

UNIVERZA V LJUBLJANI
FAKULTETA ZA DRUŽBENE VEDE

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Človekova pravica do vode in gospodarske družbe

Human Right to Water and Business

Magistrsko delo

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*To my family who gave me the opportunity to get really good
education and for their full time support.*

*I would love to thank my supervisor, Professor Carolyn Long, who
gave me insightful comments and suggestions even though she
was on the other side of the planet, to Andreja, an editor, who
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blame for the idea of this thesis and who has offered me advice
and input.*

Human Right to Water and Business

The human right to water has arguably become a flashpoint issue in debates over the social dimensions of globalization. The social dimension of globalization is the main challenge in ensuring that globalization and global governance become a positive force incorporating inclusiveness, accountability and participation with shared responsibilities. In this context, this thesis argues that a lack of social dimension in the process of globalization and a lack of good global governance can lead to a water crisis which will contribute to violation of the human right to water (Brownen 2008).

The discussion of the human right to water is used as an example that will help to examine the reaction to imbalances in globalization and overall challenges of neoliberalism. It is used as a catalyst for the intensification of the debate over the relationship between human rights and business (Hamm 2011). Where human rights could be part of the puzzle towards to the solution of global governance gaps. And, on the other hand, where business operations respecting human rights could be contributing to development.

We live in a globalized world and in a time of global crises questions are raised about the current capitalist system and its neoliberal approach. The recent global wave of crises highlights the need to move away from conventional wisdom and focus more on an approach focused on people who should be at the center of development (UNCTAD 2010).

The research question examined in this thesis is how human rights based approach to development (HRBAD), also known as a people centered or participatory approach, can ensure better business compliance with human rights when it comes to the human right to water. In other words, how access to water is related to global governance and its depression, and how can HRBAD be part of the solution to this puzzle.

In short, this paper will analyze the rising global inequalities and will address structural problems of power relations of global governance by presenting the relationship between business and human rights, how the two relate to each other and challenges in this relationship. The use of the baseline theory, HRBAD, will illustrate how the relationship between business and human rights could be managed in the best possible way towards the realization of the human right to water, as it is believed that “HRBAD means empowering marginalized groups, challenging oppression and exclusion, as well as changing power relations.” (Uvin 2007)

As suggested, this thesis will attempt to examine global water governance issues through the perspective of business responsibilities and obligations that derive from the human rights regime. The objective of this paper is to comprehensively demonstrate and analyze the existing scope of the relationship between human rights and business in the framework of global governance through the lens of the human right to water.

Key Words: Human Right to Water, Global Governance, Globalization, Human Rights based Approach to Development (HRBAD), Business.

Človekova pravica do vode

Voda in človekova pravica do vode postaja aktualno in pereče vprašanje tega stoletja tudi v razpravah o družbenih dimenzijah globalizacije. Največji izziv za sedanjo globalizacijo je, da bi pri vsej družbeni razsežnosti postala skupaj z globalnim vladanjem-upravljanjem (global governance) pozitivna sila. To pa pomeni enakomerno porazdelitev svetovnega bogastva in posledično s tem globalno solidarnost, vključenost, odgovornost in participacijo vseh vpletenih (globalnih) akterjev. V tem okvirju magistrsko delo trdi, da pomanjkanje družbene dimenzije v procesu globalizacije in pomanjkanje dobre globalne vladavine-upravljanja vodi do (globalne) krize z vodo in s tem je človekova pravica do vode kršena.

Analiza in razprava o človekovi pravici do vode je v tem raziskovalnem delu uporabljena kot primer, s pomočjo katerega naloga raziskuje, prikazuje izzive in neravnovesja v trenutno prevladujočem globalnem sistemu neoliberalnega kapitalizma. Človekova pravica do vode je uporabljena tudi za pospešeno razpravljanje in razumevanje odnosa med človekovimi pravicami in biznisom. Ta odnos pa je za nalogo ključnega pomena, saj podaja razumevanje delovanja globalizacije. Znotraj nje bi spoštovanje človekovih pravic lahko predstavljalo del rešitve, ko govorimo o pomanjkljivostih, nepravilnosti, vrzelih globalnega vladanja-upravljanja in kjer lahko biznis s spoštovanjem človekovih pravic prispeva k trajnostnemu razvoju (Hamm 2011).

Sedaj živimo v globaliziranem svetu in v času številnih globalnih kriz (ekonomskih, političnih, kot tudi v času kriz s hrano, energijskimi viri in podnebnih sprememb), ki spodbujajo razmišljanje in vprašanja o trenutnem kapitalističnem sistemu in njegovih neoliberalnih principih. Ta globalni val kriz nas opozarja, da moramo uporabiti drugačen pristop, ki temelji na ljudeh in njihovem razvoju (UNCTAD 2010).

Raziskovalno vprašanje, ki ga preučujem v svojem magistrskega delu je, kako in na kakšen način lahko „pristop do razvoja temelječ na človekovih pravicah“ (HRBAD), znan tudi kot pristop, temelječ na ljudeh ali participativni pristop, pripomore in zagotovi večjo, boljšo skladnost biznisa s človekovimi pravicami, tudi ko gre za človekovo pravico do vode. Povedano drugače, kako je dostop do vode povezan z globalnim vladanjem-upravljanjem in kako je lahko HRBAD del rešitve globalnega vladanja-upravljanja, ko govorimo o človekovi pravici do vode.

Zato magistrska naloga analizira vse bolj rastočo globalno neenakost in obravnava strukturne probleme ter razmerja moči v okviru globalnega vladanja-upravljanja. Predstavlja in analizira odnos med biznisom in človekovimi pravicami, njuno povezanost in problematiko. Uporaba osnovne teorije HRBAD pa bo prikazala, kako je lahko ta odnos med biznisom in človekovimi pravicami dobro izveden in upravljan, da deluje na najboljši možni način, saj lahko vodi tudi k uresničitvi in spoštovanju človekove pravice do vode. Zato verjamem, da „HRBAD pomeni opolnomočenje manj privilegiranih skupin, izziv zatiranju in izključevanju, kot tudi spreminjanje samih razmerij moči“ (Uvin 2007).

Kot je nakazano, bom v magistrskem delu skušala preučiti vprašanje globalnega upravljanja voda skozi perspektivo odgovornosti in obveznosti biznisa do režima človekovih pravic. Cilj, namen raziskave je celovito prikazati in analizirati obstoječi obseg odnosa med biznisom in človekovimi pravicami v okviru globalnega vladanja-upravljanja skozi objektiv človekove pravice do vode.

Ključne besede: Človekova pravica do vode, globalno upravljanje-vodenje, globalizacija, pristop temelječ na človekovih pravicah do razvoja, gospodarske družbe.

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Abbreviations

BIT	Bilateral Investment Treaty
CEO	Chief Executive Officer
CESCR	the United Nations Committee on Economic Social Cultural Rights
CSR	Corporate Social Responsibility
DIHR	Danish Institute for Human Rights
EU	European Union
FDI	Foreign Direct Investment
GATS	General Agreement on Trade in Services
HRBAD	Human Rights based Approach to Development
HRC	the United Nations Human Rights Council
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICSID	the International Center for the Settlement of Investment Disputes
IFC	the International Finance Corporation
ILO	the International Labor Organization
IMF	the International Monetary Fund
MDGs	Millennium Development Goals
NGO	Non-governmental Organization
NHRI	National Human Rights Institution
NCP	National Contact Point
OECD	the Organization for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
SRSG	the United Nations Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and other Business Enterprises
UDHR	Universal Declaration of Human Rights
UN	the United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Program
UNFPA	United Nations Populations Fund
TNC	Transnational Corporation
WB	the World Bank
WHO	the World Health Organization
WTO	the World Trade Organization
WWC	World Water Council

1 Introduction

The idea of this master thesis did not develop in a vacuum; but is an outcome of a process of studies and working experience of the past years. The knowledge and understanding I gained in my postgraduate studies are based on different thoughts and ideas presented to me at different universities and specialized programs such as Washington Collage of Law with its specialization program on Human Rights¹ and EIUC Venice summer school² with its Human Rights and Business program. To further broaden my horizons I decided to take part at the exchange program at Copenhagen University.³ I extended my stay in Copenhagen because of a job offer. An opportunity was given to me to get a greater overview of the challenges facing the world today and to make a synthesis of the knowledge I gained on the issues of globalization, human rights, international development, environment and business. While working for the Danish Institute for Human Rights at its Human Rights and Business department⁴ I put my understanding and perception into practice and benefited from it extensively. Especially because I was a part of progressive thinking on matters of minimizing negative business impacts on human rights and maximizing the positive contribution of business in the realization of human rights.

The human right to water has arguably become a flashpoint issue in debates over the social dimensions of globalization. The social dimension of globalization is the main challenge in ensuring that globalization and global governance become a positive force incorporating inclusiveness, accountability and participation with shared responsibilities. In this context, this thesis argues that a lack of social dimension in the process of globalization and a lack of

¹In 2009, at the Washington College of Law I attended one of the best classes ever – “Human Rights and Development” lectured by Mr. Patrick van Weerelt, who was a guest professor at the time otherwise he has worked for the UN – that were part of the Academy on Human Rights and Humanitarian Law. As one of the greatest minds and as one of the best practitioners within the field of human rights and development he introduced the theories about the relationship between human rights and development. During his classes he also presented the approach called Human rights based approach to development (HRBAD) as one of the outcomes of the relationship. Therefore, I got the idea from my classes that I can use HRBAD as my baseline theory for my master thesis (Academy on Human Rights and Humanitarian Law).

²In 2010, I participated at the EIUC Venice summer school on its Human rights and business program. Responsible for the EIUC Human rights and business program were: Prof. Dr. Fabrizio Marrella, with support of Prof. Dr. Jan Wouters and Dr. Radu Mares (EIUC Venice Summer School).

³In the autumn semester 2009-2010, I was part of the exchange program at the Copenhagen University where I participated at classes like: Human rights and international development, Human rights in 21st century, and International Relations and the Third World.

⁴I was involved as an intern-researcher in 2010 at the Human Rights and Business department at the Danish Institute for Human Rights (DIHR). The department is a research team, a consultancy focused on implementation and impact and the hub of a network of business and human rights organizations. The research, tools, methodologies and projects are focused on improving corporate performance on human rights. DIHR is devoted to business and its impact on human rights and it is part of National Human Rights Institutions (NHRIs) that are led by the International Coordinated Committee (ICC). ICC's first working group was on Business and Human Rights and it was chaired by DIHR to increase understanding and raise awareness of NHRIs' role and mandate in addressing business and human rights issues (Human Rights and Business Department).

good global governance can lead to a water crisis which will contribute to violation of the human right to water (Brownen 2008).

The discussion of the human right to water is used as an example that will help to examine the reaction to imbalances in globalization and overall challenges of neoliberalism. It is used as a catalyst for the intensification of the debate over the relationship between human rights and business (Hamm 2011). Where human rights could be part of the puzzle towards to the solution of global governance gaps. And, on the other hand, where business operations respecting human rights could be contributing to development.

We live in a globalized world and in a time of global crises (political, economic, food, energy and climate) questions are raised about the current capitalist system and its neoliberal approach. The recent global wave of crises highlights the need to move away from conventional wisdom and focus more on an approach focused on people who should be at the center of development (UNCTAD 2010). Many countries have been able to take advantage of globalization by increasing their prosperity and reducing poverty. However, the rapid expansion of global market has also created governance gaps in numerous policy domains (HRC 2008). It is therefore argued that “human rights can provide an ethical lens so conspicuously absent from a dominant economic framework that overly focuses on aggregate outcomes. The economic crisis and its aftermath have presented a clear opportunity to articulate the ways in which human rights principles, as an ethical and legal framework, might shape and improve economic policy both nationally and globally” (ICHRP 2010). For that reason, an interest in deepening and understanding correlations between human rights and business within global governance framework has gained momentum.

The research question examined in this thesis is how human rights based approach to development (HRBAD), also known as a people centered or participatory approach, can ensure better business compliance with human rights when it comes to the human right to water. In other words, how access to water is related to global governance and its depression, and how can HRBAD be part of the solution to this puzzle.

In short, this paper will analyze the rising global inequalities and will address structural problems of power relations of global governance by presenting the relationship between business and human rights, how the two relate to each other and challenges in this relationship. The use of the baseline theory, HRBAD, will illustrate how the relationship between business and human rights could be managed in the best possible way towards the realization of the human right to water, as it is believed that “HRBAD means empowering marginalized groups, challenging oppression and exclusion, as well as changing power relations” (Uvin 2007).

1.1 Theoretical Support to the Research

In the past two decades the United Nations (UN) has made important steps toward integrating human rights into international development. Former UN Secretary General Kofi Annan⁵ was a leader who emphasized the link between peace and security, the reduction of poverty through sustainable development and the promotion and respect of human rights. Those three indicators are also known as the three pillars (human security, human development and human rights) of the UN. His message has been the basis for further UN reform and mainstreaming of human rights into development practices. This set of understanding of human rights and development is crucial for understanding the approach based on human rights.

The recent theory about this new paradigm of human rights and development can also be found in Amartya Sen's⁶ work, "development as freedom." He defines development as "the expansion of capacity or content of human freedoms. The nature of the requirements and commitments is also based on human rights, deeply political and are constantly changing the substance, which now represents the social and legal reality that is never constant, but is a matter of political struggle" (Sen 1999, 87).

This thesis employs the term "a human rights based approach to development" (HRBAD) as "a conceptual framework for the process of human development, which is normatively based on international human rights standards and operationally directed to promoting and protecting human rights" (OHCHR 2006). Generally speaking, "its purpose is to analyze the inequality, which is at the heart of development issues, and the remedies to address discriminatory practices and unjust distributions of power that impede progress in development. It also defines the rights holders and their rights, and duty bearers and their obligations and responsibilities. What works towards strengthening the capacities of rights holders to request their rights and duties of carriers to meet their obligations" (ibid.). It has been acknowledged that "much of this task lies outside the legal arena, falling squarely in the political realm" (Uvin 2007).

The use of the baseline theory, HRBAD, on business and observing its outcomes will identify the duty bearers with their obligations and responsibilities. Further, HRBAD will identify the rights holders with their entitlements in relation to the human right to water. Using HRBAD

⁵Kofi Annan of Ghana is the seventh Secretary-General of the United Nations. The first Secretary-General to be elected from the ranks of United Nations staff, he began his first term on 1 January 1997.

⁶Amartya Sen is an Indian economist who was awarded the 1998 Nobel Prize in Economic Sciences for his contributions to welfare economics and social choice theory, and for his interest in the problems of society's poorest members.

will strengthen rights holders' capacities to demand access to water and increase business awareness for managing its human rights risks effectively towards realization of human right to water. For that reason, there might be a hope for greater global justice and, in general, for good global governance. Analysis of the current global trends through the lens of HRBAD provides insight into the distribution of power by identifying the actors that have rights and the actors whose rights are violated. HRBAD is likely the most convenient approach to protect those in need by empowering them as rights holders, changing power relations and limiting conflicts by challenging oppression and the phenomena of elite capture by holding duty bearers accountable and responsible.

In the case of water, the private sector has a long history of participation in the water sector and in this way it has three potential responsibilities concerning water: “as a user or consumer, as enabler of access to water, and as a provider or distributor of water” (IHRB 2009). However, in the developing countries private sector's participation in water is mostly understood in the context of donor development approaches and international policies. The UN Independent Expert for Clean, Drinking Water and Sanitation in 2010, Catarina de Albuquerque, argues that “international financial institutions, in particular, have promoted neoliberal reforms-advocating for states to reduce public spending and avoid significant investments-imposed through loan or aid conditionalities, debt reprogramming or loan forgiveness” (HRC 2010b). Some of these reforms lead to a greater involvement of the private sector and these have been linked to development assistance in the form of conditions, due to rescheduling the debt or loan forgiveness.

Generally speaking, water is essential for survival, health, food and energy production, and to a clean environment where people live. It is increasingly clear that a human right to water is special, also because of the status of the right to water in the international legal context and its relevance of addressing the right to water from both a business perspective and the human rights perspective. This paper attempts to advance the debate related to the right to water, its challenges, dilemmas and opportunities as well as to clarify the perspectives of water as a public good on the one hand, and on the other hand, as a rare commodity – blue gold – that is becoming increasingly rare and valuable.

Water's importance has been acknowledged in the UN Millennium Development Goals (MDGs) (2000). Its seventh goal, the concerning environmental sustainability includes the target of reducing the proportion of people without sustainable access to water by half by the year 2015. Further, water importance has been recognized by the private sector as well. A group of committed business leaders together with the former UN Secretary-General Kofi Annan launched the global initiative called CEO Water Mandate through which they promised

to undertake voluntary actions⁷ to manage water resources more judiciously. The CEO Water Mandate Preamble notes that a lack of access to water in many parts of the world causes great suffering in humanitarian, social, environmental and economic terms, and seriously undermines the development (CEO WM 2007). Moreover, according to the internationally recognized think tank, the Institute for Human Rights and Business (IHRB), implications of corporate water use and provision of water services were included as one of the biggest challenges of the coming year in its “Top 10 List of Business and Human Rights Issues for 2011”⁸

With water becoming increasingly scarce and thus more valuable as a life necessity, in July 2010 the UN General Assembly declared a human right to water as a human right equal to all other internationally recognized human rights. Traditionally, human rights have been tied to the relationship between the state and individuals. International human rights law imposes its obligations on the state and provides individuals with rights. While the state is directly responsible for the provision of water services, this becomes more complex with the private actor involvement. In the UN General Comment No. 15 (2002) on the human right to water presented by the UN Committee on Economic, Social and Cultural Rights, it is pointed out that the “state parties must prevent (third parties) from compromising equal, affordable, and physical access to sufficient, safe and acceptable water” (CESCR 2002, para. 24). As argued by the UN Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and other Business Enterprises (SRSG), John Ruggie, the root cause of the business and human rights predicament today lies in “the governance gaps created by globalization - between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences” (HRC 2008). Therefore, involving non-State actors requires a clearly defined scope of functions delegated to them, overseeing of their activities by setting regulatory standards and monitoring compliance (HRC 2008).

Some highly visible examples of private sector participation in the “water business” have triggered a lively debate among scholars and opinion leaders. On the one hand some argue that water is a public good and a unique resource essential for life and health, which must therefore remain in the public domain. Pointing to cases where participation of the private sector failed because of its poor performance, of its lack of transparency, the quality of services declined and the prices have grown significantly. In contrast, others argue that private actors can contribute to the necessary investment in the sector, and thus extend network

⁷Focusing on: Their direct operations; Supply chain and watershed management; Collective action; Public policy; Community engagement and; Transparency (CEO WM 2007).

⁸The global key issues that are set to drive the debate over the year 2011 (IHRB Top 10).

coverage and increase service quality and its effectiveness, thus contributing to the technologies and knowledge and offering services at lower prices (HRC 2010b).

It is already increasingly clear that “competition for water will intensify in the decades ahead” (UNDP 2006). The challenges of preserving water resources from overuse and pollution and of providing water accessibility for all can only be met if all stakeholders are engaged in global water governance and are held accountable. However, an important shift in global governance thinking would be to see the water crisis as a violation of the human right to water and this would represent a task for all major global players: to ensure access to water for all (IHRB 2011).

In this respect, population growth, the threat of climate change, increased urbanization, industrial developments and massive agricultural production can, at the current rate of water consumption, lead to another major global crisis, a water crisis. For instance, water for agriculture directly determines the availability of food, higher energy prices increase the cost of food production and the demand for agricultural production for biofuels further increases food prices. In this respect there is a nexus between water, food and energy. In the long term this means that when a business or a city starts looking at their future, for example, planning a new dam or the use of water resources for other purposes, they should be asking whether this is going to leave enough water for the others as well.

1.2 Research Question

In order to meaningfully clarify global governance led by neoliberal ideas framed in capitalistic thinking this thesis attempts to examine the relationship between human rights in the private sector. For the purpose of this paper, global governance is defined as an engine of globalization involving a multilevel, polycentric condition where many actors in different institutional settings contribute to policy development and implementation (Mayntz 1998). Therefore, global governance takes into account various governmental and nongovernmental actors that formulate and implement public policy (Rhodes 1997). In this context, major global players within global water governance are state and non-state actors, such as transnational companies (TNCs) and intergovernmental (economic) institutions.⁹

⁹For this paper purpose, the identification of major global players within global water governance is a bit simplified. It is acknowledged that more actors exist on global level like NGOs, mass media, social society, international forums such as G8, unions, opinion leaders etc.

Yet, given the increasingly powerful position of business in global governance it is argued that it carries a responsibility to respect and protect human rights. For the reason, business is expected to conduct its operations responsibly and with accountability to wider society. These expectations derived from responsibility and accountability have found their platform in ethical norms of the human rights that would bring into equation socially responsible behavior (Madeley 2008, 2). Furthermore, this thesis argues that business bears an additional responsibility for the realization of the human right to water. In this regard, supply and access to essential services such as water, has become an arena for struggles over distributive justice, a site for global social policy just as for an economic or industrial policy (Dubash 2005).

The general research question - how can a human rights based approach to development (HRBAD), also known as people centered or participatory approach, ensure better business compliance with human rights when it comes to the human right to water - underpins this paper. In other words, how access to water is related to global governance and its depression, and how can HRBAD be part of the solution to this puzzle.

In this respect, this thesis will demonstrate how business can comply with international human rights standards to respect human rights and to identify, prevent, mitigate and remediate human rights risks when it comes to the human right to water. Even though corporate responsibility for human rights may be in the embryonic stages, this paper attempts to argue that responsibilities to respect the human right to water exist. For the reason, transnational corporations (TNCs) become “one of the most important bodies in the global economy, occupying a more powerful position than ever before (...) and have a profound political, economic, social and cultural impact on countries, peoples and environments” (Madeley 2008).

Furthermore, it is believed that implementing the baseline theory, HRBAD, will ensure a better compliance of business with human rights standards, especially in the case of the human right to water. With this systematic approach the paper will develop a more comprehensive understanding of the relationship between business and human rights and its implications regarding the human right to water.

As suggested, this thesis will attempt to examine global water governance issues through the perspective of business responsibilities and obligations that derive from the human rights regime. The objective of this paper is to comprehensively demonstrate and analyze the existing scope of the relationship between human rights and business in the framework of global governance through the lens of the human right to water.

1.3 Methodology and Research Design

This thesis will use different methodological approaches to examine its research question. It includes a qualitative approach which analyze and interprets primary and secondary sources that will contain in-depth theoretical and analytical reviews of international documents, reports, scholarly debates, academic research work and relevant study cases. In order to clarify the methodology of the thesis, the thesis will draw upon independent analysis of main debates about its three main concepts: the baseline theory – the human rights based approach to development (HRBAD), the human right to water and the relationship between human rights and business within the framework of global governance. Furthermore, for a better understanding of the research topic – the relationship between human rights and business within the framework of global governance, a practical illustration of the human right to water will be used to demonstrate the phenomena. Hence, this thesis assesses business responsibilities and obligations from the human rights perspective, with the aim to demonstrate the need for integrating human rights concerns into the context of business activities and towards a realization of the human right to water.

However, the fundamental goal of this research is not simply to provide narrative reconstruction on business behavior in relation to human rights issues. It is also to raise awareness of the business situation and its relation with society and to analyze the preferences of the main components of business and human rights relationship and to assess their scope. I believe that the thesis finally shows that a socially responsible business is essential for human development. Therefore, the thesis offers propositions, implications for the improvements of global water governance through HRBAD perspective.

All sections of the thesis are set in the context of broader theories of human rights and development within the global governance framework. This thesis begins with chapter one, which introduces the issue, followed by five main chapters and it ends with a conclusion.

Chapter two presents and discusses the baseline theory, HRBAD. In this context, the research design on its theoretical approach will outline the human rights and development paradigm and its key features, and present HRBAD's added value.

In the third chapter the impact of globalization on human rights and the environment will be examined. The importance and the content of the human right to water will be discussed in view of water as a public good and economic commodity. The nature and the scope of the human right to water and its development will be demonstrated in order to obtain a better understanding for the subsequent chapters on human rights and business.

The following chapters four and five provide a crucial insight in respect to the analytical thread of the thesis. In order to limit the area of research, the analysis will provide practical examples and an insight into the requirements for the fulfillment of the human right to water.

Chapter four comprises an illustration and interpretation of the role played by business in global governance in relation to human rights. It examines the inclusion of business as an agent in development and global governance actors together with their issues and explores how business gained such significant power at the global level.

Chapter five looks into the legal nature and scope of business and human rights responsibilities and obligations by exploring the soft law landscape and with an analysis of the current global political pragmatism of business and human rights.

Final comments in chapter six continue with an examination of the correlations between HRBAD, human rights to water and business within the global governance framework. However, applying HRBAD to business must therefore entail asking human rights questions about decisions and processes, in this case, made in relation to the human right to water.

In the conclusion of the thesis, the findings on the normative and practical level respectively will be summarized. The thesis seeks to contribute to the further delineation of corporate human right responsibilities and obligations in the area of the human right to water. Therefore, the final section will give some proposals envisioning HRBAD to business within global water governance and will try to offer implications for the improvements of global water governance through HRBAD perspective. In this context, from human rights perspective HRBAD is believed to be an alternative that tries to minimize the negative impacts of globalization.

2 Human Rights-Based Approach to Development (HRBAD)

The United Nations (UN) as well as other primary development actors such as non-governmental and intergovernmental organizations has thus far proven insufficient in eliminating some of the biggest developmental deficits, such as extreme poverty, malnutrition and hunger. States have, until now, always been promoted as the primary duty-holders in the framework of development as well as of human rights. However, in an increasingly globalized world where global issues continue to arise and produce new challenges, the state-centric view is contested, especially because it has become increasingly obvious that states alone appear unable to solve the global issues of our time. The neoliberal agenda and the Washington Consensus,¹⁰ which has dominated the ideological mindset of the international organizations such as the World Bank (WB), the International Monetary Fund (IMF) and the World Trade Organization (WTO) during the past decades, have further served to shrink the power of the states in relation to the market. It is argued that one of the consequences of this neoliberal globalization has been a change in the dynamics of rights, resources and accountabilities; the boundaries between states, markets and civil society are becoming blurred and both the private sector and the NGO sector is increasingly seen to take over the services previously earmarked for states. At the same time, new accountability mechanisms to monitor social performance continue to be absent (Banerjee 2007, 155).

When talking about globalization and global governance, the existence and the issues of geopolitical forces of the Global North-South relationship cannot be ignored. For this reason this part of the thesis will analyze the existing relationship through the lens of human rights and development to understand global actors and their interests incorporated into the Global North-South discourse, where many actors in different institutional settings contribute to policy development and implementation. In this respect, the context of aid, donor development approaches and international policies (human rights and development) are mostly seen as global governance actors' interests and policies.

¹⁰The phrase “Washington Consensus” is today a very popular and often exposed term in debates about development. It is often seen as synonymous with “neoliberalism” and “globalization” that constituted the “standard” reform package promoted for crisis-wracked developing countries by Washington and Washington based institutions such as the International Monetary Fund (IMF), World Bank, and the US Treasury Department. It is a set of ten policies adopted in 1989 by the US government and the international financial institutions based in the US capital were believed necessary elements of “first stage policy reform” that all countries should adopt to increase economic growth. At its heart is an emphasis on the importance of macroeconomic stability and integration into the international economy - in other words a neo-liberal view of globalization. The framework included: Fiscal discipline, Public expenditure priorities, Tax reform, Financial liberalization, Exchange rates, Trade liberalization, Increasing foreign direct investment (FDI), Privatization, Deregulation, Secure intellectual property rights (IPR), Reduced role for the state (Global Trade Negotiations; WHO Trade).

2.1 The Development Paradigm

During the Cold War development was understood as a process leading to industrialization and economic growth, and a country was labeled as developed or underdeveloped exclusively by means of economic indicators such as gross national product (GNP) per capita (Nowak 2007). However, later on it was noted that “democratization should be a key to reconstructing the state, recognizing that growth alone would not suffice” (UNCTAD 2010a). A recent shift in development thinking about economic growth and poverty recognizes that economic growth alone does not necessarily lead to social development or better outcomes for the poor. Poverty is not a simple concept and in turn, growth-centered development has to address more complex and fundamental reasons for poverty, discrimination, exploitation and abuse.

This thesis argues that poverty can be analyzed in two dimensions. Firstly, in terms of material deprivation and need, and secondly, in terms of powerlessness, injustice and lack of human rights. In this respect, it is important to understand that when poverty is assessed from the perspective of powerlessness, injustice and lack of human rights, analysis focuses on the relationships between people who are poor on the one hand, and on people or circumstances which cause them to be so, on the other (ICHRP 2003).

Nevertheless, the majority of the world's population living in poverty comes from developing countries from the Global South. This thesis argues that the current situation reflects historic geopolitical interests of different international actors. Several commentators believe that politics in developing countries¹¹ are influenced by pre-colonial heritage and the colonial and post-colonial experience. This can be supported by the fact that “in 1921, 84 percent of the surface of the Earth had been colonized since the sixteen century. Though by mid-1960s most colonies were, at least formally, independent, the ghost of colonization still loomed over the post-colonial world” (Burnell and Randall 2008, 1-11). What has been left of colonialism is the legacy in developing states' institutions and its well-established trade and exchange patterns.

The global reach of democratization has extended not only because of pressures within developing countries or the collapse of the Soviet bloc and the end of the Cold War, but by deliberate interventions of Western governments and international (economic) organizations. These developments included political conditions for different forms of economic assistance and also for more direct international democracy promotion that have taken place through

¹¹For the purpose of this paper, the developing world is described as “predominantly post-colonial regions of Africa, Asia, Latin America and the Caribbean and the Middle East, perceived to be poor, less economically advanced and less “modern” than the developed world.” (Burnell and Randall 2008, 1-11.)

financial and other forms of support to democracy projects. Similarly, Manfred Nowak¹² argues that “international economic and development cooperation turned out to be primarily to the benefit of the corporations of the North and the political and economic elites in the South” (Nowak 2007).

It is noted that the “power language” can be found within these global trends promoted by the so-called Washington Consensus. In this way, the power language has influenced global economic policy and national economic management, especially in developing and newly established states as a result of the collapse of the Soviet Union and Yugoslavia. These new developments could be held in part responsible for universal movements towards neoliberalism. This direction suggests an ongoing shift from public ownership and direct control of economic life by the state towards acceptance and encouragement of the idea of for-profit enterprises and a growing role of non-state actors (Burnell and Randall 2008). In this way, “development was prominent as legitimizing image for the late colonialism” (Randal 2008, 16-31).

It is now generally recognized that development may be difficult to achieve without addressing power imbalances that prejudice particular groups of people and opening up space for public dialogue. It is further suggested that the processes and benefits of development all too often go to national and local elites-processes known as elite capture. But a human rights analysis can provide insight into the distribution of power also by identifying groups that lack effective rights and groups which may be denying rights to others. In this respect, human rights can highlight the root causes of poverty (OHCHR 2006).

In human rights based approaches, poverty is viewed not as a fact of individual circumstances and capacities, but is linked to structures of power and inequity embedded in the local, national and global context (Kirkemann and Martin 2007, 9), Moving toward human rights based approach to development (HRBAD) can be a way of capturing the interlinkages between competing social and economic policy issues (UNCTAD 2010a).

One key milestone in the struggles between the Global North and the Global South is marked by the debates around the right to development that emerged with the UN’s 1986 Declaration on the Right to Development (Davis 2009). The right to development attempted to establish the principle that the global poor should not be dependent on the simple goodwill of their own states or international donors for the fulfillment of their rights. Rather, the poor should have sufficient standing within the international human rights system to begin to hold their own states or donors as duty bearers to account for failing to discharge their duty (Sen 2000). This

¹²Manfred Nowak was one of the judges of the Human Rights Chamber for Bosnia and Herzegovina between 1996 and 2003. And from 2004 to 2010 Nowak was the UN Special Rapporteur on Torture.

package of reforms towards a fairer and more inclusive global order proposed by developing states within the UN was rejected by developed states because “pointing to inequalities between the North and the South (and it) stresses the collective obligation of all states to create a just and equitable international environment for the realization of the right to development” (Cornwall and Nyamu-Musembi 2004). Furthermore, the Global North rejected these ideas as one-sided, forced obligations and an invasion into what should be, according to them, a voluntary form of development assistance.

Nevertheless, the Declaration on the Right to Development was one of the earliest attempts to establish a clear relationship between development and human rights. Although the right to development has failed to take root in the global discourse, human rights have increasingly gained on their power language (Cornwall and Nyamu-Musembi 2004). It is also noted that “human rights became one of the most prominent arenas of fierce ideological and highly political battles firstly between the East and West and later between the North and South” (Nowak 2007).

The end of the Cold War was considered an excellent opportunity for the promotion of all human rights as equal and interdependent. Such a differentiated approach was proposed at the Second World Conference on Human Rights 1993 in Vienna. However, the euphoria of the early 1990s quickly faded away as the neoliberal course of economic globalization tended to disregard socio-economic human rights (Hamm 2011).

2.2 Human Rights and Development

This section attempts to identify the role of development and its inclusion into the concept of human rights and further, into the human rights based approach to development. It is suggested that development as a concept entered the human rights structure through the debate on the right to development. However, development has come to be redefined in terms that include human rights as a constitutive part. Reflections on this new paradigm are found in Amartya Sen’s¹³ work “Development as Freedom” in which he defines development as the

¹³Bharat Ratna Amartya Sen is an Indian economist who was awarded the 1998 Nobel Prize in Economic Sciences for his contributions to welfare economics and social choice theory, and for his interest in the problems of society’s poorest members. Sen is best known for his work on the causes of famine, which led to the development of practical solutions for preventing or limiting the effects of real or perceived shortages of food. In addition to his important work on the causes of famines, Sen’s work in the field of development economics has had considerable influence in the formulation of the Human Development Report, published by the UNDP. Sen’s revolutionary contribution to development economics and social indicators is the concept of capability approach within his work “Development as Freedom,” in 1999.

expansion of capabilities or substantive human freedoms, “the capacity to lead the kind of life he or she has reason to value” (Sen 1999, 87).

The so-called “capabilities approach” conceived by Amartya Sen, stresses the importance of respect for human rights for the positive socioeconomic outcomes – challenging the proposition that growth should take priority over civil and political rights, while highlighting the role of human rights in promoting economic security, and the limitations of development without human rights guarantees (Sen 1981, 1999). Sen’s capability approach to poverty provides a conceptual bridge between the discourses on poverty and human rights. He argues that a major contribution of a human rights approach to poverty reduction is the empowerment of poor people, expansion of their freedom of choice, and ability to structure their own lives. He states further that “human rights empower individuals and communities by granting them entitlements that give rise to legal obligations on others” (Nowak, Hunt and Osmani 2004).

It has been submitted that “the aim of human development is no longer defined only as economic growth or industrialization, but as the full realization of human rights” (Nowak 2007). In other words, human rights become part of development as a part of a shift from economic development to human development. We can also track this similar trend in the shift from the concept of national security to human security, which now includes protection of individuals against threats of hunger, thirst, disease, natural disasters and economic insecurity. For instance, “while human development aims at eradicating global poverty, human security aims are eradicating global violence. The integration of human rights into the security and development agenda illustrate the growing awareness of an inherent interdependence” (Nowak 2007).

Similarly, since 1997 the UN has taken major steps to integrate human rights into all aspects of development. Especially Kofi Annan, the former Secretary General of the UN, emphasized the links between peace and security, poverty reduction, sustainable human development, and the promotion and respect for human rights (UNFPA 2010). Therefore, the idea that security, development and human rights are interdependent developed into a comprehensive plan for the most far-reaching reforms in the history of the UN (Nowak 2007).

In this respect, international human rights provide a compelling normative framework for the formulation of national and international policies, including poverty reduction strategies for the reason that “anti-poverty policies are more likely to be effective, sustainable, inclusive, equitable and meaningful to those living in poverty if they are based upon international human rights” (CESCR 2001, para 13).

Clearly, the poor are particularly subject to exploitation and they are usually less well protected than others by the police, courts and other government institutions that are supposed to enforce their rights. Discrimination plays a key role in that the poor are more likely to be treated differently on account of their race, gender, religion, caste or social status, so this is quite rightfully a human rights issue. Failure to overcome poverty implies failure to implement human rights (ICHRP 2003).

It is indicated by some commentators that human rights and development both aim to promote well-being and freedom based on the inherent dignity and equality of all people. As a result, human rights and development share a preoccupation not only with outcomes necessary for improving people's lives, but also with improved processes. In this respect, human rights contribute to development by guaranteeing a protected space where the elite cannot monopolize the development processes, policies and programmes. According to the Office of High Commissioner for Human Rights (OHCHR), the human rights framework introduces the important idea that certain actors have duties to facilitate and foster development (OHCHR 2006).

In other words, the relationship between “development” and “rights” is complex. There is a growing consensus that development cooperation activities can promote human rights and that human rights can promote development. In this respect “in both bilateral donor agencies and many multilateral development and finance organizations, human rights have tended to be viewed as governance issues, concerned with ensuring that projects meet some minimum social, environmental and labor standards that are linked to international conventions and laws” (Gibb and others 2008). In addition, it is argued that “since the rationale for private sector development interventions is usually to promote growth, human rights advocates may feel challenged to set out a “business case” for rights based approaches, and to identify entry points in projects through which to promote human rights goals” (ibid.).

2.3 Theoretical Definitions of HRBAD

The International Covenant on Economic, Social and Cultural Rights (ICESCR) provides the clearest expression of the obligation to pursue human rights based development. It states that each state party “undertakes to take steps (...) to the maximum of its available resources, with a view to achieving progressively the full realization of the rights (...) including particularly the adoption of legislative measures” (ICESCR 1966, Article 2).

This thesis argues that “discussions of human rights mainstreaming have now been replaced by references to ‘human rights based’ or ‘rights-based’ approaches. This shift in the debate points to a systematic transformation in the way in which the goal of development is conceptualized, objectives set and monitored, strategies developed and the relationship with partners managed” (Piron 2004).

A front line advocate for a human rights based approach to development (HRBAD), Mary Robinson, a former UN High Commissioner for Human Rights, argues that the “defining attribute of human rights in development is the idea of accountability. (...) All partners in the development process – local, national, regional and international – must accept higher levels of accountability” (OHCHR 2001). She also noted that accountability and shared responsibilities are needed to ensure development. According to Robinson, countries at all levels of development should be accountable, because “accountability is a driver of positive societal change (...) and empowerment is vital for lasting progress and for raising living standards in the developing world” (UNCTAD 2010a).

Understanding human rights law and the human rights regime is essential to the implementation of HRBAD which is normatively based on international human rights standards and operationally directed to promoting and protecting human rights (UNFPA 2010).

2.3.1 What is HRBAD?

The UN Office of the High Commissioner for Human Rights (OHCHR) defines HRBAD as a “conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyze inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress. A human rights-based approach identifies rights holders and their entitlements and corresponding duty bearers and their obligations, and works towards strengthening the capacities of rights-holders to make their claims, and of duty-bearers to meet their obligations” (OHCHR 2006). This definition is one most widely recognized by other commentators, and for this reason it is used in this thesis. It is also important for its understanding and its guidance (Uvin 2007).

Similarly, the UN Statement of Common Understanding on HRBAD in 2003 states that “all programmes of development cooperation, policies and technical assistance should further the

realization of human rights as laid down in the Universal Declaration of Human Rights (UDHR) and other international human rights instruments. Human rights standards contained in, and principles derived from the UDHR and other international human rights instruments, guide all development cooperation and programming in all sectors and in all stages of the programming process. Development cooperation contributes to the development of the capacities of ‘duty-bearers’ to meet their obligations and/or of ‘rights-holders’ to claim their rights” (UN Statement of Common Understanding 2003).¹⁴ According to Laure-Hélène Piron¹⁵ the “UN Common Understanding” provides the best definition of this approach which characterizes the objective of development as the realization of human rights (Piron 2005b).

In this regard, HRBAD takes a holistic view of its environment, considering the family, the community, civil society, local and national authorities (Malone and Belshaw 2003). In this way, it considers the social, political and legal framework that determines the relationship between those institutions and the resulting claims, duties and accountabilities. Although HRBAD is normatively based, it is also equally important to see that HRBAD has more than just the legal component. Peter Uvin,¹⁶ for example, argues that “the nature of the claims and the duties created by human rights claims is a deeply political and constantly shifting matter; for what is socially and legally realistic today is never fixed, but a matter of political struggle” (Uvin 2007). In other words, “if HRBAD means empowering marginalized groups, challenging oppression and exclusion, and changing power relations, much of this task lies outside the legal arena, falling squarely in the political realm” (Uvin 2007).

Moreover, HRBAD seeks both to assist in the participatory formulation of the needed policy and legislative framework, and to ensure that participatory and democratic processes are institutionalized (locally, nationally and internationally). The approach helps to make the policy formulation process more transparent, and empowers people, and communities to hold those who have a duty to act accountable, ensuring effective remedies where rights are violated (Piron 2005b).

However, the approach is “not only about the outcome of work supporting human rights, it is also about the processes of work and how human rights principles are embodied in their operation — and also about how these processes will ultimately strengthen the overall rights-related outcomes” (OHCHR 2006). Some development agencies use a HRBAD framework to

¹⁴The UN Statement of Common Understanding 2003 is the result of the UN Inter-Agency Workshop (held in Stamford, Connecticut in May 2003) and is the response to the need for a definition of a HRBAD that could be shared by all UN agencies and could facilitate work at the UN country level. The statement is thus built upon those aspects that are common to the policy and practice of the different UN agencies.

¹⁵Researcher at the Overseas Development Institute in UK.

¹⁶Academic Dean and The Henry J. Leir Professor of International Humanitarian Studies, at the Fletcher School, Tufts University.

shape their analysis, design assessments and checklists to guide their programming. It is possible to identify ways in which human rights are deployed in HRBAD:

- as a set of normative principles to guide the way in which development is done;
- as a set of instruments with which to develop assessments, checklists and indicators against which interventions might be judged;
- as a component to be integrated into programming, and
- as the underlying justification for interventions aimed at strengthening institutions, whether to develop the advocacy skills of organizations representing marginalized people (Cornwall and Nyamu-Musembi 2004).

Overall, integrating human rights into development requires negotiation with governments, consensus-building, adapting to potentially difficult and unfriendly contexts and working within a culture. Cultural sensitivity is therefore extremely important for a successful implementation of HRBAD. Acquiring an understanding of community values and needs is the basis for an effective programme strategy (UNDP 2000).

HRBAD provides a highly flexible framework that can strengthen situation assessment and analysis, design, implementation, monitoring and evaluation in a vast array of situations and geographical settings, while giving equal importance to the processes and outcomes of development, as the quality of the process affects the achievement and sustainability of outcomes (UNDP 2001; OHCHR 2006; Uvin 2007; UNFPA 2010).

2.3.2 The Guiding Principles of HRBAD

HRBAD is grounded in the principles of universality and inalienability, indivisibility, interdependence, non-discrimination, participation, and accountability and therefore fosters cultural sensitivity and gender responsiveness. When addressed together, these core human rights principles ensure that programming processes create a favorable environment for the realization of human rights (UNFPA 2010). Moreover, HRBAD helps to bring about the essential requirements of a social transformation – change in the process, outcome and management of development, and it will also bring about a profound shift in values and subsequent behavior (UNDP 2001).

Human rights principles are the necessary conditions that enable actual exercise of rights through the development process. They

- define development objectives;

- guide the formulation of policies, laws, strategies, and other appropriate measures in the administrative, budgetary, judicial, educational, political, social, and other fields;
- direct the establishment of corresponding benchmarks and indicators; and
- are incorporated within whole development process (Darrow and Amparo 2005, 471-538).

Among the guiding principles of HRBAD to be observed in the process are: universality and inalienability, indivisibility, interdependence, non-discrimination, participation and accountability (OHCHR 2006).

Universality and Inalienability

Universality means that all people have human rights, even if resource constraints imply prioritization. It does not mean, however, that all problems of all people must be tackled at once. As noted by United Nations Development Group (UNDG), “all people everywhere in the world are entitled to rights.¹⁷ The human person in whom they inhere cannot voluntarily give them up. Nor can others take them away from him or her” (UNDG 2003). For that reason, it is argued that universality and inalienability can be realized when particular attention is paid to vulnerable groups, such as women, children, minorities, indigenous peoples, migrants, and the disabled, as they are often overlooked and ignored in development programmes.

Indivisibility

In applying this principle, the question to ask is whether some rights are regarded as more important than others, to the detriment of the enjoyment of others. For example, are civil and political rights respected and protected to the same degree as economic, social and cultural rights (UNFPA 2010)?

Interdependence

The best known example of interdependence can be found in Sen’s research work on famines. He found that none of the functioning democracies has ever had a major famine (ICHRP 2003; UNDG 2003; UNFPA 2010). Sen discovered this “remarkable empirical connection” to be true in economically rich countries but also in those that are relatively poor, such as post-independence India and Botswana. By contrast, major famines occurred in colonial territories (British India, and Ireland under English rule), one-party states (Ukraine in the 1930s, China during 1958-1961, Cambodia in the 1970s), and in current or recent military dictatorships

¹⁷As stated in Article 1 of the UDHR, “All human beings are born free and equal in dignity and rights”.

(Ethiopia, Somalia, Sudan, North Korea). In working democracies, citizens can respond politically to information about the risk of famine, while policy-makers are informed of those risks and made aware of the dangers of ignoring them (Sen 1999).

Non-discrimination

It is argued that “all individuals are equal as human beings and by virtue of the inherent dignity of each human person. All human beings are entitled to their human rights without discrimination of any kind, such as race, color, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaty bodies” (UDHR 1948). The twin principles of non-discrimination and equality are among the most fundamental elements of international human rights law (UNDG 2003).

Equality requires that all persons within a society enjoy equal access to the available goods and services that are necessary to fulfill basic human needs. It is argued that poverty not only arises from a lack of resources but it may also arise from a non-equal and discriminatory access to resources, information, opportunities, power and mobility. As the UN Committee on Economic, Social and Cultural Rights observes, “sometimes poverty arises when people have no access to existing resources because of who they are, what they believe or where they live. Discrimination may cause poverty, just as poverty may cause discrimination” (CESCR 2001, para. 11).

Participation

It is noticed that “every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realized” (UNDG 2003). This means that participation is not simply something desirable from the point of view of ownership and sustainability, but rather a right with profound consequences for the design and implementation of development activities. It is concerned also with access to decision-making and the exercise of power in general. The right to participation is a crucial and complex human right that is inextricably linked to fundamental democratic principles. The international human rights normative framework includes the right to take part in the conduct of public affairs.¹⁸ Although free and fair elections are a crucial component of the

¹⁸Ensuring that national stakeholders have genuine ownership over development processes in all stages of the programming cycle: assessment and analysis, design, implementation, monitoring and evaluation. Development strategies should empower citizens, especially the most marginalized, to articulate their expectations towards the State and other duty-bearers, and take charge of their own development (Piron 2005a).

right to participate, they are not enough to ensure that those living in poverty enjoy the right to participate in key decisions affecting their lives (Piron 2005a).

Accountability

It is argued that “states and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law” (UNDG 2003). This is the key to improved effectiveness and transparency of action. It provides for the most obvious value-added flowing from HRBAD as compared to traditional development programming. Accountability needs to be viewed in light of justice (UNDP 2001). For accountability to be effective, it needs to be demanded. Therefore, HRBAD also “requires an analysis of the capacities needed for rights-holders, especially the most disadvantaged, to claim their rights effectively. For that reason the access to information plays a central component of accountability” (Macrae 2002, 18).

2.3.3 Stakeholders: Rights-holders and Duty-bearers within HRBAD

HRBAD is explicit about its normative framework - international human rights. When poverty is assessed from the perspective of powerlessness and injustice the idea of duty-bearer becomes apparent, because “it separates the responsibility to act to end violations of rights from the responsibility for causing the violations in question. In many areas, it can clearly be said that no one has violated those rights, no one is directly to blame, but the duty to act remains” (ICHRP 2003).

With the term “stakeholder” this thesis refers to a broad understanding of actors that have interest in a programme and can include both duty-bearers and rights-holders (UNFPA 2010).

Who are rights-holders? Every individual is a rights-holder and entitled to the same rights without distinction based on race, color, sex, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status, such as sexual orientation and marital status. Rights-holders must have the capacity to:

- Exercise rights: “Individuals can act upon and use their rights. The information and services must be available, accessible (financially and physically), acceptable (in a

language that can be understood and tailored to their needs) and of good quality;” (UNFPA 2010)

- Formulate claims: “This means knowing what you are entitled to, knowing how to ask for it, and knowing who to ask for it;” (ibid.)
- Seek redress: “Having the capacity to seek redress means that there is a fair and transparent system in place that allows an individual to claim compensation for an unfulfilled obligation” (ibid.).

Who are duty-bearers? Primarily a duty-bearer is the state actors and institutions at various levels of government. HRBAD focuses on the capacity of the state at all levels to meet its duties to respect, protect and fulfill human rights. It also includes certain non-state actors who have responsibilities (implementations) in response to other actors exercising their rights. Human rights responsibilities can also apply to non-state actors, such as private individuals, international organizations and civil society organizations. Recently, more thought has been given to the responsibilities of private actors. Businesses, directly and indirectly, may have duties, including legal duties, in relation to human rights (ICHRP 2003).

For the purpose of this paper, there is a need to distinguish between two types of duty-bearers, legal and moral. As it is argued by Kirkeman and Martin, researches working at the Danish Institute for Human Rights on HRBAD, “all individuals and institutions that have the power to affect the lives of other people (rights-holders) are moral duty-bearers; this includes e.g. business, civil society organizations and local leaders. The legal duty-bearer is the state, which has the duty to regulate the actions of the moral duty-bearers” (Kirkeman and Martin 2007, 11-12).

2.4. Key Features of HRBAD

2.4.1 The Value Added of HRBAD

The value-added of HRBAD can be identified for both development and human rights. For development, this means reframing it as an entitlement, secured largely through a political and legal contract with the state and other key actors. For human rights, this entails increasing their reach beyond the legal domain and providing the tools to operationalise human rights in the economic sphere. However, redefining development work as being based on rights rather

than on generosity or charity is not a neutral act. Under this appearance, poverty is neither natural nor unavoidable, but becomes something done to people, for whom certain actors bear responsibility. Moreover, without accountability (remedies, redress) human rights mean nothing and constitutional human rights provisions provide a useful means through which citizens can seek to render their state accountable. Thus, accountability is also often terrain where human rights are seen as bringing value-added to HRBAD (UNDP 2001).

According to Hans-Otto Sano the advantages of HRBAD are in that it:

- strengthens the link between local and global actions¹⁹ through shared human rights standards and instruments;
- strengthens national strategies and social and political movements and advocacy with regard to discrimination and vulnerable groups;
- promotes clearer policies in relation to states with a stronger grip on accountability; and
- assumes that poor and marginalized achieve improvements,²⁰ which underline the role of human rights as globally shared values (Sano 2007).

It is recognized that the explicit value of HRBAD is also that addresses the impact of growing power inequalities. HRBAD offers new perspectives and solutions to traditional development projects. As a result, development can be seen as contributing to the transformation of state-society relations, enhancing government accountability to the poor and empowering all citizens to claim their rights and participate in decision making, thus strengthening the social contract. Politics and power relations are put at the center of programming analysis and interventions (Piron 2005b).

In this respect, it is now widely recognized that broad-based development is not possible without empowerment of the people and HRBAD is essentially about such empowerment. It is claimed that “the notion that individuals have rights, which they can claim, and that there are some actors who are obliged to meet those claims, is an immensely empowering one” (Osmani 2006, 261).

¹⁹Investing in human rights law machinery, supporting and building capacity, advocacy, the inward look-where employees need to begin reporting, etc (Uvin 2007).

²⁰Improvements for poor and marginalized people, even though this is maybe the essential point upon which an evaluation of HRBAD is based, is also an area of still insufficient documentation – and the studies carried out seem to have a greater focus on empowerment than on socio-economic factors. This is related to the fact that that latter is a resource-demanding exercise, and here, many NGO’s usually have insufficient capacity (Sano 2007).

2.4.2 HRBAD and Power Structures

This thesis argues that human rights and development become inseparable aspects of the same process, and both become conceptually and operationally inseparable parts of social change. A rights based strategy must extend beyond a legal approach and also work on many non-legal, social and political paths for ensuring enforcement of rights claims. HRBAD is not just about asserting the existence of legal claims, but also about political struggles in which human rights are tools that crystallize the moral imagination and provide power in the political struggle (Uvin 2007). In addition, it can also serve as an opportunity to reflect more broadly on the power dynamics inherent in the practice of international development and on the questions of ethics. Whereas rights-talk can function differently from different mouths, it depends on who they are addressing, who is speaking about rights and where they are speaking (Slim 2002).

It seems fair to suggest that international (development) actors use the language of HRBAD largely to invoke the discursive power of the concept of rights, without intending to bear the weight of the entirety of consequences that flow from it. The rights talk is “above all talk of politics, of power and of social justice. It is the talk that inspires and impassions, animates and mobilizes, restores to people a sense of their agency and their rightful claim to dignity and voice” (Cornwall and Nyamu-Musembi 2005).

Nevertheless, it is believed that “knowledge, how we understand and describe the world, is contingent on our time and place and the relations of power that shape our lives” (Chambers and Pettit 2004). For Foucault, power and knowledge are inseparable. His discussion of historical amnesia – what is forgotten by those with the power to construct knowledge is particularly relevant within this discourse of development and human rights (Foucault 1980). Critics of development argue that we collectively suffer from this amnesia. Their critique addresses the problem of politics of knowledge reflected in development research and resulting analytical approaches funded by, and shaped by, development and donor actors. Similarly, “their priorities therefore structure the creation of knowledge and lead to a predetermined conclusion” (Chambers and Pettit 2004). Consequently, development and donor harmonization with shared priorities and interests may result in “group thinking” in an international development system.

It is almost impossible to conceive how things could be done differently within development framework, because the power of development and donor actors lies in defining what is the problem and the solution for developing countries and that is perceived to be quasi-

hegemonic. For that reason, it is a challenge to see and to do development differently as individual thought can be submerged and that leads to “group think” where individuals remain closed minded, experience pressure towards uniformity, overestimate group power and consequently endorse self-censorship (Hughes, Wheeler and Eyben 2005, 61-72). Therefore, it is observed that power is also linked to roles and relationships as well as to sources.

It is argued that when we refer to power relations and power structures we cannot avoid the power of elites. It can be described in terms of a phenomenon identified as elite capture,²¹ which “may be understood as the process by which elites skim development resources intended for legitimate development ends and define policies in a way that protects their own interests” (Darrow and Amparo 2005, 471-538). As observed above, HRBAD imposes limitations in power, economic inequalities and affects the elite capture (Darrow and Amparo 2005, 471-538). Closely correlated with the elite capture phenomenon is the challenge of tackling violent conflicts, because “where development is uneven the result can be increased political tensions and risks of instability” (UNCTAD 2000). It is argued that while not all conflicts lead to violence (and indeed some conflicts lead to positive changes), conflicts do generally produce social change. HRBAD, by focusing on changing relationships between the powerful and the less powerful, engages directly with potential conflict and can make valuable contributions to increasing global and human security (UK Interagency Group 2007). Further, a normatively rigorous model of HRBAD might make a difference in “rectifying asymmetries of power, tackling the phenomenon known as elite capture, and transforming violent conflict” (Darrow and Amparo 2005, 471-538). However, HRBAD “would mean little, if it has no potential to achieve a positive transformation of power relations among the various development actors” (Cornwall and Nyamu-Musembi 2004, 9-18). What is clear is that HRBAD is challenging. It reveals difficult issues concerning the legitimacy of action, the practice of power and lines of accountability.

Exploring power and power relations is a critical challenge facing those trying to support rights in practice. Many of the power structures that development actors face, such as international economic actors, are very difficult to change. Power is both an obstacle to HRBAD and a tool that can be used to support struggles for claiming and realizing rights. Power²² relationships, their dynamics and structures mediate the realization of rights. These

²¹ Elite capture defines the process by which the economically better-off appropriate for themselves resources that are intended for poverty eradication, or establish biased policies (e.g. in education, housing, etc.) that protect their own interests (UNDP 2001).

²²These can be better understood with a conceptualization of power that categorizes into three different dimensions:

- visible power, which operates in observable ways in “open” public arenas;
- hidden power, which upholds existing power dynamics, such as who is included or excluded from decision making;
- invisible or intangible power, which affects personal experiences of power, such as socially embedded norms and the internalization of a sense of powerlessness (VeneKlasen and Miller 2002).

relationships determine who is included and who is excluded in claiming and realizing their rights and in determining their own development (Uvin 2007).

However, HRBAD builds on developmental perspectives on conflict and social change, but it is explicit about human rights' conflictual character in order to bring latent or structural power conflicts to the surface, and applies a framework of values, institutions, and laws governing legitimate entitlements and obligations in an effort to navigate and transform them (Darrow and Amparo 2005, 471-538).

2.5 Closing the Chapter

This thesis argues that HRBAD adopts a particular view of what constitutes development. HRBAD not only offers a broad notion of development, but it also lays out a number of guiding principles that must lead the policies and institutions to be designed for promoting development (Osmani 2006).

According to several commentators, HRBAD is based on universal values and it moves development from the optional realm of charity into the mandatory realm of law by establishing duties and obligations. This means that it emphasizes the importance of establishing accountability mechanisms at all levels for duty-bearers to meet their obligations. This does not apply only on the normative level but goes beyond regarding people as passive beneficiaries of state policies to seeing them as active participants in their own development and recognizes them as rights-holders, thereby placing them at the center of the development process. In this way, it focuses on analyzing inequalities, discriminatory practices and unjust power relations, which are the root causes of the human rights violations and development challenges. Furthermore, it recognizes that in accordance with the principle of non-discrimination, people living in poverty should have the right to a greater share of resources. Consequently, it emphasizes participation at every stage of the programming process and it counts on the accountability of the state and its institutions. All in all, it is quite clear that it imposes limitations in power and economic inequalities and that it affects elite capture. The distribution of assets and capabilities does not occur by accident, but is instead the product of conscious policy choices and political and social struggle. However, accountability deficits at both national and international levels continue to prevent the aggregate gains of economic development from being translated into well-being for the poorest sectors of society (UNDP 2001; Darrow and Amparo 2005, 471-538; OHCHR 2006; Uvin 2007; UNFPA 2010).

Human rights are now invoked by actors as diverse as the World Bank (WB), transnational corporations (TNCs), and social movements, because they carry a moral status and have practical uses, and for some, because they hold out a certain political promise (Gready 2008). It is noticed that “a human rights perspective calls for enhanced attention to the phase of assessment and analysis, providing among others full understanding of the legal framework of a country and the factors that create and perpetuate discrimination and social exclusion and hinder people from realizing their potential” (UNDP 2001). A human rights-perspective, therefore, helps to fully understand how laws, social norms, traditional practices and institutional actions positively or negatively affect people (UNDP 2001).

Further, it is acknowledged that “a unique feature of human rights is, very importantly, the focus on remedies and redress mechanisms” (Piron 2005b). However, there are few documented mechanisms²³ whereby communities and individuals affected by development interventions can bring a direct complaint, seek a change in the project or policy, and obtain redress or compensation. The value of HRBAD lies particularly in the transformative potential of human rights to alleviate injustice, inequality and poverty. Moreover, HRBAD not only helps to bring about the essential requirements of a social transformation process, outcome and management of development, but it will also bring about a profound shift in values and subsequent behavior (UNDP 2001).

Nevertheless, general critiques of HRBAD reveal the gaps within the concept and also recognize that HRBAD is not a concept without limitations. As mentioned in previous chapters “rights talk” is “like other fashions, the label (HRBAD) has become the latest designer item to be seen to be wearing, and has been used to dress up the same old (economic) development” (Uvin 2004, 47). In this context, some argue that “both the rights regime and development assistance are extensions of the international political economy of late colonialism” (Davis 2009, 173–192). Moreover, Otto Sano, a researcher at the Danish Institute for Human Rights, claims that development and rights organizations can contribute to incapacitating rural districts and by doing so, they are weakening their development by placing the burden of accountability for problems and solutions on the rural communities rather than on the political elite (Sano 2007).

Unfortunately, because HRBAD is still a relatively new way of understanding international development, confusion and lack of clarity can still surround its meaning. This has made it difficult to gather solid evidence to fully demonstrate its effectiveness. However, some more theoretical human rights principles, such as “universality,” ‘indivisibility’ or

²³Mechanism such as UN Treaty monitoring bodies, National human rights institutions (NHRIs), OECD national contact points (NCPs) or the World Bank Inspection Panel.

'interdependence' are much harder to measure, than more practical principles such as "non-discrimination," "accountability," or "participation" (UK Interagency Group 2007). Therefore, this thesis will operate, use and try to implement more practical HRBAD principles.

3 The Human Right to Water

In this thesis, access to water is discussed not only as a moral duty but also as a political and legal claim. Therefore, the thesis argues that water, a limited natural resource, is a common good fundamental for life and health. As observed in the UN General Comment No. 15 on the right to water, adopted by the UN Committee for Economic, Social and Cultural rights in 2002, “the human right to water is indispensable for leading a life in human dignity” (CESCR 2002). Furthermore, it stresses that “it is a prerequisite for the realization of other human rights,” (CESCR 2002) such as “the right to health. Indeed, more than 80% of all diseases in the Global South are spread by consuming unsafe water. The declining quality of water has caused increasing rates of malaria, cholera and typhoid that occur more frequently in many places where they had been all but wiped out” (Barlow and Clark 2002).

Water means political and economic power in many societies and inequalities in power can induce deep inequalities in supply and access to water. Additionally, water is also a source of human interdependence²⁴ and a successful cooperation in the management of shared waters can reduce the potential for conflict, generating prosperity and more secure livelihoods (UNDP 2006; Pacific Institute 2009).²⁵

The question of who has access to water resources lies at the core of the issue of the water crisis and the human right to water. However, access to water varies both within and among nations. For example, while as many as 77 percent of city dwellers in Congo have access to safe drinking water, only 17 percent of rural inhabitants have the same commodity. The situation is reversed in the Lao People’s Democratic Republic where most rural Laotians, but only 60 percent of residents in the capital city have access to drinking water (TWAS 2002). Moreover, water is not used only for domestic purposes; its main users are agriculture and the industry. Consequently, water is not used only to grow food but to make all kinds of products, from microchips to steel girders. The largest industrial purpose to which it is put is cooling in thermal power generation, but it is also used in drilling for and extracting oil and for

²⁴How an upstream communities use a river inevitably affects the quantity, timing and quality of water available to users downstream. The same interdependence applies to aquifers and lakes. Considering the fact that about 40 percent of the world's population relies on shared river systems by two or more countries (Barlow and Clark 2001; UNDP 2006).

²⁵Trans-boundary water governance failures as examples of human-caused ecological disasters and shrinkage: The Aral Sea, Lake Chad, Occupied Palestinian Territories that face acute water scarcity. Further, the biggest water basins shared between countries are the Amazon, the Nile, The Mekong and these areas can produce outcomes that generate inequity, environmental unsustainability and wider social and economic losses (UNDP 2006; Pacific Institute 2009).

production of hydroelectricity. Some of the processes involved are big consumers of water, such as the techniques used to extract oil from tar sands (The Economist 2010).

It is acknowledged that water accessibility is the main component of the human right to water that “applies in all circumstances” (CESCR 2002). It consists of physical, economic and information accessibility that must be based on non-discrimination principles (CESCR 2002). As recognized by UNDP, “not having access to water is a polite euphemism for a form of deprivation that threatens life, destroys opportunity and undermines human dignity” (UNDP 2006). What is more, “denying people water is to deny them the right to life” (UNDP 2006). The term access to water implies “the ability to benefit from things” (Ribot and Peluso 2003). Gaining access is about power relations and not only law-based rights and ownership. Moreover, some commentators argue that a number of mechanisms other than legal rights are at play in shaping access, such as access to technology, capital and social networks (Ribot and Peluso 2003).

It is clear that water resources are valuable to the state, to the elite and to the poor, and it is naive to assume easy collaboration around its management. In fact, even with perfect accountability and representation mechanisms, exploitation of natural resources may take place, especially if it is profitable. However, this thesis argues that higher prices of water under free-market conditions will not lead to its conservation. Given the tremendous (global) economic inequalities, there is a great possibility that the economically powerful will waste water while the poor will pay the price (Shiva 2002; Ribot and Peluso 2003).

It has already been established that rights do not necessarily equal water access, and political processes have often been described as complex and “messy.” This has raised a concern about global water governance and a need for a global policy to pay attention not only to who should receive and who should provide water, but also how decisions are to be taken, by whom and with what degree of participation and accountability (Koch 2008).

3.1 Economic Globalization, the Environment and Water

Economic globalization is artificial, human-made and driven not only by technological developments or inexorable market forces but also by human choices. Generally speaking worldwide prosperity has increased. However, ecological costs and their impacts on society

are often not included in the final price or economic calculations, but are rather externalized. The deregulating global policy has an adverse effect on the environment where it might result in a reduction of environmental standards.²⁶ This means that environmental degradation, depletion of natural resources, lack of access and environmental insecurity come from corporate externalities. Claiming environmental sustainability is therefore to promote human rights and human right to water (Barry and Woods 2009; HRC 2010b).

Moreover, population growth,²⁷ urbanization, industrial development, climate change and agriculture needs²⁸ are driving up the demand for water. Instead of “federal bureaucracy, now the “invisible hand“ of the market, which is led not only by supply and demand but also by profit interests, is to ensure a comprehensive supply and careful handling of natural resources,” such as water (Spiller 2003). Further, the United Nations Development Program (UNDP) argues that “unpredictability of access to water, global competition, environmental stress and weak global governance are powerful drivers of water insecurity for a large proportion of the global population” (UNDP 2006).

There is a growing recognition in the last decade that the world faces a new crisis – a water crisis. Grass-root environmental activists, such as Vandana Shiva and Maude Barlow, international organizations such as the United Nations (UN) and the World Bank (WB), as well as think tank organizations such as the Pacific Institute and Institute for Human Rights and Business all share the same observation that the world is facing a water crisis. The symptoms are evident: rivers are drying up, groundwater tables are falling, water-based ecosystems are being rapidly degraded. Countries are using far more water than before and consequently producing a large, water-based ecological debt that will be transferred to future generations.²⁹ In other words, already “over 1 billion people lack access to clean water, which is the primary cause of water contamination and diseases linked to water” (WHO 2000, 1; UNDP 2006; World Bank 2004).³⁰ In addition, “the world population has more than tripled

²⁶Cutting public spending means cutting environmental protection budgets; in agriculture pursuing a competitive advantage in the global market has often meant abandoning subsistence crops in favor of cash crops, reducing or eliminating crop rotation, increasing pesticide use and increasing pressure in irrigation sources. Dependence on cash crops leaves countries vulnerable to low “value added” products on the world market as has already happened with coffee, fruit, rubber etc (Barry and Woods 2009).

²⁷A report from the UN Economic and Social Council says that by 2025 the citizens of low-income countries experiencing water stress will amount to 47 percent of the total world population. Furthermore, the great majority of the megalopolis in which more than 50 percent of the population has no access to clean water are located in the developing world and the highest rate of growth within these cities is in slums (Barlow and Clark 2002).

²⁸Most of the world’s freshwater is used for agriculture, varying, on average, from 30 percent in developed countries to 80 percent in developing countries (UNDP 2006).

²⁹The term environmental sustainability projects the concern over the future generations. It can be said they have rights and that is important in environmental ethics and politics, but if the future generations have rights, the present generation in turn would have corresponding duties. There is no currently identifiable subject that can be the future generation right holder, therefore there is no subject whose rights can be said to have been violated (Barry and Woods 2009).

³⁰While basic needs vary, the minimum threshold is about 20 liters a day. Most of the 1.1 billion people categorized as lacking access to clean water use about 5 liters a day—one-tenth of the average daily amount used in rich countries to flush toilets. On average, people in Europe use more than 200 liters—in the United States more than 400 liters. When households are not connected to water, they have limited options: collect water from untreated sources or a public source, or they purchase water from a range of intermediaries, including

during the last century, while water uses have multiplied six fold” (World Bank 2004). Similarly, some forecast that “by 2050 at least one in four people is likely to live in a country affected by chronic or recurring shortages of fresh water” (UNESCO 2003). As population and incomes grow, so does the amount of water used for food, drinking and personal hygiene. Income growth, in fact, has a greater impact on water demand than population growth (IPCC 2008, 45). For example, meat consumption, which increases with income, boosts per capita water consumption considerably (ITT – Fluid Technology, 66). Bottled water³¹ often comes from the same source as tap water; in rich countries, it may have come from exotic sources like Fiji or Lapland, packed in a bottle meant to become waste, consume energy on its travels and thus making it one of the least green and least defensible rip-offs on the market (Madaley 2008, 89).

Embarking on these issues, the environment has taken an important and rising status on national political agendas. This shift in interest results from a combination of pressures from non-governmental organizations (NGOs), academia, international think tanks, international institutions, donors, and civil society movements. It has developed alongside growth in scientific understanding of environmental problems and emerging levels of public concern. Thus, the economic importance of natural resources is an essential component to a country's economic development as it determines a country's position on a particular environmental policy. In this respect some developing countries view environmental policy as an opportunity to secure additional aid and new forms of technology transfer, but others feel threatened by agendas which appear to constrain their prospects for growth and development (Newell 2009). For example, developing projects of well-digging in Sub-Saharan Africa were believed to be the best mechanism for developing rural regions. However, “the traditional rural practice of moving herds to different locations was eroded with the introduction of energized wells. The new wells supplied more water than the pastorals needed and encouraged their settlement in one location, increasing grazing pressure on the land” (Shiva 2002). Hence, the additional aid and technology transfer can appear constraining on traditional practices and can mean a threat to development as well as to the environment.

In terms of the relationship between the environment and development policies, developing countries attach greater priority to rural issues, desertification and soil erosion, and local environmental issues such as water pollution and air quality in cities, while developed

standpipe operators, water vendors and tanker truck operators. The poor are paying more not just because of the disadvantaged connectivity to water supply, but also because they are unable to afford the connection fee. Location is another barrier. On top of that, in many cities utilities refuse to connect households lacking formal property titles, thereby excluding some of the poorest households mostly located in urban slums (UNDP 2006).

³¹Nestle is one of the largest bottled water company (Madaley 2008)

countries are more concerned with problems such as climate change, ozone depletion and conservation issues (Newell 2009). Further, according to a Pacific Institute report in 2009, “industrial countries have already tackled their hydro-climatic vulnerability, and have come far in expanding economic development and improving the quality of life for their populations. Emerging economies, on the other hand, remain hampered by water-related challenges such as flooding, drought, and severe water pollution (...) and suffer large-scale poverty, disease, and uncurbed population growth,” (Pacific Institute 2009) and experience “underdeveloped knowledge base” (Barry and Woods 2009). However, there are many common challenges in the Global North and the Global South when it comes to the environmental policy, such as weakness in enforcement capacity and economic vulnerability, which means trade and aid leverage can also be used to change policy (Newell 2009).

The Global North often prefers to transfer technologies to the Global South rather than take measures to address the source of environmental degradation in their own countries. Moreover, an ecological footprint analysis suggests that richer communities displace their environmental costs onto poorer ones. Consequently, environmental casualty simply disappears from the sight of wealthy consumers, where the “out of sight, out of mind” view is an example of problem displacement and not problem solution (Dryzek and Hunter 1987). It is for this reason that many environmentalists view the North-South relations in terms of ecological depth. Especially in view of the huge challenge of achieving the Millennium Development Goals (MDGs) on poverty, hunger and environment simultaneously. These goals seem to be in direct conflict with each other, particularly when reflecting on the role of water management. This is because, “a reduction in poverty and hunger requires water for agriculture, while environmental sustainability requires sufficient water for ecosystems to prosper” (Atapattu and Molden 2006, 294). Similarly, the promoted high-yield miracle seeds all over the Global South and the so-called Green revolution were praised for preventing hunger of millions of people. This cultivation model displaced drought-resistant local crop varieties and replaced them with water-guzzling crops. In this way, water intensive Green Revolution led to water mining also in water scarce areas (Shiva 2002; Barry and Woods 2009).

However, it is quite clear that in any process of competition for scarce resources including water, rival claims are mediated through economic and political institutions and through systems of rights and entitlements. Because of the importance of water, the dispute over its supply and access has become even more complicated with the increasing role of the private

sector (Barlow and Clarke 2002). The role of the so-called “public-private partnerships”³² is therefore no more than a powerful label which implies public participation, democracy and accountability. In practice, these arrangements entail public funds being available for the privatization of public goods to replace water services as public services (Shiva 2002).

The UN Independent Expert on Water and Sanitation argues that the starting point of the expansion of neoliberal ideas within the water business has been “understood in the context of donor approaches and international policies” (HRC 2010b). Similarly, the environmental activist, Vandana Shiva, argues that international economic institutions played a major role in the creation of water crises and pollution and are now transforming this scarcity into a market opportunity for transnational corporations (TNCs). She believes that for TNCs, “sustainable development is the conversion of an ecological crisis into a market of scarce resources” (Shiva 2002). The World Bank sees the phenomenon of economic globalization and water business through a different perspective. It believes that “water should not be viewed only as a social good and a human need, but also as a common commodity, the economic value of which must be recognized” (World Bank 2004).

In this context, the globalized economy has shifted the definition of water from a public good to private good and it calls for the removal of all limits on and regulation of the environment and for establishing markets with private goods. The dominant thinking of our time made it possible to put everything up for sale. The result is a phenomenon where water trading for profit is carried out by TNCs like Veolia Environment, Suez, Bouygues-SAUR, RWE-Thames Water, Bechtel-United Utilities and Enron-Azurix. Accordingly, water has been “commodified and commercialized and what was once understood as the commons has become the last frontier in the expansion of global capitalism” (Barlow and Clarke 2002).

Consequently, this thesis argues that the roots of the water crisis can be traced to unequal power relationships and inequality in the global governance system. All in all, “water crisis is manufactured through political processes and institutions that disadvantage the poor. The pattern in many countries is that the poor get less and pay more” (UNDP 2006). For instance, public water, subsidized by governments, is delivered to the wealthy and the people in the middle class can install a small water tank for truck or dig a well. But the poor can buy water by the can from a private water delivery service which may charge as much as one hundred times the rate of publicly delivered water. Because the poor lack access to publicly subsidized

³²Public private partnership (PPP) can bring real efficiency gains, introduce the latest technology, raise capital, train staff, creating wider career opportunities for them and treat consumers as paying customers. On the negative side, the prices will rise, quality will fall, jobs will be lost, the poor will not be served and excessive profits will be made from a monopoly, which will go unchecked because of corruption. However, these negative results have also been known to happen where the public sector has been the service provider (Kok 2005, 259-287).

water utilities they often end up paying more. Therefore, they must obtain water from illegal sources or private vendor. In this respect, the elites and wealthy tourists have special water access (Barlow and Clark 2002).

Some argue that water is a public good and a unique resource essential for life and health and should therefore remain in the public domain. They point to instances where private sector involvement is perceived to have failed either because of poor performance or because agreed coverage targets have not been met, because while the quality of services has decreased, prices have increased and processes have not been transparent. In contrast, the supporters of private sector participation argue that business can contribute to the necessary investments in the water sector, and thus extend coverage to currently unserved or underserved areas, as well as increase service quality and efficiency, contribute to technologies transfer and provide services at lower prices (HRC 2010).

3.2 The Normative Framework of the Human Right to Water

In the human rights regime it is crucial to hold states accountable for their actions so that victims of violations have the possibility to claim their rights and are compensated before a court or other institution when their rights have been violated. Therefore, the UN General Assembly formally acknowledged water as a human right in 2010, which provided the foundation for the recognition of the human right to water and demonstrated it as legally binding and equal to other human rights.

The international recognition of water importance and its related human right have developed during years by the increasing international acknowledgment of its special value. Its importance and special value have accelerated in the last decades. Its importance and special value was institutionalized and verified by international community, at various international conferences, in adopted resolutions, statements, actions plans, declarations, etc. The international importance of water and its recognition evolved in the 70s and has continued ever since. However, certain policy issues have been actively kept off the international agendas of the below mentioned international environment summits. The issues such as debt, terms of trade or regulation of TNCs, which some developing countries have sought to advance (Newell 2009).

Nevertheless, the starting point for the international debate on the human right to water began in 1977 at the UN Water Conference,³³ in Mar del Plata in Argentina. Where it was declared for the first time, in its Resolution II on Community Water Supply, that “all peoples, whatever their stage of development, social and economic conditions, have the right to have access to drinking water.” Further, “all people have the right to have access to water in quantity and of quality equal to their basic needs” (UN Water Conference). In this respect, the Resolution II presents a milestone in discussions about human right to water, particularly considering the time at which it was issued.

In 1992 the International Conference on Water and the Environment,³⁴ which was held in Dublin, Ireland, produced the Dublin Statement adopted by the UN proclaiming that “water has an economic value in all its competing uses and should be recognized as an economic good” (Dublin Statement on Water). It also acknowledged “the basic right of all human beings to have access to clean water at the affordable price” (Dublin Statement on Water).

The next important international event related to water was the UN Conference on Environment and Development in Rio de Janeiro, Brazil 1992 which produced Rio Declaration on Environment and Development and Agenda 21. It represents a comprehensive attempt to manage the global economy so as to reduce environmental degradation. A direct provision to transnational corporations (TNCs) concerning the prohibition to discrimination can be found in the Rio Declaration adopted in its Article 12.³⁵ Agenda 21 is acknowledged as a comprehensive and systematic global policy for delivering sustainable development, crucially linking environmental sustainability and human rights (Barry and Woods 2009). Its adoption meant a global plan of action to realize sustainable development, and declared Resolution II presented at the Mar del Plata Water Conference “the commonly agreed premise” (Agenda 21).

Later, the UN Declaration on the right to development issued in 1999 reaffirmed that “the right to food and clean water are fundamental human rights” (UN 2000). A year later, in 2000, the UN Millennium Declaration was signed at the Millennium Summit in New York presented

³³The main concerns at the UN Water Conference were: serious health consequences due to lack of safe and sanitary water supply; and the need to give priority to the needs of the poor, the less privileged and to water-scarce areas (UN Water Conference).

³⁴The conference established four guiding principles for water policy: fresh water is a finite and vulnerable resource, essential to sustain life, development and the environment; water development and management should be based on a participatory approach, involving users, planners and policy-makers at all levels; women play a central part in the provision, management and safeguarding of water; water has an economic value in all its competing uses and should be recognized as an economic good (International Conference on Water and the Environment).

³⁵Principle 12: States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus (Rio Declaration on Environment).

the eight Millennium Development Goals (MDGs),³⁶ which included one goal referring specifically to water. That goal's target has been reducing by half the proportion of people without sustainable access to safe drinking water by 2015. That target is part of the seventh goal of MDGs for ensuring environmental sustainability. It is worth pointing out that water is also an element of the first goal, to eradicate extreme poverty and hunger, because most of the poor live in dry areas and because water is essential for growing food and in turn eradicating hunger. Moreover, water is quite relevant in terms of the fourth and fifth MDGs because both point to water-related diseases posing a major problem for maternity and children health (UN MDGs).

In this context, the UN Committee for Economic, Social and Cultural Rights adopted UN General Comment No. 15 to the right to water in 2002.³⁷ The UN General Comment No. 15 on the right to water stressed a number of key factors such as sufficiency, accessibility, safety, acceptability and affordability. It also declared the normative content of the human right to water as containing both freedoms and entitlements.³⁸ Further, it addressed special topics of broad application such as non-discrimination and equality of groups³⁹ that are generally facing difficulties with access to water. Additionally, it clarified the obligations of the states (to respect, protect and fulfill) and gave recommendations for the implementation of the human right to water.

According to the Institute for Human Rights and Business, “one cornerstone of the debate regarding the right to access to water is the premise that domestic use should get priority over all other uses” (IHRB 2009). Equally important, there should be “an adequate safety net for those who cannot access the service, and that all beneficiaries, particularly the vulnerable ones, are consulted in a free and fair manner, respecting and securing their right to participate.” Further, “accountability mechanisms are important and victims should be able to seek effective redress and adequate remedies” (IHRB 2009). In this respect, the realization of the right to water requires management capacities, technological skills, established legal framework and financial resources as well as infrastructure (FIAN 2006).

In some countries supplying (drinkable) water is an obligation or direct principle in constitutions (South Africa, Gambia, Uganda and Zambia), while numerous constitutions

³⁶The Millennium Summit brought together many of the goals and targets adopted at previous conferences and identified key development priorities for the 21st Century (Meeting the Millennium Development Goals).

³⁷The General Comment provides guidelines for states on the interpretation of the right to water under two articles of the International Covenant on Economic, Social and Cultural Rights (UN General Comments No. 15).

³⁸The freedoms “include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies.” By contrast, “the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water” (CESCR 2002).

³⁹Role of the women and children, rural and deprived urban areas, indigenous peoples’ access, nomadic and traveler communities, refugees, asylum-seekers, internally displaced persons and returnees, prisoners and detainees (CESCR 2002).

protect the related rights to health and environmental health. Where human right to water is explicitly mentioned, in most cases the right is restricted to access to water for drinking and other domestic purposes (Kok 2005, 259-287). South Africa⁴⁰ is the only state that recognizes the human right to water at the constitutional and policy level through its Free Basic Water policy. Its Water Service Act of 1997 provides for a basic level of water for those who cannot pay. People are entitled to 25 free liters of water per day for personal and domestic use. However, there is nevertheless uneven access to water. Problems of capacity of local authorities to deliver on the commitment and financial constraints have led to undersupply and people being cut-off. The government is under huge pressure to introduce user-fees and cost recovery in line with a market-based approach to water provision (Newell 2009).

Nevertheless, the most impressive legislative acts on environmental issues has India, but lack of the resources, training and corruption of its officials often conspire to delay implementation. For instance, its Supreme Court has played a decisive role in moving environmental policy forward, setting strict and sometimes unrealistic targets. In this regard, it is noticed that these developments can also be one of the outcomes of a strong Indian tradition of active civil society participation in the environment policy. In this context, Indian movements for environmental justice often oppose the location of hazardous and highly polluting industries and that frustrate the development ambitions of policy elites. Such an active participation can be witnessed in Indian state Kerala that has passed a law allowing residents to seek compensation from soft drink TNC Coca-Cola for alleged environmental damage from a former bottling plant. Environmental activists together with local residents said that the Coca-Cola plant contaminated ground water, caused severe water shortages and leeched dangerous chemicals before it was shut down in 2004 (Newell 2009; 11Alive).

3.3 Water and Business

The expanding role of the private sector in water management and increasing recognition of the rights of the poor present a major challenge in the access to water for all. The increasingly transnational dimension of water services delivery and associated policy debates mean that the politics of necessity are embedded in the Global North-South tensions typical of a range of issues in contemporary global political economy. Thus, this thesis argues that the issue of

⁴⁰ Everyone has a right to access to... (b)sufficient food and water... 27 (2) the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights (South African Constitution).

access to water or to say human right to water exemplifies the regulatory dimensions of a debate over whether it is possible to integrate social policy effectively into global governance. It is noticed, however, that there are no formal international institutions responsible for the regulation of water services at the global level (Bronwen 2008).

However, to understand what means the expanding role of business in global water sector, and how much power it possesses and why access for all presents the major challenge, the thesis presents and analysis the following example of a water transnational corporation (TNC) Veolia Environment (formerly known as Vivendi). Veolia Environment is one of the biggest water corporations with its headquarters in France and with many subsidiaries it provides services in four areas: water management, waste management and recycling, energy management and transportation of people and goods. Its impact and power are profound as it operates in 77 countries around the world and employees around 317,034 people worldwide (Veolia Environment CSR 2010). And the largest contributor to its annual revenues presents “water business” with 34% in 2007 (Veolia Annual Report 2007, 9). In this way, it is the second biggest supplier of water and waste water services in the world.

Veolia Environment has been in prime position to take advantages of the neoliberal ideas that advocated and then practiced outsourcing from the public to private sector. In other words, it has promoted water privatization. This idea includes promotion of expanded trade liberalization, favorable regulatory environments, the introduction of competition, the opening up of public services to the private sector, and institutional financing. Further, Veolia categorizes water as a commodity and for that reason, it is fighting to win the right to supply and consequently to sell water. Therefore, Veolia follows the economic approach of full-cost recovery philosophy – companies will only supply water to those they believe can afford to pay them back. Consequently, the poorest and marginalized groups are usually excluded from this business equation, as they cannot afford the costs, as discussed in previous chapters (Power Base Veolia).

Indeed, even TNC like Veolia recognizes that water can be a risky business in the Global South. For instance, Veolia acknowledged this belief by expressing that company is not interested in concessions in southern Africa unless the World Bank or any other economic institution finances its investment costs. Justifying that by a statement that, “otherwise, there is no payback for the company because people are too poor to pay the high water rates private company’s charge to cover its capital costs” (Vivendi's Empire Building 2003).

Nevertheless, to garner knowledge and influence on global scale, Veolia Environment has employed ex-political functionaries or elected officials and through these key individuals it is a member of powerful and influential lobby networks that bridge Veolia’s business and its

needs with the policy and political processes. For that reason, many members of its board have a history in politics, because knowing the architecture of government and policy making is part of company's governance strategy. For example, Veolia Water UK employed a Member of Parliament and ex-UK Environmental Secretary, John S. Gummer,⁴¹ who founded Veolia Water UK (Veolia Water UK Ltd.) in 1993 and has been its chairman since 2003. John S. Gummer is placing Veolia Environment in a strong position to exploit opportunities from policy initiatives as Veolia's UK board member and as ex-political official. Moreover, to bridge Veolia's business with European policy, Veolia even set up a European Affairs Department in 2010 to coordinate the representation of its interests to French and EU authorities. Thus, it is centrally involved in cooperation between the European Commission and water companies in Europe, to form a promotion and development of Europe as a market leader in private water provision across the globe. In this context, it is noticed that its main policy contributions within EU policy making were on sewage sludge management, development of EU climate and energy policy, concessions initiatives and state aid (Power Base Veolia).⁴² These have given Veolia the know how to influence policy affecting their business.

Moreover, in its CSR reports Veolia acknowledges some of the global partnerships they have. For instance, partnerships with various United Nations (UN) agencies such as the UN Global Compact, United Nations Educational, Scientific and Cultural organization (UNESCO), United Nations Development Program (UNDP) and the World Food Programme. Moreover, Veolia also belongs to and fund various lobby groups, think tanks and trade associations, and sponsor conferences that bring together various participants interested in water issues. Further, it is a member of the global authority, a think tank, on water policy the World Water Council (WWC) and a member of the private water lobbyist group Aquafed. In sum, all these indicate that indicates how Veolia is attempting to place itself "as a serious minded socially and environmentally sustainable practitioner of solutions to some of the problems facing the world today" (Power Base Veolia). However, its increasing transnational dimensions of water services and its expanding role and power in global water management seriously challenge the access to water for all.

The services industry is big business and it is increasingly dominated by TNCs and there is no more important service than a water supply. Water TNCs want to privatize publicly owned

⁴¹ He was a Cabinet Minister, under Margaret Thatcher, and has been serving for next sixteen years of top-level ministerial positions, his experience included Minister for Agriculture, Fisheries and Food, Minister for London, Employment Minister and UK Environmental Secretary (Veolia Board). In 1996, he was also elected chairman of the Environmental Committee of the OECD (Investing Businessweek).

⁴² Veolia's main policy contributions: Revision of directive 86/278/EEC on sewage sludge management; Development of the EU's climate policy; Development of the EU's energy policy ("Towards a New Energy Strategy for Europe 2011-2020"); EU Initiative on Concessions; State aid; etc.

water systems, promote bottled water, and sell water in bulk by transporting it from water-rich areas to thirsty markets. Further, to ensure profits, TNCs are lobbying to weaken water quality standards and are pushing for trade agreements that hand over water through international economic organizations to TNCs (Madeley 2008, 83-84). A global water crisis is becoming evident, but political influence and aid money are being used to promote policies that could do the very opposite of what aid money is supposed to do – lift people out of poverty, not reinforce it.

Such market-based approach to water could be witnessed also in Uruguay in 2002 when its government signs a letter of intent with the International Monetary Fund (IMF) aiming to extend the privatization of drinkable water services with the arrival of the French TNC Suez and the Spanish TNC Aguas de Bilbao. However, water privatization excluded many people from access because they could not afford the connection fee and the water quality dramatically decreased, according to the national quality control agency, when compared with previous public management. In response to unbearable situation the civil society movement, the National Commission in Defense of Water and Life,⁴³ was created to oppose the privatization and commercialization of water services. The civil society active participation achieved remarkable victory through a national referendum in 2004 when the people of Uruguay voted to outlaw water privatization by direct democracy, and declared water a constitutional right by the two-thirds majority.⁴⁴ In this respect, water as a constitutional right ensured not only that access to piped water is a fundamental human right available to all, but also that in the creation of water policies social considerations take priority over economic considerations. In other words, it created the basis for managing water exclusively as public good in a participatory and sustainable manner (Madeley 2008, 88; Blue Planet Project).

In this context, it is argued by John Ruggie, professor at the John F. Kennedy School of Government - Harvard University, that “the state-based system of global governance has struggled for more than a generation to adjust to the expanding reach and growing influence of TNCs, the most visible embodiment of globalization” (Ruggie 2007). In the human rights regime it is clear that the states have a duty to protect human rights. However, the role of business in human rights regime is a bit more complex. It is agreed upon that business does not have the legal obligation of the states to protect human rights, but under the policy framework put forward in 2008 by the UN Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and other Business Enterprises

⁴³ It included neighborhood associations, trade union of the public water company and international NGO – Friends of the Earth (Madeley 2008, 89).

⁴⁴ More than 64% of the population supported the Constitutional Reform to defend the right to water (Madeley 2008, 88).

(SRSG), the baseline for all business is that it has the responsibility to respect human rights. For that reason, business has to respect the human right to water as well.

In this context, respecting human rights means not to infringe on the rights of others, meaning mainly to “do no harm.” The term was used already in the Universal Declaration on Human Rights (UDHR) (UDHR 1948; ICHRP 2002; HRC 2008). In other words, respecting human rights would include “refraining from engaging in any practice or activity that denies or limits equal access to adequate water; arbitrarily interfering with customary or traditional arrangements for water allocation; unlawfully diminishing or polluting water and limiting access to, or destroying, water services and infrastructure as a punitive measure, for example, during armed conflicts⁴⁵ in violation of international humanitarian law” (IHRB 2009).

Therefore, the UN Independent Expert on the issue of Human Rights Obligations related to Access to Safe Drinking Water and Sanitation, Catarina de Albuquerque, wrote that private actors participation means a stronger focus on the obligation of the state to protect. This implies that the state has a duty to regulate and monitor providers that they involve in service delivery. Business is expected to engage with the state to ensure that business does not contribute to human rights abuses and should offer flexible payment schemes adapted to the needs of the poor, such as phased connection charges, payment in installments and grace periods. In sum, a transparent and comprehensive regulatory framework helps to ensure accountability (HRC 2010b). Similarly, as it is argued by the Institute for Human Rights and Business that involving private sector participation in the water sector would require clearly defining the scope of functions delegated to business, overseeing its activities through setting regulatory standards and monitoring compliance, and “agreements concerning trade liberalization should not curtail or inhibit a country’s capacity to ensure the full realization of the right to water” (IHRB 2009).

Despite of the mentioned international growing support and recognitions of human right to water, there is still a long way to go to translate the human right to water into access to water for all. Besides promoting recognition of the human right to water, we need to demonstrate that it is possible to implement the right to water in actual governmental laws and policies.

A major concern has been raised about the challenge of achieving universal access to water and how the state can provide it, as well as whose responsibility it is to ensure access to water, particularly in areas where the state is unwilling or unable to play its role. It is clear that the states must not limit their regulatory and policy space and must safeguard the ability to protect human rights. It is also argued that international economic institutions, including “the

⁴⁵ Extractive industries are infamous for dubious environmental and human rights records and known to fuel, finance, and perpetuate a number of armed conflicts.

International Monetary Fund, the World Bank, and regional development banks should take steps to ensure that the right to water is taken into account in their lending policies, credit agreements and other international measures” (IHRB 2009). The current crisis in global governance seems connected to the fact that international law presumes that states are in control of governing the world’s resources, when actually it is more often private actors who are in control (Feyter 2001, 288).

4 Business in Globalized World

Globalization is a process of related and connected actors that affects our everyday lives by events and decisions over which we have little influence. Economic globalization is defined by many commentators as an integration of national economies into a larger economic system defined by the increased role of international trade, worldwide flow of capital, goods, services and labor, and the rise of transnational corporations (TNCs). Integration of national economies was made possible with economic liberalization and its elements of deregulation, privatization and rolling back the role of the state (UNCTAD 2010b; Richards and Gelleny 2009).

It is feared that globalization will actually cause a regression of rights by inducing governments to lower the level of labor and environmental standards. The source of this fear lies in the force of competition unleashed by globalization. Since higher standards are likely to require higher production costs, countries wishing to compete in the global market might let their standards fall to the level of competitors with lower standards in order to keep their costs and prices competitive. Countries might be tempted to lower their labor and environmental standards in order to attract foreign investors who might otherwise go to “investments friendlier” business environments. Both these compulsions, the force of global competition and attracting foreign investors, might thus lead to a race to the bottom (Osmani 2006). The world is undergoing seismic economic changes, from the international financial crisis to the shifting balance of power between developed and developing countries (Al Jazeera English Empire 2011).

The process of globalization is relatively unproblematic when linking developed nations with broadly homogeneous views of human rights standards, but it becomes more controversial when integrating developed and developing countries with different human rights records. Globalization is therefore a two-sided process, full of opportunities and inequalities, with rules written by those in power. As noted by Dr. Michael Sakbani,⁴⁶ “the recent trade-investment system raises the issues of the marginalization of countries, firms, and agents, if they are not capable to compete with large successful entities” (UNCTAD 2005). At the same time it is believed that “countries that embrace globalization will raise their economic wealth,

⁴⁶A former UNCTAD Director of Economic Cooperation, Poverty Alleviation and Special Programmes and Adjunct Professor of Finance and Economics in Thunderbird Europe and Webster University in Geneva. He continues to work as consultant to the United Nations, the European Union and Swiss private banks.

while countries that fail to join will find themselves languishing in underdevelopment” (Richards and Gelleny 2009, 182-200).

According to the report of the UN Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (SRSG), governance gaps created by globalization provide the permissive global environment for wrongful acts by TNCs (HRC 2008). The increasingly large and powerful private sector threatens the role of the state as the primary duty bearer of human rights by subverting regulatory systems through political pressure or the co-opting of regulators. Globalization allows TNCs to collect economic rewards at the expense of human rights. This thesis therefore argues that the global economic approach has not taken into consideration potential human rights implications (Isa 2005).

Globalization is seen as the final stage of the inevitable march of capitalism with the implementations of neoliberal economic policy reforms and increased world trade flows. Developments in information and communication technology and an increased codification of liberalized trade are the main drivers to make globalization work (Richards and Gelleny 2009; UNCTAD 2010). Further, international economic institutions⁴⁷ “in particular have promoted neoliberal reforms advocating for states to reduce public spending and avoid significant investments imposed through loan or aid conditionalities, debt reprogramming or loan forgiveness” (HRC 2010b). These economic institutions are perceived as a conglomerate for the corporations to voice their interests.

Generally speaking, the Global North is in a better starting position due to its colonial heritage. These are the countries that have passed “through an industrial revolution, through a period of progressive and incremental improvements in standards of living and a period of gradual, if imperfect, diffusion of wealth through the ranks of society” (ICHRP 2000). The North is also where the idea of human rights was born and has been advanced, codified and observed.

On the other hand, in the Global South, for various reasons, nations have experienced fewer of these transformations. The reduction in the role of the state has been particularly severe as

⁴⁷The Bretton Woods institutions established after second WW with the aim of financing the reconstruction of countries devastated by the war and stabilizing global economy. The character and remit changed in 80s with the adoption of neoliberal ideological outlook known as the Washington consensus, which also came to dominate the WTO. The implementation of the structural adjustment programs mean to stimulate economic growth, stabilize the national economy and reduce government debt, which entailed cuts in public spending-health, education, social welfare budgets, and the deregulation of agriculture and industry to facilitate integration of a particular country into the world economy and attract foreign investment. The policy was oriented towards encouragement to welcome foreign direct investment and to invest in export oriented industries. A principal critique of the Washington Consensus and global economic institutions, such as the International Monetary Fund (IMF), the World Bank (WB), and the World Trade Organization (WTO), is that they shape monetary and fiscal policies by imposing policy conditionalities and also by empowering private actors in global markets (Barry and Woods, 2009).

a result of structural adjustment programs imposed by powerful global actors. Privatization has therefore become an integral component of the globalization process and its programs have spread around the globe within the last two decades (UNCTAD 2010b).

Recognizing the global economic pressures as debt burdens and the conditions attached to structural adjustment programs often creates incentives for economic activities that are highly destructive for the environment. Export-led growth patterns that often require intensive use of land with heavy application of chemical fertilizers, and the creation of Export Processing Zones whose aim is to attract foreign capital to areas where labor is cheap and environmental standards are low, drive economies to exploit their water resources unsustainably. In this way, the challenge is to harness this concern towards long-term sustainable change aimed at tackling the causes of environmental degradation rather than merely addressing some of the consequences (Newell 2009).

Today, with the world becoming increasingly interdependent, and global communications systems making us more aware of international events, the idea of global citizenship and the acceptance of global responsibilities towards one another, is emerging. We are dealing with an ideological and self-interested structure born out of the ideology of the market. Therefore, our task is to look for alternatives from a human rights perspective to try to minimize its negative impacts (ICHRP 2003; Isa 2005). In this respect, human rights can provide an ethical lens, which has been missing within the dominant economic thinking, and can present an opportunity to reshape and improve economic policy.

Moreover, recent global crises (economic, energy, food and climate) have highlighted the need to move away from the conventional dominating thinking based on an unfaltering belief in unleashing global markets. Not only has liberalization of the markets failed to deliver on its promises, it has also worsened the magnitude of the crises (UNCTAD 2010b). However, one of the outcomes of these crises is the renewed interest in deepening the understanding of correlations and interdependence of the business and human rights paradigm.

When talking about business and human rights it is important to note that approximately half of the world's largest 100 economies are transnational companies (TNCs) and their total number has risen from 7,000 to about 54,000 with around 450,000 foreign subsidiaries in the last thirty years (the number is almost eight times bigger) (Buchamn 2007). In sum, global production and marketing are concentrated in the hands of a few. As a consequence, TNCs are one of the most powerful actors in the international arena with an enormous impact on human rights through employment practices, their environmental policies, their support for regimes or advocacy for policy change (UNDP 2000). Even though TNCs are not democratic

institutions and are described by some as “profit-seeking conglomerates,” they are expected to do no harm and to respect human rights as they are “part of the society” (UDHR 1948).

Moreover, the global market is considered highly monopolistic. In consumer goods, for instance, the top five companies control 70% of the entire global market. Further, in the airline, automobile, electronic, pharmaceutical and steel industries the top five companies control more than 50% of the global market. In the oil, computer and media sectors the top five companies control more than 40% of sales (Korten 1995, 225).

TNCs have benefited from the development of international law and have lobbied to ensure that it protects their rights and interests. They have access to international commercial dispute and compensation mechanisms. For example, under a treaty created through the World Bank, foreign corporate or individual investors, as well as states, are able to submit disputes to binding arbitration by the Washington based International Center for the Settlement of Investment Disputes (ICSID). Consequently, it is argued that if international law can protect the rights and interests of TNCs, it is reasonable to examine how it might also place duties on them to respect human rights. It is recognized that business practices have environmental implications. For example, mining, logging, oil drilling, chemical production and waste disposal projects all have the potential to disrupt or harm ecosystems and the natural environment. By damaging the environment, such activities also compromise the rights of people living there. Contamination of a community’s water resources as a result of uncontrolled deforestation, or pollution of indigenous lands as a result of industrial processes, is only two manifestations of such problems.

This means that business and human rights are in a continuous struggle. In this regard, “the human rights framework has focused on constructing the public domain, while neoliberal economic thinking, for decades, dominated by an emphasis on the market as the most efficient distributive mechanism, has enhanced the private” (ICHRP 2010). The logic of a market-based approach implies that goods and services are bought and sold. The economic point of view is not concerned with whether the initial distribution of resources is fair or just, but whether their allocation through a market mechanisms is optimal. In contrast, the human rights perspective is concerned with the initial distribution of resources and with ensuring a basic level of participation in the market. It is concerned with ensuring that individuals can be fully functioning citizens and this may mean that they are exempt from the economic logic or are given some form of subsidy to participate in the market (Graham 2005).

In the last two decades we have witnessed quite a few global developments in the field of business and human rights. The purpose of these developments has been to guide and clarify

responsibilities and obligations for businesses and the states as well as their accountability in terms of complicity in human rights violations. Because of the importance of business and human rights, different initiatives also emerged within international organizations; from Organization for Economic Co-operation and Development (OECD) Guidelines for multinational enterprises, International Labor Organization (ILO) Tripartite Declaration, the United Nations (UN) Global Compact, to the appointment of SRSG. These initiatives can be described as milestones in the discourse on globalization and human rights. They emerged because of the pressures⁴⁸ on TNCs because of the threat of legal suits, greater mobilization of human rights, NGOs, new communication tools and similar (De Schutter 2006).

As suggested above, economic globalization characterizes the current state and system we are living in. It is a system of winners and losers, the powerful or the marginalized who did not or could not adapt to the present situation, and where powerful players such as TNCs and the international economic institutions such as the Bretton Woods Institutions and the World Trade Organization (WTO) define rules and undergoing development. Similarly, a statement from the UN Millennium Summit in 2000 clearly shows that globalization is not currently headed in the direction of being “absolutely inclusive and equitable.” Very much the contrary, it generates exclusion and extreme inequalities, which brings about very serious consequences for the protection of human rights (Isa 2005).

TNCs and international economic institutions, which in principle work on the basis of profit and shareholder interest, are believed by some to bring prosperity to (developing) nations. However, the recent economic downturn illustrates that market liberalization does not always bring prosperity. Some commentators believe that the human rights framework, which can provide an ethical lens, could help to make the system more accountable, and increased transparency can bridge governance gaps “between the scope and impact of economic forces and actors and the capacity of societies to manage their adverse consequences” (HRC 2008). For the purpose of this thesis it is believed that the human rights framework can provide common and universal standards to judge TNCs practices across boundaries. Moreover, human rights standards can be seen as a benchmark against which to assess the effectiveness of national regulations, and using the language of human rights can strengthen advocacy

⁴⁸Pressures from different NGOs and civil society movements, national human rights institutions, reconstituted opinion leaders, various researchers from think tanks and academia circles, mass media reports, etc.

efforts to put a stop to objectionable practices. This advocacy power is especially important for vulnerable or marginalized groups in view of their empowerment.

4.1 Understanding the Inclusion of Business as an Agent in Development

This paper argues that business bears a certain role in development and this section will analyze the role of business and how it has become one of the major players in development. It outlines the understanding of the developing world in the global context and the global governance failures that occurred with the introduction of major global actors, such as the states, relevant international organizations and transnational corporations (TNCs) within the global governance paradigm. This will help put the findings into perspective and give further insight with respect of the role of the states, international organizations and business in the development and human rights framework.

Several commentators argue that international actors such as the United Nations (UN), the World Bank (WB) and the International Monetary Fund (IMF) have so far not managed to fulfill one of their primary tasks, namely that of alleviating the world from one of its major deficits – underdevelopment. This is reflected in the fact that extreme poverty and widespread inequalities still prevail in many countries, especially those in the Global South. Further, an incentive for the involvement of the private sector in development strategies is particularly applicable in the context of the developing states, because their governments are often unable to meet their obligations towards economic and social rights for reasons such as economic inability, conflicts, omission or commission.

Despite of the wealth of new business opportunities and economic globalization, 2.8 billion people still live on less than US \$ 2 a day. The wealthiest 1% of the world's population has as much income each year as the poorest 57% (UNDP 1991). However, it would be careless to presume that more economic growth will automatically translate into less poverty or less social problems. We have experienced fast social and environmental disintegration, which can easily be due to the increase of poverty, armed conflicts, unemployment, discriminatory practices and environmental catastrophes. These issues could be caused by an inequitable

distribution of wealth-related issues and the exploitation of the ecosystem beyond its sustainability.

During European colonialism the major pattern of trade was for the colonies to export raw material to now so-called developed countries, while the metropolitan cores exported manufactured goods. These structures of trade have persisted into the post-colonial period. With the end of the Cold War the emergence of a global economy as a capitalist system became a reality. Yet the benefits of greater engagement in the global economy were not realized in the poorest countries. For the past twenty years, the free market philosophy dominated the development policy. But although many developing countries followed neoliberal prescriptions, they still face protectionist measures imposed by governments in the developed world. For the purpose of this paper it is crucial to understand the reasons for such developments in global politics (Burnell and Randal 2008).

During the Cold War the superpowers intervened in the developing world in a variety of different ways, motivated by different interests such as security, trade, or ideology. Further, by reflecting the neoliberal agenda⁴⁹ and pursuing structural adjustment⁵⁰ policies, the Bretton Woods institutions had the purpose of promoting sustainable macroeconomic policies in the countries affected by the debt crisis mostly in the developing world. The margin of the debt crisis⁵¹ in the 1980s became the primary agent of international finance capital by establishing requirements of harsh structural adjustments to ensure debt repayment. The WB and IMF with unprecedented power to prescribe and to implement economic and monetarist policies for developing states did not simply give economic advice. They affected a wide range of national policies. By doing so, they have taken over what should be democratic decision making by elected politicians in affected countries and not a matter of conditions imposed on the state. Furthermore, from the 1990s the so-called transition countries started emerging following the breakdown of the Soviet Union, the fall of the Berlin wall and the collapse of Yugoslavia. These transitional countries also became new territories for the march of the neoliberalism doctrine (Eide 2010).

The reasons for the disparity of wealth in the global economy will be disputed indefinitely. To be clear, economic growth in rich countries historically originated not from unrestrained international free trade, but from consciously framed industrialization policies that had

⁴⁹Privatization of public enterprises, deregulation of the economy, liberalization of trade and industry, massive tax cuts, monetarist measures to keep inflation in check, strict control of labor, reduction of public expenditure, downsizing the government, expansion of international markets and removal of controls on global financial flows (Eide 2010).

⁵⁰Privatization was encouraged or made a requirement for credit; reduced protection of domestic industries was requested. "Flexibility" of the labor market consisting of reduction or elimination of protection for labor rights under the heading of "labor discipline" was part of the packages. A termination of food subsidies was requested.

⁵¹It started in Mexico and then it spread to the other developing countries. The established economic order became even more unequal than before due to impact of the debt crisis and its handling by the international financial institutions (Eide 2010).

progressively shaped particular economic structures (de Schutter 2005). Yet, given the powerful nature that business increasingly possesses in today's global economy, it also makes it more difficult for individual governments to regulate business and hold it accountable. To make things even more complex, many TNCs have outgrown the ability of the states to regulate them effectively. In this respect, TNCs' home state may have little interest in scrutinizing the activities of the company overseas and its host state has sometimes inadequate legislation or is simply unwilling to do so (ICHRP 2002).

In conclusion, global markets have a potential to generate enormous wealth as well as the capability to exploit the most vulnerable. In so doing, only a big shift in the international economic architecture could produce a fairer, more inclusive and democratic world order (Hobden 2008). While we devote our energies to scrutinizing the activities of business in developing countries, we often forget about structural dimensions of their presence in those states, such as the pressure under which the developing states are to attract financial direct investment (FDI) and the concessions they make to ensure the flow of foreign capital or the consequences of FDI on local producers and investors or on the relative wages (de Schutter 2005). In business persistent battle to increase profits, "TNCs have increasingly turned to the developing world, which holds many attractions to them" - from low wages and low operations costs to geographical reasons like land for agriculture, land rich with minerals and other natural resources and land for tourists to explore (Madeley 2008).

4.2 Global Governance Actors and their "Grab for Water"

The objective of this sub-chapter is to demonstrate and analyze the existing scope and nature of political processes and institutions that are part of global water governance through the perspective of the human right to water. In general, to examine what globalization has done to the power of the state, international economic institutions and transnational companies (TNCs). For the reason, the aim of this thesis is to analyze the rising global inequalities and to address structural problems of power relations of global governance actors during their mission to "grab for water."

It is noted that globalization "is a process of expanding power by dominant actors in global economy, bringing vastly increased fortunes to some, causing growing inequalities to others. (...) The economic pattern of globalization has become deeply conflictual" (Eide 2010).

Similarly, Bård A. Andreassen,⁵² argues that “the global community is moving from a monocentric world clustered around states, to a polycentric world with different actors, from states and international organizations to non-state actors. This shift affects the way human rights and freedoms of individuals and groups are implemented” (Bård 2010).

For the purpose of this thesis it is argued that global governance as an engine of globalization involves a multilevel, polycentric condition where many actors in different institutional settings contribute to policy development and implementation (Mayntz 1998). Global governance takes into account various governmental and nongovernmental actors that formulate and implement public policy (Rhodes 1997). In this way, global governance encompasses coordination and steering processes involving formal as well as informal institutions (Scharpf 1997). Major global players within global water governance are the states and non-state actors, such as TNCs and international organizations. It will be demonstrated that the global governance crisis reflects a lack of the qualities⁵³ of good governance and therefore also non-realization of human rights, in this case the human right to water.

Access to water is distributed unevenly both regionally and socially. While most of the countries in the Global North have an adequate water supply, it is mainly the countries in the Global South who suffer from scarcity of water. Moreover, wealthy people who live in countries with scarce amounts of water have such an over-abundance of water they literally can “swim” in it, while the poor segments of society can hardly fill their needs (Spiller 2003). International cooperation and solidarity should be directed towards realization of the human right to water. As members of international economic organizations, the states have to make sure that organizations such as IMF, WB, WTO and other economic institutions, respect and fully take into account the right to water in their policies (FIAN 2006). In addition, their member states “have to take into account their state obligations under international law when engaging with international economic institutions (...) and should take steps to ensure that the right to water is taken into account in their lending policies, credit agreements and other international measures” (ICESR 2002). Further, states as members should insist that these institutions conduct human rights due diligence and ensure that their clients conduct it as well. Investment should be undertaken in cooperation with actors working to deliver long-term sustainable change based on the principles of empowering people, developing local capacity and requiring collective action. Any external interference in public policy discussions should

⁵²Bård A. Andreassen is a researcher at the Norwegian Center for Human Rights.

⁵³It will be argued that good global governance relates to a regulatory system that shows qualities of accountability, transparency, legitimacy, public participation, justice, an absence of corruption and incorporation of rule of law, which requires fair legal frameworks that are enforced impartially and full protection of human rights (UNESCAP).

be open, transparent and participatory in conjunction with civil society to ensure that shared regulatory risk is addressed in a way that joins up all relevant actors (Amnesty International 2010; IHRB 2011).

However, several commentators argue that corruption⁵⁴ is “at the core of the governance crisis in the water sector” (Stalgren 2006). Addressing corruption in the water sector requires both government reform and reform of corporate practices. Another big gap in water governance is a lack of data regarding water resources in general. As one observed about water infrastructure utilities, “the data gaps are so large that they impede an effective monitoring of the evolution of performance in terms of access, efficiency, equity or fiscal costs for most sub-sectors. Consequently, there is less global accountability in this sector” (ICCR 2009). The challenges facing water management will require not only vast sums of finance capital, but wise stewardship of ecological resources, respect for human rights and commitment to inclusive and accountable processes (ICCR 2009). Sustainable solutions to main problems of water access will require collective action. Business leaders should therefore see it as part of their responsibility to work with other businesses and institutions to put in place policies on the scale required. Solutions need to “take account of context, and people’s rights and ability to access water. Where system of stakeholders does not already exist, business may be in a position to support their creation” (IHRB 2011).

In this context, it means that, “the crisis in global governance is essentially a crisis of legitimacy and accountability. A large accountability gap separates those who make decisions concerning the global economy and those who are affected by those decisions” (ICHRP 2010). It must be recognized that the major challenge in the realization of the human right to water, i.e. access to water, is to provide and maintain a balance between the expanding role of the private sector in the water resources management and increased recognition of the rights of the poor.

In order to develop understanding of the global governance crisis in the discourse of the human right to water the next sections will introduce and identify the contents of the global governance gaps as well as who the global power holders and the global decision makers are. This thesis examines three major interrelated actors: the states (home and guest states), international organizations (the UN, the Bretton Woods institutions and the WTO) and TNCs, and their fundamental global issue or so-called phenomenon of a “grab for water.”

⁵⁴According to World Bank, “20% to 40% of water sector finances are being lost to dishonest and corrupt practices.” Although there are no accurate figures, it is estimated that political corruption costs the water sector millions of dollars every year and undermines water services, especially to the poor.

4.2.1 Home and Host States of Transnational Corporations (TNCs)

This section attempts to identify the correlations between the home state of the TNCs and the host state of the TNCs, which is usually a developing country. Moreover, the incentive for the involvement of the private sector in development strategies is particularly applicable in developing states.

For example, the case of the Hindustan Coca-Cola Beverages Private Ltd. (Coca-Cola) bottling plant in Plachimada, India, shows that Coca-Cola as TNC was attracted as a foreign investor to India, because of low production costs and the offered protection by signing BIT and by operating in export production zone. These cost reductions translated into like pressures upon environment conditions. The Coca-Cola's production resulted in the depletion and contamination of groundwater. Its activities caused a noticeable decline in the quantity of harvested crops and contributed to community health problems. Further, it caused a substantial decrease of groundwater levels in the area and the drying up of wells. The groundwater was severely contaminated, probably partly because the Coca-Cola gave some of the plant's waste as "fertilizers" to local farmers. Therefore, the women responsible for collecting water had to resort to safe water several kilometers away from their homes. Nevertheless, the Kerala High Court in India decided that the extraction of water was threatening the right to life protected by the Indian constitution and that the underground water belonged to the general public. Because of Coca-Cola the quantity and the quality of the water in Plachimada was inadequate for human consumption and other sources of water were too far away to ensure a sufficient supply while the Coca-Cola plant was in operation (FIAN 2006).

Generally speaking, a major difference between developed and developing states is that developed states leave TNCs less room for maneuver due to their regulatory strength in terms of well-established legal systems and economic resources. As noted by the UN Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and other Business Enterprises (SRSG), the home states of TNCs, "may be reluctant to regulate against overseas harm by these firms because the permissible scope of national regulation with extraterritorial effect remains poorly understood, or out of concern that those firms might lose investment opportunities or relocate their headquarters" (HRC 2008). It has frequently been observed that some problems go beyond national borders, which means that governance mechanisms must also be effective beyond borders. Developing these

extraterritorial mechanisms may require non-state actors' participation, with corresponding delineation of rights and responsibilities (IHRB 2009a).

Governments in developing countries are often unable to fulfill their obligations toward economic and social rights for different reasons, such as economic incapability, conflicts, weak governance and lack of the rule of law. This results in the continuous existence of poverty, lack of social and physical infrastructures and the absence of development projects to change the status quo. However, TNCs often operate and have interests in these countries as well, because they are attracted by the possibilities of low production costs, vague regulations, a friendly investment environment and a wealth of natural resources. On the other hand, the expectations and demands upon TNCs to meet locally defined social and economic goals where the government has failed, increases. The term "expectation" is employed by Olivier de Schutter, the UN Special Rapporteur on the Right to Food, as a consequence of the arrival of the investors. Expectations are the creation of quality and well-paid employment, the transfer of new technologies, know-how to local producers and subcontracting of local producers, etc (de Schutter 2005). Moreover, developing countries cannot compete against and enter major export markets in rich countries. This happens in part due to either national subsidies or to the walls of protection that remains in the Global North. These double standards endanger developing economies, limiting their economic participation and spreading poverty (Reich 1991).

Being a part of the global governance system and globalization process, the states face serious conflicting interests because of political imbalances. For example, governments try to act on behalf of victims or to develop laws that hold TNCs accountable, but at the same time try to attract foreign investment; thus, TNCs can choose to invest in competing countries (ICHRP 2002). In order to attract foreign investment for development, economic growth and competitiveness on the global market, states sometimes offer protection to the investor. If TNCs operate in a developing country where the level of poverty and corruption is high, it can basically do what it wants because of the lack of regulatory state power. This is, nonetheless, not necessarily an advantage for companies, since it heightens the risk of their investments. Further, to attract foreign investment, host States usually offer protection through bilateral investment treaties (BITs) and government agreements, or in some cases by creating export production zones. In this context it has to be noted that the set of agreements between host governments and TNCs sometimes also includes promises to "freeze" the existing regulatory regime for the TNCs project's duration (HRC 2008). This makes labor regimes attenuated in the interests of attracting international investment, which makes it difficult for most countries to enforce the rule of law and therefore realize human rights. In this way, it is unrealistic not

to acknowledge that these pressures towards cost reductions will translate into like pressures upon labor and environment conditions that have cost implications upon international production (Redmond 2003).

However, TNCs will obtain what they have sought simply because of the awareness of the host state's need for foreign investment and its prior mentioned expectations. In addition to this, the host states often have neither the interest nor resources to monitor TNCs' operations and have limited capacity to enforce the standards against such powerful global actors (Redmond 2003). The fundamental problem lies in the fact that developing states often do not have sufficient resources to match the economic power of TNCs (Isa 2006, 62).

It is not just about developing countries seeking the arrival of foreign investors, but also about the Northern states, from where investors originate, and international organizations looking for new markets for new profits (de Schutter 2006). Nevertheless, Olivier de Schutter notes that “it is the responsibility of all states not to pressure developing states, in need” (de Schutter 2005). This assertion has been backed by the justification that globalization will truly serve as an instrument for human development, as stated in the Universal Declaration for Human Rights (UDHR), Article 28, when all states will contribute to a social and international order in which the rights and freedoms of the Declaration can be realized.

Therefore, this thesis argues that today's global water crisis is not just the global issue of water scarcity and of access, but also a crisis of global governance and thus the issue of water crisis serve as an example for the dimensions of the debate over the global governance crisis. The human right to water and its incorporation in global governance is suggested to be an alternative to minimize the negative impacts of globalization and to ensure that global governance becomes a positive force.

4.2.2 International (Economic) Organizations

Globalization represents increasing cross-border economic transactions and interactions, as well as an exchange of symbolic and communication messages, ideas and values, including human rights ethics and laws. Globalization manifests a deepening of international interconnectedness and interdependence of states and societies. It has contributed to the international spread of ethical standards and inspired a discourse on ethical responsibilities of globalized corporate entities (Bård 2010). When talking about global politics, Asbjorn Eide, a former UN Special Rapporteur for the Right to Food, argues that “we cannot overlook the

very important role of international organizations that have played a prominent role, especially in relation to the developing world” (Eide 2010).

Growing freshwater scarcity and increasing demand for water have given rise to investment strategies based on water as a commodity, such as oil. In this respect, privatization gained momentum as cash strapped governments sought innovation, efficiency and new sources of capital. Some decades later, however, many of these public-private partnerships have gone sour (ICCR 2009). The Cochabamba dispute in Bolivia, for example, has become an iconic reference point in international regulatory and political dynamics around struggles over the human right to water that resulted from significant pressure of international economic organizations.

Having said that, “no story of a transnational transformation of the state is ever just a story of external molding, but also of local political elites” (Bronwen 2008). Promotion of a full cost recovery policy for water services, advocated by international economic institutions and free market proponents, raises ethical concerns about disadvantaged people that are priced out of the market for this necessity of life. Decisions about water allocation cannot be based solely on who is willing to pay the most for it. Similarly, the main criticism of international economic organizations is that they shape global monetary and fiscal policies by imposing policy conditionalities and empowering non-state actors like TNCs in global markets to play fundamental role in conducting global water policy especially in developing world (Barry and Woods 2009).

In this regard, Asbjorn Eide argues that, “while some measures demanded by the Bretton Woods institutions might make good sense in given contexts, the generalized and persistent demands for these structural adjustments had crippling effects, making poorer countries increasingly dependent on the rich states” (Eide 2010). The practical implications of the structural adjustments programs were not producing good economic outcomes mainly because they combined relatively ineffective policies and undermined a precondition for economic growth, the respect for human rights (Rodwan and Cingranelli 2007).

In this way, this thesis looks at international organizations such as the United Nations (UN), Bretton Woods institutions and the World Trade Organization (WTO), because they have a great impact on international development and consequently on human rights. One could argue that they are the standard setting actors within the field. Nevertheless, concerns are raised about their powerful influence and their credibility in developing countries.

4.2.2.1 United Nations (UN)

Some commentators have observed that the UN is suffering from the crisis of its accountability. In this regard the UN General Assembly represents the 21st century “talking Tower of Babel” where one observes a lot of talking but a lack of real action. It is argued that the decision making authority and the real power behind the UN lies in the UN Security Council, which is controlled by five “great powers.” For this reason, the UN is thought to be downplaying the priorities of developing countries.

This thesis argues that there is clearly a role for the UN in standard setting and guidance on international corporate governance, development and human rights. Similarly, the UN Special Representative of Secretary-General on the issue of Human Rights and Transnational Corporations and other Business Enterprises (SRSG), argues that “the UN is not a centralized command-and-control system that can impose its will on the world – indeed it has no “will” apart from that with which member states endow it. But it can and must lead intellectually and by setting expectations and aspirations, by supporting this (human rights and business) framework, inviting its further elaboration, and fostering its uptake by all relevant social actors” (HRC 2008).

In this way, the UN Treaty Bodies can play an important role in making recommendations to the states on implementation of their obligations to protect human right to water vis-à-vis corporate activities. Further, the UN Committee on Economic, Social and Cultural Rights has created the guidelines for the realization of human right to water known as the UN General Comment No. 15 on the right to water (Eide 2010). Moreover, the UN Human Rights Council has just established an independent expert Working Group on Human Rights and Transnational Corporations and other Business Enterprises to conduct among other things also country visits and to make recommendations for enhancing access to effective remedies available to those whose human rights are affected by corporate activities. However, as the UN working group was constituted in 2011, it is hard to predict its impacts. The UN mechanisms which enforce human rights standards are the weakest in providing enforceable remedies, relying mainly on diplomatic and sometimes public pressure.

It can be concluded that the UN does not constitute sufficient response towards global trends in international development and realization of human rights, even though international development and human rights are at the top of its agenda. Consequently, it is losing global legitimacy and accountability while it is controlled by great powers that make decisions in their own interests, neglecting the needs of the developing states. This can be witnessed through the weakness of enforceability of international human rights law, whose monitoring

bodies do not go beyond formulating vague recommendations of little practical effect. In addition, the international human rights implementation mechanisms are not strong on providing remedies, and domestic courts are often reluctant to give full effect (de Feyter and Isa 2005).

4.2.2.2 Bretton Woods Institutions

The International Monetary Fund (IMF)⁵⁵ is the multilateral lending institution for central banks, while the World Bank (WB) operates mainly as the multilateral lending institution for private banks. Both multilateral lending institutions offer loans and is in the position to enforce conditions like privatization of water public systems and promotion of structural adjustment⁵⁶ policies. At the same time, it supplies resources for directly financing TNCs through the International Financial Corporation (IFC) (Barlow and Clark 2002). As a result the Bretton Woods Institutions are specialized in making loans to finance major projects⁵⁷ in the developing world.

However, the inconsistency of Bretton Woods Institutions' lies at their heart of their operation as they function in a manner similar to that of a commercial bank, while at the same time pursuing development objectives of reducing poverty and promoting economic growth. Their critics argue that power over decision making is not based on the “one country, one vote” principle as in the UN, but is based on the size of the quota that each country pays into the fund which is proportionate to the size⁵⁸ of its economy. Consequently, the developed world controls their decision making and that is far removed from the people who are affected by the decisions (Hobden 2008). The problem is that not all governments participate on equal terms and domestic parliaments have little impact. Furthermore, their policies are often incompatible with human rights requirements.

⁵⁵The aims of IMF are to increase monetary cooperation, to facilitate increased trade, promote foreign exchange stability, help to overcome balance of payments problems and to reduce the duration of international financial disequilibria.

⁵⁶Defenders of structural adjustment policies: they claim that structural adjustment has not failed. According to them, the problem is in that governments have not really followed through on the policy prescriptions promoted by the Bank and the Fund. They argue that they assist many of the worst cases and that things would have been even worse if WB and IMF had not intervened. They contend it is not WB and IMF's fault that the governments of developing countries choose to place hardship on the poor in order to meet structural adjustment objectives. Defenders argue that even if previous assessments of these agreements have indicated negative impacts in the societies of developing countries the WB and IMF have now recognized these issues and have changed their policies (Rodwan and Cingranelli 2007).

⁵⁷Since its conception, one of the major priorities for the WB in the water sector has been also to finance hydroelectric dams in the Global South. The WB was involved in 101 dam and hydro projects in 2007, up from 89 in 1997 and 76 in 2003, and approved over \$800m in hydro lending in 2008, up from \$250m in 2002. Some of the projects, poorly sited or poorly designed, were doomed to be uneconomic from the start. Others have been badly maintained or have simply silted up. But although 89% of the country's hydro projects operate below design capacity, the building continues wastefully apace (The Economist 2010).

⁵⁸Hence the USA with the largest economy has the largest proportion of the votes app. 17%.

These critics are also in opposition to a particular set of doctrines under the interests of the richest countries and TNCs, which are able to apply political pressure and are trying to present the only possible global policy. These critics note that, “these international financial institutions are specialized agencies of the UN, but in practice the UN have no power over them” (Eide 2010). In other words, it is “morally wrong for organizations of the UN, which include both the WB and the IMF, to undermine one of their parent organization's most vital goals, the promotion of human rights” (Rodwan and Cingranelli 2007).

How can violations of human right to water take place in a framework of the Bretton Woods Institutions' development projects can be witnessed by the next example. In Ghana thousands of people have lost their access to water and land as a result of a gold-mining project supported by the Bretton Woods Institutions. In January 2006 the IFC approved support for Newmont's Ahafo project with a loan of 125 million dollars. Gold production started that year. In order to gain support for the IFC loan, the company provided land access and a food programme to support vulnerable individuals and families, and to overcome the negative consequences for the local communities. However, these programmes have been evaluated without the participation of the affected communities and are insufficient in terms of overcoming the problems.⁵⁹ There was also a danger of contamination of water (FIAN 2006).

While the affected people are no longer able to produce enough food and cocoa which is their major cash crop, and at the same time one of their main problems is a lack of water for their daily needs, “the alternative livelihood programmes have proven ineffective to secure their livelihoods and compensation paid to them was insufficient” (FIAN 2006). These policies have been incompatible with human rights requirements. And with a combination of empowering the company through IFC by directly financing the non-state actor, together with clearly removed decision making process from the local community – meaning not proper participation, all together reflects the crises in global governance. This thesis argues that the crisis in global governance is essentially a crisis of legitimacy and accountability of global actors that separates those who make decisions concerning the global economy and those who are affected by those decisions. As it was noticed the realization of the human right to water is to provide and maintain a balance between the expanding role of the private sector in the water management and increased recognition of the rights of the poor.

Nevertheless, in 1994 the WB established an Independent Inspection Panel.⁶⁰ The Independent Inspection Panel provides to private individuals, in the territory of a borrowing

⁵⁹In the UN General Comment No 15 to the right to water, which defines the “failure to enact or enforce laws to prevent the contamination and inequitable extraction of water” as a violation of the obligation to protect the right to water (CESCR 2002).

⁶⁰It cannot issue judgments or give remedies in favor of those harmed by the Bank's projects, nor can it monitor projects on its own initiative without first receiving a complaint (ICHRP 2002).

state who has been adversely affected by the WB's project, to be entitled to register grievances with the Panel, alleging that a project does not conform to the WB's guidelines or operational procedures. A Panel can only make non-binding recommendations to the WB's Board of Executive Directors. The Panel is a review procedure, not an enforcement mechanism. Although the Panel process does not formally refer to companies, in practice the Panel interacts closely with companies that manage the WB's projects. Although it cannot provide specific remedies, the WB's reports can influence the direction of its projects or even force the WB to withdraw financing altogether (ICHRP 2002).

The investment requirement in the water sector is the essential argument with which the WB has supported private sector participation since the early nineties. The belief was that transnational public utilities would supply capital and modern management. More market, more competition and the entrepreneurial striving for profit would help remove the chronic problems many public utilities are faced with, such as high water loss and insufficient supply (Hoering 2003). In the developing world the WB and IMF make privatization of water services a condition of debt rescheduling and the poor soon find they are unable to pay⁶¹ for the costs of water services (Barlow and Clark 2002). The reduced involvement of the state makes things worse for people who depend most on the state for protection – the poor. They lose jobs and subsidies for necessities. With privatization, even water may become unaffordable. It must be recognized that the debate about the impacts of the decision to privatize the water service has now moved from a political debate at the local level involving people immediately affected to a private arbitration that provides no role for the social movements (Rodwan and Cingranelli 2007).

There is one more very important part of the WB that must be acknowledged here and that is the International Center for the Settlement of Investment Disputes (ICSID).⁶² It serves as an arbitration forum between governments and foreign investors to settle investment disputes. The use of the ICSID is facing an explosion of cases and increasingly vocal criticism, mostly from Latin American countries.⁶³ Its power has expanded rapidly as “bilateral investment treaties (BITs) have increased from 385 in 1989 to over 3,000 today. Therefore, two thirds of international investment disputes go through ICSID” (Bretton Woods Project 2009). Given the setting of the tribunal, it is more likely that the outcome will be determined by the concern to provide secure foreign direct investment. In any case, the nature of the tribunal is such that as

⁶¹From the IMF's perspective, cost recovery means that everyone must be required to pay user fees to cover the full costs of the water system, which includes not only the operating costs and maintaining costs but also the capital expenditures (Barlow and Clark 2002).

⁶²ICSID was established with 20 members through a Convention in 1966. Today there are 143 contracting states. ICSID has concluded 162 cases since its inception and has 125 cases pending, a third of which are against Argentina (Bretton Woods Project 2009).

⁶³Criticisms and explosion from Latin American countries occurred, because a lot of the WB's projects have been conducted in that region and because of strong civil society movements and their engagement in public life.

a forum it is not equipped to deal properly with disputes on privatization that have serious human rights consequences (De Feyter and Isa 2005; Bronwen 2008). It is quite clear that using this mechanism, TNCs⁶⁴ can by-pass domestic courts and go directly to international arbitration when they believe their contracted rights have been violated. Moreover, the results favor TNCs. One study, conducted by the NGO – Bretton Woods Project, found that, “70% of ICSID cases have favored the investor, whether through settlement in or out of court” (Bretton Woods Project 2009). However, questions remain over whether ICSID helps channel productive investment to developing countries or serves as a tool for TNCs to get their way. For that reason, the controversies surrounding ICSID are deep, including problems of loss of sovereignty, unequal bargaining power and poor governance.

4.2.2.3 World Trade Organization (WTO)⁶⁵

Like the Bretton Woods institutions, the WTO is based on multilateral agreements which have an enormous impact on the developing world and has thus been an object of considerable criticism. For that reason, the WTO has found itself at the heart of arguments concerning globalization, the impact of corporate power on international development and human rights. The WTO’s primary objective is to “liberalize international trade and place it on a secure basis,” (WTO 1993, 13) and it has a mandate to work increasingly towards eliminating remaining tariff and non-tariff barriers. Some believe it can “contribute to the economic growth, development and welfare of the world’s people” (WTO 1993, 13). On the other hand, its critics say that more free trade does not necessarily bring more benefits to the people and that the benefits it brings are usually not equitably distributed. In effect, international economic law and international human rights law, having developed in isolation, are now colliding in the halls of the WTO (Barlow and Clark 2002; ICHRP 2002).

While the World Bank (WB) is supporting privatization of water through structural adjustment programs and conditions, the WTO is instituting water privatization via free-trade rules embodied in General Agreement on Trade in Services (GATS). GATS promote free trade in services, including water. In reality, GATS is a treaty with no accountability to national democratic processes. GATS not only bypass government restrictions but also permit

⁶⁴Almost half of the cases involve the services sector, and all cases involving the natural resources sector are in mining, oil and gas exploration activities. Twenty per cent of ICSID cases are brought by companies that rank within the top 500 globally, seven of these companies have revenues that exceed the GDP of the country they are bringing a case against (Bretton Woods Project 2009).

⁶⁵Established in 1995 as the successor to the 1947 General Agreement on Tariffs and Trade (GATT), the WTO now boasts over 140 members who account for over 90% of world trade. WTO aim is to promote trade and is a central feature of economic globalization; it provides an institutional and legal framework for operationalization for the world trade, where international trade issues can be discussed and policies formulated and it provides a mechanism whereby trade disputes can be settled (ICHRP 2002).

companies to sue countries whose domestic policy prevents free-market entry (Shiva 2002). Under WTO water is understood to be a tradable commodity. This means that if a water-rich country places a ban or even a quota on the export of a bulk of water for sound environmental reasons, that decision could be challenged under WTO as a trade-restrictive measure and a violation of international trade rules (Barlow and Clark 2002). Therefore, the European Union (EU) and its water corporations can use GATS to serve as an international legal instrument of neo-colonial control, one that is organized to serve the interests of the dominant water corporations (Santiago 2003).

TNCs do appear to exercise considerable influence in the WTO by lobbying governments to bring cases to the WTO that would advance their commercial interests. The initial, unresolved WTO human rights debate is about how to bring human rights considerations into the WTO's organs. This is one reason for concern about the WTO, and fear that its decisions may cause violations of human rights and restrain development (ICHRP 2002).

For instance, in 2003 the EU launched the EU Water Fund. The Fund is worth 1 billion Euros aimed at providing financing for safe drinking water in 77 African, Caribbean and Pacific (ACP) countries. Most of these countries are deprived and are former colonies of EU member states. Many of the ACP countries are in various stages of planning and implementation of private-public partnerships and the EU Water Fund is believed to provide the necessary financial support. Moreover, the Fund is to be administered by the IMF and WB. Therefore, the ACP countries will be subjected to Bretton Woods's institutions conditionality and lending policies, including de-regulating their water sector and pushed to accept GATS disciplines. However, the vision is to be packaged and promoted as a sustainable development effort, one that promises a development agenda for the poor (Santiago 2003).

International trade policy conducted by WTO has been played in order to secure efficiency of the global market, which benefits mostly TNCs without limiting their ability to concentrate power and drive unfair competitors out of the market. In this way, it is observed that international economic institutions play central roles in shaping global monetary and fiscal policies by imposing political conditionality, promote free trade in services, including water, and serve the interests of business by empowering private actors like TNCs.

4.2.3 Transnational Corporations (TNCs)

TNCs have increasingly taken advantage of accelerating economic globalization and its conditions. This thesis is particularly interested in the nature and the scope of human rights

responsibilities of TNCs in a development context where TNCs could be central agents of development. In this way, TNCs have a potential to be important actors not only in that they may contribute to economic growth, but also in that they may help fulfill a form of development oriented towards the expansion of human capabilities, of which human rights are both a main ingredient and a precondition.

It is recognized by many commentators that TNCs could advance development by benefiting the poor and disadvantaged. As observed by the UN Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and other Business Enterprises (SRSG), “business is the major source of investment and job creation, and markets can be highly efficient means for allocating scarce resources (...) They constitute powerful forces capable of generating economic growth, reducing poverty, and increasing demand for the rule of law, thereby contributing to the realization of a broad spectrum of human rights” (HRC 2008). However, TNCs operations have not been part of the human rights and development agenda for too long (Bård 2010).

It is argued that TNCs can be considered as “organs of society” as interpreted within the framework of the Universal Declaration for Human Rights (UDHR), but they are specialized economic organs and not democratic public interest institutions. Not only are they not democratic institutions, they are institutions for making profit and that can justify the skepticism and concerns about their beneficial role and potential for contribution to long term sustainable development and protection of human rights. In this way, there are growing concerns about the impunity of TNCs in the globalized economy (HRC 2008).

A major limitation of business solutions to development challenges lies in the fact that businesses view development from an economic perspective and lack the expertise towards the implementation of development projects. Similarly, it is argued by the economist Michael Hopkins that “companies are acting on an economic rather than a political basis, and are by far superior to the UN when it comes to economic capabilities” (Hopkins 2009, 4). To complicate matters even more, the political balance has often tilted in favor of TNCs, which makes it difficult for any single state to regulate their activities, because of the ability of TNCs to move capital between different countries, to create flexible international structures and exploit the legal fiction that subsidiaries are independent from their parents. Furthermore, a government will have serious conflicting interests because of such political imbalances. For example, a government tries to act on behalf of victims, or to develop laws that hold corporations accountable, but at the same time tries to attract foreign direct investment and businesses can choose to invest in any of the competing countries (ICHRP 2002).

It is remarkable to note that the history of TNCs is significantly intertwined with the history of colonialism and that the role of companies in developing countries has historically resembled the role of colonialist states. The idea of TNC as a person emerged in the US, but the disturbing detail is that TNCs provide a shield for the people who owned them - as they were generally not responsible or liable for any debts the corporations incurred. Further, the argument of the neoliberals is that TNCs and corporate capitalism are the most efficient and reasonable means available for ensuring the widest distribution of resources among the people. However, it is clear that the resources do not go to the people, but to those who use TNCs to help ensure that twisted distribution of wealth stays that way (Al Jazeera English, Opinion 2011).

Nowadays, TNCs have reached similar constitutional rights to those of a natural person. TNCs, considering their scope of activity, are set normally, outside of effective domestic or international accountability. The problem with that is that they are gaining major political participation in society, without meeting similar obligations, competing not only with the rights of individuals but also with state's functions. In other words, TNC is merely a legal creation, which has been fashioned in order to serve public needs. However, this thesis argues that with greater power should come greater responsibility (Quiroz 2003).

Although TNCs are also involved in the provision of water services, from a formal perspective and especially from the perspective of legal rights and obligations, water service delivery is still deeply embedded in national domestic structures and institutions. Where access to water is limited, small-scale private independent operators⁶⁶ dominate. But TNCs are becoming increasingly involved in water services delivery.

Nevertheless, global regulation which has emerged in global water policy has taken root in a broadly neoliberal context. The water market is controlled by ten TNCs, of which nine are based in Europe. It is thus not surprising that the EU is one of the strongest supporters of further privatization. The recently founded EU Water Fund is to assist TNCs in making a decision to invest in the water sector (Spiller 2003; Bronwen 2008). It also includes two biggest TNCs in the water sector, the French based conglomerates Suez, the company that undertook the 19th century megaproject of building the Suez Canal, and Veolia Environment (before known as Vivendi Universal), both reflecting corporate message through their status and marketing strategy based on securing water concessions and privatizing water services (Barlow and Clark 2002).

Moreover, this research noticed that the power and the influence of TNCs is sometimes not that obvious, but rather hidden in different "NGOs," agencies or think tanks such as the World

⁶⁶Ranging from individual water vendors to low-technology neighborhood systems.

Water Council (WWC). On the surface they all appear to be impartial, because they exist to facilitate dialogue between the various stakeholders and to bring about more sustainable management of water sources. However, a closer look reveals that these organizations encourage privatization and export of water through close links with TNCs and international economic institutions. For instance, the most prominent hybrid forum the WWC which is legally a French-based NGO, but in practice a transnational organization composed of business-based NGOs and TNCs⁶⁷ operating as a think tank whose key mission is to present decision makers with assistance on global water issues. The WWC also played a key role in organizing the second World Water Forum in the Hague in 2000, to promote private-public partnerships as the only answer to the global water crisis. Consequently, these different NGOs, agencies or think tanks generate principles and policy documents for guiding water governance, emphasizing such core issues as full cost recovery method (Barlow and Clark 2002).

4.2.4 The Phenomenon of Water Privatization

Privatization⁶⁸ is to make private what was not private before with the aim of exploiting private property to achieve private benefit. The transfer of responsibility to a private actor implies an increased application of market principles to the provision and distribution of the service (de Feyter and Gomez 2005). In this way, sectors previously covered by the public sector are left in the hands of the market assuming that privatization is the best way to increase economic efficiency, flexibility and quality in the provision of services. Privatization is also seen as a way to raise revenue for the state and to reduce government interference in the economy, paving the way to introduce more competition (Isa 2005). However, the market is blind to the ecological limits set by the water cycle and the economic limits of poverty. The water crisis is “an ecological crisis with commercial causes but no market solutions. The solution to an ecological crisis is ecological and the solution for injustice is democracy. Ending the water crisis requires rejuvenating ecological democracy” (Shiva 2002). For that reason it is argued that instead of providing a solution to the challenge of sharing a common resource like water, the economic cure only displaces the problem from the sphere of politics

⁶⁷Members include Veolia Environment, Suez, Severn Trent, Mitsubishi, Evian, Electricite de France, Japan Dam Engineering Centre, Mitsubishi Heavy Industries, PriceWaterhouse Coopers, US Army Corps of Engineers.

⁶⁸The term privatization is used to describe a process involving the removal of public authorities from the operation even if the state retains ownership. If the management is contracted out to a private body, a type of privatization occurs (De Feyter and Gomez 2005, 1-9). It must be distinguished from liberalization and deregulation. Liberalization means a process of introducing competition into industry, while deregulation refers to relaxing the rules under which a sector conducts its activities (Graham 2005, 33-56).

and public decision-making to the sphere of markets and private profit seeking (ICCR 2009). However, the problem does not lie in globalization, but rather in the direction taken by the current neoliberal globalization process. The key issue here is to what extent the state can manage the process of privatization in a way that ensures human right to water and whether the state can ensure that private bodies respect that right (Isa 2005).

In this context, the most common negative impacts of water privatization on human rights are that:

- privatization has frequently resulted in price increases for the general public;
- that elimination of universal subsidies has negatively affected the poor and the quality of life;
- that there is a decline in public spending on social services while debt obligations continue to be paid;
- that the quality of social services has usually declined as a consequence of pressures to reduce public expenditures (Rodwan and Cingranelli 2007).

Generally, utility service entails the right to access water upon payment of the appropriate sum, but the issue is whether the individual or group can actually afford this access. It is rare to find rights of access to utility services enshrined in national constitutions. The South African constitution requires that the government put in place a reasonable plan to effect the realization of the rights which will take into account the resources available. However, it does not give rise to a free standing and independent positive right to water (Graham 2005).

The Cochabamba water dispute⁶⁹ in Bolivia has become the world famous case around struggles over access to water. The Bolivian government had been pushed heavily by the World Bank (WB) to privatize water, which was a condition for further assistance in the water sector and for further debt relief. The influence of international politics has been very powerful. However, there was also an undoubted enthusiasm on the part of local political elites for securing the financial backing of TNC Aguas de Tunari for this project. It is quite clear that no story of a ‘transnational’ transformation of the state is ever only a story of external pressure. The negotiations about Aguas the Tunari’s (subsidiary of Bechtel) contract were not transparent. By doing so, the government did not respect the people’s right to water.⁷⁰ Moreover, because there was no Bilateral Investment Treaty (BIT) between the US and Bolivia, Bechtel relocated its headquarters to the Netherlands, making it possible for

⁶⁹Cochabamba is the third-largest city of Bolivia. In September 1999, the Bolivian government gave a 40-year concession to a private consortium (Aguas de Tunari) (FIAN 2008).

⁷⁰The UN General Comment No. 15 to right to water stresses that, “even though non-state actors are not bound to the Covenant like states, the international financial organizations in particular should be aware of their responsibility for the realization of the right to water” (CESCR 2002).

Bechtel to take advantage of the protection afforded by the BIT between the Netherlands and Bolivia, just shortly after signing the concession. However, after seeing their water rates dramatically increased the people protested and took the streets because they wanted Bechtel's subsidiary to return the water to the public. And they succeeded. Consequently, because the private contractors are primarily interested in the return on their investment the Bechtel is suing the Bolivian government for just about US\$40 million at the WB's International Center for Settlements of Investment Disputes (ICSID) claiming “expropriation rights” under the BIT between Bolivia and the Netherlands. This insecure situation shows how much major corporate players depend on international economic institutions to build a global market. Through the privatization process, water is turned into a commodity, put on the market and sold, usually on the basis of ability to pay (Barlow and Clark 2002; Bronwen 2008).

Privatization creates enormous inequalities in power also between TNCs and the governments that deal with them. As a result, governments’ power is reduced, making it difficult for them to establish minimum access requirements. Nor can governments always be effective in penalizing TNCs for failing to meet the (water) standards while continuing to raise (water) rates. This demands increasing use while contributing modestly to the protection of the water resources (Barlow and Clark 2002). In this regard, privatization tends to reduce the democratic public sphere by the democracy deficit and what is at stake are good governance principles. Thus the privatization aggravates the removal of policy-making on privatization from the domestic political realm (De Feyter and Gomez 2005). This trend towards privatization of human right to water has had disastrous consequences in terms of its protection. Not only does privatization shape people’s right to water, it also “affects the livelihood and the employment rights of those who work in municipalities and local water systems” (Shiva 2002). In particular, when water services are privatized, it needs to be recognized that companies should guarantee transparent and democratic decision-making, ensure quality of essential services that are affordable to groups of people who are poor and marginalized, by avoiding disconnections and by monitoring performance as well as establishing an effective complaint mechanism (IHRB 2011).

This thesis argues that governments should not be pushed toward privatization by donor conditionality. Further, the states must ensure access to water services that comply with certain standards, and services must not compromise the realization of human rights (IHRB 2011). The example of the Bolivian city of Cochacabamba shows that privatization can drive up the price of water to such an extent that it becomes unaffordable for many right-holders. In this respect, private water services have made it very difficult for the poorest to have the access to water (Kok 2005).

Nevertheless, today world-wide water supply is generally still in the hands of public utilities. Privatization and public-private partnerships tend to be the exception. Currently, less than 10% of the urban water supply is privately owned (well-known examples are Buenos Aires, Manila, Mexico City, Hanoi, Jakarta, Abidjan) (Spiller 2003).

4.3 Closing the Chapter

This chapter, “Business in Globalized World,” examined the nature and the scope of global power holders as global decision makers. Its point of departure is the opinion that engagement of business is inadequate for international development that promotes and protects human rights. However, it is acknowledged that business can be a powerful global actor and a key supporter for pushing the development agenda forward. In this respect, the discussion on business involvement in development in this thesis concludes that all examined actors (the states, international (economic) organizations and TNCs) are interrelated and play a profound role throughout international development.

However, one could claim that the critical standpoint of this thesis is motivated by the observation that when business as a development partner enters the field, through their home states or through international organizations, the political balance is often tilted in favor of business. With regard to the developing states, it is likely that business would surpass the power of the state in terms of monetary resources and thereby leave the state in an inferior position leading to deregulation and lower level of human protection (ICHRP 2010). Such situations occur mostly when we talk about the weak states, generally referred to as the Global South where the states are willing to accept an inferior position only to attract foreign direct investments.

As discussed in previous chapters, poverty is linked to power structures, inequalities and lack of human rights and it is therefore necessary to focus on the analysis of development through the relationship between the poor and disadvantaged on the one hand and the actors or circumstances which contribute to this problem on the other. It is argued that the relationship between the poor and disadvantaged and the actors or circumstances is established as a result of the historical pretext of the developing countries and through the crisis in global governance. The crisis in global governance is seen as a crisis of legitimacy and accountability caused by the neoliberal agenda tailored to serve the interests of TNCs and pursuing policies of international economic organizations whose members are national states.

Similarly, the existence of the big contradictions within TNCs between economic profit and social accountability poses severe constraints upon their liability as a responsible actor in development. The TNCs and international organizations together with their powerful member states are affecting national polices also through their conditionalities and structural adjustment policies, and by doing so they are taking over democratic decision making in those countries.

In this context, it is essential to narrow the governance gap also between developed and developing countries, to produce a fairer, more inclusive and democratic world order by overcoming the growing inequalities, accountability and legitimacy gaps which are related to social tensions that undermine international development as well as social and economic stability and security, to which Human Rights based Approach to Development (HRBAD) and business can help to fill in the gab.

This thesis argues that no separation of politics and economics is possible; the decrease of social issues is as much a matter of democratic participation as of re-distribution of the wealth. As it has been shown, business has a central role in this process. Certainly, the aim of decrease of poverty takes much more than just an economic approach. The participation of all spheres of society would be helpful for such an aim. In other words, this thesis finds that business could be the central actor in development as its agent, but the legitimacy of its actions and its responsibilities to social justice in the development context are questionable. Yet, importantly, the central theme of this thesis is that the challenges might be overcome by using a human rights and development framework that aims to promote well-being and freedom, based on the inherent dignity and equality of all people, also in situations when development is exercised by business. Further, the application of human rights in the development framework is believed to make business more accountable and would mean a shift to good global governance (ICHRP 2003; OHCHR 2006; Kirkemann and Martin 2007, 9).

It has been noticed that global governance decision-making is far removed from the people that are affected by those decisions. This thesis attempts to show that two conflicting aspects⁷¹ - economic thinking and the human rights perspective - of globalization prevail and that they lead the way in global governance thinking. In this way, “the debate surrounding private sector participation in the water sector has often been polarizing” (HRC 2010a). To be clear, the question is “whether or not it is possible to find reconciliation between these two perspectives” (Graham 2005). This paper observes that weaknesses in global governance

⁷¹It appears that the economic point of view is not concerned with whether the initial distribution of water is fair or just, but whether its allocation through market mechanisms is optimal. In contrast, the human rights perspective is concerned with the initial distribution of water and with ensuring a basic level of participation in the market. In addition, it is concerned with ensuring that individuals can be fully functioning citizens and this may mean that they are exempt from the economic logic or are given some form of subsidy to participate in the market (Graham 2005).

systems are one of the major reasons behind the difficulties encountered in water crisis. There is thus a strong need for improved institutions and social arrangements (UNDP 2007). Therefore, an effective management of water would contribute to better health, economic growth, stable societies, and promises to close the gap – weakness in enforcement capacity, economic vulnerability and an underdeveloped knowledge base – between the countries of the Global North and those of the Global South (Newell 2009).

Water is thus a rising issue of global governance characterized by comparatively young and immature structures and processes that have slowly evolved over the past two decades. These structures and processes have defined global water governance development and its characteristics. Water is undoubtedly an issue of growing importance on the international policy agenda. Human rights considerations and approaches are an essential part of this development (IHRB 2011).

This thesis argues that today's water crisis is not just the global issue of water scarcity and of access, but also a crisis of global governance and thus the issue of water crisis serve as an example for the dimensions of the debate over the global governance crisis. The human right to water and its incorporation in global governance is suggested to be an alternative to minimize the negative impacts of globalization and to ensure that global governance becomes a positive force. In this respect, human rights can provide an ethical lens which has been missing from the dominant economic thinking, and human rights can present an opportunity to reshape and improve the global economic policy. Generally speaking, human rights may civilize the march of capitalism and provide good global governance.

5 Regulating Business to Respect and Protect Human Right to Water

Economic globalization and its rapid market expansion have created governance gaps in numerous policy domains. The area of business and human rights is one such domain (HRC 2008). Consequently, the research on Corporate Social Responsibility (CSR) has blossomed over the last decade. Much of this interest can be attributed to the combined effects of the Cold War, accelerated globalization with rapidly increasing foreign direct investments (FDIs) and transnational trade supported by the free market philosophy and digital revolution (Bård 2010). Thus, the field of the debate around private actors' responsibility to respect human rights is growing. What was once a marginal issue is now a major concern of governments, international organizations, NGOs, investors, transnational corporations (TNCs) and rights-holders (ICHRP 2002).

It is argued that the discourse on business and human rights means a reaction to overall challenges of neoliberalism and to global power imbalances. Further, it is understood as a catalyst for the intensification of the debate over global governance issues. However, when emphasizing the human rights responsibility of business, most often reference is made to the Universal Declaration of Human Rights (UDHR 1948). It can be claimed that all human rights instruments are based on the UDHR because it includes civil and political rights (first generation of human rights) as well as economic, social, and cultural rights (second generation of human rights). A third area of rights termed as the third generation of rights and these include, for example, environmental protection and the right to development. The UDHR, thus, contains an explicit language-obligation for every member of society, including TNCs to participate in the realization of its rights. It must be noted that the UDHR has become legally binding and it is considered part of customary international law.

Moreover, within the normative framework of human rights, the quest for greater responsibility of business is often discussed with a focus on extraterritorial state obligations. Extraterritorial obligations imply that the competence for ensuring a company's compliance with human rights abroad lies with the state where a company has its headquarters (Hamm 2011).

The "spotlight" of human rights concerns which traditionally focused on governments now increasingly turns on the conduct of business. TNCs are "not bound directly by international

treaties, which states sign, though it is part of a state's obligation to ensure that companies respect human rights and comply with domestic legislation" (IHRB 2011). Much of the discussion has focused on the scope of business responsibilities and how companies should implement the commitments they make. However, just as human rights law was initially developed as a response to the power of states, there is currently a need to respond to the growing power of business. In this respect, it is a function of the law to balance power and obligations by establishing enforceable rights and corresponding duties (ICHRP 2002).

Today the idea of the state sovereignty should not be replaced by a new corporate sovereignty, which is unrestricted or unaccountable. It is clear that human rights imply obligations and if these "duties are not assigned to and borne by specific agents, rights are in effect not guaranteed and are hence illusory" (Kolstad 2007). The effectiveness of law is not simply based on court proceedings which are often drawn out and expensive, but on its power to encourage a culture of compliance. Further, international law is still intended primarily to regulate relations between states, and states⁷² remain its most important subjects (ICHRP 2002).

In a debate surrounding business and human rights the general topics discussed are "human rights responsibility of business and the need to define the sphere of influence of business as well as business complicity with human rights violations" (Hamm 2011). The business and human rights discourse is a sub-discourse of a broader one on corporate social responsibility (CSR). Ethics and economic interest seems to conflict in a neoliberal view where profits are the only function of business. Opportunely, a new business ethics is emerging. The responsibility of business in issues of labor, environment and society has been a key point of discussion of CSR and "business has been encouraged to do this by international initiatives and declarations and by pressure to ensure that they achieve some international standards" (Voiculescu and Yanacopulos 2011). CSR is the idea of responsibility beyond legal compliance, which filters into the human rights and business debate through "the extent of responsibility in terms of the company's sphere of influence which means "a company has a certain political, contractual, economic or geographic proximity" (Buchamn 2007).

The debate on the responsibility of business for human rights intensified in 2003 within the discourse of the UN Draft Norms on the Responsibilities of TNCs and other Business Enterprises with regard to Human Rights.⁷³ One important outcome of this discourse was

⁷²They can enforce claims in international tribunals, make international treaties and their diplomats enjoy privileges. Finally, states are still the only actors that make international law; they draft, adopt, sign and ratify treaties, or create customary international law through what they say and do. States create the international human rights law that can confer rights and obligations on individuals or companies (ICHRP 2002).

⁷³The UN Draft Norms asserted that TNCs have a role to play in the realization of human rights and in contributing to development. The UN draft Norms were intended to provide TNCs with guidelines as to how to deal with human rights and at the same time give society a mechanism to evaluate TNCs' behavior. The UN Draft Norms clarified the scope and nature of TNCs' responsibilities. According to the document, TNCs have both direct and indirect obligations (Bård 2010). These obligations are based on the idea that TNCs, as organs of society,

stronger institutionalization of the discourse by means of appointing Professor John Ruggie⁷⁴ as a Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises (SRSG).⁷⁵ The global discussion on human rights and business was led by SRSG, who was appointed in 2005 by Kofi Annan, a former UN Secretary-General, as the UN global voice on this issue. The SRSG's concept relies on the existing human rights regime by emphasizing state obligations and his views show the structural conditions of the neoliberal course of globalization. His leading role in the process of the discourse formation has become broadly accepted. After presenting his policy framework for business accountability for human rights, which he describes as the “Protect, Respect and Remedy” framework, to the UN Human Rights Council in 2008, his concept and language have become mainstreamed. His mandate can be described as pragmatic and outcome-oriented (HRC 2008; Hamm 2011).

Furthermore, recent years have seen a significant rise in the development of soft law instruments and voluntary initiatives designed to regulate the behavior of business in relation to human rights. The term “soft law” operates between politics and law. It may shape international conduct as well as contribute to the formation of customary norms that create political and moral obligations for states parties (Jägers 2002). It was developed to describe declarations, resolutions, guidelines, principles and other high-level statements by groups of states such as the United Nations (UN), International Labor Organization (ILO) and Organization for the Economic Cooperation and Development (OECD) members that are neither strictly binding norms nor ephemeral political promises.

Soft law standards are not without authority and practical impact, and they have effect on judicial or quasi-judicial decision making and in formulating new (international) norms. Their advantage is that they are easier to negotiate. In addition, they can be relatively effective when accompanied by an active civil society campaign for their enforcement and can be used as an inspiration for the domestic legislation (ICHRP 2002). It is noticed that business conduct is legally twofold controlled firstly by the states – international legal instruments such as conventions or treaties impose on states the obligation to regulate the non-state actors

are responsible for promoting and securing the human rights set forth in UDHR and therefore their offices and employees are obliged to respect them (De Schutter 2006). During the drafting process much consideration was given to its compulsory or voluntary nature. However, they use the language of treaties they are voluntary and not binding (Buchamn 2007). For that reason the Draft Norms were seen as the first step toward a binding document that would lead to binding regulations for the global economy. For that reason it received immediate criticism. Other concerns were about the Draft Norms including too many or too few rights and containing a blurred definition of the business sphere of influence and the complicity with human rights abuses (De Schutter 2006).

⁷⁴A well-qualified choice since he was special adviser and the father of the idea on the UN Global Compact and a professor of International Affairs at Harvard University's Kennedy School of Government and Director of its Center for Business and Government.

⁷⁵SRSG characterized the UN Draft Norms as “conceptual foundations” and as “a useful point of departure for guidance” on human rights responsibilities of business and a “helpful tool for companies to understand how human rights relate to their management functions” (HRC 2008).

behavior and secondly by international organizations – explicit instruments envisage TNCs as their main subjects, imposing direct obligations.

For the purpose of this thesis, this section, “Regulating Business to Respect and Protect Human Rights” attempts to examine soft law because the idea of business responsibility to respect human rights is recognized in, and originates from, such soft law instruments. In this way, the thesis will make general queries regarding soft law constitutes an adequate response and whether it addresses the human rights violations of business. This chapter shortly analyzes the most known and broadly used soft law mechanisms, including the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, the OECD Guidelines for Multinational Enterprises and the UN Global Compact. In addition to the mechanisms developed by international organizations, many transnational corporations (TNCs) also started to develop their own policies and guidelines for doing less harm to local communities and the environment. These corporate policies are known as corporate codes of conduct. This chapter will be followed by a synthesis of the SRSG's policy framework for business accountability for human rights, known as “Protect, Respect and Remedy” framework. For the reason, the framework illustrates issues of the relationship between business and human rights, and provides multi-dimensional approach towards structural conditions of the neoliberal course of globalization. (HRC 2008)

5.1 Soft Law and Voluntary Initiatives to Respect Human Right to Water

In order to transform business into instrument for a fairer, more inclusive and democratic globalization, many tools have been proposed to ensure that business comply with certain requirements in the areas of labor rights, respect for the environment, human rights and development (de Schutter 2005). However, some are skeptical about assuming that working with private sector actors alone would benefit the poor and disadvantaged. Indeed, in spite of the potential for business to contribute to development, business is seen to be implicated in human rights abuses (Bård 2010).

Many international organizations emphasize that business should respect human rights. In this respect, some existing standards and voluntary initiatives already exist and refer to business,

including the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration, the UN Global Compact and Corporate Codes of Conduct. Although these soft law instruments are not legally binding as are treaty obligations, these human rights standards do have some legal significance and effect.

As suggested, what is new in the field of business and human rights is the level to which expectations are being recast in human rights terms and in this respect, human rights claims are more innovative in relation to business. Even though this phenomenon is relatively new, the law should not stay static. It must evolve if it is to meet the needs of society and should reflect current and prevalent economic, political and social norms.

5.1.1 International Labor Organization (ILO) Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy

As noted by the International Labor Organization (ILO), “in the context of globalization, the private sector has started to play an increasingly important role in areas of work that were previously considered the preserve of public sector actors and civil society, such as social policy and the environment, thus contributing to the spread of self-regulation practices and public-private partnerships” (ILO 2007, 1). Further, the international community has come to accept that “workers have certain human rights that must guide the relationship with trade unions, employers and governments. The ILO has defined them as core labor standards” (Osmani 2006). The ILO as a part of the UN system is concerned primarily with the problem of labor conditions.

In 1977 the ILO adopted a Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy.⁷⁶ It is directed at TNCs, governments, and employers as well as workers’ organizations to cover employment issues⁷⁷ by reflecting the labor rights. The document is significant because it calls on all employers to respect human rights and it was accepted by employer organizations, governments and trade unions from all over the world. Its aim is “to encourage the positive contribution which TNCs can make to economic and social progress, and to minimize and resolve the difficulties to which their various operations may give rise” (Bård 2010). While being promotional in nature, it remains a non-binding instrument.

⁷⁶It refers to a long list of binding ILO conventions, including the most central ones on freedom of association, the right to organize and bargain collectively, the abolition of forced labor and the right to equality of opportunity and treatment (ILO 1977).

⁷⁷Such as non-discrimination, security of employment, training, wages, benefits and working conditions, health and safety, freedom of association and the right to organize.

This paper argues that the ILO importance lies in pressuring TNCs to respect human rights, demonstrating that labor rights are an essential part of their paradigm. Furthermore, labor rights are “explicitly linked with the concept of sustainable development” (ILO 2007). However, the ILO emphasizes that states ratify its conventions and states alone have binding obligations under international law to implement workers’ rights (ICHRP 2002).

5.1.2 Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises

The OECD⁷⁸ or the so-called rich man's club is home of the most transnational corporations (TNCs) and the source of most of the foreign investment flows. It is important to remember that the OECD members produce around 2/3 of all world’s goods and services. For that reason are OECD Guidelines “the most widely applicable set of government-endorsed standards related to corporate responsibility and human rights” (HRC 2008) because OECD member states traditionally represent major TNCs responsible for most of the world's foreign investments. In this respect, the document represents a declaration of public policy made by a high-level, inter-governmental ministerial body. The aim of these guidelines is to help TNCs to operate in harmony with government policies and societal expectations and to specifically create standards of conduct for companies (de Schutter 2006).

In June 2000 OECD member states adopted the revised OECD Guidelines⁷⁹ and the most significant revision was a general statement that TNCs should respect human rights and “take due account of the need to protect the environment (...) and generally to conduct their activities in a manner contributing to the wider goal of sustainable development” (OECD Guidelines 2000). Moreover, the revised Guidelines strengthen the monitoring and conflict resolution mechanisms by setting up the OECD National Contact Points (NCPs)⁸⁰ in each member state. When member states, companies, employee organizations, NGOs and National Human Rights Institutions (NHRIs) believe the OECD Guidelines have been violated, they can ask NCPs for a consultation or mediation. It appears that a complaint can relate to the activity of a company anywhere in the world, not just in the NCP’s own country. However, it

⁷⁸OECD mandate is to promote policies that achieve the highest sustainable economic growth for its members, sound economic expansion globally and an expansion of free trade (OECD Mandate).

⁷⁹In 1976 the OECD adopted a Declaration on International Investment and Multinational Enterprises designed to protect the rights of investors. As part of this package, it produced guidelines for Multinational Enterprises containing recommendations to TNCs in OECD members and adhering non-member states. They set out standards of practice for multinationals covering disclosure of information, workers’ rights and industrial relations, environmental protection, bribery, consumer interests, science and technology, ensuring competition and payment of taxation. The revision also added a recommendation on elimination of child and forced labor and is slightly stronger on disclosure of environmental information (OECD Guidelines).

⁸⁰ NCPs are analyzed in more details under chapter 5.2.3 about “Victims’ Right to Access Remedies”

has been generally recognized that the work of the NCPs has been disappointing, mainly because the government officials employed at the NCPs are unaware of their responsibilities, lack resources and may even present a conflict of interest because of the duality of their occupational position (OECD Watch).

The document expressly states that it is a non-legal recommendation and companies are invited to follow it voluntarily, but for the states adhering to them it may be argued that they are “committed to promoting them,” which suggests a genuine duty (OECD 2000). However, its current human rights provisions lack specificity, so the OECD Guidelines are expected to be revised and updated again in 2011 (HRC 2008).

Having briefly described the OECD Guidelines, the only international mechanism that looks directly and exclusively at the conduct of TNCs and allows civil society to lodge what are in effect complaints, the procedure still has little immediate impact on the behavior of TNCs. Nevertheless, this thesis argues that OECD Guidelines could become a source of useful precedents on acceptable business conduct (OECD Watch; ICHRP 2002).

5.1.3 The UN Global Compact

The UN Global Compact⁸¹ is not international law, but it is an initiative based on companies making voluntary commitments to respect and promote its ten⁸² voluntary principles based on international law. Moreover, it is not a code of conduct, but a value-based platform designed to promote institutional learning so that businesses can take part in the solution of the challenges derived from globalization. It utilities transparency and dialogue for the reason to spread good practices and promoting new initiatives and partnerships with civil society and other organizations. The UN presents it as the world's largest corporate citizenship and sustainability initiative for businesses that are committed to aligning their operations and strategies with the principles. It is clear in requesting that businesses must not be complicit in human rights abuses⁸³ and insists on participants communicating with their stakeholders and

⁸¹In 1999, the former UN Secretary-General Kofi Annan launched the UN Global Compact at the World Economic Forum in Davos, calling on private companies to embrace, support, and promote a set of ten core principles in relation to human rights, labor rights, the environment and the anti-corruption. It is based on companies making voluntary commitments to respect and promote a set of principles based on international law.

⁸²The human rights principles (1-2) are based on universal declaration on human rights. Also relevant in human rights and poverty context principles on labor rights (3-6) build on the 1998 ILO declaration on fundamental principles and rights at work. Principles (7-9) build on the Rio declaration and the last principle (10) on the UN convention against corruption (UN Global Compact).

⁸³The first two principles of the UN Global Compact, which are derived from the Universal Declaration of Human Rights, are, Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and Principle 2: Business should make sure that they are not complicit in human rights abuses (UN Global Compact).

sharing their “best practices” about their progress on human rights and environmental issues⁸⁴ and their implementation (Benerjee 2007; Bård 2010).⁸⁵

Additionally, the initiative gained its importance by introducing the “sphere of influence,” a model described as an ‘onion skin’ approach that maps human rights issues as concentric circles.⁸⁶ Its presumption is that the human rights issues are at the center of the onion and these represent an area where business has greater influence and the influence decreases towards the outer layers. Therefore, it remains a useful metaphor for businesses in thinking about their human rights impacts beyond the workplace and in identifying opportunities to support human rights (DIHR).

However, a major critique of the UN Global Compact has to do with the risk of “blue-washing”⁸⁷ and hereby avoiding further examination of TNCs actions (Benerjee 2007). Similarly, some NGOs have criticized the initiative for allowing TNCs to improve their public image without any real change in their overall corporate behavior and in respecting human rights. Moreover, some remarked that this development leads to a need for “a legal regime to help to underpin the values of ethical globalization,” implying that the voluntary nature of initiative was insufficient; especially because the UN Global Compact initiative leads to a big question over whether the UN and its mechanisms are capable of forcing TNCs to protect human rights (Robinson 2002). As noted, the UN lacks both the resources to properly regulate corporate behavior and the political will to stand up to global capital. To achieve this, the UN needs full commitment and cooperation of the international community.

Further, the TNCs that support the UN Global Compact should take into account the right to water and report on it in their annual reports on progress. There are TNCs that also endorsed the UN-supported CEO Water Mandate,⁸⁸ an initiative launched in 2007 to assist companies in developing policies and practices related to sustainable water management. It is worth noting that all CEO Water Mandate members are also the UN Global Compact members. The CEO Water Mandate outlines developments in relation to business responsibility for the right

⁸⁴The UN Global Compact’s environment principles are derived from the Rio Declaration on Environment and Development. The three principles are: Businesses should support a precautionary approach to environmental challenges; Undertake initiatives to promote greater environmental responsibility; and Encourage the development and diffusion of environmentally friendly technologies (UN Global Compact).

⁸⁵In addition to its core environmental principles, the UN Global Compact is focusing on two of the most critical environmental issues: Climate change and Water sustainability. In this regard, participants are encouraged to join the following engagement platforms: Caring for Climate - The Global Business Leadership Platform, and The CEO Water Mandate (UN Global Compact).

⁸⁶The company’s direct operations and labor rights issues are placed at the center, with issues relating to suppliers, communities and local governments placed in the outer folds.

⁸⁷Meaning that TNCs by joining the UN Global Compact, “wrap” their documentation and reporting in the blue UN flag and by doing that the UN legitimizes corporations with poor human rights and environmental records.

⁸⁸The CEO Water Mandate is a public-private initiative. The CEO Water Mandate covers six areas, including direct operations, supply chain and watershed management and public policy. It assists companies to develop policy and practice on sustainable water management. The Mandate’s support of a strong regulatory framework for water-related public policies is nevertheless encouraging, as are its recognition of important principles, such as inclusiveness, accountability and transparency, and the role of the public as well as the private sector. (CEO WM Environment)

to water, discusses challenges and touches on emerging practices related to the human right to water (CEO WM White Paper). These TNCs are committed to respect the right to water independently of states' progress in implementing the right.

However, this does not mean that TNCs have responsibilities that states do not have, nor does it imply that states may transfer duties to companies. However, in the future, the CEO Water Mandate will need to grapple more with the human rights aspects of water, for example, conduct a deeper examination of the potential and actual negative impacts of business as water user. Moreover, despite the private water industry's commitment to the right to water "no evidence is publicly available that shows human rights have been referenced in a public-private water contract anywhere in the world" (IHRB 2011).

5.1.4 Corporate Codes of Conduct

Many TNCs started to develop their own codes of conduct within their Corporate Social Responsibility (CSR) departments. Corporate codes of conduct address labor conditions, occupational health and safety, concern for the environment, corruption, human rights responsibilities and corporate ethics. It is a formal statement of the values and business practices of TNCs. A code may be a short mission statement, or it may be a sophisticated document that requires compliance with articulated standards and having a complicated enforcement mechanism (What is a code of conduct). The number of the codes has mushroomed in the recent years. And, the development of such codes⁸⁹ illustrates that TNCs are increasingly recognizing their responsibility to respect human rights, even if they do not see this duty as legally binding.

As an example of such a code of conduct one can be found at Veolia Environment one of the biggest water corporations (formerly known as Vivendi). Veolia Environment is in water sector it is the second biggest supplier of water and waste water services in the world. According to its CSR report, Veolia considers itself "as a world leader in environmental solutions and it seeks to set the standard in sustainable development. The scale of this challenge means transforming the company into a yardstick for exemplary performance" (Veolia Environment Performance). For that reason, Veolia argues that "it is managing environmental performance, social performance and sustainable purchasing" (ibid.). Regarding its responsible and human face the Veolia's CSR reports present its name listed in the main socially responsible investment indexes such as the

⁸⁹ Although codes generally refer to a very limited range of human rights, many make specific commitments in areas such as nondiscrimination, labor rights (such as no child or forced labor), and in some cases freedom of association and collective bargaining.

Sustainability Yearbook and the Dow Jones Sustainability Index (Veolia Water Corporate Responsibility). Moreover, Veolia's CSR policy has committed the company to support and to become a member of the United Nations Global Compact since 2002. In this respect, in its latest SCR report in 2011, it claims that its activities are "carried out in compliance with both national standards and the recommendations of international organizations like the ILO (International Labor Organization) and OECD (Organization for Economic Co-operation and Development), in particular as concerns respect for basic rights and protecting the environment" (Veolia Environment CSR 2010). Moreover, Veolia's CSR department, its Ethics Committee, is "designed to guide the behavior of their employees in their activities" (ibid.). The CSR department also developed the formal statement of the values and business practices, the Sustainable Development Charter, that outline company's commitments to sustainable development in a 12-point Charter. Its Sustainable Development Charter shows Veolia's commitment to protect the environment, promote environmental solutions, raise awareness, ensure employees health and safety, etc. In this way, it generally addresses concerns for the environment, labor conditions, occupational health and safety, and corporate ethics⁹⁰ (Veolia Environment CSR 2010).

Interestingly for this thesis is the observation that Veolia designed the Independent Sustainable Development Committee, which advice on sustainability and corporate responsibility and reviews the work of the Ethics Committee by making recommendations. In this respect, the Ethics Committee has become the ultimate body to receive alerts and acts as a whistle-blowing system. However, the Chairman of the Independent Sustainable Development Committee is John Gummer,⁹¹ who has been the chairman of Veolia Water UK PLC (Veolia Water UK Ltd) since 2003. Therefore, independence and credibility of the Veolia's Independent Sustainable Development Committee are questionable (Veolia Environment CSR 2010).

However, corporate codes of conduct also reflect TNCs double agenda, as they are often no more than a public relations exercise and a minimum response to public pressure. The reputation of TNCs is a vital element of their economic performance. In this way, it has been asserted that TNCs might be even more likely to respond to bad publicity than governments (ICHRP 2002).

As noted, the CSR debate focuses mostly on how business interests could produce less harm to local communities and the environment. On the other hand, it focuses very little on how companies could respect human rights or whether a company has the responsibility to

⁹⁰ Protect the environment; contribute to conserving natural resources and biodiversity, and combat climate change; Promote—through innovation, research and development - environmental, economic and social solutions that will meet the needs of future generations; Raise awareness of environmental challenges and the ensuing need for behavioral changes among all concerned with our activities; Ensure our employees' health and safety and help improve public health; and etc. (Veolia Environment CSR 2010)

⁹¹ More about John Gummer, the chairman of Veolia Water UK, under the Chapter 3.3

promote or advance human rights (Bård 2010). Moreover, in most cases the codes are highly selective upon the issues addressed in them and they deal with human rights in ways that vary considerably across companies and sectors and are weak on external accountability practices (HRC 2010a).

Almost all companies now have codes of conduct, which can be viewed as a progressive step towards accountability. However, only one third of the codes were found to contain references to human rights. Moreover, their integrity and credibility should depend upon monitoring and verification of corporate compliance systems, including periodic independent audits. In this respect, if there is no implementation and enforcement of the codes, they do not have any impact in practice. Finally, a conflict of interest between TNCs operations and the policy endorsed in the codes on top of the lack of transparency could also be troubling (Redmond 2003).

5.2 Principled Pragmatism of Business and Human Rights

The UN Commission on Human Rights (now the UN Human Rights Council) asked the UN Secretary-General to appoint a Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises (SRSG) to help guide all relevant actors and to submit his views and recommendations on the topic.

The UN Human Rights Council welcomed the SRSG's policy framework “protect, respect, remedy” for business accountability for human rights in 2008. SRSG identified the root causes of the “human rights and business predicament” to establish governance structures that may “correct, sanction and repair adverse effects on human rights” caused by business operations and global markets (HRC 2008). SRSG's fundamental challenge was to narrow and bridge the global governance gaps in relation to human rights, as these governance gaps “provide the permissive environment for wrongful acts by companies” (HRC 2008). Subsequently he suggested a policy framework comprised of the “protect, respect and remedy” principles⁹² that exist independently. In this way, the state duty to protect human rights exists independently of the business responsibility to respect human rights, which is understood as “a baseline expectation” for all TNCs (HRC 2008). Nevertheless, the attempt to

⁹²The SRSG's framework comprises three core principles: the state duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies. The three principles form a complementary whole in that each supports the others in achieving sustainable progress.

develop legally binding rules for corporate behavior was rejected. SRSG suggested that businesses use due diligence with respect to human rights. The policy framework also stresses the need for access to appropriate and effective (judicial and nonjudicial) remedies for victims of human rights abuses committed by business activities (IHRB 2009a). The framed fundamental principles illustrate issues of the relationship between business and human rights, and make up the so-called multidimensional approach.

While some responses to his work have been positive, there are also some responses which offer a critical perspective. The policy framework has been criticized for taking a weak and overly pragmatic stand in identifying solutions and recommendations for the business and human rights relationship. Another objection is that SRSG does not propose global governance solutions to the global governance gaps, but instead focuses on the development of better judicial tools for hearing complaints and enforcing remedies against businesses. Some argue that he should make recommendations on how the conduct of TNCs' operations that cause or contribute to human rights violations in countries other than their home state should be regulated and remediated (Joint Civil Society Statement 2011). In addition, the framework does not attempt to explain how it relates to the generally accepted international human rights law classified into respect, protect and fulfill categories (Letnar 2010a). Some even believe that global standards are crucial to address the global governance gaps and therefore, a binding international framework at the UN level is necessary (OECD Watch 2008). It would have been more persuasive and interesting if the SRSG had attempted to identify when TNCs have obligations to protect and fulfill human rights. For these reasons, some would argue that “protect, respect and remedy” framework appears to fail to propose an appropriate response to corporate human rights violations and to global governance gaps (Letnar 2010a).

However, SRSG defends himself by calling his approach “principled pragmatism,” which he describes as “an unflinching commitment to the principle of strengthening the promotion and protection of human rights as it relates to business, coupled with a pragmatic attachment to what works best in creating change where it matters most” (HRC 2010a; Letnar 2010a). It is agreed by many scholars that SRSG provided a good analysis of the key problem concerning human rights and business, namely the imbalance between rights and powers of business and an effective regulatory framework to address the human rights duties and responsibilities by producing an impressive collection of material on business and human rights, receiving data contributions from major TNCs, corporate law firms, NGOs, and various international organizations. Taken together, his work laid out a comprehensive understanding of the challenges of the relationship between business and human rights. Still, governments,

scholars, legal experts and NGOs continue to debate these fundamental issues (OECD Watch 2008).

5.2.1 The State Duty to Protect Human Right to Water

The main purpose of human rights law is to ensure that the minimum rights of every human being are respected, and that they reaffirm faith in human rights, in the dignity and worth of human beings and promote social progress and better living standards (UDHR 1948). Generally, human rights law has sought to protect individuals principally against abuse by the state (ICHRP 2002).

When referring to business and human rights, international law provides the principle of the state duty to protect against human rights abuses by business, which means the state has to take positive action through the government so that people can enjoy their right to access water. For instance, the state should guarantee that water resources are protected from contamination by harmful substances and infective microbes (CESCR 2002). Its primary role is to take necessary steps to protect against abuse, including to prevent, investigate, punish the abuse, and to provide access to redress for the victims (IHRB 2011). In this regard, the state is obliged to pay priority attention to excluded and discriminated groups, like women, children, migrants, indigenous peoples, refugees, prisoners and human rights defenders (Joint Civil Society Statement 2011). For that reason, depending on the circumstances, the state may need to adopt positive measures to redress existing discrimination policies or practices. In this context, it is argued that, “the state has a special obligation to provide those who do not have sufficient means with the necessary water and water facilities” (CESCR 2002). The state duty to protect against human rights abuses has both legal and policy dimensions (HRC 2010b). The UN General Comment No. 15 argues that “the manner of the realization of the right to water must also be sustainable, ensuring that the right can be realized for present and future generations” (CESCR 2002).

If the majority of the states have difficulties in upholding their own human rights obligations, corporate compliance with human rights norms may not be at the top of their agenda. The most common challenge exhibited when the states interact with business is the failure to establish and implement adequate legal and practical protection, often due to inadequate legal protection and lack of policies and regulations (Letnar 2010).

Nevertheless, in many cases the state has also played a significant role in corporate-related abuses not only through public security forces but also through threatening, intimidating, ill-

treating and charging unfounded offenses when human rights defenders and indigenous community leaders campaigned against business operations and defended their right to be consulted before a government grants a concession for exploration or extraction of natural resources (Amnesty International 2010).

Subsequently, the research work on the issues of water use and water management indicates not only that states should incorporate concern for human right to water in all relevant public-private contracts, but also that potential impacts of such agreements should be assessed before they are entered into and that findings should be adequately disclosed. States should therefore require businesses to undertake human rights due diligence before bidding for any public-private tender and “must prevent business from compromising equal, affordable, and physical access to sufficient, safe and acceptable water” (CESCR 2002). For reasons of consistency, states should also make similar requirements for state-owned enterprises and local authority providers where they do not already exist (IHRB 2011a). A central component of the state duty to protect is that “states must – through legal and policy measures – require corporate human rights due diligence”⁹³ and “impose sanctions, if companies fail to carry out such due diligence” (Amnesty International 2011).

The duty to realize human right to water remains with the state, even when states contract with or legislate for business enterprises to provide water services. This means that the state ought to clarify responsibilities of business by including human right to water in contractual arrangements or regulatory provisions. Therefore, it is argued that, “the state should ensure that the investments in water, facilitate access to water for all. Investments should not disproportionately favor expensive water supply services and facilities that are often accessible only to a privileged fraction of the population” (HRC 2010b).

In contemporary globalization the state has a duty to ensure that powerful economic actors exhibit corporate behavior that does not abuse fundamental rights and freedoms. For that reason, states have a responsibility to find new ways to control the potentially exploitative and harmful power of national and international economic actors (IHRB 2011). In other words, when acting multilaterally, states should ensure the respect of human right to water when providing financial or other forms of support to the private sector. Similarly, states should require from international economic organizations, such as the Bretton Woods Institutions and World Trade Organization (WTO), to respect human rights. These international organizations should ensure the respect for human right to water also by their clients, and that should be a precondition for their support as well. In this respect, states should insist that international organizations conduct human rights due diligence and should take steps to ensure that the

⁹³Human rights due diligence will be further clarified and discussed in the following chapter.

right to water is taken into account in their lending policies, credit agreements and other international measures (Amnesty International 2010; French Government Remarks 2010).

This thesis argues that trade and investment policies need to reflect an orientation towards the realization of human right to water. Developed countries must deliver on their aid promises and their governments should be held accountable for creating and spending budgets that support development priorities such as access to water for all. In addition to investment, an emphasis on policies to encourage the rule of law is of key importance to international development, which is crucial from an investment point of view as well (UNCTAD 2010b).

However, human right to water requires more than good judicial processes and remedies. It also requires civic engagement, public openness, free flow of information and civic and social movements – organizations that can engage in “shaming and blaming” campaigns. These responses to human right to water issues and violations outside of the institutionalized legal system are important additional means to hold business accountable for human rights principles and may help make legal as well as voluntary mechanisms more robust (Bård 2010).

In short, the state as the duty bearer should be aware of and held accountable for ensuring that business activities in no way abuse or undermine the enjoyment of human right to water. It should provide adequate remedies for every victim of a human rights abuse also when they act as members of international (economic) organizations or as development aid providers (IHRB 2011).

5.2.2 The Corporate Responsibility to Respect Human Right to Water

The corporate responsibility to respect human rights is the second principle in SRSG’s policy framework for business accountability for human rights. The debate around corporate responsibility to respect human rights started to evolve with development and recognition of soft law mechanisms adopted by international organizations such as the International Labor Organization (ILO), Organization for economic cooperation and development (OECD) and the United Nations (UN), as discussed previously. In this respect, respecting human rights means not to infringe on the rights of others, meaning mainly to “do no harm” (HRC 2008). Furthermore, according to the UN General Comment No 15 on right to water, a refrain from interfering with the right to water includes “refraining from engaging in any practice or activity that denies or limits equal access to adequate water; arbitrarily interfering with customary arrangements for water allocation; unlawfully diminishing or polluting water, for

example through waste facilities; and limiting access to, or destroying, water services and infrastructure as a punitive measure, for example, during armed conflicts” (CESCR 2002).

The starting point of business participation in water sector is set in the developing and transition countries during the 1990s, and that participation is mainly understood in the framework of donor approaches and international policies (HRC 2010b). International economic cooperation has emerged to encourage global capitalism rather than to moderate its social effects. In this respect, the rapid liberalization of global markets and growth of international trade and investments have generated issues that are not adequately addressed either by global governance mechanisms or by national (legal) systems (Redmond 2003). Moreover, this thesis argues that there is an inherent tension between water commercialization and direct full cost recovery on the one hand and providing affordable services to the poor on the other hand. For that reason, it is argued that, “regulatory oversight alone may not be sufficient to achieve the right to water for all, and special safeguards and supplementary social policies to ensure inclusiveness, such as safety nets and subsidies, may be necessary” (HRC 2010).

However, SRSR explains that business, as a one of the major global economic players, has a responsibility to respect human rights by conducting human rights due diligence. Human rights due diligence is a process whereby businesses not only ensure compliance with national laws but also manage the risks of human rights violations by avoiding them. The process of human rights due diligence means for businesses to address their responsibility to respect human rights and business must take due diligence steps to become aware of, prevent and address its human rights impacts. Therefore, the human rights due diligence is a process where businesses should:

- adopt a human rights policy;
- make impact assessments⁹⁴ to understand, address and avoid potential negative human rights impacts;
- integrate human rights policies throughout the company; and
- monitor as well as audit processes to track human rights impact and performance (HRC 2008).

It has also been suggested that business has to include an independent monitoring system to ensure the credibility of the due diligence process and taking into consideration that the due diligence process should involve meaningful and transparent engagement with all relevant stakeholders. This is of particular importance in the water sector, where, for example, a lack

⁹⁴Impact assessment, defined by International Association for Impact Assessment, is the process of identifying the future consequences of a current or proposed action. Such interventions are most effective and least costly when implemented early in the business life cycle in anticipation of impacts, rather than in reaction to impacts that have occurred as a result of business activity. (UN General Assembly 2007)

of data is quite common. Where credible information is not available risks to civil society, companies and government increase. To mitigate these risks, all the parties in a given area should work to establish agreed data on water availability by using credible baseline studies, so that the current situation is made known and a benchmark established to assess future impacts (Amnesty International 2010; Joint Civil Society Statement 2011).

In this way, regarding human right to water in conducting human rights due diligence businesses should understand the likely impact their operations will have on public access to water for domestic use. Effective water resource management is an essential component of any human rights approach to business responsibility. It should be standard practice to set transparent targets that reduce the amount of water used and take steps that prevent pollution of water systems (IHRB 2011).

Stimulus for corporate human rights sensitivity is an evident shift in community expectations with due respect to corporate behavior and its social impacts (Redmond 2003). Some may argue that because of its voluntary nature the proposed guidance under the second principle of the policy framework as currently articulated only speaks to the willing companies. A system for the willing does not address the “governance gaps” identified by SRSR as the root causes of the business and human rights predicament. In this context, there is a clear need to articulate the role of the state in requiring due diligence from business, as discussed in previous chapters. This would capture the need for the less than willing to also carry out human rights due diligence in their business operations (Amnesty International 2010).

Policy makers have not sufficiently considered the due diligence responsibilities of companies that provide water or on other terms influence water access as their secondary function of their operations. Due diligence should be particularly necessary where water is scarce or of poor quality, or where business activity affects the water access and its supply to marginalized groups. Water use in contexts of rampant corruption, adverse poverty, conflict or humanitarian emergency will therefore require particular attention by the business concerned as well (IHRB 2009a). In cases when business provides water services, its “responsibility to respect human rights raises additional concerns with regard to tendering, negotiation of terms, the content of contracts, and post-contract operations” (IHRB 2011b).

In this context, the UN Independent Expert on Water and Sanitation listed a number of human rights-related concerns that arise in relation to private water service providers:

- ensuring the quality of water services;
- avoiding water disconnections in cases of inability to pay;
- ensuring affordable water services;
- reaching the poorest and most marginalized;

- guaranteeing transparent and democratic decision-making;
- addressing power asymmetries in the bidding and negotiation process;
- ensuring regulatory capacity and enforcement;
- ensuring monitoring and follow-up capacity;
- establishing effective complaint mechanisms;
- addressing corruption (HRC 2010b, 10).

The balance of this paper is devoted to the notion that private actors are indeed an “entity” with legal status. What is clear is that international law does impose direct obligations on private actors to respect international law by virtue of their having legal personality and as “organs of society” under international human rights law (Bård, 2010). However, as noted, the legal meaning of complicity⁹⁵ of TNCs has been spelled out most clearly in the area of aiding and abetting international crimes – where the knowledge⁹⁶ is a major factor.

A company might risk complicity in an international crime if it withheld access to drinking water by order of the government or another armed group trying to punish local civilians (IHRB 2011). An example of corporate complicity can be observed with Israel's occupation of Palestinian territories. It is reported that international businesses that benefit from Israeli settlements on occupied territories play an indirect role in the harmful treatment of the Palestinians. Business interests in the settlements take a number of forms; one can be a commercial agricultural production that benefits from discriminatory access to enormous quantities of water and extracting natural resources from the West Bank, primarily for the benefit of the Israelis (Human Rights Watch 2010). However, while no conceptual barrier should prevent prosecution of companies as legal entities for international⁹⁷ crimes, states did not give the International Criminal Court (ICC) the authority to try TNCs, only individuals (Clapham 2000).

On the other hand, in non-legal contexts, corporate complicity has become an important benchmark for social actors that can impose reputational costs and even lead to divestment (HRC 2008). In other words, this thesis argues that complicity includes notions of political or moral responsibility and even where legal complicity cannot be proved, public opinion may attach the blame (ICHRP 2002).

⁹⁵Complicity refers to indirect involvement by companies in human rights abuses - where the actual harm is committed by another party, including governments and non-State actors (HRC 2008). Complicity is reflected in several well-established concepts in international and national criminal law, such as aiding and abetting, conspiracy, procurement, incitement, common purpose. Being an accomplice to the principal crime is itself a crime under international law in several tribunals (ICHRP 2002).

⁹⁶A company might be responsible because it has itself directly committed the abuse, in which case it would be considered the principal actor or perpetrator. Alternatively, the company might be responsible for participating in or assisting abuses committed by others, especially government authorities and armed groups, in which case it could be said to be complicit in the abuses. Whether a company is culpable as a principal actor or accomplice might depend on such factors as the company's knowledge of the violations, its intentions, whether its actions helped to cause the violation, and the relationship between the company and the victims or perpetrators (ICHRP 2002).

⁹⁷It must be recognized, that there exist one exceptional case that is found in domestic U.S. law, which allows foreigners to sue the companies for violating the international law these claims are based on the Alien Tort Claims Act.

It is possible to argue that international law already creates a direct legal obligation on business that can be enforced, at least by national courts in some jurisdictions. If international law says that business must respect human right to water, it is primarily up to the states to make sure this happens through their domestic laws. Most commonly, when international law aims at changing law or practice in the world, it must largely rely on the states to effect the change and without national action by governments, the rules are practically unenforceable. Where business abuses human right to water and no redress or accountability is available, this indicates a failure of national law. To ignore the role of the state – and focus only on business – might appear to imply that such failure is inevitable (ICHRP 2002).

In conclusion, a number of commentators agree that business can be held responsible for a violation of human right to water. Even though the precise content of the human rights obligations of TNCs is somewhat unclear, it may appear self-evident that TNCs should comply with standards of the human right to water. Participation and transparency are an important way in which the accessibility, acceptability and affordability of the right to water can be achieved. However, sustainable solutions will require collective action. The risk of business negatively affecting the human right to water may stem from regulatory failings or lack of adequate enforcement. It is therefore in the interest of business and communities to ensure that robust regulatory frameworks are in place. Any business role in public policy discussions should be open and transparent and carried out in participatory manner with civil society to ensure that shared regulatory risk is addressed in a way that joins up all relevant actors (IHRB 2011). Nevertheless, it is fair to conclude that progress has been made in identifying indirect obligations of TNCs, but much more conceptual clarification is needed about their explicit legal duties. Therefore, the human rights community should continue to collaborate with the international business community in advancing this agenda (Bård 2010).

5.2.3 Victims' Right to Access the Remedies

Under international human rights law, people whose rights have been violated are entitled to an effective remedy. Any persons or groups who have been denied their right to water should have access to effective judicial or other appropriate remedies at both national and international levels. Victims of violations of the right to water should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition (CESCR 2002). These encompass both the ability to access justice to bring claims of wrongdoing and to seek reparation. Moreover, effective grievance mechanisms play an

important role in the state duty to protect, as well as in the corporate responsibility to respect human rights.

This thesis argues that regulation will be undermined where corruption is rampant or when there is no functioning independent judiciary to enforce the regulatory framework and decisions taken by the regulator. Therefore, accountability and access to effective remedies are essential for unmet performance standards, unjustified tariff increases, inadequate social policies or other gaps related to water resources (HRC 2010b). To ensure accountability, duties of the state and responsibilities of business have to be clearly designated and made transparent. For that reason the access to a remedy is also the third principle of the policy framework for business accountability for human rights declared by the SRSG. As observed by SRSG there are three types of grievance⁹⁸ mechanisms that can provide avenues for remedy: state-based judicial and non-judicial mechanisms and company-level mechanisms (HRC 2008; HRC 2010a).

Firstly, the state judicial mechanism is the responsibility of the state, which must ensure its functionality, accessibility, independence and integrity. It should investigate, punish, and redress⁹⁹ abuses. Therefore, it is stated that, “states should adapt their legal and policy frameworks so that victims can exercise their right to an effective remedy, including by reducing or eliminating financial barriers to access public justice mechanisms, and by making the functioning and decisions of those mechanisms more effective” (Joint Civil Society Statement 2010).

The second grievance mechanism is the state-based non-judicial mechanism, whereas the state must take appropriate steps to ensure access to the effective remedy through judicial, administrative, legislative or other appropriate means. SRSG argues that all non-judicial mechanisms should meet principles of legitimacy, accessibility, transparency, predictability and equitability to be credible and effective (HRC 2008). The key functions of the state-based non-judicial mechanisms should include complaint handling, promotion of human rights, guidance, building capacity and providing support to stakeholders and businesses. They have an oversight of particular standards and publicly funded mediation services. Examples of such institutions are National Human Rights Institutions (NHRIs), OECD National Contact Points (NCPs)¹⁰⁰ – already mentioned and discussed under the chapter 5.1.2 about “OECD

⁹⁸A grievance is a perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on law, customary practice or general notions of fairness (HRC 2010a).

⁹⁹Include compensation, restitution, guarantees of non-repetition, changes in relevant law and public apologies (HRC 2008).

¹⁰⁰The one formal obligation that the OECD Guidelines have put on countries is to set up National Contact Points (NCPs). NCP's primary responsibility is to ensure the follow-up of the Guidelines. NCPs should respond to inquiries about the Guidelines from other NCPs, the business community, employee organizations, NGOs, the public and governments from non OECD-adhering countries. NCPs also have the right to screen cases, deciding whether they are admissible or not through an initial assessment procedure. Generally, issues are dealt with by the NCP in whose country the issue has arisen. If, however, there is no NCP in that country, cases can instead be brought before the NCP in the country where the company is headquartered (OECD Watch NCP).

Guidelines for Multinational Enterprises,” and the UN mechanisms – such as the UN treaty bodies, the UN Committee on Economic Social and Cultural Rights, the UN Working Group etc., already discussed and analyzed in previous chapter 4.2.2.1 about “United Nations.”

These non-judicial institutions like NHRIs present both cornerstones of national human rights protection and promotion and links between the states and the international human rights regime. Therefore, the UN and its Office of High Commissioner for Human Rights (OHCHR) has increased its activities “in the strengthening of NHRIs in conformity with the Paris Principles¹⁰¹ as an important element in securing human rights at the national level” (OHCHR 2010). NHRIs are not only key elements of a national human rights regime, but they also act as a “bridge” between civil society and governments, linking the responsibilities of the state to the rights of citizens as well as connect national laws to regional and international human rights regimes. At the same time, NHRIs often find themselves criticizing the actions of the very governments that created and fund them, which is not surprising since the states are frequently the targets of human rights complaints (OHRCH 2010).

In relation to business, NHRIs¹⁰² are particularly well-positioned to facilitate processes, whether adjudicative or mediation-based, that are culturally appropriate, accessible and expeditious. They can provide information and advice on promotion and protection of human right to water and act as “lynchpins” within the wider system of grievance mechanisms (HRC 2008). In this way, they can play a crucial role in promoting and monitoring the effective implementation of human right to water standards at the national level (OHCHR and NHRIs). Nonetheless, NHRIs are important mechanisms, but they do not exist in all states and rarely provide full coverage of business human rights related issues. Even more crucial is that they are often not mandated or are incompetent (in most cases) to hear individual complaints. Therefore, SRSR argued that “governments should reconsider this limitation as one important step towards enhancing access to effective remedy” (Letnar 2010).

On the other hand, NCPs, which address complaints under the OECD Guidelines for Multinational Enterprises, already have the potential of providing an effective remedy (HRC

¹⁰¹In 1991, the first International Workshop on National Institutions for the Promotion and Protection of Human Rights took place in Paris. A key outcome was the Paris Principles relating to the status of national institutions. For the first time NHRIs compliant with the Paris Principles were formally recognized as important and constructive actors in the promotion and protection of human rights, and their establishment and strengthening formally encouraged. Paris Principles—are the cornerstone of national human rights protection systems and, increasingly, serve as relay mechanisms between international human rights norms and the State (OHCHR 2010).

¹⁰²The International Coordinating Committee (ICC) of NHRIs decided to establish its first thematic body, the Working Group on Business and Human Rights, in 2009. The mission of the NHRI Working Group on Business and Human Rights is to facilitate collaboration among NHRIs in relation to strategic planning, joint capacity building and agenda-setting in the field of business and human rights. The Working Group, chaired by Danish Institute for Human Rights, was established to increase understanding and raise awareness of NHRIs' role and mandate in addressing business and human rights issues. It assists NHRIs in promoting business respect and support for human rights, as well as in strengthening human rights protection and remediation of abuses in the corporate sector. Moreover, the increased focus of NHRIs on the issue of business and human rights can be noticed also through the ICC decision to hold its 10th Biennial Conference on "Business and Human Rights: What role for NHRIs?" in 2010. The conference outcome was the Edinburgh Declaration, which set out a commitment to engage proactively with corporate human rights responsibility and abuses, including with reference to SRSR by promoting the advancement of his "Protect, Respect, Remedy" policy framework (OHCHR and NHRIs).

2008). To understand the OECD Guidelines mechanism - NCPs - it is necessary to look at how this monitoring and conflict resolution mechanism works in practice. This can be seen in the example of human rights violations by Goldcorp's gold mine in Guatemala. Firstly, a group of local Guatemalan communities filed a complaint against Canada-based Goldcorp Inc., which operates the Marlin gold mine in Guatemala, for failing to respect the human right to water. In their complaint the communities claimed that toxic contamination from the mine and the depletion of fresh drinking water violated their right to health and overconsumption of water resources violates their right to water.¹⁰³ Secondly, the complainants from Guatemala specifically asked the Canadian NCP to examine the facts of the case and determine whether breaches of OECD Guidelines had occurred. Further, the Canadian NCP declared the case admissible in March 2010 after carrying out an initial assessment and offered to host meetings between the involved parties (the local community and the Goldcorp Inc.). In this respect the NCP's view is that communication and dialogue between the TNC and the notifiers are essential to the resolution of disputes. Therefore, the NCP recommended that the parties participate in a constructive dialogue with a view to addressing the issues raised. Nonetheless, the Canadian NCP considers this specific instance to be closed, because the parties never met (OECD Watch Water). If mediation fails, like it did in the above case, the NCP should make a determination on compliance with OECD Guidelines (OECD Watch Proposals).

However, this mechanism still has a long way to go to be more credible and efficient. Therefore, several areas of improvement of NCPs should be considered. For instance, lack of the resources to undertake adequate investigation and the training to provide effective mediation, non-effective implementation due to the absence of minimum performance standards for NCPs or time lines. There are no official consequences to NCPs findings against companies – a company could reapply immediately for export or investment assistance from the same government and outcomes are often not publicly reported (HRC 2008). Some critics argue that the OECD Guidelines are not well known and for that reason too few cases have been filed and solved. Moreover, it has been argued that there is no standard practice as to how the NCPs should deal with complaints in the initial phase (OECD Watch Proposals). As a result, overall NCPs' performance continues to be well below acceptable and reasonable standards, especially when considering that their tasks include handling grievances and providing remedies (OECD Watch Review 2008). Generally speaking, according to SRSR experience suggests that in practice they have too often failed to meet their potential (HRC 2008).

¹⁰³The issue raised related to the implementation of Paragraph 2 of the General Policies (Chapter II) of the OECD Guidelines which states that enterprises should "respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments" (OECD 2000).

The above non-judicial procedures are not a substitute for national law, but can still help to harmonize rules at a time of weak national regulation and can bring coherence to standards that should be implemented by companies whose international operations straddle several countries. They can act as a common reference point for national law, setting of benchmarks, drawing attention to core minimum requirements and establishing clearly what is not permissible. However, none of the above international procedures have any system for providing financial assistance to the victims who wish to lodge complaints. For this reason victims find access to international procedures prohibitive mainly because of the costs of communication and travel. Furthermore, many of the intentional mechanisms are cumbersome and too slow, so decisions are made too late (ICHRP 2002).

Nevertheless, when a company finds it is responsible for harmful impacts, it is expected to “provide for or cooperate in their remediation through legitimate processes” (HRC 2010c, Principle 20). The company-level grievance mechanism, introduced in policy framework for business accountability for human rights by SRSG, is claimed to serve as an early warning system for companies providing information about human rights impacts and it makes it possible for grievances to be addressed and remediated directly. An effective mechanism is part of the corporate responsibility to respect and businesses should identify and address grievances early, before they escalate. Under this mechanism, the corporate responsibility to respect human right to water requires the harm to be brought to the attention of the company (HRC 2008).

However, there are some commentators that claim that the mechanisms developed by business have established means mainly in order to preserve customer loyalty, employee morale and their reputation as a responsible TNC. It is suggested that the state should play a monitoring role over corporate grievance mechanisms to ensure that, where appropriate, intervenes to make sure the remedy is in place. It is also important to emphasize that corporate grievance mechanisms should not in any way impede access to or the availability of state-based remedial mechanisms (Amnesty International 2010; IHRB 2011). Generally speaking, such mechanisms continue to be underdeveloped in the human rights field and “individuals and communities are often unaware of existing avenues” (HRC 2010a).

To conclude, what the international community can do is to help create an enabling international environment and provide assistance that increases the capacity of governments to pursue such development. In this respect, it should be obvious that “much depends on decisions made in global political economy and there is a strong need for the improved governance of the global economy” (Eide 2010). In almost all cases, victims of corporate-related abuses of human right to water will be expected to seek redress first in their national

courts and before international ones, but in many cases they are confronted with legal¹⁰⁴ and practical¹⁰⁵ challenges, such as large imbalances in power, resources and information, compared to business actors (Joint Civil Society Statement 2011). As some observed it appears that it is less important which grievance mechanism is more appropriate or effective, than how to get the different types of mechanisms to connect and improve their impact by combining their different advantages. Nevertheless, some authors have also discussed the possibility of a world court for human rights, which would have jurisdiction over business (Letnar 2010a).

5.3 Closing the Chapter

Some important points can be made with reference to the above examined issues. Soft law mechanisms include two inter-dependent aims: making businesses respect human right to water in their operations and advancing business as a responsible actor in development. In this context, the human rights debate in relation to business seems to be centered on encouraging businesses to refrain from violating human right to water in their operations and relations. This chapter presented the general context in which the question of human rights responsibilities of business has developed. It described the initiatives which are the outcome of the growing importance of the Corporate Social Responsibility (CSR). Supporting human rights standards, thus, benefits both the company and the country of operation. CSR of transnational corporations (TNCs) depends on how it runs its core operations, interacts with partners, subcontractors and the community. It also depends on how it manages its investments. It is not based on donation or sympathy, but rather on social responsibility and common good. Therefore, soft law, voluntary initiatives and legislation must be tied to the larger framework of human rights in order to ensure a real contribution to human development. This means that actors other than states have certain responsibilities and obligations under the international law that is made by states, but is no longer exclusively for states (de Schutter 2006).

¹⁰⁴The attribution of responsibility among members of a corporate group can prove extremely complex, even in purely domestic cases, alleged “negligence” with respect to its subsidiary (primary liability) and “complicity” (secondary liability) or the concept of “agency” (vicarious or third party liability). The permissible grounds for courts to exercise extraterritorial jurisdiction. The third legal challenge is that investigating large companies for human rights abuses are typically well beyond State prosecutors’ usual work – it requires expertise, resources and political will and international cooperation (HRC 2010).

¹⁰⁵Costs; bringing representative and aggregated claims; standing, delays, damages and deterrence, burden of proof, fear and social stigma and disincentives to providing legal and related assistance to victims (ICHRP 2002).

Concerns related to the process of economic globalization express the need for specifying the state and non-state actors' responsibilities and obligations. In terms of globalization the adaptation of the state duty to protect human right to water implies further discussions on extraterritorial state obligations. The commitment to human right to water also provides a baseline for making businesses accountable and thus more vulnerable to public criticism. This leads to a modification of perspective as the states are no longer the only address for taking over responsibility for human right to water. One aspect of duty assignment concerns what duties to assign to private actors. This has become a prominent issue in recent years when the power of business has become particularly big. Therefore, a debate on business and human rights reflects not only a holistic view on human rights, but also the need to adjust the human rights regime to the challenges of economic globalization.

This discussion gained momentum leading to a stronger institutionalization and an impact on the existing human rights regime (Hamm 2011). As the human rights regime is particularly concerned with vulnerable, marginal, disadvantaged or socially excluded individuals and groups, it can act as an effective counterweight to the disruptive effects of globalization, whose burden is likely to fall disproportionately on these very categories of people (Osmani 2006).

Looking at advantages and disadvantages, voluntary approaches can at best be characterized as ambivalent, especially since the advantages are mainly advantages from the business perspective and the disadvantages are mainly disadvantages from the human rights perspective. However, the introduced mechanisms attempt to make businesses respect human right to water in their business operations as well as portray them as responsible actors in international development. The voluntary nature of the soft law mechanisms significantly weakens their enforcement due to the lack of legal sanctions for non-compliance. This thesis acknowledges that the above initiatives indicate a trend of international law toward regulating business directly through soft law mechanisms. Clear trends in international law to make businesses morally and legally responsible are evolving based on the obligation to respect and protect from abuse and harm. Business as an agent of development therefore has a moral responsibility to respect human right to water (Bård 2010).

On the one hand, voluntarism has little effect and the results are modest. The growth of corporate cultures of accountability and compliance with human rights norms is depending upon strong civil society and free media that create awareness and publicly articulate accountability. Furthermore, all of the above mentioned initiatives refer to "human rights responsibilities" of business in general terms, which lacks a precise notion of the content and practical requirements of the responsibilities. On the other hand, soft law voluntarism reflects

a general concern over potential harmful impacts and violations of human right to water made by business operations. Its spread reflects the gradual emergence of commitments that could form a basis for legitimate, agreed international human rights standards. Nevertheless, it also makes commercial sense to a company's public image, which is a factor in attracting investors and consumers (Bård 2010).

The important result of the discourse on business and human rights is further institutionalization of the idea of business responsibility for human rights, where institutionalization refers not only to forms of institution building but more importantly to order through dominant views. In this regard, the leading role of SRSG dominates the debate on the global stage. His policy framework for business accountability for human rights can be seen as the mainstreamed language that prevailed as dominant global thinking on the issue. In his framework it is states that are primarily responsible for the realization of human right to water and to monitor business conduct. Businesses must do no harm and avoid complicity as well as take human rights due diligence steps to become aware of, prevent and address its human rights impacts. Moreover, businesses need to be more accountable and transparent about the impact of their activities, and must provide adequate remedies for victims of abuse. Especially the third principle of his policy framework, access to remedy, "grants his policy framework the potential to turn into strong instrument with the capability to bare its teeth" (Hamm 2011).

When businesses engage with communities on water issues they need to understand the relationship between access to water and human survival and dignity (IHRB 2011b). It is obvious that business has a role to play in water policy, given its influence and the scale of its water consumption, and also because of its important role in providing or processing water for public use. However, when talking about water most businesses do not yet consider water to be a social or related human rights issue, for the reason that the great majority of businesses do not explicitly assess the human rights impacts of their policies and operations (IHRB 2011b). What is necessary is implementation enforced by one of the key concepts of the human rights regime, the capacity of public oversight and monitoring of corporate behavior (ICHRP 2002). Moreover, it is argued that, "the effectiveness of the international standards depends on the enforcement efficiency of domestic legal and non-legal institutions and the functioning of international monitoring bodies" (Bård 2010). In this way, the states can individually impose obligations directly on businesses, but whether they should collectively develop international law in this direction is another question. The problem is not in that businesses do not have human rights obligations; the real structural problem is that individuals do not have the resources to enforce their human rights through redress (Letnar 2010). Where

businesses abuse human right to water and no redress or accountability is available, this indicates a failure of national law (ICHRP 2002).

The risk of business negatively affecting the human right to water may stem from regulatory failings or lack of adequate law and policy enforcement. It is therefore in the interest of business and communities to ensure that robust regulatory frameworks are in place and can assist companies in assessing the legitimacy of existing policies and practices (IHRB 2011). In this way, business should assure that minorities are taken into account, the voices of the most vulnerable in society are heard in decision-making and that corruption is minimized. They should be also responsive to the present and future needs of the society (Pacific Institute 2003).

In contemporary globalization the state has a duty to ensure that powerful economic actors exhibit corporate behavior that does not abuse human right to water. States have a responsibility to find new ways to control the potentially exploitative and harmful power of economic actors. Modern human rights require more than good judicial processes and remedies. They also require civic engagement, public openness, free flow of information and civic and social movements and organizations that can engage in “shaming and blaming” campaigns. Such responses to human rights issues, outside of institutionalized legal system, are important additional means to hold TNCs accountable to human rights principles and may help make legal as well as voluntary mechanisms more robust (Bård 2010).

6. Conclusive Comments

Nevertheless, the global water crisis is now acknowledged as a governance crisis, a failure of political will to protect watershed resources, failed investments in infrastructure, inability to provide quality services, to ensure access for the poorest and fight corruption (UNDP Water). Across many water source areas there is a lack of reliable data on water quantity, how available water is being used and what this means for people's ability to access supply. Lack of credible data means increasing risks to civil society, business and the state (IHRB 2011). In many cases, mismanagement and lack of interest by the authorities not only prevents improvements, it may worsen the situation by depriving people of their existing access to water. One of the major problems is "discrimination and willful neglect of the poor and marginalized who lack the power to defend themselves and their rights" (FIAN 2006).

It is argued that water is a shared resource, a part of the "natural commons, belonging to everyone and to no one and, consequently, susceptible to being overused or misused" (ICCR 2009). Therefore, the challenges facing water sources will require not only large sums of capital, but even more importantly, wise stewardship of ecological resources, respect for human rights and organizational commitment to inclusive and transparent processes. Preserving water from overuse and pollution and providing water for all can only be met if all stakeholders are engaged in water governance (ICCR 2009).

Nevertheless, the economic theory suggests that globalization's gains will outweigh the losses and in turn nations as a whole should gain in the form of an overall increase in welfare. The problem is that gains and losses may not be distributed evenly across the globe. Much depends on who happens to be involved and who is contracting, who has the skills and other means of access to the new opportunities that are being opened up. Furthermore, globalization has widened not only income differences, but also distribution. Losses will generally be borne disproportionately by the poor who would suffer more because of the lack of flexibility to cope with global market forces (Osmani 2006). For that reason it is stated that "trade and investment policies need to reflect an orientation towards accountability achievement and empowering the poor." In addition to investment, of key importance to development is an emphasis on policies to encourage the rule of law, which is crucial also from the investment point of view (UNCTAD 2010b).

In this respect this thesis advocates that the only way to ensure social dimensions of constructive and consensual globalization is through the human rights based approach to

development (HRBAD) (Eide 2010). The social dimension of globalization is a current and main challenge in ensuring that globalization and global governance become a positive force. In this context, this thesis argues that a lack of social dimension in the process of globalization and a lack of good global governance can lead to a water crisis which will contribute to violation of the human right to water. However, moving towards the HRBAD would be a way of capturing the interlinkages between the competing social and economic policy issues (UNCTAD 2010b). The HRBAD recognizes that economic growth alone does not necessarily lead to social development or better outcomes for the poor. For that reason, growth-centered development has to address more complex and fundamental causes of poverty and inequality, including discrimination, exploitation and abuse. Within the HRBAD, poverty is viewed not as a fact of individual circumstances and capacities, but is linked to the structures of power and inequity embedded in the local, the national and the global context (DIHR).

It is argued that using the HRBAD can help state and non-state actors to respond more effectively to the unmet rights of the poor – including access to water – because it focuses its attention on accountability and responsibility of duty-bearers. By using the HRBAD it becomes easier to decide whether rights have been violated, and (if so) by whom, and who should take action to ensure that rights are respected (ICHRP 2003). Adopting a HRBAD strengthens policy formation and its implementation by defining roles and responsibilities clearly, setting minimum standards, promoting non-discrimination and encouraging the participation of all those who have a legitimate interest (IHRB 2011b).

Integration of the HRBAD into business policies and practices would enable businesses to foster more sustainable development and address human rights abuses, including the human right to water. Moreover, integrating human rights considerations, including those relating to water, into the policies and practices of business could enable states to call on businesses to be more transparent and accountable for their impacts in relation to water, also in human rights terms (IHRB 2011b). The HRBAD seeks to add a focus on the root causes by asking why a certain group of people does not have access to water. Other relevant issues are the questions of exclusion and discrimination; functioning of public or private systems and whose responsibility it is; what duty-bearers are doing to address their responsibility (Gibb and others 2008). The HRBAD is therefore an approach that delivers advantages to the poorest and the most disadvantaged individuals and communities. Through this, the HRBAD will help to ensure that:

- states as primary duty-bearers have the primary responsibility to respect, protect and fulfill human right to water, prevent businesses from abusing or undermining the human right to water, and hold it accountable if it is complicit in violations related to access to water;

- businesses as moral duty-bearers, integrate all recognized human rights including the human right to water in their policies and activities, and see every human being to be a ‘rights-holder’;
- adequate, accessible and effective remedies are made available to every victim of (corporate) human rights abuse (IHRB2011b).

States as the primary duty bearers for the realization of all human right to water are aware of and held accountable for ensuring that business activities in no way abuse or undermine the enjoyment of human right to water. The primary role of the state is to take all necessary positive steps to protect against human rights abuse, including to prevent, investigate and punish the abuse, and to provide access to redress for the victims (HRC 2008). The state duty to protect makes it clear that “states must – through legal and policy measures – require corporate human rights due diligence” and “impose sanctions if companies fail to carry out such due diligence” (Amnesty International 2010). The state ought to clarify responsibilities of business by including human right to water in contractual arrangements or regulatory provisions in all public-private contracts. However, potential impacts of public-private agreements should be assessed before contracts enter into force and the findings of the assessed impacts should be adequately disclosed (IHRB 2010a). The duty to realize human rights remains with the state even when the state contracts with or legislates for business enterprises (to provide public services) (HRC 2010b). It is argued that states should ensure that private actors:

- fulfill their responsibilities towards human right to water throughout their operation processes, including by engaging with the state and stakeholders to detect potential human rights violations and find solutions to address them;
- integrate human right to water into impact assessments;
- develop effective organizational-level grievance mechanisms for water users and refrain from obstructing access to the state-based accountability mechanisms;
- in the case of water management, private actors should contribute to a regular supply of safe, acceptable, accessible and affordable water services of good quality and sufficient quantity (IHRB 2011).

This thesis argues that trade and investment policies need to reflect an orientation towards empowering the poor. In other words, when acting multilaterally, states should ensure respect of human right to water when providing financial or other forms of support to the private sector. Similarly, states as member parties of international organizations should require also from international economic organizations such as the Bretton Woods Institutions and World

Trade Organization (WTO) to respect human right to water. Following the HRBAD principles means to identify the corresponding duties and obligations not only of the economic actors, but also of international economic institutions which finance the private sector (de Schutter 2005).

The UN Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises (SRSG) explains that business as one of the major global economic players has the responsibility to respect human right to water by conducting human rights due diligence, a process whereby business ensures compliance with national laws and manage the risks of human rights violations by avoiding them (HRC 2010). It is further noticed that businesses must take due diligence steps to become aware of, prevent and address their human rights impacts. They must therefore adopt a human rights policy, make impact assessments, integrate human rights policies throughout the company and monitor as well as audit processes (HRC 2008). The role of businesses with regard to the right to water is understood in terms of providing access to water and making sure that processes based on human rights criteria are used in delivering water (in the case of service providers) and (in the case of all businesses) ensuring that access is not diminished because of their own use or pollution. Businesses might risk complicity by International Criminal Law if they withheld access to drinking water by order of the government or another armed group trying to punish local civilians (IHRB 2011).

In terms of business, HRBAD guiding principles can also assist businesses in assessing the legitimacy of their policies and practices. In particular, they clarify how a business should relate to other stakeholder groups. The HRBAD recognizes that in accordance with the principles of non-discrimination people living in poverty should have the right to a greater share of resources. Consequently, it emphasizes participation at every stage of the programming process and it counts on the accountability of duty-bearers (UNDP 2001; IHRB 2011).

The HRBAD non-discrimination principle should be an integral part of business responsibility to respect human rights and here businesses should consider the way in which rights-holders, especially women, children and other marginalized groups, are or may be affected by business activities in particular in relation to access to water. It is argued that water and water services must be accessible to all, including the most vulnerable or marginalized sections of the population (CESCR 2002). Especially when bearing in mind that on average women and children in Africa and Asia walk six kilometers a day in search for water and carry heavy loads back home, which often prevents them from attending school or having a job. Yet they

are under-represented in most community and state-based decision making mechanisms that influence water use and its management (IHRB 2011b).

One of the most important HRBAD principles is participation. Regarding the participation water accessibility should include “the right to seek, receive and impart information concerning water issues” (CESCR 2002). Therefore, the participation of all concerned must be active, free and meaningful. These require disclosure of adequate and sufficient information and actual access to information. The creation of a opportunities for individuals and civil society to participate, monitor, evaluate and report on possible violation of human right to water (HRC 2010b). Traditionally, the poor and marginalized groups lose out in policy formulation as they do not possess enough political or financial power to make their interests count. Participation means that “everyone is entitled to take part in making the decisions that affect the exercise of their human rights.” For example, decision-making processes relating to design of water tariffs should be “open to participation at different levels and within formalized structures” (IHRB 2011). This may require building the capacity of the poor and most marginalized to do so. Capacity-building activities can play a very constructive role by strengthening the bargaining power of the rights holders. Firstly, the state must create the necessary legal and institutional environment in which an independent civil society can flourish. And secondly, without empowerment effective participation is not possible. Empowerment is a precondition which means the rights holders are able to claim their rights and to participate effectively in the decision making process. However, the process of empowerment can itself be quite complex and time-consuming because of the deep-rooted nature of the asymmetries of power that exist in most societies (Osmani 2006; IHRB 2011). The relevant authorities (the state and business) must ensure before any action that interferes with human right to water:

- opportunity for genuine consultation with those affected;
- timely and full disclosure of information on the proposed measures;
- reasonable notice of proposed actions;
- legal recourse and remedies for those affected; and
- legal assistance for obtaining legal remedies (CESCR 2002).

Therefore, any business role in public policy discussions should be open and transparent and carried out in conjunction with civil society to ensure that shared regulatory risk is addressed in a way that joins up all relevant actors (IHRB 2011).

When referring to the HRBAD accountability principle transparency helps to ensure the “overall integrity” of different business sectors in making the private sector more accountable to stakeholders. Accountability has specific relevance to the contracting and reporting

relationships between business and the state in relation to water use and its management. Effective accountability means “redress before a court or other adjudicator” for those whose rights are affected. A responsibility or duty can only be meaningful if duty-bearers can be held accountable for failing to perform their responsibility or duty. Most importantly, accountability procedures must be participatory so that rights holders are able to hold duty-bearers accountable for their actions. The remedy principle set out by SRSG policy framework is therefore highly relevant here (Osmani 2006; IHRB 2011). Accountability mechanisms can be judicial or non-judicial. State judicial mechanisms should investigate, punish, and redress human rights abuses (Joint Civil Society Statement 2011). Non-judicial accountability mechanisms must meet the principles of legitimacy, accessibility, transparency, predictability and equitability to be credible and effective. Their key functions should include complaint handling, promotion of human rights, guidance, capacity building and provision of support to stakeholders and businesses (HRC 2008). Examples of these mechanisms have already been mentioned in this thesis, namely National Human Right Institutions (NHRIs), OECD National Contact Points (NCPs), the UN treaty bodies and similar. All accountability mechanisms or remedies must be accessible, transparent and effective. They should encompass the ability to access justice to bring claims of wrongdoing and seek reparation. Therefore, an effective remedy plays an important role as an accountability mechanism in both the state duty to protect, as well as in the corporate responsibility to respect human rights.

It is believed that through its guiding principles the HRBAD provides tools that help to address violations of economic, social and cultural rights, and in this respect also violations of the human right to water. Since the right to water was internationally recognized in 2010, it is recommended that businesses observe it in their operations, while continuing to give specific attention to the particular demands of public and individual entitlement to access water, especially when considering that the ‘social license to operate’ can be maintained only if stakeholders are convinced about businesses’ commitment to human right to water. However, continued and coordinated investments in water are needed in order to reach the poorest and most marginalized. Therefore, investments should be “undertaken in cooperation with actors working to deliver long-term sustainable change based on the principle of empowering people and developing local capacity” (IHRB 2011b).

7 Conclusion

The general research question addressed in this thesis is how the human rights based approach to development (HRBAD), also known as the people-centered or participatory approach, can ensure better compliance of business with human rights, particularly when it comes to the human right to water. In other words, the thesis examined how access to water relates to global governance, and how HRBAD can become a piece in the puzzle of its solution.

In order to meaningfully clarify global governance led by neoliberal ideas that are framed in capitalist thought this thesis attempts to examine how businesses respect and protect human rights in the globalized world. It analyses the rising global inequalities originating from the global North-South relationship and argues that they are reflected through the asymmetries of the expanding role and power of business, and on the other hand describes the rising recognition of the rights of the poor and marginalized. These asymmetries are perceived as a result of the historical pretext and the global governance crisis.

However, this thesis also tries to address the structural problems of global governance power relationships linked to global inequalities in an attempt to examine respect and protection of human rights by business. It is argued that the discourse on business and human rights means a reaction to overall challenges of neoliberalism and to global power imbalances. In addressing the structural problems of global governance power relationships the thesis reveals the poor and marginalized as powerless and holding an unequal position in global governance, and points out the actors and circumstances that contribute to their reality. It is argued that poverty is linked to power structures and global inequalities. Thus, it is necessary to focus on the analysis of development through the relationship between the poor and disadvantaged, and the actors or circumstances which contribute to this problem. In this respect, business represents a critical position based on the observation that on the global stage political balance is often tilted in its favor because of its increasingly influential position in global governance. This is especially so in view of the fact that global inequalities and global governance power relationships are tailored to serve the interests of businesses and to pursue policies of international organizations - mostly international economic organizations such as the Bretton Woods Institutions and the World Trade Organization – that serve as the entering point for business interests. These interests are mostly expressed through their home states which are members of these international organizations.

In this regard, supply of and access to essential resources such as water have become an arena for struggle over distributive justice, a site for a global social policy as well as global business policy (Dubash 2005). In this context, a lack of the social dimension in the process of globalization and a lack of good global governance lead to a water crisis, which contributes to violations of the human right to water (Morgan 2008). In the discussion on access to water it is believed that human right to water is a global issue not only of water access and of scarcity, but also an issue of global governance. The access to water issue has enabled an examination of global inequalities and is believed that it can show the way to addressing the structural problems of the global governance power relationships. In the thesis, access to water therefore exemplifies policy and regulatory dimensions of global governance and its crisis.

It is argued that the global governance crisis has been caused by the neoliberal agenda tailored to serve the interests of businesses and powerful states of the Global North through international organizations exerting their influence on national policies. By imposing policies on the less powerful states, which are usually the states of the Global South, through policy conditionalities and structural adjustment policies the powerful are taking over their democratic decision making. The crisis in global governance is seen as a crisis of inequality, legitimacy and accountability of global actors and their actions. It presents two conflicting aspects – the economic thinking and the human rights perspective.

The thesis firstly tries to examine how access to water is related to global governance by identifying and analyzing the main global actors in global water governance and their role in the water policy. The actors identified in the thesis are states, international (economic) organizations (the UN, the Bretton Woods institutions and the World Trade Organization), and transnational corporations (TNCs). It is argued that these various actors in different institutional settings contribute to policy development and implementation of water policy. The global policy development and implementation of water policy are influenced by the idea of more market, more competition, a reduced role of the state, export-led growth, out-sourcing and a belief that distribution of resources through the market is optimal, which directs us to the phenomenon of water privatization. The thesis characterizes the phenomenon as a grab for water.

Nevertheless, the thesis argues that there is a difference between the so-called home and host states of TNCs. While the home states, commonly the states of the Global North, have functioning legal systems, economical resources and regulatory strength, the host states of TNCs – the states of the Global South – have no interest and, more importantly, no resources to enforce or monitor standards against the powerful actors such as TNCs. The reasons behind why the host states appear to be so attractive for business investments are low production

costs, vague (labor and environment) regulations, richness with natural resources and creation of a friendly investment environment reflected through export production zones and bilateral investment treaties (BITs) that are usually the secrets best kept from the public eye – their own citizens. Moreover, when the cash strapped governments sought innovation, efficiency, well-paid employment, transfer of new technology and transfer of know how to local businesses and especially new sources of capital the public-private partnership gained its momentum and policy support. However, intense use of natural resources, collecting of economic rewards at the expense of human rights and subverting of regulatory national systems by business threaten the role of the state.

International organizations discussed in the thesis, from the UN and Bretton Woods institutions to the WTO are also considered very important players in global water governance because they define rules, provide guidance and act as standard-setters. And even here there are differences among actors in their agendas and interests. For instance, the UN promotes the ideas of human rights and international development and is the one organization that has recognized the human right to water at the international level as an international human right that was later adopted by its General Assembly. The UN acts as a forum provider for voicing concerns of all its members. However, it is argued that the UN is controlled by the interests of the great global powers – mostly the permanent members of the UN Security Council – which weakens human rights enforceability and implementation mechanisms that are not strong in providing remedies for victims of human rights violations.

On the other hand, international economic organizations like the World Bank (WB), the International Financial Corporation (IFC), Center for the Settlement of Investment Disputes (ICSID), the International Monetary Fund (IMF) and the World Trade Organization (WTO) shape global monetary and fiscal policies by imposing political conditionalities and by empowering private actors like TNCs, which play a fundamental role in conducting global water policy. They pose power over democratic decision-making that is based on quota size that each member state gives in to the “organization's budget.” In this way, it is the richer, more developed countries which have a say in the agenda and interest formulation in global water governance.

Furthermore, promotion of water privatization presents a condition of debt rescheduling through structural adjustments policies or, in the case of WTO it is promoted via free trade rules embodied in the General Agreement on Trade in Services (GATS) which present water as tradable commodity. Privatization is usually presented as a private-public partnership that means reduced involvement of the state over public functions, which leads to disparities in power between TNCs and the government. This is accompanied by a reduced democratic

public sphere seen as a democratic deficit. This system is supported by the ICSID, which is used as an arbitration forum for settling investment disputes against the states which violate BITs; and in the case of the WTO, GATS allows TNCs to sue governments that prevent free market entry of business. The famous case of Cochabamba dispute over water rights in Bolivia, where a TNC – Bechtel - had to cease its operation over water services, can characterize global water policies put in practice. However, BIT between Bolivian government and Bechtel was terminated because of civil unrest caused by skyrocketing prices of water supply. Consequently, Bechtel filed a case for compensation because of the termination of BIT. This insecure situation shows how much major corporate players depend on international economic institutions to build a global market. Through the privatization process, water is turned into a commodity, put on the market and sold, usually on the basis of ability to pay (Barlow and Clark 2002). However, citizens groups engaged in a global campaign to pressure Bechtel to drop the case and for the first time the court of global public opinion won, TNC has had to back down as the result of global citizen pressure. Therefore, the challenge now is to build on pressing for new trade and investment rules that promote democracy and sustainable development rather than the narrow interests of business (Madeley 2008, 85-91).

As suggested throughout the thesis the biggest challenge now is how to balance the actions of global governance actors by way of overcoming inequality, accountability and legitimacy gaps. Therefore the thesis argues that the challenges posed by global water governance can be overcome by using the HRBAD to encourage businesses to refrain from human rights violations. To understand the general research question the thesis explains the human rights and business relationship by analyzing its regulatory framework that leads the way to show how HRBAD can contribute to the solution. It is argued that human rights could be part of the puzzle towards the solution of global governance gaps and an opportunity for business operations to respect human rights, which would contribute to development. The incorporation of human rights can be seen as a way to minimize negative impacts of globalization and ensure that global governance becomes a positive force. It is therefore believed that human rights can provide an ethical lens and reshape and improve the global economic policy.

The thesis also looks at the origins of business responsibility to respect human rights by presenting various volunteer initiatives and soft law mechanisms developed either by companies or different international organizations. They emerged to make businesses morally and legally responsible actors in global governance and to make businesses respect and advance human rights as a responsible actor in development. On the other hand, the voluntary nature of these mechanisms weakens their enforcement due to the lack of legal sanctions for

non-compliance. Emergence of these commitments have provided the basis for legitimate standards to form commitments to human rights, which is seen as a baseline for accountability and a means for making businesses much more vulnerable to public scrutinizing. Enforcement mechanisms such as those provided by the ILO Tripartite Declaration, OECD Guidelines and the WB inspection panel are relevant in giving a social dimension to business behavior. These procedures allow for individual complaints against TNC. However, they do not provide reparations for the petitioner, frequently work slowly and are not financially assisted.

Moreover, the thesis argues that the human rights regime has been very slow in adjusting to the challenges of economic globalization and that modifications to international human rights law have been too modest. On the other hand it is acknowledged that the human rights law was foremost developed as a response to the power of the state; now, however, there is an urgent need to regulate business conduct as business is becoming an increasingly powerful player on global scale. In this respect, the thesis emphasizes that a function of law is to balance power and obligations by establishing enforceable rights and corresponding duties (ICHRP 2002)- The international human rights law must evolve in a way that meets the needs of society and should reflect the current and prevalent economic, political and social norms.

However, a better legal framework is required, especially concerning TNCs to stop economic deprivation and socio-economic exclusion. The lack of legal accountability renders the current system profitless and controversial. Clearer international standards will help to ensure that business can be part of the solution to today's social challenges and not their cause. A problem with the human rights and business idea is that is not very much a developed theory, yet. Voluntary standards, though valuable, are not a substitute for binding international agreements.

Nevertheless, current development of the listed soft law mechanisms, volunteer initiatives, value-based platforms and code of conducts leads to a stronger institutionalization, encouraged also by the appointment of the UN Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises (SRSG). SRSG represents a global voice to anchor the business and human rights debate and to help to guide all relevant global actors. His major contribution is a concept of a policy framework for business accountability for human rights, which he describes as the "Protect, Respect and Remedy" framework. His work has been broadly accepted and its ideas mainstreamed.

Even though SRSG rejected the idea of binding rules for corporate behavior his policy framework for business accountability for human rights is very relevant for the thesis as it leads the way towards incorporation of human rights into business policies and practices.

Following the SRSG's policy framework enables a more comprehensive implementation of HRBAD, because the three framed fundamental policy principles present issues related to human rights and business, stress the need for effective remedies for victims of human rights abuses, define main global governance actors – as they are illustrated in this thesis – and clarify their main roles through human rights obligations and responsibilities. In this context, SRSG presents the way in which greater responsiveness and effectiveness in dealing with human rights and business issues can be achieved. However, his policy framework is argued to be pursuing an approach of political pragmatism, claiming that he does not ask for much, but something that could be negotiated and acceptable for all the players on the global stage.

This thesis argues that the SRSG's policy framework together with the applied HRBAD guiding principles forms an answer to the general research question (how HRBAD can ensure better compliance of business with human rights?) examined in the thesis. In this respect, implementation of HRBAD guiding principles in SRSG's policy framework would ensure a social dimension of constructive and consensual globalization that could become a positive force, a way of more environmentally sustainable development and would also address violations of human rights as well as the causes of poverty, inequality and inadequate power relationships.

The HRBAD identifies the state as a primary duty-bearer and under the SRSG's framework it has a duty to protect human rights by taking positive steps to prevent, investigate, punish and provide redress for victims. The state should require human rights due diligence from businesses and impose sanctions if rights are violated. It should include human rights standards in contractual arrangements, especially in all public-private partnership contracts. Furthermore, states as members in international (economic) organizations should call for respect of human rights in these organizations' policies and practices and identify their corresponding duties. International (economic) organizations should undertake their investments projects in cooperation with all relevant stakeholders with an aim to bring long-term sustainable change based on empowering and developing local capacity.

However, implementing HRBAD guiding principles in SRSG's second principle of business responsibility to respect human rights is much more complex, but it presents the fundamental or core recommendations of this thesis and these might lead the way towards improvements in policy formulations and their implementation. It is argued that businesses must follow human rights due diligence steps to become aware of, prevent and address their human rights impacts. When conducting human rights due diligence – a process that ensures compliance with national laws and manages risks of human rights violations – businesses must adopt a human rights policy, make impact assessments, monitor their operations and provide audits

when necessary. Moreover, the thesis argues that the second principle of business responsibility to respect should enforce HRBAD guiding principles – non-discrimination, participation and accountability – in all its stages and processes. For the reason, some more theoretical HRBAD guiding principles, such as ‘indivisibility’ or ‘interdependence’ are much harder to measure, than more practical principles such as “non-discrimination,” “participation” or “accountability.” The HRBAD defines business as a moral duty-bearer.

Non-discrimination should implement a way for rights-holders not to be negatively affected by business operations on a discriminatory basis such as age, gender, sexual orientation or ethnicity. In this respect, particular attention should be paid to demands of those under-represented in communities.

Everyone has the right to participate in decisions which affect their human rights. Participation should require building the capacity for strengthening the bargaining power of rights-holders. Empowering of rights-holders is a crucial factor here as it is a precondition for participation to work. Empowering the rights-holders enables them to claim their rights and participate effectively in the decision making process. Individuals and communities should understand their rights, and be fully supported to participate in the development of policy and practices which affect their lives.

Business responsibility to respect human rights can only be meaningful if businesses can be held accountable for their actions. Accountability requires effective monitoring of human rights standards as well as effective remedies for human rights violations. Remedies encompass the ability to access justice to bring claims and to seek reparation. Accountability procedures must be participatory in nature and accountability mechanisms or remedies must be easy accessible, transparent and effective. For accountability to be effective there must be appropriate laws, policies, institutions, administrative procedures and mechanisms of redress in order to secure human rights. Therefore, the remedy principle set out by the SRSR policy framework is highly relevant here.

The objective of this thesis is to comprehensively demonstrate and analyze the existing scope of the relationship between human rights and business in a framework of global governance through the lens of the human right to water. The human right to water is used as an example to examine the reaction to imbalances in globalization and overall global challenges of neoliberalism. Still, global governance weaknesses are major reasons behind difficulties in tackling the realization of the human right to water that are encountered when pursuing sustainable development and balancing social-economic needs with environmental sustainability. Therefore, the debate surrounding the water sector is often polarizing. When dealing with global governance gaps it is essential to produce a fairer, more inclusive and

democratic world order, which would in turn facilitate the realization of human rights and good global governance.

Responsible business practices are one of the most dynamic and challenging subjects that business face. Business operating in global market is increasingly required to balance the social, economic, and environmental elements of their actions. Human right to water as part of the Corporate Social Responsibility (CSR), thus, is more than a good image for business operation or a philanthropic act. It is based on legislation and common good. Human rights practices must be seen, as a necessary element of a business strategy. Whether business can contribute to human development, in the near future, will depend on expanding their initial function of production and services to ethical and social responsible practices.

The research work for this thesis had to deal with some limitations. It is understandable that the field work related to the examined topics would contribute to the research through practical experience and add to its relevance, simply for the fact that the theory could be studied more thoroughly in practice. However, the thesis is focused around the case of the human right water in order to reduce this gap between theory and practice. The other two limitations are somehow related as they were experienced as challenges. The thesis was not written in my mother tongue but in English and communication with the supervisor has also been a limiting factor because of the lack of personal communication, which was due to the considerable geographical distance. Therefore, it took me a bit longer to find the right research methodology approaches and how to implement them on analyzed theory.

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9 Abstract in Slovene

ČLOVEKOVA PRAVICA DO VODE IN GOSPODARSKE DRUŽBE

Voda in človekova pravica do vode postaja aktualno in pereče vprašanje tega stoletja tudi v razpravah o družbenih dimenzijah globalizacije. Največji izziv za sedanjo globalizacijo je, da bi pri vsej družbeni razsežnosti postala skupaj z globalnim vladanjem-upravljanjem (global governance) pozitivna sila. To pa pomeni enakomerno porazdelitev svetovnega bogastva in posledično s tem globalno solidarnost, vključenost, odgovornost in participacijo vseh vpletenih (globalnih) akterjev. V tem okvirju magistrsko delo trdi, da pomanjkanje družbene dimenzije v procesu globalizacije in pomanjkanje dobre globalne vladavine-upravljanja vodi do (globalne) krize z vodo in s tem je človekova pravica do vode kršena.

Analiza in razprava o človekovi pravici do vode je v tem raziskovalnem delu uporabljena kot primer, s pomočjo katerega naloga raziskuje, prikazuje izzive in neravnovesja v trenutno prevladujočem globalnem sistemu neoliberalnega kapitalizma. Človekova pravica do vode je uporabljena tudi za pospešeno razpravljanje in razumevanje odnosa med človekovimi pravicami in biznisom. Ta odnos pa je za nalogo ključnega pomena, saj podaja razumevanje delovanja globalizacije. Znotraj nje bi spoštovanje človekovih pravic lahko predstavljalo del rešitve, ko govorimo o pomanjkljivostih, nepravilnosti, vrzelih globalnega vladanja-upravljanja in kjer lahko biznis s spoštovanjem človekovih pravic prispeva k trajnostnemu razvoju (Hamm 2011).

Sedaj živimo v globaliziranem svetu in v času številnih globalnih kriz (ekonomskih, političnih, kot tudi v času kriz s hrano, energijskimi viri in podnebnih sprememb), ki spodbujajo razmišljanje in vprašanja o trenutnem kapitalističnem sistemu in njegovih neoliberalnih principih. Ta globalni val kriz nas opozarja, da moramo uporabiti drugačen pristop, ki temelji na ljudeh in njihovem razvoju (UNCTAD 2010). Res je, da je mnogim državam uspelo izkoristiti globalizacijo sebi v prid in so tako povečale svojo blaginjo in zmanjšale stopnjo revščine. Vendar pa je hitra širitev globalnega trga ustvarila vrzeli pri globalnem vladanju-upravljanju na številnih policy področjih (Ruggie 2008). Zato trdim, da „lahko človekove pravice zagotavljajo perspektivo, ki je tako očitno odsotna pri prevladujočem ekonomskem okviru (...) Gospodarska kriza in njene posledice so priložnost

za oblikovanje drugačnih načinov, pri katerih bi principi človekovih pravic – kot etični in pravni okvir – lahko oblikovali in izboljšali ekonomsko nacionalno in globalno politiko“ (ICHRP 2010). Tako je zanimanje za povezave med človekovimi pravicami in biznisom pridobilo nov zagon, predvsem nov interes za razumevanje tega odnosa.

Raziskovalno vprašanje, ki ga preučujem v svojem magistrskega delu je, kako in na kakšen način lahko „pristop do razvoja temelječ na človekovih pravicah“ (HRBAD), znan tudi kot pristop, temelječ na ljudeh ali participativni pristop, pripomore in zagotovi večjo, boljšo skladnost biznisa s človekovimi pravicami, tudi ko gre za človekovo pravico do vode. Povedano drugače, kako je dostop do vode povezan z globalnim vladanjem-upravljanjem in kako je lahko HRBAD del rešitve globalnega vladanja-upravljanja, ko govorimo o človekovi pravici do vode.

Zato magistrska naloga analizira vse bolj rastočo globalno neenakost in obravnava strukturne probleme ter razmerja moči v okviru globalnega vladanja-upravljanja. Predstavlja in analizira odnos med biznisom in človekovimi pravicami, njuno povezanost in problematiko. Uporaba osnovne teorije HRBAD pa bo prikazala, kako je lahko ta odnos med biznisom in človekovimi pravicami dobro izveden in upravljan, da deluje na najboljši možni način, saj lahko vodi tudi k uresničitvi in spoštovanju človekove pravice do vode. Zato verjamem, da „HRBAD pomeni opolnomočenje manj privilegiranih skupin, izziv zatiranju in izključevanju, kot tudi spreminjanje samih razmerij moči“ (Uvin 2007).

V zadnjih dveh desetletjih so Združeni narodi (ZN) naredili pomembne korake pri vključevanju človekovih pravic v mednarodne razvojne politike. Nekdanji generalni sekretar ZN Kofi Annan je veliko prispeval k promociji te ideje, ki je bila podlaga za nadaljnje reforme ZN in vključevanje človekovih pravic v prakse razvojnih politik. Takšno razumevanje človekovih pravic in mednarodnega razvoja je ključno za razumevanje pristopa temelječega na človekovih pravicah, ki je uporabljen v tem raziskovalnem delu. O paradigmi med človekovimi pravicami in mednarodnim razvojem se je razpisal tudi Nobelov nagrajenec za ekonomijo Amartya Sen¹⁰⁶ v delu “Razvoj kot svoboda.“ Sen definira razvoj kot „razširitev zmožnosti ali človekovih svoboščin. Kjer zahteve in obveznosti temeljijo na človekovih pravicah, vendar so globoko politične in neprestano spreminjajo svojo vsebino, predstavljajo trenutno družbeno in pravno realnost, ki pa ni nikoli stalna, ampak je stvar nenehnega političnega boja“ (Sen 1999, 87).

¹⁰⁶ Amartya Sen is an Indian economist who was awarded the 1998 Nobel Prize in Economic Sciences for his contributions to welfare economics and social choice theory, and for his interest in the problems of society's poorest members.

Magistrska naloga uporablja HRBAD kot „konceptualni okvir za proces človekovega razvoja, ki iz normativnega vidika temelji na mednarodnih človekovih pravicah in je operacijsko usmerjen k spodbujanju in spoštovanju človekovih pravic“ (OHCHR 2006). Saj je njen „namen analizirati neenakosti, ki so v samem središču razvojnih vprašanj, in preučiti ukrepe za odpravo diskriminatornih praks in nepravične distribucije moči, ki ovirajo napredek pri razvoju. HRBAD tudi opredeljuje imetnike pravic in njihove pravice kot tudi nosilce dolžnosti in njihove obveznosti ter odgovornosti. To pa krepi možnosti imetnikov pravic, da zahtevajo svoje pravice, in za nosilce dolžnosti pomeni, da izpolnjujejo svoje obveznosti in odgovornosti“ (ibid.).

Uporaba osnovne teorije HRBAD na biznisu in opazovanje njenih izidov bo opredelila nosilce dolžnosti in njihove obveznosti ter odgovornosti. HRBAD bo prepoznal imetnike pravic in njihove pravice, tudi ko govorimo o človekovi pravici do vode. To bi okrepilo zmogljivosti imetnikov pravic pri zahtevanju dostopa do vode in bi povečalo zavedanje biznisa pri učinkovitem upravljanju s tveganji pri uresničevanju človekove pravice do vode. Zato še vedno obstaja upanje za večjo globalno pravičnost in za dobro globalno vladanje-upravljanje. Analiza trenutnih globalnih trendov skozi perspektivo HRBAD omogoča vpogled v porazdelitev moči z opredelitvijo akterjev na tiste, ki imajo pravice, in na tiste akterje, katerim so le-te kršene. HRBAD je najverjetneje najbolj primeren pristop za zaščito tistih v stiski, saj jim podeli moč kot imetnikom pravic, spreminja odnose moči, omejuje konflikte in omejuje pojav elitnega ujetja (elite capture), pri čemer imajo nosilci pravic dolžnost biti odgovorni.

V primeru vode ima privatni sektor kar dolgo zgodovino vpletenosti v vodni sektor in tako nosi tri potencialne odgovornosti v povezavi z vodo: „kot uporabnik ali potrošnik vode, kot nekdo, ki omogoča dostop do vode, in kot ponudnik ali distributer vode“ (IHRB 2009). Vendar pa je potrebno razumeti vpletenost biznisa v vodni sektor v državah v razvoju, oziroma državah globalnega juga, v okviru pristopov donatorjev razvojnih in mednarodnih politik. Kot je dejala neodvisna izvedenka ZN za čisto, pitno vodo in sanitarije, Catarina de Albuquerque, da „mednarodne finančne institucije še posebej spodbujajo neoliberalne reforme – saj zagovarjajo, da države zmanjšajo javno porabo in se izogibajo večjim investicijam – uvedene s pomočjo posojila ali preko pogojevanja pomoči, reprogramiranja dolga ali odpisa dolga“ (de Albuquerque 2010). Nekatere od teh reform so zato privedle do večjega vključevanja biznisa v vodni sektor, kar je povezano z razvojno pomočjo v obliki pogojev za reprogramiranje dolga ali njegovega odpisa.

Splošno je znano, da je voda bistvena za preživetje, zdravje, proizvodnjo hrane in energijo ter za čisto okolje, kjer živijo ljudje. Magistrska naloga namerava nadgraditi razpravo o

človekovi pravici do vode, njenih izzivih, dilemah in priložnostih ter pojasniti vidik voda kot javnega dobrega na eni strani in po drugi strani kot redkega blaga – modrega zlata – ki postaja vse redkejša in vse bolj dragoceno.

Pomen vode je potrjen tudi v Milenijskih razvojnih ciljih (MDGs). Sedmi cilj, ki se navezuje na okoljsko trajnost, vključuje cilj, ki želi zmanjšati delež ljudi, ki nimajo stalnega dostopa do vode, za polovico do leta 2015. Poleg tega pomembnost vode priznava tudi privatni sektor-biznis. Skupina predanih direktorjev je skupaj z nekdanjim generalnim sekretarjem ZN Kofi Annanom ustanovila globalno prostovoljno iniciativo imenovano „CEO Water Mandate,“ ki je zaprisežena, da izvaja prostovoljne akcije, dejavnosti za upravljanje vodnih virov bolj premišljeno. Preambula CEO Water Mandata ugotavlja, da pomanjkanje dostopa do vode v mnogih delih sveta povzroča veliko trpljenja s humanitarnega, družbenega, okoljskega in ekonomskega vidika ter resno ogroža razvoj (CEO Water Mandate 2007). Poleg tega je tudi mednarodno priznani raziskovalni inštitut „Institute for Human Rights and Business“ navedel posledice uporabe vode, v privatnem sektorju in zagotavljanje storitev za rabo vode, kot enega največjih globalnih izzivov za prihodnja leta.

Ker je vode vse manj in tako postaja čedalje bolj dragocena kot življenjska nujnost, je julija 2010 Generalna skupščina ZN razglasila človekovo pravico do vode enakovredno vsem ostalim mednarodno priznanim človekovim pravicam. Tradicionalno so človekove pravice vezane na odnos med državo in posameznikom, saj mednarodno pravo človekovih pravic nalaga državi obveznosti pri zagotavljanju pravic posamezniku. Medtem ko je država neposredno odgovorna za zagotavljanje storitev povezanih z vodo, postane stvar veliko bolj zapletena z vpletenostjo biznisa v vodni sektor. V splošnem komentarju ZN številka 15 (2002) o človekovi pravici do vode, ki ga je predstavil Odbor za ekonomske, socialne in kulturne pravice, je poudarjeno, da morajo „države pogodbenice preprečiti (tretji osebi, akterju) ogrožanje dostopa do vode, ki mora biti dostopen vsem enako, cenovno in fizično. Vode pa mora biti dovolj, mora biti varna in sprejemljiva“ (para. 24). Kot trdi Posebni predstavnik generalnega sekretarja ZN o vprašanju človekovih pravic in transnacionalnih korporacij in drugih gospodarskih družb (SRSG) leži glavni vzrok za težave v odnosu med biznisom in človekovimi pravicami v „vrzelih globalnega vladanja-upravljanja, ki jih je ustvarila globalizacija – med obsegom in vplivom gospodarskih sil in akterjev – in zmožnostjo družb pri odpravljanju njihovih škodljivih posledic“ (Ruggie 2008). Zato vključevanje privatnih akterjev zahteva jasno določen obseg njim dodeljenih funkcij in nadzor njihovih dejavnosti z vzpostavitvijo standardov in spremljanjem njihove skladnosti s človekovimi pravicami (Ruggie 2008).

Nekaj najbolj vidnih primerov participacije privatnega sektorja v vodni biznis je sprožilo živahno razpravo med znanstveniki. Na eni strani nekateri trdijo, da je voda javno dobro in edinstven vir za življenje in zdravje in mora zato ostati v javni domeni. To dokazujejo s primeri, kjer udeležba, vključenost privatnega sektorja ni uspela zaradi slabe učinkovitosti, zmanjšanja kakovosti storitev in pomanjkanja transparentnosti, zato so se cene storitev občutno zvišale. V nasprotju s tem pa nekateri menijo, da biznis lahko prispeva k potrebnim naložbam v sektorju in tako razširi pokritost „vodnega omrežja“ in poveča kakovost storitev in njegovo učinkovitost, kar prispeva k tehnologiji in znanju ter ponudbi z nižjo ceno (de Albuquerque 2010).

Vse bolj jasno postaja, da „se bosta konkurenca in tekmovanje za vodo stopnjevala v desetletjih pred nami“ (UNDP 2006). Ohranjanje vodnih virov pred prekomerno uporabo, onesnaženjem in zagotavljanje vode za vse lahko doseženo le, če so vključene vse zainteresirane strani v globalno upravljanje z vodo ter nosijo odgovornost. Pomemben premik pri razmišljanju o globalnem vladanju-upravljanju bi bil, če bi vodno krizo razumeli kot kršenje človekove pravice do vode in to bi predstavljalo nalogo za vse glavne, pomembnejše globalne akterje: zagotoviti dostop do vode za vse (IHRB 2011).

Rast prebivalstva, grožnja podnebnih sprememb, večanje urbanega prebivalstva, industrijski razvoj, masovna kmetijska proizvodnja vse to lahko z dosedanjo porabo privede do globalne krize z vodo. Na primer, voda v kmetijstvu neposredno določa razpoložljivost hrane, višje cene energije pomenijo povečane stroške proizvodnje hrane in povpraševanje po proizvodnji biogoriv nadalje dviguje cene hrane. Tako obstaja povezava med vodo, proizvodnjo hrane in energije, kar dolgoročno gledano pomeni, da kadar biznis ali mesto začne razmišljati o prihodnjih projektih in tako npr. načrtovati nov jez ali kakšno drugačno uporabo vodnih virov, bi se morali vprašati, ali kakšne posledice in tveganja to prinese ter bo to pustilo dovolj vode tudi za domačo, osebno uporabo.

V tem magistrskem delu preučujem spoštovanje in varovanje človekove pravice do vode v privatnem sektorju, da bi smiselno pojasnila globalno vladanje, ki ga vodijo neoliberalne ideje, umeščene v kapitalistično razmišljanje. V tej raziskavi je globalno vladanje-upravljanja definirano kot motor globalizacije, ki vključuje več ravni, več centrov. Pri globalnem vodenju-upravljanju mnogi akterji v različnih institucionalnih okvirjih prispevajo k razvoju in izvajanju politik (Mayntz 1998). Globalno vladanje-upravljanje upošteva različne vladne in nevladne akterje, ki oblikujejo in izvajajo politiko (Rhodes 1997). V tem okvirju so relevantni globalni akterji pri globalnem upravljanju z vodo države in nevladni akterji, kot so transnacionalne korporacije (TNCs) in mednarodne (ekonomske) institucije.

Vendar glede na vse močnejši položaj biznisa v globalnem vladanju-upravljanju, v tezi trdim, da ta tudi nosi odgovornosti za spoštovanje in varovanje človekovih pravic. Saj se od biznisa tudi pričakuje, da bo opravljal svoje dejavnosti odgovorno, odgovorno tudi do širše družbe, v kateri deluje. Ta pričakovanja izhajajo iz pristojnosti in odgovornosti, ki temeljijo na univerzalnih etičnih normah človekovih pravic, ki bi lahko doprinesle k družbeno dogovornemu vedenju (Madeley 2008). Poleg tega zagovarjam trditev, da biznis nosi dodatno odgovornost v primeru človekove pravice do vode. Tako dobava in dostop do osnovnih dobrin, tudi do vode, postaja prizorišče bojev za več pravičnosti, prizorišče za globalno družbeno politiko kot tudi za ekonomsko ali industrijsko politiko (Dubash 2005).

Prikazala bom, kako lahko biznis v skladu z mednarodnimi standardi človekovih pravic spoštuje in kako lahko zmanjša tveganje kršenja človekovih pravic, tudi ko govorimo o človekovi pravici do vode. Čeprav je družbena odgovornost biznisa za človekove pravice še v povojih, odgovornosti ostajajo. Saj so TNCs postale „ena od najpomembnejših organov v globalnem gospodarstvu, ki zasedajo zelo močan položaj, močnejši kot kdajkoli poprej (...) in povzročajo globoke politične, gospodarske, družbene in kulturne posledice, imajo vpliv na države, narode in okolje“ (Madeley 2008).

Poleg tega domnevam, da bo izvajanje osnovne teorije HRBAD zagotovilo boljše skladnost biznisa s standardi človekovih pravic, še posebej, če gre za človekovo pravico do vode. S tem sistematičnim pristopom bom v raziskavi razvila bolj celovito razumevanje odnosa med biznisom in človekovimi pravicami, tudi za človekovo pravico do vode.

Kot je nakazano, bom v magistrskem delu skušala preučiti vprašanje globalnega upravljanja voda skozi perspektivo odgovornosti in obveznosti biznisa do režima človekovih pravic. Cilj, namen raziskave je celovito prikazati in analizirati obstoječi obseg odnosa med biznisom in človekovimi pravicami v okviru globalnega vladanja-upravljanja skozi objektiv človekove pravice do vode.

Magistrska naloga uporablja različne metodološkega pristope, s katerimi skuša preučiti raziskovalno vprašanje. Uporabljen kvalitativni pristop analizira in interpretira primarne in sekundarne vire, ki vsebujejo poglobljene teoretične in analitične preglede raznih mednarodnih dokumentov, poročil, znanstvenih razprav, akademska raziskovalna dela in relevantne študije primerov. Za razumevanje raziskovalnega dela in njegovega poteka je bilo potrebno analizirati tri vsebinsko vodilne razprave, ki predstavljajo tudi tri poglobljene koncepte naloge, in sicer: osnovna teorija – HRBAD, človekova pravica do vode in odnos med biznisom in človekovimi pravicami znotraj okvirja globalnega vodenja-upravljanja. Poleg tega je za boljše razumevanje raziskovane teme – odnosa med biznisom in človekovimi pravicami v okvirju globalnega vladanja-upravljanja, uporabljen praktični prikaz primerov

človekove pravice do vode, ki bolj nazorno prikaže fenomen samega odnosa. Torej ocenjujem odgovornosti in obveznosti biznisa do človekove pravice do vode z namenom prikazati potrebo po vključitvi čim manjšega tveganja za kršitev človekovih pravic v delovanju biznisa, zlasti pri uresničevanju človekove pravice do vode. Vendar pa temeljni cilj te raziskave ni samo nudenje opisne obnove, ampak tudi analiza povezav glavnih sestavin odnosa biznisa in človekovih pravic in ocena obsega odnosa. Tako delo prikaže posledice in ponudi predloge za izboljšanje globalnega upravljanja voda skozi perspektivo HRBAD.

Za smiselno pojasnitev globalnega vladanja-upravljanja, ki ga vodijo neoliberalne ideje, uokvirjene v kapitalistične misli, ta magistrska naloga namerava preučiti kako biznis spoštuje in varuje človekove pravice v globaliziranem svetu. Pri tem analiziram rastoče globalne neenakosti, ki izvirajo iz globalnega razmerja sever-jug in trdim, da se ta odraža z asimetrijo večanja vloge in moči biznisa, po drugi strani pa razlagam naraščanje priznavanja pravic revnih in marginaliziranih. Te asimetrije razumem kot rezultat zgodovinskega ozadja in krize globalnega vladanja-upravljanja.

V magistrskem delu skušam tudi poiskati rešitve strukturnih problemov moči globalnega vladanja-upravljanja, ki so povezane z globalnimi neenakostmi. Tu poskušam raziskati, kako biznis spoštuje in varuje človekove pravice. Pri naslavljanju strukturnih problemov moči globalnega vladanja-upravljanja, menim da revni in marginalizirani nimajo dovolj moči in imajo zato neenak položaj pri globalnem vladanju-upravljanju. V magistrskem delu pokažem na akterje in okoliščine, ki so prispevale k tej realnosti. Raziskovalno delo trdi, da je revščina odvisna struktur moči in globalne neenakosti, zato se je potrebno osredotočiti na analizo razvoja odnosa med revnimi, deprivilegiranimi in akterji, okoliščinami, ki so prispevali k temu problemu. Tako biznis predstavlja kritično točko, ki temelji na ugotovitvi, da se na globalni ravni politično ravnovesje pogosto nagne v njegovo korist, ker ima vedno večji vpliv na globalno vladanje-upravljanje. To pa je zato, ker so globalne neenakosti in moči odnosov globalnega vladanja-upravljanja narejene tako, da služijo interesom biznisa, kar jim omogočajo mednarodne organizacije, ki izvajajo tako politiko – predvsem mednarodne ekonomske organizacije kot so Bretton Woods institucije in Svetovne trgovinske organizacije – da služijo kot vstopne točke za interese biznisa. Ti interesi so večinoma izraženi preko držav članic, ki sedijo v teh mednarodnih organizacijah.

Ko govorim o dostopu do vode, trdim, da je človekova pravica do vode globalni problem, ne samo zaradi njenega dostopa in pomanjkanja, ampak tudi zaradi krize njenega globalnega upravljanja. Vprašanje o dostopnosti do vode je omogočilo preučevanje globalnih neenakosti in verjamem, da lahko pokaže način reševanja strukturnih problemov in odnosov moči

globalnega vladanja-upravljanja. Tako v tej magistrski nalogi dostop do vode ponazarja politike in regulativne mehanizme globalnega vladanja-upravljanja in njegovo krizo.

V magistrski nalogi sem je tako najprej poskušala preučiti, kako je dostop do vode povezan z globalnim vladanjem-upravljanjem, in sicer tako, da sem opredelila in analizirala glavne globalne akterje pri globalnem upravljanju voda ter opredelila in analizirala njihovo vlogo pri vodnih politikah. Opredeljeni akterji v raziskovalnem delu so države, mednarodne (ekonomske) organizacije (ZN, Bretton Woods institucije, Svetovna trgovinska organizacija) in transnacionalne korporacije. Ti različni akterji v različnih institucionalnih okvirjih prispevajo k razvoju in izvajanju vodnih politik. Nanje vplivajo ideje o povečanju trga, o večji konkurenci, zmanjšani vlogi države, pa tudi izvozno usmerjena rast in prepričanje, da je razdelitev sredstev preko trga optimalna, kar pa nas vodi tudi k fenomenu privatizacije vode, v nalogi je pojav imenovan kraja vode.

Kot sem že nakazala skozi nalogo, je sedaj največji izziv, kako uravnotežiti dejanja akterjev pri globalnem vladanju-upravljanju pri premagovanju neenakosti, pomanjkanju odgovornosti in legitimnosti. Zato trdim, da je mogoče izzive globalnega upravljanja voda premagati z uporabo HRBAD, saj ta bi lahko spodbudila biznis, da ne krši človekovih pravic. Saj bi lahko človekove pravice predstavljale delček rešitve pri vrzelih globalnega vladanja-upravljanja in priložnost za biznis, da spoštuje človekove pravice, saj bi njihova uresničitev prispevala k razvoju. Vključitev človekovih pravic je mogoče razumeti kot način za zmanjševanje negativnih učinkov globalizacije, saj njihova vključitev lahko zagotovi, da globalizacija postane pozitivna sila. Zato verjamem, da lahko zagotovijo etično dimenzijo in izboljšajo globalno ekonomsko politiko.

Magistrsko delo preučuje izvor odgovornosti biznisa do človekovih pravic s predstavitvijo različnih prostovoljnih pobud in mehanizmov mehkega prava, ki so jih razvila bodisi podjetja ali različne mednarodne organizacije. Prostovoljne pobude in mehanizmi so se pojavili, da bi biznis postal moralno in pravno odgovornejši akter v globalnem vodenju-upravljanju, in da bi spoštoval in pripomogel k napredku človekovih pravic. Vendar prostovoljna narava teh mehanizmov slabi njihovo uresničitev, zaradi pomanjkanja pravnih sankcij ob kršitvah. Pojav prostovoljnih pobud pa je omogočil osnovo za pravne standarde, ki so temelj za odgovornost in naredijo biznis veliko bolj dovzeten za javno mnenje širše družbe.

Sistem človekovih pravic je zelo počasen pri prilagajanju na izzive ekonomske globalizacije in spremembe mednarodnega prava človekovih pravic so preskromne. Vendar je pa je potrebno razumeti, da se je pravo človekovih pravic najprej razvilo kot odgovor na moč držav, sedaj pa je nujno potrebno pravno urediti delovanje biznisa, saj ta postaja vse vplivnejši akter na globalni ravni. Saj je vendar namen prava vzpostaviti ravnotežje moči in podeliti

obveznosti in dolžnosti (ICHRP 2002). Zato bi bilo potrebno mednarodno pravo človekovih pravic razvijati tako, da zadovolji potrebe družbe in odraža trenutne in prevladujoče ekonomske, politične in družbene norme.

Kljub temu trenutni razvoj navedenih prostovoljnih pobud in mehanizmov mehkega prava vodi k trdnejši, močnejši institucionalizaciji. Spodbudilo je tudi imenovanje Posebnega predstavnika generalnega sekretarja ZN za problematiko človekovih pravic v transnacionalnih korporacijah in drugih biznisih (SRSG). SRSG predstavlja globalni glas pri podpori razprave o odnosu biznisa in človekovih pravic ter predstavlja pomoč pri vodenju vseh relevantnih globalnih akterjev. Njegov največji prispevek je bil koncept o političnem okvirju za odgovornost biznisa do človekovih pravic, katerega sam imenuje okvir „varuj, spoštuj in nudi pravna sredstva.“ Njegovo delo in ideje so bile splošno sprejete.

Čeprav je SRSG zavrnil idejo o obveznostih biznisa do človekovih pravic v svojem političnem okvirju, je njegov okvir zelo pomemben za to magistrsko nalogo, saj vodi k vključevanju človekovih pravic v politike in prakse biznisa. Zasledovanje njegovega političnega okvirja omogoča bolj celovito izvajanje HRBAD, kjer njegovi trije temeljni politični principi predstavljajo probleme povezane z biznisom in človekovimi pravicami. Poudarjajo potrebo po učinkovitih pravnih sredstvih za žrtve kršitev človekovih pravic, opredeljujejo glavne globalne akterje – kot so že prikazani v tej raziskovalni nalogi – in pojasnjujejo njihove vloge skozi obveznosti in odgovornosti človekovih pravic. V tem kontekstu SRSG predstavlja način, s pomočjo katerega je mogoče doseči večjo odzivnost in učinkovitost pri obravnavanju odnosa med biznisom in človekovimi pravicami. Vendar njegov politični okvir zasleduje pristop političnega pragmatizma, kar pomeni, da ne zahteva preveč, ampak le toliko, kot je sprejemljivo za vse pogajalske pozicije na globalni ravni.

Politični okvir, ki ga je predstavil SRSG, skupaj z osnovno teorijo HRBAD in njenimi vodilnimi načeli, oblikuje možno rešitev, preučitev raziskovalnega vprašanja (kako lahko HRBAD zagotovi boljše skladnost biznisa s človekovimi pravicami?). Implementacija vodilnih načel HRBAD v politični okvir SRSG bi zagotovila družbeno dimenzijo konstruktivne in konsenzualne globalizacije. Ta bi lahko postala pozitivna sila, za trajnostni razvoj okolja ter bi rešila kršitve človekovih pravic, kot tudi vzroke revščine, neenakosti in neustreznega razmerja moči.

HRBAD opredeli državo kot primarnega nosilca dolžnosti in v okviru SRSG ima ta dolžnost varovati človekove pravice, ki jih krepi s preprečevanjem, preiskovanjem, kaznovanjem in zagotavljanjem odškodnin žrtvam. Država bi morala zahtevati skrb biznisa za človekove pravice in uvesti sankcije, ko so človekove pravice kršene. Skrb za človekove pravice mora vključevati standarde človekovih pravic v pogodbene dogovore, še posebno v vseh javno-

zasebnih pogodbenih partnerstvih. Poleg tega bi morale države kot članice mednarodnih (ekonomskih) organizacij pozivati k spoštovanju človekovih pravic v politikah in praksah teh organizacij in opredeliti njihove ustrezne dolžnosti. Mednarodne (ekonomske) organizacije bi morale izvajati svoje naložbene projekte v sodelovanju z vsemi zainteresiranimi stranmi, z namenom prispevati k dolgoročni trajnostni spremembi, ki bi temeljila na opolnomočenju in razvoju lokalnih zmogljivosti.

Vendar je izvajanje vodilnih načel HRBAD v SRSG policy okvirju, in sicer na odgovornosti biznisa za spoštovanje človekovih pravic, veliko bolj zapleteno. Predstavlja pa temeljna priporočila za to raziskovalno nalogo in to lahko vodi k izboljšanju oblikovanja in izvajanja politik. SRSG predvideva, da mora biznis upoštevati predpisane policy korake skrbnosti za človekove pravice, se zavedati, preprečevati in obravnavati vpliv na človekove pravice. Pri izvajanju korakov skrbnosti človekovih pravic – postopek, ki zagotavlja skladnost z nacionalno zakonodajo in upravlja s tveganji glede kršitev človekovih pravic – mora biznis sprejeti politike človekovih pravic, narediti raziskavo vplivov, nadzorovati svoje delovanje in nuditi revizije, kadar je to potrebno. Drugo načelo o odgovornosti biznisa za spoštovanje človekovih pravic bi moralo uveljaviti spoštovanje vodilnih načel HRBAD – nediskriminacije, participacije in odgovornosti – v vseh fazah in procesih. Nekatera vodilna načela HRBAD, kot so nedeljivost in neodvisnost, so težje merljiva kot praktična vodilna načela HRBAD, npr. nediskriminacija, participacija in odgovornost. HRBAD opredeljuje biznis kot moralnega nosilca odgovornosti.

Prepoved diskriminacije je potrebno izvajati tako, da biznis ne diskriminira imetnikov pravic na osnovi kot so let, spola, spolne orientacije ali etične pripadnosti. Posebno pozornost mora nameniti potrebam tistih, ki so slabo ali premalo zastopani v skupnosti.

Vsakdo ima pravico do participiranja pri odločitvah, ki vplivajo na človekove pravice. Participacija bi zahtevala izgradnjo zmogljivosti za krepitev pogajalske moči imetnikov pravic. Opolnomočenje imetnikov pravic je ključni dejavnik, saj predstavlja predpogoj za delujočo participacijo. Opolnomočenje jim omogoča, da zahtevajo svoje pravice in učinkovito sodelujejo pri procesu odločanja. Posamezniki in skupnosti morajo razumeti svoje pravice in kdo jih mora podpreti morajo biti v celoti podprti za sodelovanje pri razvoju politik in praks, ki vplivajo na njihovo življenje.

Odgovornost biznisa za spoštovanje človekovih pravic je smiselna samo, če podjetja odgovarjajo za svoja dejanja. Za odgovornost je potrebno učinkovito nadzorovati standarde človekovih pravic in nuditi pravno pomoč v primeru kršitev človekovih pravic. Pravna sredstva omogočajo možnost dostopa do pravnega varstva in odškodnine. Postopki zagotavljanja odgovornosti biznisa morajo biti participatorni in mehanizmi odgovornosti

oziroma pravnih sredstev morajo biti lahko dostopni, transparentni in učinkoviti. Za učinkovito odgovornost morajo obstajati primerni zakoni, politike, institucije, upravni postopki in mehanizmi za zagotavljanje pravnih sredstev, ki varujejo človekove pravice. Zato je za odpravo kršitev človekovih pravic zelo pomemben tretji princip, ki je določen v političnem okvirju SRSG.

Cilj magistrskega dela je celovito prikazati in analizirati obstoječe stanje odnosa med človekovimi pravicami in biznisom v okvirju globalnega vladanja-upravljanja skozi objektiv človekove pravice od vode. Človekova pravica do vode je v delu uporabljena kot pripovedovalna nit naloge, ki podaja primere, s pomočjo katerih preučuje neravnovesja globalizacije in izzive neoliberalizma. Slabosti globalnega vladanja-upravljanja so še vedno glavni razlogi pri reševanju težav, povezanih s človekovo pravico do vode, ki so se pojavile pri uresničevanju trajnostnega razvoja in uravnoteženju družbeno-ekonomskih potreb trajnostnega okolja. Zato so razprave, ki se dotikajo vodnega sektorja, mnogokrat bipolarne. Ko govorimo o vrzelih globalnega vladanja-upravljanja je nujno, da ustvarimo pravičnejši, vključujoč in bolj demokratični svetovni red, ki bi olajšal uresničevanje človekovih pravic in vpeljal odgovorno globalno vladavino-upravljanje.