statista, January 13, 2022, <https://www.statista.com/statistics/237832/volume-of-bottled-water-in-the-us/>.

¹⁹ Dan Mitler et al., "What Is Water Worth? Nestlé Walks a Fine Line," *W.D.I. Publishing* W94C15 (February 27, 2015): pp. 1-12, at pp. 5. [Hereinafter: Dan Mitler et al., *supra* note 4]

²⁰ Ian Tiseo, "U.S. Tap Water Prices in Select Cities 2021," Statista, May 7, 2021, <https://www.statista.com/statistics/1232861/tap-water-prices-in-selected-us-cities/>.

²¹ "Nestlé Reports Full-Year Results for 2021," Nestlé Global, February 17, 2022, <https://www.nestle.com/media/pressreleases/allpressreleases/full-year-results-2021>.

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soft drink market grew 6.35% from 2021 onwards despite increasing health concerns.²³ Emerging markets, such as China, Brazil, and Mexico, are growing rapidly and catching up with the United States, the largest market in value and volume. According to a 2011 study, the water footprint of a half-liter soft drink was 170 liters to 310 liters.²⁴ Also, “Water consumption per unit of product was: 95% (320 to 590 liters per liter of product) for ingredient production, 4% (14-25 liters per liter of product) for manufacturing processes, and less than 1% for the final product itself.”²⁵

Milk products and ice cream accounted for 24.1% of Nestlé’s sales in 2020.²⁶ Global milk production reached nearly 906 million tonnes in 2020, up 2% from 2019.²⁷ According to the Organization for Economic Cooperation and Development (OECD), world milk production will grow at 1.6% by 2029.²⁸ It takes up to 2,000 gallons of water to produce 1 gallon of milk.²⁹ Cows need water to perform essential day-to-day functions. Moreover, only a fraction of the water cows consume is converted into milk. “Major channels for dairy farms’ water consumption include parlor wash, cow drinking water, commercial operation, and distribution.”³⁰

Nestlé’s total water withdrawal, taken from groundwater or surface sources in 2020, was 115 million m³.³¹ Also, Nestlé’s total water consumption for 2020 was 56 million m³, about less than half of its water consumption. Furthermore, Nestlé’s operations in 2020 discharged 59 million m³ of water.³² It is unreported how much of the discharged water Nestlé recycled or reused. However, in 2013, Nestlé recycled or reused 6.7 million m³ of water, about 4.4% of its total water use.³³ In addition, approximately 25% of Nestlé water withdrawals in 2020 occurred in water-stressed areas.

²² “Soft Drinks Global Market Overview,” Food Export Market (Global Marketing Associates, March 31, 2021), <https://foodexportmarket.com/soft-drinks-global-market-overview/#:~:text=In%202020%2C%20the%20global%20revenue,to%20grow%20by%208.9%25%20annually.>

²³ *Id.*

²⁴ Ercin, A., et al. “Corporate Water Footprint Accounting and Impact Assessment: the Case of the Water Footprint of a Sugar-Containing Carbonated Beverage,” *Water Resources Management*, 2011, 25(2): 721-741.

²⁵ *Id.*; see also, Water Footprint Network, “Product Water Footprints: Soft Drinks,” <https://www.waterfootprint.org/?page=files/Softdrinks>.

²⁶ “Nestlé Reports Full-Year Results for 2021,” Nestlé Global, February 17, 2022, <https://www.nestle.com/media/pressreleases/allpressreleases/full-year-results-2021>.

²⁷ “FAO Releases 2020 Dairy Report,” Dairy Industries International, April 16, 2021, <https://www.dairyindustries.com/news/37081/fao-releases-2020-dairy-report/#:~:text=Global%20milk%20production%20reached%20nearly,Africa%2C%20where%20production%20remained%20stable.>

²⁸ Organisation for Economic Co-operation Development (OECD) and Food and Agriculture Organization (FAO), “OECD-FAO Agricultural Outlook 2020-2029,” OECD, July 16, 2020, <https://www.oecd-ilibrary.org/sites/aa3fa6a0-en/index.html?itemId=%2Fcontent%2Fcomponent%2Faa3fa6a0-en>.

²⁹ Dan Mitler et al., “What Is Water Worth? Nestlé Walks a Fine Line,” *W.D.I. Publishing* W94C15 (February 27, 2015): pp. 1-12, at pp. 5. [Hereinafter: Dan Mitler et al., *supra* note 4]; see also, Adams, Mike, “Why It Takes 2,000 Gallons of Fresh Water to Produce One Gallon of Milk,” *Natural News*, 2 June 2008.

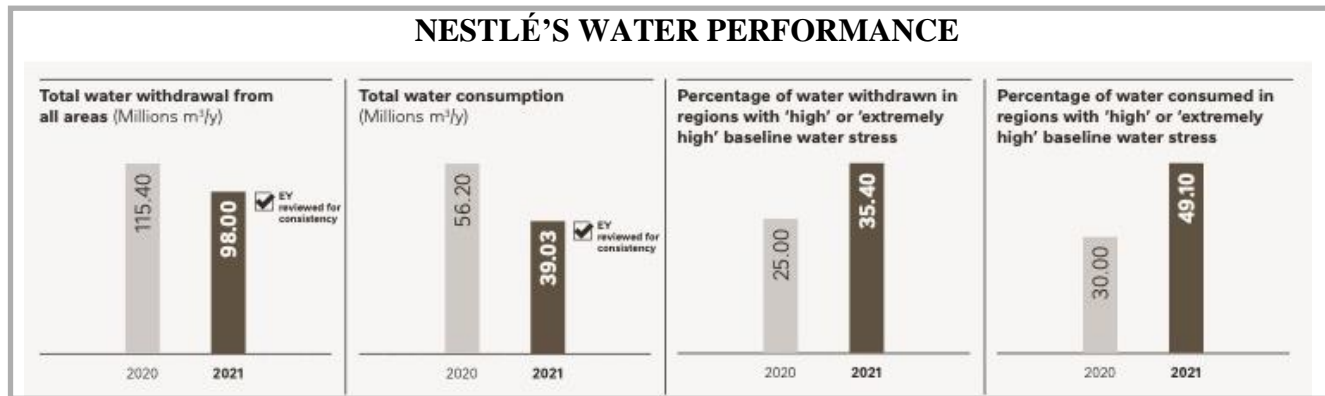
³⁰ Dan Mitler et al., “What Is Water Worth? Nestlé Walks a Fine Line,” *W.D.I. Publishing* W94C15 (February 27, 2015): pp. 1-12, at pp. 5. [Hereinafter: Dan Mitler et al., *supra* note 4]

³¹ Carbon Disclosure Project (C.D.P.), “Nestlé - Water Security 2021,” pp. 1-48, pp. 5 [hereinafter: C.D.P. *supra* note 9]; See also, “Indoor Water Use in the United States,” EPA (U.S. Environmental Protection Agency), accessed March 26, 2022, <https://19january2017snapshot.epa.gov/www3/watersense/pubs/indoor.html>.

³² *Id.*

³³ Dan Mitler et al., “What Is Water Worth? Nestlé Walks a Fine Line,” *W.D.I. Publishing* W94C15 (February 27, 2015): pp. 1-12, at pp. 5.

These withdrawals occurred in 26% of the company's 375 factories worldwide located in water-stressed locations, and less than half of those facilities are in areas with extreme water scarcity.³⁴



© Nestlé. "Nestlé Guidelines on Respecting the Human Rights to Water and Sanitation," (Nestlé, December 2016), <https://www.nestle.com/sustainability/human-rights/water-sanitation>

II. *INTERNATIONAL LAWS AND TREATIES ON THE RIGHT TO WATER*

The leading international treaties that address the human right to water includes the UN Convention on Economic, Social and Cultural Rights (CESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC). Subsequent UN conferences and coalitions, such as the Sustainable Development Goals (SDGs), incorporated several of these treaties into their mandates.

In November 2002, the Committee on Economic, Social and Cultural Rights adopted General Comment No. 15 on the right to water. Article I (1) of the General Comment No. 15 states that "[T]he human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights."³⁵ Moreover, Comment No. 15 defined the right to water as "the right of everyone to sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses"³⁶ Signatory States to the UN Convention on Economic, Social and Cultural Rights (CESCR) are required to achieve and respect the right to water progressively. They should work quickly and efficiently to facilitate access and improve service.³⁷ Following General

³⁴ Carbon Disclosure Project (C.D.P.), "Nestlé - Water Security 2021," pp. 1-48, pp. 5 [hereinafter: C.D.P. *supra* note 9] ; *See also*, "Indoor Water Use in the United States," EPA (U.S. Environmental Protection Agency), accessed March 26, 2022, <https://19january2017snapshot.epa.gov/www3/watersense/pubs/indoor.html>.

³⁵ "General Comment No. 15." The right to water. UN Committee on Economic, Social and Cultural Rights, November 2002.

³⁶ *Id.*

³⁷ *Id.*

Comment No. 15, several signatory States formally acknowledge the right to water to be part of their treaty obligation under the CESCR and the CESC R Committee acknowledged the rights to water and sanitation under articles 11 and 12 of the CESCR.³⁸

On 28 July 2010, the United Nations General Assembly passed Resolution 64/292, recognizing the human right to water and sanitation, and acknowledging that clean drinking water and sanitation are essential to realizing all human rights.³⁹ “The Resolution calls upon States and international organizations to provide financial resources, help capacity-building, and technology transfer to help countries, particularly developing countries, provide safe, clean, accessible, and affordable drinking water and sanitation for all.”⁴⁰ Thus, international law acknowledges the human right to water and emphasizes States and international organizations’ duties to provide financial resources, help with capacity-building and technology transfer to ensure the right to water and sanitation, and in so doing, satisfy five factors :

1. **“Sufficient water:** The water supply for each person must be sufficient and continuous for personal and domestic uses. These uses include drinking, personal sanitation, washing of clothes, food preparation, and personal and household hygiene.
2. **Safe water:** The water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances, and radiological hazards that threaten a person’s health. Measures of drinking-water safety are usually defined by national and/or local standards for drinking water quality. The World Health Organization (WHO) Guidelines for Drinking-Water Quality provide a basis for developing national standards.
3. **Acceptable water:** Water should be of acceptable color, odor, and taste for each personal or domestic use. Also, all water facilities and services must be culturally appropriate and sensitive to gender, lifecycle, and privacy requirements.
4. **Physically accessible water:** Everyone has the right to a water and sanitation service that is physically accessible within or near the household, educational institution, workplace, or health institution. According to the WHO, the water source has to be within 1,000 meters of the home, and the collection time should not exceed 30 minutes.

³⁸“ Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment No. 15, the Right to Water (Art. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights) ,” (United Nations, E/C.12/2002/11, Jan. 2003), pp. 1-18.

³⁹ U.N. General Assembly, “Resolution 64/292: The Human Right to Water and Sanitation,” 28 July 2010, <https://www.un.org/es/comun/docs/?symbol=A/RES/64/29&lang=E>

⁴⁰ Resolution A/RES/64/292. United Nations General Assembly, July 2010.

5. **Affordable water:** Water and water facilities and services must be affordable for all. The United Nations Development Program (UNDP) suggests that water costs should not exceed 3 percent of household income.”⁴¹

Other international treaties that explicitly recognize the human rights to water include, Article 14(2) of the 1979 Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW) which states,

“[P]arties shall take all appropriate measure to eliminate discrimination against women in rural areas to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular shall ensure the women the right [...] (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply transport and communications.”⁴²

Similarly, Article 24 of the 1989 Convention on the Rights of the Child (CRC) states,

“[P]arties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health [...] (2) States parties shall pursue full implementation of this right and, in particular, shall take appropriate measures [...] (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia [...] the provision of adequate nutritious foods and clean drinking water [...]”⁴³

Also, Article 28(2)(a) of the 2006 Convention on the Rights of Persons with Disabilities (CRPD) requires that,

“Parties recognize the right of person with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measure to ensure equal access

⁴¹“ International Decade for Action 'Water For Life' 2005-2015,” United Nations, United Nations Department of Economic and Social Affairs (UNDESA), accessed May 5, 2022, https://www.un.org/waterforlifedecade/human_right_to_water.shtml#:~:text=On%2028%20July%202010%2C%20through,realisation%20of%20all%20human%20rights.

⁴²“ Convention on the Elimination of All Forms of Discrimination Against Women New York, 18 December 1979,” OHCHR (United Nations), accessed May 8, 2022, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>.

⁴³“ Convention on the Rights of the Child,” OHCHR (United Nations), accessed May 8, 2022, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs.”⁴⁴

Furthermore, in the UN Millennium Development Goals (MDGs) (2000 to 2015)⁴⁵ and the Sustainable Development Goals (SDGs) (2016 to 2030),⁴⁶ countries have restated the importance of implementing the human right to water and sanitation into practice and renewed their commitment to ensuring the progressive realization of the human right to water and sanitation.⁴⁷ Under the MDGs, countries “pledged to reduce by half the proportion of people without access to safe drinking water and basic sanitation.” According to the WHO and UNICEF Joint Monitoring Program (JMP) on the world drinking water and sanitation, “the target for safe drinking water was met in 2010, well ahead of the MDGs deadline of 2015. Over 90 percent of the world’s population now has access to improved drinking water sources.”⁴⁸ How? “The strategy was to guarantee, above all, a free, safe, public water supply, close to everyone’s home, in the square of each town and each neighborhood.”⁴⁹ However, inequalities between urban and rural residents, genders, and the poor and wealthy are significant issues that remain.

The SDGs Goal #6’s objective is to ensure the availability and the sustainable management of water and sanitation for all.⁵⁰ According to the JMP, “the world is not on track to achieve SDG 6. Achieving universal coverage by 2030 will require a quadrupling of current rates of progress in safely managed drinking water services [...]”⁵¹ The least developed countries have to accelerate progress

⁴⁴ Article 28 – Adequate Standard of Living and Social Protection Enable,” United Nations (United Nations), accessed May 8, 2022, <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-28-adequate-standard-of-living-and-social-protection.html>.

⁴⁵ The Millennium Development Goals (MDGs), adopted in 2000, are eight goals agreed to by all the world’s countries and all the world’s leading development institutions. “The Goals range from halving extreme poverty rates to halting the spread of HIV/AIDS and providing universal primary education, all by the target date of 2015.” The Sustainable Development Goals (SDGs) succeeded the MDGs in 2016. See, “United Nations Millennium Development Goals,” United Nations (United Nations), accessed May 7, 2022, <https://www.un.org/millenniumgoals/>.

⁴⁶ The Sustainable Development Goals (SDGs), adopted by all United Nations Member States in 2015, provide a shared blueprint of seventeen goals for peace and prosperity for people and the planet. The SDGs recognize that “ending poverty and other deprivations must go hand-in-hand with strategies that improve health and education, reduce inequality, and spur economic growth while tackling climate change and preserving our oceans and forests.” See, “The 17 Goals: Sustainable Development,” United Nations (United Nations), accessed May 7, 2022, <https://sdgs.un.org/goals>.

⁴⁷ “Countries Must Fully Support Right to Water at Rio+20 Conference, Says UN Expert | UN News,” United Nations (United Nations), accessed May 5, 2022, <https://news.un.org/en/story/2012/06/412512>.

⁴⁸ “25 Years Progress on Sanitation and Drinking Water : 2015 Update and MDG Assessment” (UNICEF & the World Health Organization (WHO), 2015), <https://washdata.org/reports?reports%5B0%5D=date%3A2015&reports%5B1%5D=monitoring-category%3Asanitation&reports%5B2%5D=monitoring-category%3Awater>.

⁴⁹ “The Measurement and Monitoring of Water Supply, Sanitation and Hygiene (WASH) Affordability : A Missing Element of Monitoring of Sustainable Development Goal (SDG) Targets 6.1 and 6.2” p. 8, (UNICEF & WHO, May 2021).

⁵⁰ UN Environment, “Goal 6: Clean Water and Sanitation,” UNEP, accessed May 7, 2022, <https://www.unep.org/explore-topics/sustainable-development-goals/why-do-sustainable-development-goals-matter/goal-6>.

⁵¹ “Progress on Household Drinking Water, Sanitation and Hygiene: 2000-2020 Five Years Into the SDGs” (UNICEF & WHO , 2021), <https://washdata.org/reports?reports%5B0%5D=monitoring-category%3Asanitation&reports%5B1%5D=monitoring-category%3Awater&text=&page=0>; see also, “Progress on Schools Drinking Water, Sanitation and Hygiene: 2000-2020 Five Years Into the SDGs” (UNICEF & WHO , 2020); “Progress on Healthcare Facilities Drinking Water, Sanitation and Hygiene: 2000-2020 Five Years Into the SDGs” (UNICEF & WHO , 2020).

three folds to achieve SDG 6, which will be incredibly challenging. Also, many countries face “challenges in extending services to rural areas and to poor and vulnerable populations who are most at risk of being left behind.”⁵²

At the European level, the World Health Organization (WHO) European Region’s member States adopted the Protocol on Water and health in 1999 at the Third Ministerial Conference on Environment and Health in London and entered it into force in 2005.⁵³ This Protocol commits its parties, 26 countries ratified to date, “to ensure that equitable access to water, adequate in terms both of quantity and quality, is provided for all members of the population, especially those who suffer a disadvantage or social exclusion.”⁵⁴ This Protocol is “the first and only international legal agreement linking sustainable water management and the prevention, control, and reduction of water-related diseases in Europe.” By ratifying the Protocol, member States agreed to take all appropriate measures to:

- “Ensure adequate supplies of wholesome drinking water;
- secure adequate sanitation of a standard that sufficiently protects human health and the environment;
- protect water resources used as sources of drinking water, and their related water ecosystems, from pollution;
- provide adequate safeguards for human health against water-related diseases; and
- establish and maintain effective national and local surveillance and early warning systems for monitoring and responding to outbreaks or incidents of water-related diseases.”⁵⁵

The WHO European Regional Office and the United Nations Economic Commission for Europe (UNECE) oversee the secretariat to the Protocol and coordinate activities for its implementation.⁵⁶

⁵²“ Progress on Household Drinking Water, Sanitation and Hygiene: 2000-2020 Five Years Into the SDGs” (UNICEF & WHO , 2021); *see also*, “States of Fragility 2020: En: OECD: OCDE,” OECD, accessed May 7, 2022, <https://www.oecd.org/fr/cad/states-of-fragility-fa5a6770-en.htm>.

⁵³“ Protocol on Water and Health,” World Health Organization (World Health Organization Regional Office for Europe, May 5, 2022), <https://www.euro.who.int/en/health-topics/environment-and-health/water-and-sanitation/protocol-on-water-and-health>.

⁵⁴“ The Equitable Access Score-Card: Supporting Policy Processes to Achieve the Human Right to Water and Sanitation.” UNECE & WHO Europe Regional Office, Geneva: United Nations Publishing Service, October 2013.

⁵⁵“ Protocol on Water and Health,” World Health Organization (World Health Organization Regional Office for Europe, May 5, 2022), <https://www.euro.who.int/en/health-topics/environment-and-health/water-and-sanitation/protocol-on-water-and-health>.

⁵⁶ *Id.*

III. HOW DOES THE RIGHT TO WATER APPLIES TO MULTI-NATIONAL CORPORATIONS LIKE NESTLÉ?

To encourage companies to operate in socially and environmentally sustainable ways, the United Nations introduced several international measures that incorporated into their mandates some of the treaties mentioned above. These measures established a social and environmental pact between business enterprises and the world community.

Under the 2000 UN Global Compact, businesses and firms worldwide committed to implementing ten universal sustainability and social principles and report on their implementation. It is a non-binding UN pact to encourage companies to operate in ways that, “at a minimum, meet fundamental responsibilities in human rights, labor, environment, and anti-corruption.”⁵⁷ The CEO Water Mandate, adopted in 2007 under the UN Global Compact, “mobilizes business leaders to address global water challenges through corporate water stewardship, in partnership with the UN, governments, civil society organizations, and other stakeholders.”⁵⁸ Water stewardship is “the use of water in socially equitable, environmentally sustainable and economically beneficial ways. Ultimately, stewardship is a crucial practice to address critical water challenges, drive water security, and achieve the Sustainable Development Goals (SDGs).”⁵⁹

The UN Global Compact CEO Water Mandate assists companies in developing, implementing, and disclosing water sustainability policies and practices. Endorsing companies commit to action across six key elements and report annually on progress. These six commitment areas are:

1. Direct Operations:

- Conduct a comprehensive water-use assessment to understand the extent to which the company uses water in the direct production of goods and services.
- Set targets for the company’s operation related to water conservation and waste-water treatment, framed in a corporate cleaner production and consumption strategy.

⁵⁷“ The Ten Principles: UN Global Compact,” UN Global Compact (United Nations), accessed May 8, 2022, <https://www.unglobalcompact.org/what-is-gc/mission/principles>.

⁵⁸“ What Is the Mandate?,” CEO Water Mandate (UN Global Compact, February 15, 2022), <https://ceowatermandate.org/about/what-is-the-mandate/#1529600588940-d806bade-6cbaef82-5ca4>.

⁵⁹ *Id.*

- Seek to invest in and use new technologies to achieve these goals
- Raise awareness of water sustainability within corporate culture.
- Include water sustainability consideration in business decision-making (e.g., facility-siting, due diligence and production processes).

2. Supply Chain and Watershed Management

- Encourage Suppliers to improve their water conservation, quality monitoring, waste-water treatment, and recycling practices.
- Build capacities to analyze and respond to watershed risk.
- Encourage and facilitate suppliers in conducting assessments of water usage and impacts.
- Share water sustainability practices—established and emerging—with suppliers.
- Encourage major suppliers to report regularly on progress achieved related to goals.

3. Collective Action

- Build closer ties with civil society organizations, especially at the regional and local levels.
- Work with national, regional and local governments and public authorities to address water sustainability issues and policies, as well as with relevant international institutions (e.g., the UNEP Global Program of Action).
- Encourage development and use of new technologies, including efficient irrigation methods, new plant varieties, drought resistance, water efficiency and salt tolerance.
- Be actively involved in the UN Global Compact's Country Networks.
- Support the work of existing water initiatives involving the private sector (e.g., the Global Water Challenge; UNICEF's Water, Environment and Sanitation Program; IFRC Water and Sanitation Program; the World Economic Forum Water Initiative) and collaborate with other relevant UN Bodies and inter-governmental organizations (e.g., the World Health Organization, the Organization for Economic Co-Operation and Development and the World Bank Group).

4. Public Policy

- Contribute inputs and recommendations in the formulation of government regulation and in the creation of market mechanisms in ways that drive the water sustainability agenda.
- Exercise “business statesmanship” by advocating for water sustainability in global and local policy discussions, clearly presenting the role and responsibility of the private sector in supporting integrated water resource management.
- Partner with governments, businesses, civil society and other stakeholders—for example specialized institutes such as the Stockholm International Water Institute, UNEP Collaborating Centre on Water and Environment, and UNESCO’s Institute for Water Education—to advance the body knowledge, intelligence and tools.
- Join and/or support special policy-oriented bodies and associated frameworks (e.g., UNEP’s Water Policy and Strategy; UNDP’s Water Governance Program).

5. Community Engagement

- Endeavor to understand the water and sanitation challenges in the communities where the companies operate and how their business impact those challenges.
- Be active member of the local community, and encourage or provide support to local government, groups and initiatives seeking to advance the water and sanitation agendas.
- Undertake water-resource education and awareness campaigns in partnership with local stakeholders.
- Work with public authorities and their agent to support, when appropriate, the development of adequate water infrastructure, including water and sanitation delivery system.

6. Transparency

- Include a description of actions and investments undertaken in relations to the CEO Water Mandate in the annual Communication on Progress for the UN Global Compact, making reference to relevant performance indicators such as the water indicators found in the Global Reporting Initiative (GRI) Guidelines.

- Publish and share water strategies (including targets and results as well as areas for improvement) in relevant corporate reports, using, where appropriate, the water indicators found in the GRI Guidelines.
- Be transparent in dealing and conversation with governments and other public authorities on water issues.”⁶⁰

Over two hundred companies, including Nestlé, endorse the Mandate.⁶¹ The endorsing companies pledge to undertake the six commitments mentioned above “where appropriate [and] over time,” establishing a non-legally binding sustainability framework. The endorsing companies are only required to “make an earnest commitment to continuous improvement” on the six commitments.⁶² However, an endorsing company's failure to abide by these six commitments could be detrimental to its relationship with stakeholders, financial gains, and public trust. According to Rachel Davis, Vice-President and Co-Founder of the Shift Project,

“[t]his guidance provides real-world examples and feasible steps for companies to help them understand and take action on the impact their operations have on people’s access to water and sanitation. Water and sanitation are crucial issues to both the environment and human rights and this guidance provides companies with a way to take their existing water and sanitation programs and broaden or adapt them in order to meet their responsibility to respect the rights.”⁶³

In addition to the companies’ six commitments to water stewardship, the Mandate supports the overall mission and companies in many ways, including:

- “Developing research, guidance and tools that advance corporate water stewardship;
- Convening multi-stakeholder events to identify, explore, and solve key water challenges;
- and

⁶⁰ *Id.*

⁶¹ See, “Endorsing Companies,” CEO Water Mandate (UN Global Compact, December 20, 2019), <https://ceowatermandate.org/about/endorsing-companies/>.

⁶² “What Is the Mandate?,” CEO Water Mandate (UN Global Compact, February 15, 2022), <https://ceowatermandate.org/about/what-is-the-mandate/#1529600588940-d806bade-6cbaef82-5ca4>.

⁶³ The Shift Project is a French nonprofit created in 2010 that aims to limit both climate change and the dependency of our economy on fossil fuels. See, “New Guidance for Companies on How to Respect the Human Rights to Water and Sanitation,” Shift Project (The Shift Project, June 9, 2020), <https://shiftproject.org/new-guidance-for-companies-on-how-to-respect-the-human-rights-to-water-and-sanitation/>.

- Facilitating meaningful collective action to improve conditions in at-risk basins around the world.”⁶⁴

The Mandate also encourages endorsing companies to make an annual contribution to the Mandate’s work, financially or otherwise. This yearly contribution is distinct from any contributions companies make as part of their membership in the UN Global Compact or towards other CEO Water Mandate’s initiatives.⁶⁵ Companies must already be signatories of the UN Global Compact or agree to become signatories of the UN Global Compact within one year to endorse the Mandate.⁶⁶ The benefits of endorsing the CEO Water Mandate include “attending Mandate events to learn about stewardship trends and cutting-edge best practices; demonstrating the company’s commitment to sustainability to investors, customers, employees, communities and other key stakeholders; and keeping abreast of engagement opportunities through quarterly email communications from Mandate Secretariat to all endorsing companies.”⁶⁷

Endorsing companies of the CEO Water Mandate that wish to take their water stewardship commitment even further can join the Water Resilience Coalition by supporting the Water Reliance Pledge.⁶⁸ “The Coalition aims to preserve the world’s freshwater resources through collective action in water-stressed basins and ambitious, quantifiable commitments.”⁶⁹ In signing the Water Reliance Pledge, companies confirm that they will achieve the following by 2050 and a half by 2030, through both individual and collective actions:

- **“Net positive water impact:** Achieve a measurable and net positive impact in water-stressed basins on availability, quality and accessibility through industry-leading water operations and basin initiatives.
- **Water-resilient value chain:** Develop, implement, and enable strategies to support leading impact-based water resilience practices across the global value chain.

⁶⁴“ What Is the Mandate?,” CEO Water Mandate (UN Global Compact, February 15, 2022), <https://ceowatermandate.org/about/what-is-the-mandate/#1529600588940-d806bade-6cbaef82-5ca4>.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Companies must be endorsers of the CEO Water Mandate to join the Water Resilience Coalition. Participation in the Coalition is entirely optional. See, “INTRODUCTION TO THE CEO WATER MANDATE: Garnering Commitments and Building Capacity for Corporate Water Stewardship” (UN Global Compact & Pacific Institute, n.d.), accessed May 9, 2022.

⁶⁹“ INTRODUCTION TO THE CEO WATER MANDATE: Garnering Commitments and Building Capacity for Corporate Water Stewardship” (UN Global Compact & Pacific Institute, n.d.), accessed May 9, 2022.

- **Global leadership:** Raise the global ambition of water resilience through public and corporate outreach.”⁷⁰

The individual and collective actions that companies agree to undertake in signing the Water Reliance Pledge include: “active support of existing and new watershed coalitions and partnerships; enabling new tools and technology; spreading shared water use and reporting standards for the supply chain; advocating for smart water management and equitable access policies by the government; and partnering with members and NGOs on water basin investment and access initiatives.”⁷¹ As of the date of this paper, Nestlé did not join the Water Resilience Coalition.

Joining both the CEO Water Mandate and the Water Resilience Coalition significantly impacts a company’s behavior compared to joining only the CEO Water Mandate. As endorsers of both the CEO Water Mandate and the Water Resilience Coalition, companies have more pressure to satisfy the six Commitments of the CEO Water Mandate by 2050 and half of the goals of these six Commitments by 2030. However, a company like Nestlé, a member of the CEO Water Mandate only, commits to undertake the six Commitments of the CEO Water Mandate (i.e., net positive water impact) where “appropriate and over time”; there are no pressure for commitment and meeting deadlines.⁷² For example, in its water security strategy, Nestlé commits to using “its expertise to strive toward the regeneration of local water cycles” and to achieving “good water resource management throughout [its] operations and agricultural supply chains,” which this paper further elaborates on below.⁷³ Nestlé set up several targeted goals to progressively meet its CEO Water Mandate Commitments. One of these goals includes launching a new strategic approach to water in agriculture to source 50% of crucial ingredients through regenerative agricultural methods by 2030.⁷⁴ The company is also supporting existing and new watershed coalitions and partnerships. It signed the WASH Pledge of the World Business Council for Sustainable Development, committing to providing adequate WASH (Water, Sanitation, Hygiene) services, and is founding member of the Sustainable Agriculture

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ “Nestlé Guidelines on Respecting the Human Rights to Water and Sanitation,” Nestlé Global (Nestlé, December 2016), <https://www.nestle.com/sustainability/human-rights/water-sanitation>.

⁷⁴ *Id.*

Initiative Platform, a food and beverage industry initiative supporting the development of sustainable agriculture worldwide.⁷⁵

In comparison, the Coca-Cola Company, an endorser of both the CEO Water Mandate and the Water Resilience Coalition, has a broader water security strategy than Nestlé, with a mid-deadline of 2030. Their 2030 water security strategy focuses on "100% regenerative water use in bottling operations, improved watershed health, and enhanced community water resilience."⁷⁶ The company will apply this strategy everywhere it operates and, in every sector, (i.e., agriculture, beverages). Because water challenges are fundamentally local in nature, the Company "cannot just say, across the board, we're going to do X, Y, and Z. That doesn't make sense."⁷⁷ Instead, the company has a framework with global goals around operations, watershed health, and communities based on a rigorous risk and vulnerability assessment.⁷⁸ The company is also supporting existing and new watershed coalitions and partnerships. For example, Coca-Cola, World Wildlife Fund (WWF), and other stakeholders, such as Fundación Defensores de la Naturaleza, worked together to tackle water stress in the Sierra de las Minas Reserve Zone, Guatemala. The coalition provided training through an integrated approach to managing watersheds and funding.⁷⁹

⁷⁵ *Id.*

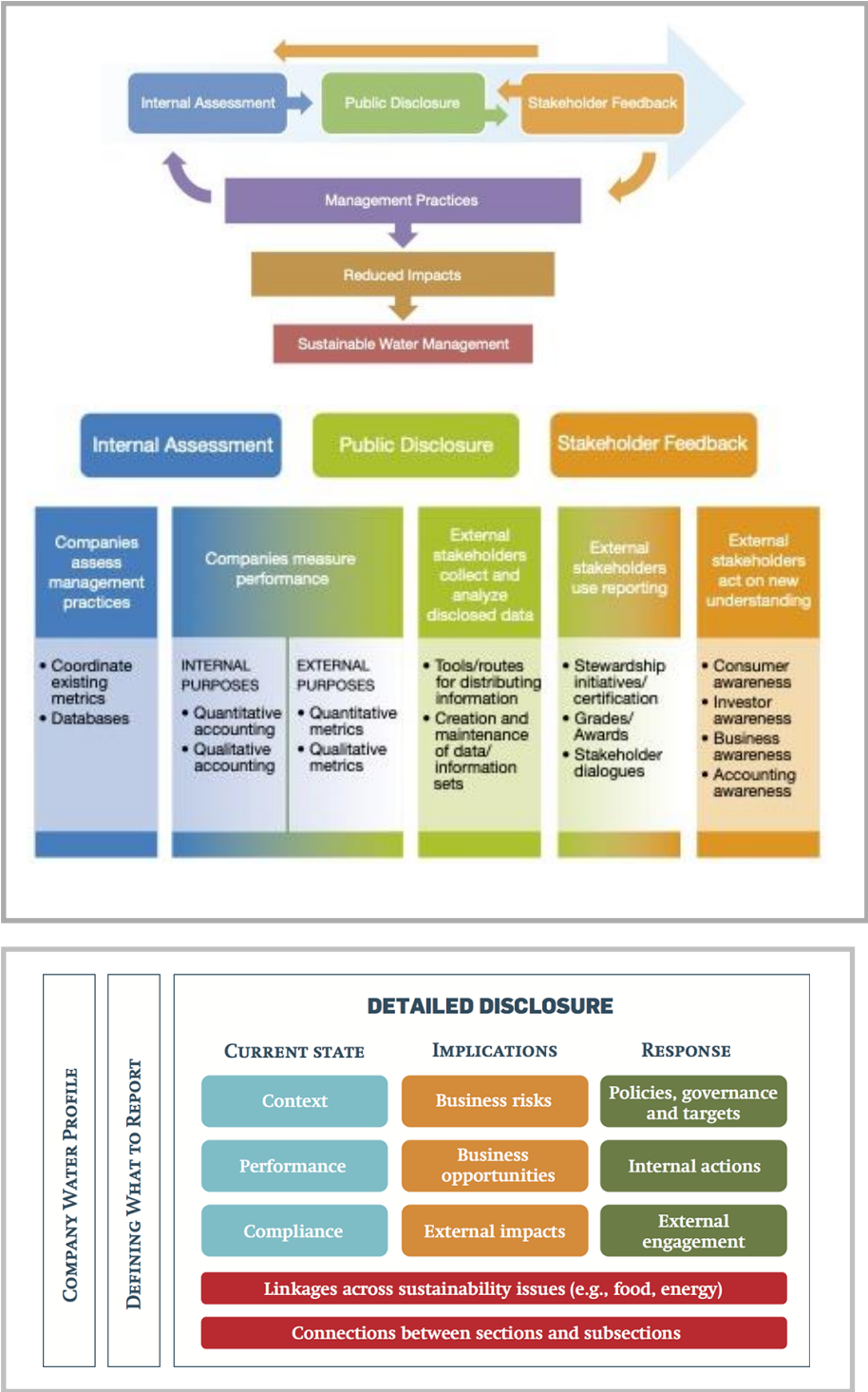
⁷⁶ "Coca-Cola Unveils 2030 Water Security Strategy," The Coca-Cola Company, March 22, 2021, <https://www.coca-colacompany.com/news/2030-water-security-strategy>.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ "Coca-Cola and World Wildlife Fund Working Together to Tackle Water Stress," The Coca-Cola Company, accessed May 17, 2022, <https://www.coca-colacompany.com/sustainable-business/water-stewardship/world-wildlife-fund-guatemala>.

FRAMEWORKS FOR CORPORATE WATER DISCLOSURE



© United Nations Environmental Program, “Water Footprint and Corporate Water Accounting for Resource Efficiency.” 2011. <<http://www.waterfootprint.org/Reports/>>. © The CEO Water Mandate. “Corporate Water Disclosure Guidelines Toward a Common Approach to Reporting Water Issues.” Sep. 2014. <<http://pacinst.org/wp-content/uploads/sites/21/2012/08/ceowatermandate-corporate-disclosure-2014.pdf>>.

In addition to the Global Compact CEO Water Mandate, on June 16, 2011, the United Nations Human Rights Council unanimously endorsed the Guiding Principles for Business and Human Rights (UNGPs) under resolution 17/4. The Secretary-General's Special Representative developed the UNGPs to prevent and address the risk of adverse business impacts on human rights. The UNGPs consist of thirty-one principles that enhance standards and practices concerning human rights, transnational corporations, and other business enterprises. The thirty-one principles were built on a three-pillar structure:

1. The state's duty to respect, protect and fulfill human rights and fundamental freedoms **(Principles 1 to 10)**;
2. The business enterprises' responsibility to comply with all applicable laws and respect human rights **(Principles 11 to 24)**; and
3. Access to remedy for victims of business-related violations **(Principle 25 to 31)**.

UNGs Principle 12, under the second pillar on the business enterprises' duty, emphasizes that 'human rights' refers to internationally recognized human rights expressed in the International Bill of Human Rights and the International Labour Organization's Declaration on Fundamental Principles and Rights at work.⁸⁰ The International Bill of Human Rights consists of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. Although not expressly stated in the Universal Declaration of Human Rights, the right to water is arguably among the rights that business enterprises must respect under the UNGPs. As mentioned above, the United Nations General Assembly passed Resolution 64/292, recognizing the human right to water and sanitation.⁸¹ Moreover, the Committee on Economic, Social, and Cultural Rights adopted General Comment No. 15 on the right to water, thereby reading the right to water and sanitation in Articles 11 and 12 of the International Covenant on Economic, Social, and Cultural Rights.⁸²

⁸⁰ Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" (United Nations, HR/PUB/11/04, 2011), pp. 3-28, <https://www.ohchr.org/en/publications/reference-publications/guiding-principles-business-and-human-rights>.

⁸¹ U.N. General Assembly, "Resolution 64/292 : The Human Right to Water and Sanitation," 28 July 2010, <https://www.un.org/es/comun/docs/?symbol=A/RES/64/29&lang=E>

⁸² Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment No. 15, the Right to Water (Art. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights) ,” (United Nations, E/C.12/2002/11, Jan. 2003), pp. 1-18.

To meet their responsibility to respect human rights, business enterprises must identify, prevent, mitigate, and account for their adverse human rights impact by carrying out human rights due diligence. This human right due diligence process includes “assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.”⁸³ Such a process is ongoing as human rights risks may change over time as the business’ operations evolve. The UNGPs apply “to all States and business enterprises, both transnational and others, regardless of their size, sector, location, ownership, and structure.”⁸⁴ The UNGPs were widely endorsed by international and regional organizations, States, business enterprises, industry, trade union networks, and civil society organizations, further solidifying their status as the leading global foundation for business and human rights.

The Organization for Economic Co-operation and Development (OECD) designed guidelines based on the UNGPs for multinational enterprises to prevent and address business-related abuses. The OECD Guidelines are non-binding and expanded the scope of due diligence to include other matters such as environmental protection and anti-bribery.⁸⁵ Similarly, European countries like France⁸⁶ and Germany⁸⁷ incorporated the UNGPs into their national laws and introduced mandatory due diligence legislation on business enterprises. Moreover, in 2021, the European Parliament, inspired by the UNGPs, proposed a text on compulsory due diligence to the European Commission.⁸⁸ A large majority in Parliament supported this text (504 votes to 79, with 112 abstentions). Subsequently, in 2022, the European Commission adopted a proposal for a Directive on corporate sustainability due diligence. The Directive aims “to foster sustainable and responsible corporate behavior and anchor human rights and environmental considerations in companies’ operations and corporate governance.”⁸⁹ The new law will “ensure the businesses address the adverse impact of their actions, including their

⁸³ “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework” (United Nations, HR/PUB/11/04, 2011), pp. 3-28, <https://www.ohchr.org/en/publications/reference-publications/guiding-principles-business-and-human-rights>.

⁸⁴ *Id.*

⁸⁵ “OECD Guidelines for Multinational Enterprises,” MNEGuidelines - OECD (Organization for Economic Co-operation and Development, 2011), <https://mneguidelines.oecd.org/mneguidelines/>.

⁸⁶ France introduces the due diligence law (loi du 27 mars 2017 relative au droit devoir de vigilance des sociétés mères et des entreprises donneuse d’ordre). See, “Rapport D’information (...) Sur L’évaluation De La Loi Du 27 Mars 2017 Relative Au Devoir De Vigilance Des Sociétés Mères Et Des Entreprises Donneuses D’ordre,” vie-publique (République Française, 2017), <https://www.vie-publique.fr/rapport/284174-devoir-de-vigilance-des-societes-meres-et-entreprises-donneuses-d-ordre#:~:text=Pr%C3%A9sentation-.La%20loi%20du%2027%20mars%202017%20relative%20au%20devoir%20de,effective%20un%20plan%20de%20vigilance>.

⁸⁷ Germany introduced ‘Lieferkettengesetz’ or the Supply Chain Act, which is scheduled to come into force in early 2023. See, “The New Supply Chain Act,” The Federal Government, accessed May 10, 2022, <https://www.bundesregierung.de/breg-en/news/supply-chain-act-1872076>.

⁸⁸ “Corporate Sustainability Due Diligence,” European Commission, accessed May 10, 2022, https://ec.europa.eu/info/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en.

⁸⁹ *Id.*

value chains inside and outside Europe.”⁹⁰ It will also establish sanctions under public law and complaint procedures for affected parties.

In the United States, the Obama administration developed a National Action Plan to promote and incentivize responsible business conduct. The U.S. Government National Action Plan on Responsible Business Conduct (NAP) was released in December 2016; it is consistent with the UNGPs and the OECD Guidelines on Multinational Enterprises.⁹¹ The White House National Security Council (NSC) led and coordinated the government’s effort to develop NAP. More than a dozen government agencies and multiple public and private stakeholders helped develop and draft the NAP.⁹² The United States government faced challenges in tracking the progress of NAP in terms of the implementation of each goal. The Biden administration announced in June 2021 that “the State Department, working with the White House and other federal departments and agencies, will soon begin the process of updating and revitalizing the NAP.”⁹³ Thus unless companies incorporate their human rights due diligence program in their business structure, there are no US guiding principles to ensure they do.

⁹⁰ *Id.*

⁹¹ Beata Faracik, “Implementation of the UN Guiding Principles on Business and Human Rights,” ed. Daniela Adorna and Trans European Policy Studies Association (TEPSA), Think Tank European Parliament (the European Parliament’s Subcommittee on Human Rights (DROI), February 2, 2017), pp. 5-87, <https://www.europarl.europa.eu/thinktank/en/home>.

⁹² *Id.*

⁹³ “Responsible Business Conduct National Action Plan,” U.S. Department of State (U.S. Department of State, March 1, 2022), <https://www.state.gov/responsible-business-conduct-national-action-plan/>.

OECD DUE DILIGENCE PROCESS & SUPPORTING MEASURES



© OECD 2018. <mneguidelines.oecd.org/due-diligence-guidance-for-responsible-business-conduct.htm>

IV. NESTLÉ'S RESPONSE TO THE INTERNATIONAL TREATIES ON THE RIGHT TO WATER

Before and during the early 2000s, Nestlé approached water purely as a commodity. In 1994, Helmut Maucher, the former Chief Executive Officer, said in an interview with the *New York Times*, "[s]pring is like petroleum. You can always build a chocolate factory. But springs you have or you don't have."⁹⁴ At the 2000 World Water Forum in the Netherlands, Nestlé and other multinational corporations convinced the World Water Council to change its position to reduce access to drinking water from a 'right' to a 'need.'⁹⁵ Peter Brabeck-Letmathe, another Nestlé's CEO, drew criticism for encouraging the commodification of water in a 2005 documentary when he said, "One perspective held by various NGOs, which I would call extreme, is that water should be declared a human right..."

⁹⁴ Caroline Winter, "Nestlé Makes Billions Bottling Water It Pays Nearly Nothing For: The Company's Operation in Michigan Reveals How It's Dominated the Industry by Going into Economically Depressed Areas with Lax Water Laws," Bloomberg.com (Bloomberg, September 21, 2017), <https://www.bloomberg.com/news/features/2017-09-21/nestl-makes-billions-bottling-water-it-pays-nearly-nothing-for>.

⁹⁵ Paul Muir, "The Human Rights and Wrongs of Nestlé and Water for All," The National News (The National, June 15, 2021), <https://www.thenationalnews.com/arts/the-human-rights-and-wrongs-of-nestle-and-water-for-all-1.303517>.

The other view is that water is a grocery product. And just as every other product, it should have a market value."⁹⁶ Brabeck-Letmathe subsequently withdrew his comment following public outrage. He said his statement was taken out of context and that water is a human right. He later proposed that people should have free access to thirty liters per day, paying only for further use.⁹⁷

While Nestlé's bottled water operation arguably may not be sustainable in practice, on paper, however, Nestlé did adopt sustainable measures. Pakistan is one of the most water-stressed countries in the world.⁹⁸ Nestlé, Pepsi Co Inc., and Coca-Cola Beverages Ltd dominate the bottled water business in Pakistan, with Nestlé having the largest share.⁹⁹ Several other big and small companies are also doing bottled water business. Nestlé began its operations in Pakistan in 1988 when it merged with Milkpak Ltd. to become Nestle Milkpak Ltd. and produced milk, butter, cream, desi ghee, and fruit drinks.¹⁰⁰ By 1998, Nestle Milkpak Ltd. added 21 branded product lines, including Nestlé's 'Pure Life', AVA, and Fontalia bottled water, which the company introduced as clean water sources.¹⁰¹ Nestlé established three processing plants for water treatment in Pakistan (Islamabad, Port Qasim, and Sheikhpura). The company extracts water from nine wells at the three sites. The company provides over 1,100 job opportunities for skilled, unskilled, and professional workers and contributes positively to the local economy by selling and resale its products.¹⁰²

According to a 2005 Report, Nestlé's water operation in Pakistan was unsustainable.¹⁰³ First, its bottled water was not affordable for the Pakistani people who needed safe and clean drinking water. Second, Nestlé contributed to the decrease of the groundwater level that dries local water provisions, and its use of groundwater exceeded the renewable volume.¹⁰⁴ Bottled water in Pakistan is not considered a beverage in Pakistan. Beverage processing includes carbonated soft drinks, fruit juices, syrups, and juice-flavored drinks. Drinking water and bottled water are not regarded as essential

⁹⁶ Caroline Winter, "Nestlé Makes Billions Bottling Water It Pays Nearly Nothing For: The Company's Operation in Michigan Reveals How It's Dominated the Industry by Going into Economically Depressed Areas with Lax Water Laws," Bloomberg.com (Bloomberg, September 21, 2017), <https://www.bloomberg.com/news/features/2017-09-21/nestl-makes-billions-bottling-water-it-pays-nearly-nothing-for>.

⁹⁷ *Id.*

⁹⁸ Rutger Willem Hofste, Paul Reig, and Leah Schleifer, "17 Countries, Home to One-Quarter of the World's Population, Face Extremely High Water Stress," World Resources Institute, August 6, 2019, <https://www.wri.org/insights/17-countries-home-one-quarter-worlds-population-face-extremely-high-water-stress>.

⁹⁹ Nils Rosemann, "Drinking Water Crisis in Pakistan and the Issue of Bottled Water : The Case of Nestlé's 'Pure Life'," IRC (ActionAid Pakistan and The Swiss Coalition of Development Organizations), accessed May 18, 2022, <https://www.ircwash.org/resources/drinking-water-crisis-pakistan-and-issue-bottled-water-case-nestl%C3%A9s-pure-life>.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

commodities in Pakistani culture.¹⁰⁵ Consequently, Pakistan has low consumption of bottled water and carbonated soft drinks in general. Recent figures estimate a yearly consumption of about 2 liters of bottled water per person.¹⁰⁶ Groundwater is the primary source of drinking water in Pakistan through water pipes and wells. However, forty-four percent of the population does not have access to safe drinking water. The Pakistani government estimated that up to 90 percent of the population may lack such access and that 200,000 children in Pakistan die every year due to diarrhea diseases alone.¹⁰⁷

The ill-planning of the governments allows for the rapid depletion of water resources. Groundwater extraction is one of the few possibilities to satisfy people's need for drinking water. But groundwater extraction in Pakistan is unregulated and different users, such as public water providers, agriculture, and industrial exploitation, compete for this scarce source.¹⁰⁸ The Pakistani government's omission in addressing these access to water issues properly and establishing fixed water extractions standards and regulations that it properly monitors is the root cause of the country's deficient water supply. Pakistan does not have an integrated water management policy that could limit excessive groundwater exploitation.¹⁰⁹ Moreover, Nestlé's engagement in Pakistan and business policies contradict its self-commitments to human rights, the principle of sustainable use of resources, and its membership in the United Nations Global Compact. Nestlé had said that its bottled water contained the appropriate mineral balance and complied with the bottled drinking water standards laid down by the Pakistan Standards and Quality Control Authority (PSQCA) and the World Health Organization's (WHO) recommendations.

In fact, in 2013, Nestlé signed the WASH Pledge of the World Business Council for Sustainable Development, committing to providing adequate WASH (Water, Sanitation, Hygiene) services to all 340,000 employees located around the factories and the upstream supply chain.¹¹⁰ Moreover, the company was a founding signatory of the UN Global Compact CEO Water Mandate. In January 2015, the CEO Water Mandate, published with support from Nestlé, the guidance for companies on respecting the human rights to water and sanitation.¹¹¹ This guidance builds upon the

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Nestlé Guidelines on Respecting the Human Rights to Water and Sanitation," Nestlé Global (Nestlé, December 2016), <https://www.nestle.com/sustainability/human-rights/water-sanitation>.

¹¹¹ *Id.*

UN Guiding Principles on Business and Human Rights. As part of its Creating Shared Values (CVS)¹¹² water commitments, Nestlé has decided to implement the guidance by 2015.¹¹³ Nestlé formalized this guidance on a corporate level in its Commitment on Water Stewardship, an appendix to Nestlé's Policy on Environmental Sustainability. This appendix states that "effective water stewardship will require that provisions be for water to meet the human right to water, ensure that ecosystems function, and ensure that water is used efficiently for agricultural and industrial use."¹¹⁴ This document contributes to the realization of the objective, providing guidelines on how Nestlé markets and factories can respect and support the human rights to water and sanitation.

- "First, it shows the human rights to water and sanitation and how markets and factories can avoid any negative impact on these rights. The 'do no harm' principle is key to the guideline, and Nestlé's entire supply chain should respect it.
- Second, the guidelines provide a set of criteria for Nestlé factories, particularly the ones located in high-risk areas, to take steps in support of access to water, sanitation, and hygiene among stakeholders.
- Third, the guidelines cluster countries into low-risk, medium-risk, and high-risk markets based on the percentage of people lacking access to water.¹¹⁵
- Fourth, the guidelines advise markets and factories on ways to assess their impact on the human right to water using existing audit or engagement mechanisms."¹¹⁶

Nestlé uses the World Resources Institute's Volumetric Water Benefit Accounting methodology to measure all projects. "This methodology provides consistency in analyzing water management activities and helps focus the company's activities on addressing current and future

¹¹² "Creating Shared Value (CSV) is a game-changing shift from Corporate Social Responsibility (CSR) and the traditional mindset that business can either do good or make a profit, to a model that can improve the world. CSV is policies and operating practices that enhance the competitiveness of a company while simultaneously advancing the economic and social conditions in the communities in which it operates (hence the acronym 'doing well by doing good'). The shared value model supports a positive impact for society, the environment, finance, and all parties involved." As part of Nestlé's CSV strategy, 440 000 people located around the factories and around the upstream supply chain have gained access to water, sanitation and hygiene between 2005 and 2015. See, Marga Hoek, "CSR v CSV: The Difference and Why It Matters," Sustainable Brands, July 14, 2020, <https://sustainablebrands.com/read/business-case/csr-v-csv-the-difference-and-why-it-matters>. See also, "Nestlé Guidelines on Respecting the Human Rights to Water and Sanitation," Nestlé Global (Nestlé, December 2016), <https://www.nestle.com/sustainability/human-rights/water-sanitation>.

¹¹³ "Nestlé Guidelines on Respecting the Human Rights to Water and Sanitation," Nestlé Global (Nestlé, December 2016), <https://www.nestle.com/sustainability/human-rights/water-sanitation>.

¹¹⁴ *Id.*

¹¹⁵ Countries where 95% or more of the population have access to water are characterised as "low-risk" countries. Countries where 80% or less of the population have access to water are considered as high-risk countries.⁵ Countries where less than 95% have access to water and where, at the same time, at least 10 000 000 people lack access to water are considered as high-risk countries as well. The countries in between are considered as "medium-risk" countries. See, "Nestlé Guidelines on Respecting the Human Rights to Water and Sanitation," Nestlé Global (Nestlé, December 2016), <https://www.nestle.com/sustainability/human-rights/water-sanitation>.

¹¹⁶ *Id.*

shared water challenges.”¹¹⁷ Using this methodology, an external panel reviews the relevance and sustainability of the projects and gives feedback on whether they helped address local challenges and opportunities. Nestlé is committed to certifying all its Waters sites to the Alliance for Water Stewardship (AWS)¹¹⁸ Standard by 2025, and pledged to create a positive water impact everywhere its bottled-water business operates by 2025.¹¹⁹

WATER STEWARDSHIP ACROSS NESTLÉ

Nestlé factories serving our Nestlé Waters business	Agricultural supply chain	Nestlé factories	Water in communities	Water partnerships and advocacy
Nestlé Waters pledge: We will advance the regeneration of the water cycle to help create a positive water impact everywhere our water business operates by 2025.	We promote and implement better water management practices in water-stressed areas. This is to help protect watersheds and ensure regeneration of the water cycle.	We monitor water efficiency and the quality of the water we discharge.	We believe businesses have a role to play in helping to ensure that more people have access to safe water.	We work together with local stakeholders to address watershed challenges.

© Nestlé. “Nestlé Guidelines on Respecting the Human Rights to Water and Sanitation,” (Nestlé, December 2016), <<https://www.nestle.com/sustainability/human-rights/water-sanitation>>

Nestlé was also a founding member of the Sustainable Agriculture Initiative Platform, a food and beverage industry initiative supporting the development of sustainable agriculture worldwide.¹²⁰ The company launched a new strategic approach to water in agriculture to support its net-zero commitment and goal to source 50% of crucial ingredients through regenerative agricultural methods by 2030.¹²¹ The process focuses on two key areas. The first is to build on the foundations for good water management practices. The second area is to ensure that water is not used beyond what is naturally regenerated.¹²² Nestlé received positive feedback from leading water experts and stakeholders (i.e., NGOs, UN agencies) when it shared its new approach at the Stockholm World

¹¹⁷ *Id.*

¹¹⁸ “AWS International Water Stewardship Standard (AWS Standard) is a globally applicable framework for major water users to understand their water use and impacts, and to work collaboratively and transparently for sustainable water management within a catchment context. The Standard is intended to drive social, environmental and economic benefits at the scale of a catchment.” See, “The Alliance for Water Stewardship (AWS) International Water Stewardship Standard,” Alliance for Water Stewardship, April 5, 2022, <https://a4ws.org/the-aws-standard-2-0/>.

¹¹⁹ “Nestlé Guidelines on Respecting the Human Rights to Water and Sanitation,” Nestlé Global (Nestlé, December 2016), <https://www.nestle.com/sustainability/human-rights/water-sanitation>.

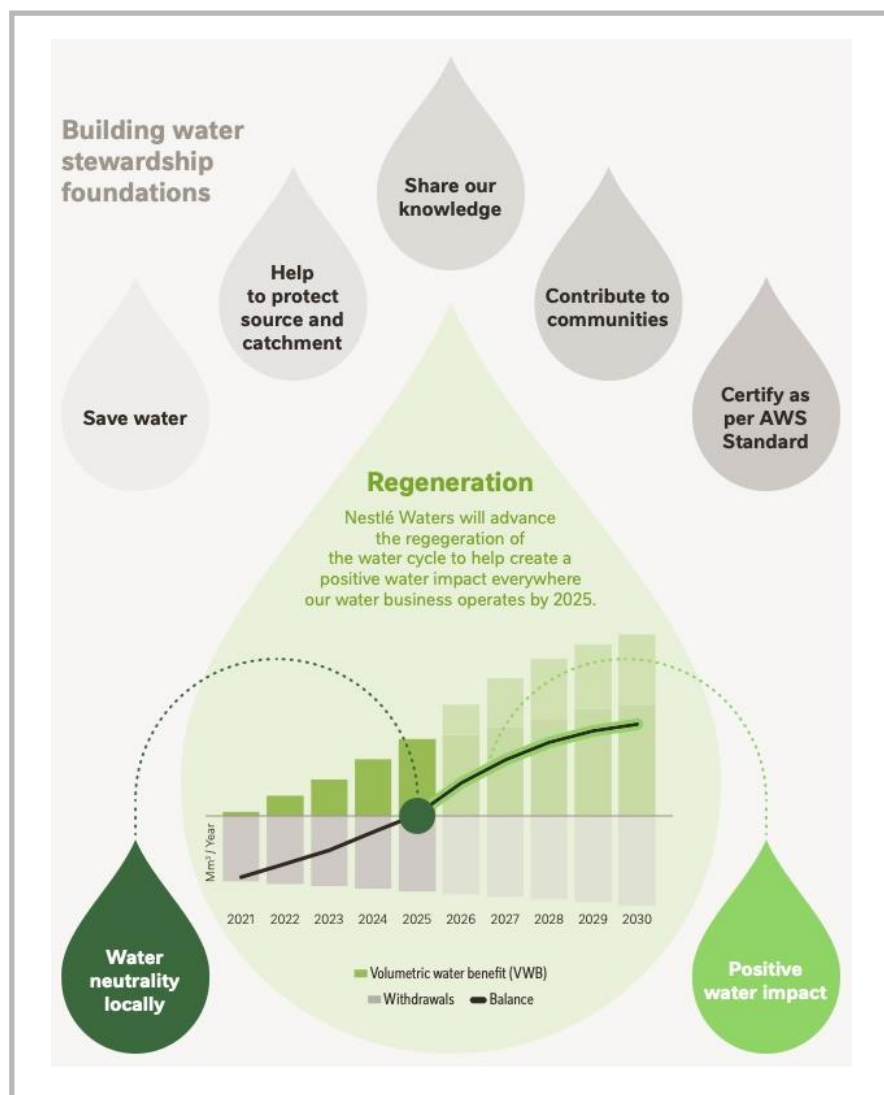
¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

Water Week 2021 Nestlé workshop. In Pakistan, where drought and water stress are of concern, Nestlé is working with dairy farmers to implement water sensors and develop water-saving techniques for animal feed production.¹²³

FOUNDATIONS OF THE NESTLÉ WATERS PLEDGE



© Nestlé. "Nestlé Guidelines on Respecting the Human Rights to Water and Sanitation," (Nestlé, December 2016), <<https://www.nestle.com/sustainability/human-rights/water-sanitation>>

¹²³ *Id.*

CONCLUSION

The human right to water entitles everyone to access sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic use.¹²⁴ Everybody is entitled to this right because Human rights are “universal (applicable everywhere) and egalitarian (the same for everyone).”¹²⁵ Those responsible (i.e., the State) should deliver the right to water in ways that are participatory, accountable, and non-discriminatory.¹²⁶ They must also protect against third parties violations within their territory. This duty requires States to take "appropriate steps to prevent, investigate, punish and redress [any violation] through effective policies, legislation, regulations, and adjudication."¹²⁷ As preventive measures, States should:

- 1) Emphasize in their legislation that incorporated businesses in their jurisdiction respect human rights at home and abroad;
- 2) Provide practical guidance to businesses on CSR measures to implement to respect human rights in their operations and require firms to report on their human rights impacts and due diligence;
- 3) Exercise adequate oversight to meet their international human rights obligations when they contract with foreign and international businesses for projects that may impact the local community. It requires States to monitor at the earliest stage companies, to provide adequate resources to help them identify, prevent and mitigate the human rights-related risks of their activities;
- 4) Deny access to resources and services to businesses known to be involved in gross human right abuses and who refuses to redress their practices;
- 5) Ensure that policies, legislations, and regulations are up to date and effective in addressing the risks of companies' human rights abuses;
- 6) Provide regular CSR training, information, and support to state agencies, officials, and staff.¹²⁸

¹²⁴ “International Decade for Action 'Water For Life' 2005-2015,” United Nations, United Nations Department of Economic and Social Affairs (UNDESA), accessed May 5, 2022.

¹²⁵ “Business and Human Rights: Checklist on Human Rights to Water & Sanitation for Small Scale Providers,” Human Right 2 Water, accessed May 10, 2022, <http://humanright2water.org/2133-2/>.

¹²⁶ “International Decade for Action 'Water For Life' 2005-2015,” United Nations, United Nations Department of Economic and Social Affairs (UNDESA), accessed May 5, 2022.

¹²⁷ “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework” (United Nations, HR/PUB/11/04, 2011)

¹²⁸ “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework” (United Nations, HR/PUB/11/04, 2011); see also, “State Duty to Protect,” Shift, August 26, 2021, <https://shiftproject.org/resource/un-guiding-principles-on-business-and-human-rights/state-duty-to-protect/#chapter>.

These steps, although not exhaustive, will set a coherent and consistent message and preserve the State's reputation. It will help developing States like Pakistan from falling behind in their duty to protect human rights and from being taken advantage of by powerful enterprises. One main point the Water Right Assessment Report on Pakistan highlighted is that when a State fails in this duty to protect, it is the population that suffers. As important as all the international initiatives are, they are not a replacement for internally solid national-level compliance and regulatory frameworks. Hence, each State must set minimum standards, rules, and regulations for businesses to follow. Undeniably, many developing States' economic situation hinders their human rights agenda. However, these States can begin by implementing measures that demand limited resources, such as adopting human rights-friendly legislations and providing CSR training to government agencies, officials, and staff. The UN Working Group on Business and Human Rights plays a central role in this regard; it provides guidance, support and resources to countries in implementing the UN Guiding Principles.

In this regard, remedial measures should come into play whenever there are minor incidents or imperfections in the policies and regulations adopted. With a solid and effective preventive measure, States would find themselves putting less money into correcting violations because the preventative measure will minimize such violations. States must nevertheless put in place strong and effective corrective actions; States should:

- 1) Provide adequate and effective access to remedy through judicial, administrative, legislative, or other appropriate means that are fast or efficient, transparent, equitable, and legitimate;
- 2) Reduce legal, coercive, financial, and other practical barriers to remedy;
- 3) Provide multiple routes to remedy, such as mediation;
- 4) Provide access to state and non-state grievance mechanisms;
- 5) Provide adequate protection and care to victims.¹²⁹

Similarly, companies and operators like Nestlé must respect human rights by complying with local, regional and international laws, and adopting internal human rights policies and practices. In so doing, companies must be aware of, prevent, and address adverse human rights impacts by:

¹²⁹ Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" (United Nations, HR/PUB/11/04, 2011); *see also*, "Access to Remedy," Shift, August 26, 2021, <https://shiftproject.org/resource/un-guiding-principles-on-business-and-human-rights/access-to-remedy/#chapter>.

- 1) Expressly committing to respect human rights and adopting internal and external policies approved by the most senior level of the business enterprise;
- 2) Communicate the companies' human rights commitment and agenda to investors, business partners, and other shareholders directly and indirectly linked with the business operation;
- 3) Avoiding causing or contributing to adverse human rights impacts through their activities and addressing such impacts when they occur;
- 4) Adopting human rights due diligence process to identify, prevent, mitigate and account for human rights impact;
- 5) Mitigating adverse human rights impacts that are directly linked to their operations, products, suppliers, and sub-contractors and communicating how the company addresses such impacts;
- 6) Keeping up to date companies' human rights policies and procedures;
- 7) Carrying out regular control by relying on international and independent human rights expertise;
- 8) Provide human rights due diligence training to senior managers and staff;
- 9) Implement a whistleblower mechanism and protection;
- 10) Implement remedial measures and compensation in case of violations.¹³⁰

Although not exhaustive, these steps will allow companies to exercise due diligence concerning human rights while operating.¹³¹ Accordingly, Nestlé can sell its bottled water so long as it abides by these human rights due diligence measures on water. Also, Nestlé is not obligated to ensure that people receive these human rights; the State does. Nestlé only has to make sure it does not violate these rights. Whether Nestlé continuously violates its human rights due diligence is a question that a subsequent research paper can address.

¹³⁰ Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" (United Nations, HR/PUB/11/04, 2011); *See also*, "Corporate Responsibility to Respect," Shift, August 26, 2021, <https://shiftproject.org/resource/un-guiding-principles-on-business-and-human-rights/corporate-responsibility-to-respect/#chapter>.

¹³¹ "Business and Human Rights: Checklist on Human Rights to Water & Sanitation for Small Scale Providers," Human Right 2 Water, accessed May 10, 2022, <http://humanright2water.org/2133-2/>.