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Drinking Water Crisis in Pakistan and the Issue of Bottled Water The Case of Nestlé's 'Pure Life'

Nils Rosemann

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1. Prologue

After five years of experience with 'Pure Life' in Pakistan, Nestlé frames its global objectives with regard to bottled water less in terms of profit and more in relationship to the global struggle against water shortage. In its Water Brochure, Nestlé states: *"Bottled water is not a major part of the solution to the world's drinking water needs. However, when no public safe water supply is available, bottled water can be a source of clean water. Bottled water is often the consumers' choice for a healthy beverage that gives them a source of minerals, helps to prevent obesity, and in so doing, reduces the risk of associated healthcare problems."*¹

In February 2005, the Pakistan Standards & Quality Control Authority (PSQCA) served a notice to the management of Nestlé in Pakistan for selling its brand 'Pure Life' without proper authorisation.² The PSQCA is demanding a costly renewal of Nestlé's 2002 licence and its compliance with standards set out by the Pakistan Council of Research in Water Resources (PCRWR) in 2004. Nestlé argues that PSQCA had no right to take this action, challenging the authorities' attempt to declare their business illegal. However, the government is initiating legal action to seal off Nestlé's Pakistan bottled water factory.

This story seems like a sequel of the battle between Nestlé and PCRWR in 2003. On June 3, 2003 the Daily Times – published in Lahore – publicized that Nestlé Milkpak Ltd, a subsidiary of Nestlé Switzerland, has claimed PKR 20 million (USD 350.000^b) as damages from both Akram Kahlowan, chairman of PCRWR, and the Associated Press of Pakistan (APP).³ The company initiated a legal action after a newspaper published an APP story based on an interview with Mr. Kahlowan, who was reported to have claimed that Nestlé Pure Life and AVA, two brands of Nestlé's bottled water, were contaminated with minerals and, therefore, unfit for human consumption. Nestlé claimed that Mr Kahlowan overstepped his official jurisdiction by making frivolous, unsubstantiated and unwarranted statements to the press, which amounted to unlawfully targeting and damaging the reputation of the company's water brands. Nestlé had said that their bottled water contained the appropriate mineral balance and complied with the standards of bottled drinking water laid down by Pakistan Standards and Quality Control Authority (PSQCA), as well as taking into account the World Health Organization's (WHO) recommendations. Finally, Nestlé claimed that this false statement damaged its standing as the world's largest food company, which is acknowledged for its product quality.

What has happened to Nestlé's strategy to introduce healthy and affordable water in regions with prospering markets but lack of safe water and more than half the population without any access to water at all? In Pakistan, where Nestlé road-mapped its global success story of 'Pure Life,' Nestlé faces one struggle after another. On December 31, 2004, the Supreme Court of Pakistan approved the decision of the Lahore High Court, which dismissed a PKR 6.35 million (ca. USD 110.000) Pakistan Railways contract that granted Classic Needs Pakistan (Pvt) Ltd. exclusive rights to sell bottled water to railway passengers during 2004/2005. Furthermore, the court directed the railways

ⁱ Beside differences in exchange rates between Pakistani Rupee (PKR) and U.S. Dollar (USD) this research calculates with an average exchange rate of PKR 57 = 1 USD.

administration to revoke the present contract, invite fresh bids and award the contract of bottled water supply to a firm after examination of water by a credible laboratory. Classic Needs Pakistan (Pvt) Ltd. Is exclusively distributed Nestlé's 'Pure Life' and is its own brand. The Supreme Court had declared the bottled water being supplied to passengers unfit for consumption and injurious to health. The decision of the Supreme Court was based on two different reports.⁴ The report of the Pakistan Council of Scientific & Industrial Research (PCSIR) declared that both companies were bottling clean and healthy water. But the second report, by National Health Centre (NHC) in Islamabad, stated that even though mineral water products by both companies were contaminated, Nestlé water had a low risk factor while the Classic Needs water was high risk. The Supreme Court Justices Khalilur Rehman Ramday and Falak Sher took a serious view of the reports and observed that the firms were making the people consume poisonous water and taking advantage of rail passengers as particularly captive buyers, as no hygienic water was available at platforms and inside trains.⁵

On November 30, 2004, the Sindh High Court restrained Nestlé from initiating any commercial or industrial activity, including setting up of a bottling plant on the 20-acre plot leased to it by the Sindh government in the area near Karachi. The site was leased on October 25, 2003, and the plant ready to extract 306 million litres of water annually for the sale of 228 million litres of bottled water. The court ruled: "*No civilized society shall permit an unfettered exploitation of its natural resources*".⁶

Considering the critique and struggle Nestlé is facing in Pakistan, one has to ask what is happening to the distinguished goals of "The World Food Company".⁷ Hans-Dieter Karlscheuer, director of Paris-based Perrier-Vittel SA – then Nestlé's water division – once said, "*We can't change the world. We can only try to improve it a little*".⁸ Nestlé's "improvement" was named 'Pure Life'. In times of shrinking markets in Europe and Northern America, Nestlé enlarged its activities in developing countries. A new brand and kind of production were created in the late 1990's in order to sell safe water to the poor.

2. Introduction

Access to an improved drinking water supply is not only a basic need and precondition for a healthy life; it is also a human right. "Improved" water supply technologies include: household connection, public standpipe, borehole, protected dug well, protected spring, and rainwater collection. "Not improved" include: unprotected well, unprotected spring, vendor-provided water, bottled water, and tanker truck-provided water. Access to an "improved source" also entails that the source is able to provide at least 20 litres per capita per day at a distance no more than 1000 metres from the user's residence.⁹ But this need is not met in reality. The global water shortage of affordable and safe drinking water is manifested in Pakistan with an estimated 44 percent of the population without access to safe drinking water. In rural areas, up to 90 percent of the population may lack such access.¹⁰ As one indication of the magnitude of the problem, it is estimated that 200,000 children in Pakistan die every year due to diarrhoeal diseases alone.¹¹

Drinking bottled water reflects not just a certain way of life in the rich North but a necessity and the only option for safe water in the South. Beside official figures, there should be no doubt that the majority of the Pakistan's population is exposed to the hazard of drinking unsafe and polluted water. In an effort to improve this situation, many consumers in Pakistan have to turn to bottled water as a first alternative to drinking unfiltered tap water or contaminated water of other sources where no public drinking water service exists.¹² However, bottled water is a very expensive alternative and not always healthy because of infrequent testing for contaminants and sporadic inspection of processing plants. Bottled water should not be considered as a substitute to a sufficient service with drinkable tap water, but it is due to lack of access to water services or to bad quality of available resources.¹³ Bottled water consumption has been steadily growing in the world for the past 30 years. It is considered as one of the most dynamic sectors of all the food and beverage industry, where consumption in the world increases by an average 12% each year, in spite of its excessively high price compared to tap water.¹⁴

This case study about Nestlé's bottled water 'Pure Life' will examine how the production and distribution of one brand of a transnational corporation affect people's life in a developing country. In order to do so, this study will take political objectives from the Millennium Development Goals (MDGs), the human right to water, and specific human rights obligations of corporations as its point of departure.

The first half of the case study will examine the situation of the poor in Pakistan with regard to their human right to water. By doing so, the analysis will focus on causes of water shortage, identification of obligations and examination of the capacities to meet human rights and political commitments, such as the human right to water and the MDGs. A human rights approach to development, in general, and the basic need for sufficient and safe drinking water, in particular, will further lead to the identification of the duties of corporations active in the water sector, such as Nestlé.

The second half will focus on the operation of Nestlé's 'Pure Life' in Pakistan. This part will examine the impact of the production of Nestlé's bottled water on local communities close to the production facilities. In addition, the impact of pricing and distribution on

poor and disadvantaged groups will be observed. By this, the study seeks to examine concerns and benefits in order to contribute to a better understanding of corporate objectives and human needs and to analyse corporate responsibilities.

Unfortunately, Nestlé initially refused to react to various attempts to contact them and to discuss the findings of this research. In the final stage of this research, Nestlé continued to put the author off, requesting a questionnaire that has still not been answered. Nestlé's self-commitments with regard to the social aspects of its business policies in the water sector include: "*the importance of developing long-term, mutually rewarding relationships with other stakeholders*".¹⁵ Obviously, Nestlé refused to consider this research as part of such a relationship. Furthermore, Nestlé undertakes in its Corporate Business Principles – which are part of its commitment to the United Nations Global Compact – that "*as part of its broader commitment towards the good of the community, Nestlé [...] supports initiatives and fosters awareness on the importance of water resource conservation among employees, governments, local communities, schools, industry, consumers and other stakeholders*".¹⁶ Again, it seems that Nestlé considers this case study neither as an initiative, nor as sufficient for awareness-building about water resource conservation among consumers and other stakeholders. Finally, the silence of Nestlé shows that an affected stakeholder is less important than a shareholder or potential investor. While the first one is refused any information and comment, the latter have "*access to relevant, up-to-date and consistent information in a timely and consistent fashion. This information should allow shareholders as well as prospective investors to make informed judgements about the Nestlé S.A. shares.*"¹⁷ Therefore, this case study unfortunately lacks public statements, interviews and other available resources from Nestlé.

3. Water – Global Trends and Pakistan’s Struggle

Water is essential for human beings to survive and develop. At the same time, water is a scarce good, and shortage sometimes results in crises. Both facts lead to the simple conclusion that lack of water hinders development and a dignified life. This can be assessed from global trends, as well as from Pakistan’s national and local struggles for better access for people to safe and sufficient drinking water.

3.1. Water – A Global but Scarce Good

According to figures published by the United Nations, subsidiary organisations and other international organisations, 1.1bn people are without a sufficient access to water, and 2.4bn people have to live without adequate sanitation. Under current trends, the prognosis is that about 3bn people of a population of 8.5bn will suffer from water shortage by 2025. 83% of them will live in developing countries, mostly in rural areas where even today sometimes only 20% of the population have access to a sufficient water supply.¹⁸

This actual lack of water is opposed to the theoretical conclusion that there is enough ground water existing in all regions of the world to guarantee an adequate water supply for all people. According to international law, in the case of concurring water users, the socio-economic priorities have to rest on human development and social interests of the people.¹⁹ however, only 6% of global freshwater is used by households, while 20% is utilized industry and another 70% by agriculture. The conclusion drawn from these framework conditions is that water shortage and the unequal distribution of water are global problems rather than regional problems that require international solutions.

Insufficient supply of drinking water is the main cause of diseases in developing countries. Already in 1997, the United Nations Commission on Sustainable Development concluded that 2.3bn people suffer from diseases rooted in insufficient water provision and quality.²⁰ More than five years later, it was estimated that 2.4bn people were suffering from water related diseases, and the World Health Organisation reckons that 80% of all infections are traceable to poor water conditions. 5,483 people die daily of water caused diarrhoea – 90 percent are children under five. Taking into account all water related diseases and deaths, international organizations estimated in 2001 that 2,213,000 people died because of inadequate water supply – ten times more than the tsunami disaster caused in December 2004.²¹

3.2. Poverty and Access to Water in Pakistan

It is acknowledged that lacking safe and sufficient drinking water – as with other basic needs such as food, shelter and education – is not a geographical but social problem. Being poor or rich is mainly decided by birth, and poverty perpetuates itself from generation to generation. Development strategies should be judged by their effort to

break through this vicious cycle. Single indicators, such as literacy rates or households with access to water, are a litmus test for such an assessment.

3.2.1. Poverty and Development in Pakistan

The United Nations Human Development Report 2004 categorises Pakistan as the "*worst performer in South Asia*" in terms of its Human Development Index. The Human Development Index (HDI) focus on three measurable dimensions of human development: living a long and healthy life, being educated and having a decent standard of living.²² The HDI ranks Pakistan as 142nd out of 177 and one of the poorest performers, with low human development even though the MDGs were given top priority for development.²³ Poverty in Pakistan is also gender-related. Pakistan has the worst disparities between HDI and gender-related development goals and ranks at 120th out of 140.²⁴

3.2.2. Access to Water in Pakistan

Pakistan is an Islamic Republic, whose aim is to enable its Muslim majority "*to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah*".²⁵ Water is recognized in Islamic teachings as a vital resource, of which everyone has the right to a fair share. Following the Hadith, it is reported that the Prophet Muhammad (PBUH) said: "*Muslims have common share in three (things): grass, water and fire*".²⁶ Furthermore, the Holy Quran warns human beings against unfair distribution of common goods and the majority of scholars agree that Islam forbids speculation, manipulation and unbalance profit with a common good such as water.²⁷

In 1995, UNDP counted Pakistan as country having among the highest water potential per person out of 130 countries that should dramatically improve its water situation to overcome the current crisis and prevent future ones.²⁸ Obviously, Pakistan failed to make any improvement. In 2003, the United Nations dropped Pakistan's ranking, because its total renewable water resources per capita per year have been estimated as 114th out of 180 countries.²⁹

Only three percent of Pakistan's sweet water resources are used for household purposes and drinking.³⁰ Therefore the debate about access to water in Pakistan is dominated by irrigation disputes, mega-projects of dams and canals, and climate change.³¹ The focus is on water for agriculture rather than for people.³² This production-oriented perspective continues in the debate about groundwater use and extraction. It is estimated that surface water meets only 75-80 percent of crop water requirements. As a result, groundwater is merely seen as a reserve water source for irrigation and food production, as well as the major factor for the growth of agricultural production in the late 20th century.³³

With regard to the availability of safe and sufficient drinking water, Pakistan lacks reliable statistics. While data about the availability of water and field studies about water

quality exist, there is no sufficient data that take both into account. Official data about the access to drinking water vary between 60 and 90 percent of households. In rural areas – where a decline of households with access to water is documented³⁴ – figures about availability differ between 10 and 53 percent. Differences in these statistics mainly emerge from the inclusion or exclusion of households that rely on privately owned wells and supply systems.³⁵

In addition, having access to water in Pakistan is not similar with having access to safe and sufficient water supply. Pakistan's water quality ranks as 80th out of 122 nations.³⁶ Pipe water in Pakistan is contaminated either because of leakages with all sorts of bacteria or due to geological conditions and insufficient purification, with abnormally high levels of arsenic and elevated fluoride.³⁷ Water, extracted by hand pumps – the major water source in rural areas – is mainly brackish water and not sufficient for drinking and cooking. The Pakistan Council of Research and Water Resources (PCRWR) estimates that almost 50 percent of urban water supply is insufficient for drinking and personal use.³⁸

This research takes data about availability and quality into relation and concludes that an average of 25.61 percent of Pakistan's 159 million inhabitants have access to safe and sufficient drinking water (see Annex I). This calculation shows that in rural areas only 23.5 percent and in urban areas approximately 30 percent can use their source of water without jeopardizing their health. These findings come close to a conclusion by independent experts who predicted that already in 2001, with prevailing consumption rates and a population growth of 4 million people per year, one out of three people in Pakistan would face critical shortages of water, "*threatening their very survival*".³⁹

The Government of Pakistan estimated with regard to diarrhoea that this mainly water-related disease accounts for 14 percent of illnesses for children under five and for seven percent of all disease in people age five and older.⁴⁰ The Pakistan Council of Research and Water Resources (PCRWR) assesses that 40 percent of all reported illnesses are water-related.⁴¹ It is estimated that 200,000 children in Pakistan die every year due to diarrhoeal diseases alone.⁴² Unsafe water affects mainly rural and urban poor, who suffer above the average from sickness and water related diseases.⁴³

4. Water – A Basic Need Becomes a Millennium Development Goal

Deficient water supply is mainly a local issue rooted in national omissions to address the needs of the people in a sufficient manner. In order to address these issues properly, international advice, cooperation and standard-setting is needed.

4.1. Water – An Issue on the International Agenda

International conferences dealing with water and related issues such as health, environment and development date back to the late 1970's. Cornerstones of these international developments include the Water Conference in Mar del Plata 1977, which declared the access to water as a basic need⁴⁴; the International Decade of Water and Sanitation (1981-1990), that had the aim to provide everybody with access to safe drinking water by 2000⁴⁵; and the declaration of March 21 as the World Day for Water.⁴⁶ Although these international efforts missed the goal of providing access to everybody, they mobilized resources to provide additional 600-800 million people with access to water. After decades of international debates on the improvement of water supply, it can be stated that the political declarations, which have been repeated time and again, have been followed only by limited action and minimal improvement of water supplies. Therefore, at the end of the Global Consultation on Safe Water and Sanitation, it was concluded that some water for all is better than enough water for few.⁴⁷

The main shift in perspective came with the Millennium Assembly in 2000, and its declaration of access to water and sanitation as a Millennium Development Goal.⁴⁸ Adopting the Millennium Declaration, the international community committed itself to halve the number of people without sufficient access to safe water and to wastewater treatment by 2015. To meet this MDG requires to connect around 275,000 people a day until 2015 globally.⁴⁹ The Millennium Development Goals share a common motivation and constitute a new and ongoing commitment to sustainable and balanced development.⁵⁰ While in the 1990s development was fast for some nations while under-privileging others, the Millennium Development Goals try to leave no nation behind. But taking recent development and progress into account, the prognoses after the first five out of fifteen years seems to be that the goal of providing access to safe drinking water will be met only in South Asia and Latin America and the Caribbean.⁵¹

4.2. Transforming the Millennium Development Goal on a National Level in Pakistan

As outlined about with regard to distribution of water supply and water-related diseases, the poor bear the main burden of underdevelopment in Pakistan. It is estimated that water related diseases cause annual national income losses of USD 380-883 million – or approximately 0.6-1.44 percent of GDP.⁵² The underlying socio-economic and market forces, institutions and power structures discriminate against the rural and urban poor

and deprive them not only of their actual or possible income but also of their ability to develop. Therefore it is suggested that development has to go hand-in-hand with empowerment of the poor by changing of market and supply structures for public goods, such as water.⁵³

The request for access of the poor to markets, institutions and services also meets the demand of the MDGs. Translating the globally defined MDG targets into action requires an operational framework at the national level. Such a framework should set out a country-owned, cross-cutting agenda aimed at sustained, shared growth and public action towards achieving the MDGs. Such a national strategy should be enshrined in Poverty Reduction Strategy Papers (PRSP) which constitute the primary strategic and implementation vehicle to reach the MDGs.⁵⁴ Although Pakistan's PRSP makes references to the overall objective of the MDG of poverty reduction, it fails to meet concrete proposals to meet MDG 7 (Target 10) of providing safe and sufficient access to water to half of the population without such service. This is compounded by Pakistan's development strategy, which focuses more on macroeconomic issues and economic growth than on poverty reduction and the situation of the poor and their equal participation in political and economic affairs.⁵⁵ The reason for the insufficient balance between poverty reduction at the micro-level and reforms and objectives with regard to the macro-level might be found in the compliance with the World Bank's request for a PRSP and their objectives in relationship to macro-economic issues, such as Foreign Direct Investment.⁵⁶ With regard to water, the International Financial Institutions assessed Pakistan's PRSP as needing more reliable data, lacking a consistent water policy and overall missing realism.⁵⁷ Unfortunately, these missing essentials are not provided within Pakistan's Water Sector Strategy, which was even written by highly paid consultants of the Asian Development Bank.

As shown above, the Government of Pakistan lacks a strategy in its PRSP to meet this goal. On the one hand, it admitted in its PRSP that improving health outcomes requires – among other issues – addressing the lack of access to safe drinking water and inadequate sanitation. The core objective in this regard should lie in the increase of sustainable access to safe drinking water in rural areas.⁵⁸ On the other hand, the steady link to health issues is too short-sighted. The Pakistani Government acknowledged the necessity of improving the performance of the health sector significantly to ensure good progress towards reaching MDGs, but at the same time it admitted officially that it would only spend 0.60 percent of its budget to do so.⁵⁹ While the main focus is on prevention, the PRSP never speaks about how to improve the disastrous and insufficient supply with safe drinking water.

Development needs sufficient resources. It is estimated that the MDGs require a low-income country, such as Pakistan, to increase its investment in public services by four percent; based on an estimate that five percent is already spent in these sectors.⁶⁰ In a draft PRSP, the Government of Pakistan confessed that besides knowledge, a PRSP needs adequate resources, thus its main focus is on macroeconomic stabilisation policies, such as controlling the fiscal deficit, generating resources. Therefore, poverty reduction remains a formidable task, since less than four percent of GDP has been allocated to poverty-focused sub-sectors in recent years, and expenditures characterized as “development” have been less than three percent of GDP.

United Nations agencies calculate an additional need of USD 50bn. to globally reach the MDGs in general, including USD 12.6bn. for water and sanitation.⁶¹ The World Panel on Financing Water Infrastructure estimated in its final report a necessary, additional investment of USD 10bn. per year for lower standards and USD 17bn. per year for urban standards of water access.⁶² Since Pakistan lacks a national policy for the MDG target of water access, there are no resources available that estimate how much this MDG would cost. Nevertheless, Pakistan calculated already the costs for its Vision 2025 to bring access to water to 96 percent of urban and 75 percent of rural population. The Government of Pakistan estimates the cost in urban areas of USD 50.66bn. and USD 21.57bn in rural areas.⁶³ In another calculation, the Government of Pakistan's Clean Drinking Water Initiative estimates that the costs for combating poor water quality in selected cities at PKR 180 million (USD 3.16 million) in the first three years and additional PKR 35,48 million (USD 622'500) afterwards.⁶⁴ Taking into consideration that this calculation is founded on the wrong presumption that 60 percent, instead of an actual 30 percent, in urban areas and 53 percent, instead of an actual 23.5 percent, in rural areas have access to safe drinking water, one might double these calculations about the estimated costs in order to find the real amount of required resources (see Annex I).

Available resources nevertheless show that the allocations of public resources for key infrastructure sectors such as agriculture, water irrigation, water supply and sanitation are less than one percent of GDP. Estimates regarding expenditures for water and sanitation differ between 0.14 and 0.16 percent. At the federal level, a total of 491 million PKR (USD 8.6 million) was spent, and including all provincial Governments, a total of 4.176bn PKR (USD 73.26 million) was spent for water supply and sanitation.⁶⁵ This is less than 0.5 percent of all expenditures in the fiscal year 2003-04, compared with 180.5bn PKR (USD 3.127bn.) or a 20.8 percent share for the military budget.⁶⁶ Finally, public spending on water supply and sanitation at the federal level and in total is further declining by more than 40 percent in the first quarter of the fiscal year 2004-05. In this regard, the Pakistani Government admitted that there is a need to allocate sufficient resources – without saying where they should come from.⁶⁷ In fact, the government admitted that more than 40 percent of available development resources are lying unutilized, due to 'capacity constraints' of various federal government agencies.⁶⁸ Finally, the new budget for projects in the water sector again focus on irrigation projects, while new projects related to drinking water and sanitation are not planned at the federal or provincial level.

To sum up the financial situation of Pakistan and its impact on the enjoyment of basic needs, one has to conclude that economic growth is necessary but not sufficient for human development. The assessment of UNDP from 1995, that Pakistan's uneven distribution of income and assets - as well as high growth rates - failed to translate into improvements in peoples' lives, is today more applicable than ever.⁶⁹ What stands at the end is the privatization of poverty and profit. With lack of drinking water, Pakistan's poor have a choice between becoming indebted due to hospital costs or buying bottled water as the only 'safe' source for their basic needs.

5. Human Right to Water

Human rights and human development are two sides of the same coin. A human rights-based approach provides both a vision of what development should strive to achieve, and a set of tools and essential references. In 1993, governments acknowledged at the United Nations World Conference on Human Rights that “*while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognised human rights*”.⁷⁰ What results from this statement is that a rights-based approach to development distinguishes between inability and unwillingness. As shown above, Pakistan spends officially approximately 80 times more into its military than on the provision of water and sufficient sanitation facilities to its people.

If injustices and discrimination in society are the main reasons for poverty, then as an effective operational mechanism, the human rights-based approach⁷¹ to development demands:

- Participation and transparency in decision-making – implies making participation throughout the development process a right and the obligation of the state and other actors to create an enabling environment for participation of all stakeholders.
- Non-discrimination – implies that equity and equality cut across all rights and are the key ingredients for development and poverty reduction.
- Empowerment – implies empowering people to exercise their human rights through the use of tools such as legal and political action to make progress in more conventional development areas.
- Accountability of actors – implies accountability of public and private institutions and actors to promote, protect and fulfil human rights and to be held accountable if these are not enforced.

5.1. Water – A Basic Need becomes a Human Right

Despite the minimal practical impact of the great number of world conferences, declarations and action programmes, this discourse has sensitised governments and international actors with respect to the issue of water shortage and the human right to water. Because of this sensitisation, the institutions, bodies and agencies of the United Nations have been discussing the issue of water shortage increasingly from the standpoint of other endangered human rights, such as the right to food, health, shelter, education and development.

A human right can be seen as a universal and indivisible standard that provides equality and outlaws discrimination. Human rights call for participation and inclusion, guided by accountability and the rule of law. The protection of a human right, such as the human right to water, starts with the definition of the normative demand of the right by setting of internationally agreed standards. These norms have to be implemented nationally and might be overseen and guided internationally. This international monitoring and

implementation functions either within the treaty-based, quasi-judicial proceedings and guidance of international treaty bodies, such as the UN Committee on Economic, Social and Cultural Rights,⁷² or by the Charter-based general mandate of the United Nations for human rights protection. Within the latter, the General Assembly and its subsidiaries, such as the Economic and Social Council, Commission on Human Rights and the Sub-Commission on the Promotion and Protection of Human Rights are able to make recommendations⁷³ and to encourage the progressive development of international law as part of the Charter-based human rights protection mechanisms.⁷⁴

The advantage of the human rights approach is that needs must be satisfied while human rights must be respected, protected and implemented. It is not absolutely necessary for needs to be satisfied by means of legal (human) rights. However, by recognising the human right to water, decision makers and actors, whose decisions have an impact on the access and accessibility of water, are responsible for satisfying this need to the greatest possible extent. The benefit of access to water and sanitation as a human right is that one enlarges the political and economic debates about needs to an international discourse of standard setting and national and international implementation, as well as monitoring.

This socio-economic priority of individual access to water for development and human dignity becomes even more important if different water uses stand in competition. The human right to water lays the decision about rival water uses in the hands of the people who need access to water and sanitation most. In other words, the human right to water shifts the participation from a merely political decision about socioeconomic priorities to an economic democracy with the human being in its centre. The human rights approach deconstructs power relationships, such as economic and political interests, that hinder the satisfaction of basic needs. By recognizing a basic need as a human right, exercised political power becomes legitimized if its objective is the fulfilment of human rights, and economic power is legitimized as long as it does not obstruct the individual or collective satisfaction of human rights.

The human rights approach to basic needs urges public authorities to provide a legal framework that serves economic interests as well as socioeconomic priorities for human development. In order to enable concerned people to participate in decision-making processes about water issues the human rights approach, linked with the notion of democracy, calls for certain information about objectives and means within public and private water policies. Furthermore people have to be empowered to practically participate within public and economic affairs on equal footing. In addition, the human rights approach introduces accountability. Rights entail responsibilities, so the human right to water calls for holding actors with influence on access to water and sanitation accountable.

Finally, the human rights approach to basic needs highlights that the core obligations of the human right to water – which serve as the basic framework that is necessary to provide a minimum standard of living – are regarded as compulsory norms (*jus cogens*) of the international law. This means that provisions on human rights become inalienable components of the law that applies to everyone (*erga omnes*). Thus, any violating provisions are null and void.

5.2. The Content of the Human Right to Water

The normative demand for the Human Right to Water is derived from the Universal Declaration of Human Rights.⁷⁵ It implicitly recognized the right to drinking water and sanitation in article 25 (1), which states that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care...” It is restated in Article 11 of the International Covenant on Economic, Social and Cultural Rights, as part of the right of everyone to an adequate standard of living for himself and his family.⁷⁶ In previous comments by the UN Committee on Economic, Social and Cultural Rights,⁷⁷ as well as in various human rights protection mechanisms, the human right to water is recognized as precondition for other human rights – such as the human right to live, to appropriate nutrition and sufficient medical care.

Apart from being the precondition for other human rights, the human right to water has its own contents and protective duty. As outlined in General Comment Number 15 by the UN Committee on Economic, Social and Cultural Rights⁷⁸, the Human Right to Water aims to guarantee that all people have the right to non-discriminatory and fair access to safe, sufficient and affordable drinking water in order to satisfy their personal needs (such as the preparation of food and the use of water for sanitary facilities and for domestic consumption). Safe drinking water means that the water quality must not jeopardise peoples’ health. Affordable water means that the expenditure for water must not jeopardise the fulfilment of other basic needs that are guaranteed by human rights – such as the right to education and food.

In addition to the function of being a precondition for other human rights, further rights are derived from the human right to water, which are considered a prerequisite to actually implement the right to water. These are, among others: the right to have access to existing water supply systems without being discriminated against; the ban on destroying or separating existing water supply system; the right to have priority over industrial or agro-industrial water use; the right to be supported in case of financial problems; and the right to information and participation in national and local water policies. If water is supplied by private companies, there is also the right to governmental regulation in order to guarantee that these private companies comply with the duties stipulated by the human right to water.

5.2.1. Core obligations under the human right to water

The benefit of defining the basic need for sufficient water as a human right is that general obligations and particular duties ensue from such a qualification. These duties comprise among others:

- *the duty of a state to respect, protect and implement the human right to water;*
- *the duty of a state to respect the human right to water in other countries, i.e. not to interfere with the fulfilment of other governments’ duties to respect the right to water;*

- *the duty of a state to contribute to the fulfilment of the human right to water in other countries by means of international cooperation;*
- *the duty of a state to prevent and stop violations of the human right to water and to make no decisions that jeopardise the fulfilment of the human right to water in one's own country or in other countries. This can be done within the framework of affiliation in international organisations;*
- *the duty of international organisations to respect the human right to water and to contribute to its fulfilment by means of international cooperation;*
- *the duty of non-state actors, such as companies or individual persons, to respect the human right to water and to support its implementation within their own scope of action.*

These duties should all be stipulated in a national water strategy. This strategy ought to be based on human rights in general and on the human right to water in particular. It should assign governmental and institutional responsibilities to the duties mentioned above.

With respect to governments' fundamental freedom of choice regarding when to take steps or to develop political approaches, the human right to water has core obligations which are not subject to this principle of free choice. These core obligations must be ensured even in times of scarce resources or in a state of emergency. Core obligations include the most basic forms of the Human Right to Water such as:

- *non-discriminatory and regular access to a minimum of safe drinking water for personal and domestic use and*
- *access to simple – yet hygienically acceptable – wastewater disposal and sanitary infrastructure.*

5.2.2. Violation of the human right to water

As described above, a benefit of describing the basic need of access to safe water as a human right is the relationship between the rights holder and the duty bearer. The rights of the one correlate with the obligations of the other. If the specific duties which arise from the general obligations are not fulfilled, the clear definition of the rights and the duties under the human right to water makes it easy to describe violations of the human right and to hold the relevant actors responsible.

From this perspective, countries violate the human right to water when they do not act in good faith and when they fail to explain why they do not comply with their core obligations. A decisive factor in determining whether such a violation has taken place or not is an assessment of how resources have been deployed. If a state has not deployed a maximum of available resources to guarantee a basic supply of drinking water, to ensure that access to the existing systems is non-discriminatory, or to prevent companies from establishing an unfair price system and excessive charges, the human right to water has been violated. Violations of the human right to water on part of the state may also be manifested indirectly. Among these indirect violations are the lacks of

laws to regulate corporate interests in the water sector, the insufficient enforcement of existing laws, or the lack of a national water strategy. The state violates its protective duties if it fails to stop individual persons, groups, companies or other non-state actors from interfering. The states duty to respect the human rights in other countries is violated if there are no regulations concerning the use of water resources by corporations and, as a result, these resources are used to business' benefit. The duty to international cooperation is violated if developed countries do not aim at reducing the developing countries' debt burden in order to improve their water supply and sanitary infrastructure.

The corporate obligation to respect the human right to water is violated, if it interferes directly with people's access to and use of water. Furthermore, any collaboration with governmental agencies that jeopardizes the right to water of the individual or a group constitutes a human rights violation. Finally, corporations that do not protect or contribute to the fulfilment of the right to water within their respective spheres violate this human right.

5.3. Rights based approach to Water in Pakistan

The constitution of Pakistan protects the life of its people and obliges the State to secure the well-being of the people and to provide for all citizens, within the available resources of the country, facilities for adequate livelihood and basic necessities of life.⁷⁹ In 1994, the Supreme Court of Pakistan interpreted the constitutionally protected right to life and dignity to include the right to a healthy environment.⁸⁰ Furthermore, the State is urged to promote, with special care, the economic interests of poorer classes or areas.⁸¹ With regard to rights and interests in water, any individual has the right to complain about actual or proposed executive or legislative acts and failures of any authorities with respect to the use, distribution or control of water.⁸² With regard to the access to safe drinking water the Supreme Court of Pakistan specified in another case in 1994, that mining companies have violated the rights of citizens by polluting local drinking water supplies. The Court expanded Art. 9 of the right to life and said: "*the right to have unpolluted water is a right of every person, wherever he lives.*"⁸³

6. Corporate Obligations toward the Human Right to Water

Human rights obligations – such as the human right to water – are the primary responsibility of states. With regard to activities of corporations the obligation to *protect* requires states to prevent third parties – such as corporations – from interfering in any way with the enjoyment of the right to water. Among other factors, this obligation includes adopting the necessary and effective legislative and other measures to restrain, for example, corporations from denying equal access to adequate water or polluting or inequitably extracting from water resources.⁸⁴ Furthermore, governments should take appropriate steps to ensure that corporations are aware of, and consider the importance of, the right to water in pursuing their activities.⁸⁵

6.1. Business' Human Rights Obligations – Normative Principles without Implementation

In addition, corporations have their own obligations with regard to human rights, where governments are failing to meet their regulatory and guiding obligations or in situations where corporations are acting independently due to economic power or market position. Within their respective spheres of activity and influence, the secondary obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law.⁸⁶ In this regard, transnational corporations shall respect economic, social and cultural rights as well as civil and political rights and contribute – among others – to the realization of the right to food and drinking water and shall refrain from actions which obstruct or impede the realization of those rights.⁸⁷ When distributing basic services – such as water – corporations shall ensure equality of opportunity and treatment for the purpose of eliminating discrimination based on race, colour, sex, language, religion, political opinion, national or social origin, social status, indigenous status, disability, age or other status.⁸⁸ In addition, in their market operation, corporations shall act in accordance with fair business, marketing and advertising practices and shall take all necessary steps to ensure the safety and quality of the goods and services they provide and shall not produce, distribute, market, or advertise harmful or potentially harmful products for use by consumers.⁸⁹ Finally, corporations shall generally conduct their activities in a manner that contributes to the wider goal of sustainable development.⁹⁰

6.2. Business' Human Rights Self-Commitments

Beside these normative demands of human rights obligations, corporations which are based in a member state of the Organization of Economic Co-Operation and Development (OECD) are obliged to follow the OECD Guidelines for Multinational Enterprises voluntarily.⁹¹ The Guidelines include an important provision specifying that enterprises should: “*Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.*”⁹² The OECD's Guidelines are the only comprehensive rules that governments have endorsed

so far in which they commit themselves to help solve problems arising with corporations. The Guidelines represent the commitment of adhering governments to make recommendations to multinational companies operating in or from their territories.⁹³ Although the Guidelines are not be binding in a strict legal sense, they demand observance wherever a company operates on a voluntary basis.⁹⁴

Voluntary approaches with regard to human rights are either incorporated into the policies of a business or occur under the umbrella of international organizations, such as the United Nations Global Compact.⁹⁵ But different dimensions of corporate compliance with human rights obligations – often labelled “Corporate Accountability” or “Corporate Social Responsibility” – have to be distinguished.⁹⁶ The first dimension is *legal compliance*, e.g. obedience to existing tax, labour, environmental or human rights law. With regard to Nestlé’s ‘Pure Life,’ compliance with quality standards requires legal compliance, in order to meet peoples’ human rights. The second dimension can be called *strategic corporate responsibility*, since its main aim is a modern structure of the corporation and a sustainable presence in the market. Mainly labour relations and security within the production process, as well as risk management, are applied within this second dimension. This dimension can be important for the human rights of the work process and labour-related human rights, such as health and education. Thirdly, the dimension of *remoulding competitive advantage* intends to secure and enlarge market performance via public relations, incorporation of general codes of conduct and institutionalisation of cooperation with states authorities and civil society. In this dimension, consumer interests about production conditions and normative expectations of non-governmental organisations play a major role. As it will be shown below, Nestlé’s main activities with regard to human rights, such as the membership in the United Nations Global Compact and its self commitment to human rights and sustainable development fall into this dimension. In addition, Nestlé efforts in Pakistan to educate farmers for enhancing milk production can be counted in this dimension.

Since the first three dimensions mainly have to do with risk management, one can argue that whenever a human right has a market value or is covered by domestic law, it can be enforced by one of them. But due to a lack human rights-based regulation in Pakistan, the fourth dimension of *philanthropy* gains major importance, where corporations contribute to a better human rights environment without any side effect towards their own business. Nestlé’s activities in this regard include its initiative to improve the standard of living of the people and provide them clean drinking water.⁹⁷

All dimensions have in common that the implementation of human rights obligations is a question of selectivity by governments, corporations or civil society because human rights remain voluntary. One can say that business’ human rights obligations are only partly implemented by law and partly addressed as moral duties within voluntary concepts of corporate social responsibilities. In an environment like Pakistan’s investor friendly deregulation, human rights are not the main objective. In these cases, a gap exists between the normative demand of the human right to water and its observance by the government and corporations.

7. Nestlé's Self-Commitment with regard to Human Rights

In an environment where human rights in general and the human right to water in particular are left aside in general politics and regulatory efforts, the impact of business' activities on human rights depends on the acceptance of human rights by the corporation itself. As shown above, compliance with human rights is either incorporated in business strategies or in commitments to international standards.

7.1. Nestlé – The World Food Company

Nestlé S.A. is a typical transnational or multinational corporation.⁹⁸ It employs around 253,000 people, has more than 500 factories, and operates in almost every country in the world. Nestlé Waters accounts for almost 10% of the Nestlé Group's consolidated sales and manages a portfolio of 77 brands, covering 109 production sites and employing a global workforce of 27,600.⁹⁹ In 2004, the United Nations Conference on Trade and Development (UNCTAD) ranked Nestlé as the third biggest trans-national non-financial corporation with regard to its network and internationalization and as 26th biggest transnational non-financial corporation in view of its foreign assets.¹⁰⁰ Nestlé itself admits that it is "The World Food Company" with factories or operations in almost every country in the world.¹⁰¹ Taking into consideration figures from 2002, Pakistan's GDP of 60.2bn. USD was exceeded by Nestlé S.A. sales of 74.02bn. USD¹⁰² and Pakistan's GDP growth rate of 3.9 percent failed to keep pace with the 14.5 percent sales increase, 27.4 percent increase in operating profits, and 57.2 percent increase in net profits earned by Nestlé Milkpak Ltd.¹⁰³

Nestlé's operations in Pakistan go back to the merger with Milkpak Ltd. in 1988, renamed as Nestlé Milkpak Ltd. Nestlé Milkpak Ltd. continued and enlarged operations in the production of UHT milk, butter, cream, desi ghee and fruit drinks. Between 1990 and 1998, 21 branded product lines were added, including Nestlé 'Pure Life' bottled water. Nestlé Milkpak Ltd. now operates the largest, as well as an extremely efficient, milk collection system in Pakistan.¹⁰⁴ Nestlé Milkpak Ltd. entered the export market in 1993, and its overseas markets include the UAE, UK, USA, Sri Lanka, Malaysia, Bangladesh, Afghanistan and Central Asian States. In the social sector, the company provides over 1,100 job opportunities for skilled, unskilled and professional workers. It constitutes a major factor in the rural economy by disbursing over PKR 1.37 billion annually through milk purchases from approximately five million household members of dairy farms.¹⁰⁵

7.2. Nestlé's Human Rights Standards

In 1998, Nestlé first published its Corporate Business Principles, which were subsequently revised in 2002 and 2003. These principles lay out Nestlé's basic commitments to corporate social responsibility and sustainable development, which have to be upheld in any sector of activity.¹⁰⁶ These principles include Nestlé's commitments to United Nations Global Compact. Nestlé sees the Global Compact not

as regulatory regime or a code of conduct, “*but as platform and forward-looking forum for the exchange of good practices in order to achieve actual progress in creating a more prosperous and sustainable world.*”¹⁰⁷ Nestlé further sees the Global Compact as a forum of discussion about which human rights principles work for corporations and which do not. In this regard, Nestlé S.A. wants to lead this dialogue “with those actually concerned”, i.e. with people in the developing world, who are working with Nestlé as employees, suppliers, partners and community members.¹⁰⁸ Apart from their self-appointment as a leader in this dialogue, Nestlé has not sent any Communication on Progress to the United Nations Global Compact office in New York.¹⁰⁹ Critics argue that Nestlé’s membership in the United Nations Global Compact is just another part of its PR and image campaign, meant to make rich customers in the North feel good.¹¹⁰

Apart from the discursive elaboration of human rights principles in the Global Compact, Nestlé recognizes that human rights are foremost addressed to Governments but also acknowledged its own responsibilities by applying the United Nations Declaration of Human Rights¹¹¹ within its sphere of direct influence.¹¹² With regard to other international recommendations and human rights standards, Nestlé incorporates them on a selective basis related to their relevance for its operations. Among other standards, Nestlé directly applies certain standards of the International Labour Organization and the World Health Organization. With regard to other relevant commitments and recommendations for voluntary self-regulation, Nestlé requests consultation or participation of industrial interest and lobby groups – such as the International Chamber of Commerce (ICC) – in these standard settings, before it endorses them itself.¹¹³ Finally, Nestlé uses the OECD Guidelines for Multinational Enterprises as a reference point for its Corporate Business Principles.

In addition to its direct commitments to human rights, Nestlé stresses its responsibility as the world’s leading food and beverage company, as well as the world leader in bottled waters, towards the sustainable use of water resources.¹¹⁴ Apart from the pledge to human rights within its own sphere of operation, Nestlé links its bottled water policy with the MDG to halve the number of people without access to safe drinking water or basic sanitation.¹¹⁵ Unfortunately Nestlé fails to directly apply this objective as well as its self-commitment to human rights to its bottled water policy. Nestlé fails to incorporate a holistic approach to its operations in the water sector and its use of water as resource for production. The short-sighted perspective to water from the angle of sustainable management ignores a human rights approach to water. Nestlé’s water policy ends with the statement: “*Water is a top priority for Nestlé – and always will be.*”¹¹⁶ But it is open to interpretation what this means to the human rights of people affected by water extraction and the in-affordability of its bottled water for the poor.

8. Nestlé's Bottled Water Strategy

Nestlé forecasts that bottled water will continue being the fastest growing beverage category. In 2003, Nestlé Water's organic growth was 9.1 percent, but in developing countries, it was 13.6 percent. In its Management Report 2003, Nestlé expected the water sector to continue growing, with markets outside of North America and Europe contributing significant volume and profitability.¹¹⁷ Nestlé sees the bottled water market as a rapidly expanding market, with one-third of the total volume of the refreshment beverage market and the highest annual growth rates. Bottled water is the most dynamic segment, and sustained growth patterns forecast a doubling of the bottled water market by 2012.¹¹⁸ These expectations by Nestlé reflect a global trend in bottled water, a market in which Nestlé would like to become one of the major players. In 2004, Nestlé showed that its strategy was to acquire greater market shares in developing countries, in order to compensate for possible losses and stagnation in developed countries. In its presentation of its Financial Statement 2004, Nestlé announced that despite a negative organic growth of -8.4 in Europe, Nestlé was able to balance this with organic growth rates in North America of 9.7 percent and good performances elsewhere in the world, maintaining 0.6 percent growth. Nestlé owes its satisfaction to other regions in the world, especially in Africa and the Middle East, where Nestlé Waters maintained a double-digit growth rate of 17.7 percent, thanks to solid local partnerships and the development of Nestlé Pure Life.

8.1. Global Market for Bottled Water

It is estimated that bottled water consumption has grown exponentially over the past ten to fifteen years. Available statistics show that consumption of bottled water in countries with available safe tap water, e.g. North America and Europe, increased from 20 up to 80 percent between 2000 and 2003 and is lead by an average consumption of 112 litres per capita in Europe.¹¹⁹ In 2003, for example, global bottled water companies produced 153.1bn. litres of water, an increase in production of 27 percent compared to 2000. This reflects a production value in sales of USD 45.8bn. The world's bottled water companies are lead by transnational corporations like Nestlé, Danone (owner of brands like Evian), Coca Cola or Pepsi. This means that the bottled water industry has literally created its own water culture, pursuing costumers – for example in the US – to pay up to 10,000 times more for bottled water than for tap water.¹²⁰ Nestlé calls this culture one of “*health, wellness and pleasure*” in which bottled water also serves “*increasing mobile lifestyles*”.¹²¹

But apart from the “bottled water culture”, bottled water is one of the few sources of safe drinking water in developing countries. Economic development and globalization work together to meet demands for safe drinking water by a new middle class. Therefore, since 1998, growth rates of up to 50 percent yearly are common in countries in Asia, the Transcaucasus, Middle East and North Africa. Global consultants, like Zenith, report that total sales reached 25,270 million litres in 2000, more than double the level of 1995. The Asian region now represents 23% of global consumption, with its largest markets in

China, Indonesia and Thailand.¹²² Nestlé directs its objectives in this market segment, “*where the natural mineral water culture is less apparent*” to the question of bottled water as a safe alternative for the lack of safe tap water.¹²³

8.2. Bottled Water Market in Pakistan & Nestlé’s ‘Pure Life’

8.2.1. Bottled Water Market in Pakistan

Bottled water in Pakistan is not considered a ‘beverage’. Beverage processing includes carbonated soft drinks – where Pakistan has the lowest per capita consumption in the world, fruit juices, syrups and juice flavoured drinks.¹²⁴ Drinking water – and also bottled water – is not considered an important commodity either. Water supply and prices for drinking water and bottled water are not considered under the items in the Sensitive Price Indicator, Consumer Price Index or Wholesale Price Index.¹²⁵

From this perspective, it is obvious that Pakistan has low consumption of bottled water. The Government of Pakistan described the market for bottled water, with 33 million litres of consumption per annum in 1999, as small but growing. It furthermore estimated the consumption for 2003, as 70 million litres or 0.5 litres per capita.¹²⁶ The bottled water market in Pakistan has witnessed annual growth rates of 40 percent, and after the introduction of Nestlé’s ‘Pure Life’, it had the fastest worldwide growth in bottled water in 2000, at 140%.¹²⁷ Recent figures estimate a yearly consumption of about 2 litres per person bottled water.¹²⁸ Compared with Thailand’s 43 litres and Philippine’s 15 litres per capita consumption, this seems relatively low. But taking Pakistan’s population into account, one has to estimate an annual consumption of 318 million litres. While again, sufficient figures are not available to prove this 964 percent consumption increase in five years, one is able to conclude that Pakistan is a highly dynamic and lucrative market. Market expectations are as high in the retail market of bottled water as in the household and operations sector for bulk water.

Besides these market expectations, the production of bottled water is also considered quite profitable. It is estimated that a bottle of 1.5 litres has production costs of PKR 12.51 (USD 0.22) while it is sold for PKR 22 (USD 0.38).¹²⁹ The profit is shared between producing corporations, with PKR 0.66-0.83 (USD 0.011-0.014), and middleman, with PKR 6.66-7.08 (USD 0.116-0.124). By this standard, the producing corporation makes a profit of 4-5 percent while the middleman makes a profit of 27-30.55 percent.

In Pakistan’s water market, there are approximately 20 permanent players. Official figures show an estimated number of 26 corporations, while in summer time, this number increases up to 70.¹³⁰ But from the perspective of quality control, PCRWR is witnessing a fluctuation in the market of 50 percent, e.g. half of the brands disappear and are replaced by new brands yearly.¹³¹ In 2005, PSQCA admitted that 200 companies are selling bottled water in Pakistan, but only 27 are registered as maintaining standards stipulated for the product.¹³² Nestlé itself estimates approximately 150 water brands, with only 15 registered under the PSQCA scheme.¹³³ Regardless of this data, it is unquestioned that Nestlé controls the majority of the market (over 50 percent) with its brands ‘Pure Life’, AVA and Fontalia, while Danone’s subsidy

“Sparkletts” holds 12 percent and another local brand “BSW” has an estimated five percent market share.¹³⁴

8.2.2. Nestlé’s ‘Pure Life’ in Pakistan

In regard to the dynamic prospects of Pakistan’s bottled water market, it is not surprising that Nestlé wanted to take shares of it. In its mission statement, Nestlé concludes that its brand ‘Pure Life’ is the “*base of operations to meet the need of the continent’s emerging nations for clean, good-tasting water in convenient sizes and packages to satisfy a family’s daily requirements*”.¹³⁵ The development of Nestlé’s market share, in the bottled water market in Asia, is closely linked to its leading world-brand ‘Pure Life’. Now available in 17 countries and highly successful in Uzbekistan, Turkey, Jordan, Thailand and the Philippines and Argentina, the brand was also launched in United Arab Emirates and Saudi Arabia, in 2003.¹³⁶ But this worldwide business began in 1998, in Pakistan.

Nestlé started its water business in 1969, with a 30 percent stake in the Société Générale des Eaux Minérales de Vittel. It acquired a controlling interest in SGEMV in January 1992, and went on in May of the same year to buy out the entire Perrier Group. In the same year, the group launched mineral Water “Valvert” as a novelty in five different countries. In 1997, its market presence was worldwide, and the acquisition of ‘San Pellegrino’ gave it leadership in the Italian market. But these initial steps under local brands were over in 1998, when Nestlé – for the first time in its history – associated its name with bottled water as ‘Nestlé Pure Life’.¹³⁷ In April 2002, Nestlé renamed its water business as Nestlé Waters, which now represents 10 percent of its sales. Today, Nestlé Waters is established in 130 countries and markets about 77 different brands.¹³⁸

The decision to invent a new brand and production method was made in 1997, and road-mapped in field test in Ozarka (Texas, USA). The concept was to extract groundwater and, after purification and addition of minerals, to sell it as an affordable product for daily use. The concept was a blueprint for a global production network. The implementation started when Nestlé’s ‘Pure Life’ was launched in Pakistan, and soon appeared in Brazil, followed by Argentina, and now globally.¹³⁹ In six months, ‘Pure Life’ took over 50 percent of the country’s bottled water market, and only a year after the set up of the first production plant in Lahore, Nestlé had installed more than 15,000 shops and a country-covering distribution network. Nestlé’s smartest idea was the use of ground water instead of water from springs. While the latter water sources are highly regulated in Pakistan, ground water lacks regulation and proper monitoring. Selling a public good became similar to the permission to print money.

The aggressive market strategies of Nestlé went astray when “awareness seminars” about bad water conditions turned out to be counterproductive. Nestlé asked its Lahore ad agency, Interflow Communications Ltd., to organize public information events about water hygiene issues. Participating officials of health and water agencies announced that tests had determined that urban water was unsafe for drinking and even existing bottled water was unhealthy. Nestlé discontinued the seminars immediately after it was reproached for unethical marketing practices. For instance, a representative from the Lahore Water Supply Company alleged that Nestlé was “*misleading the people to make*

money".¹⁴⁰ Regardless of the discussion and temporary fall back from Nestlé, it became clear that bad news was also good news, and Nestlé gained public attention as a safe option for bottled water. In the end, Nestlé successfully stepped into the market and filled a need, but turned water from a danger into a luxury. Apart from the production of 'Pure Life' in Lahore, Nestlé acquired major share holdings in both AVA and Fontalia in 2001, in order to expand its house and operating services. AVA is produced in Karachi and Islamabad, while Fontalia is produced in Karachi, where it enjoys strong holding in the bulk water service.¹⁴¹

While Nestlé's highly industrialized extraction of ground water was soon opposed in other parts in the world,¹⁴² in Pakistan, its business went smoothly unquestioned. The only visible critique came from outside, mainly from anti-globalization activists from developed countries.¹⁴³

8.2.3. Challenges for Nestlé's Water Policy in Pakistan

After five years of operation, Nestlé faced its first opposition when it announced that it would build a second production plant in Karachi. On October 25, 2003, the Shaheed Zulfiqar Ali Bhutto Institute of Science and Technology sent a writ petition to the Sindh High Court (Karachi), saying that the 20 acres leased out to Nestlé were carved out of the 300 acres of land allotted to it previously. The lawsuit has been joined by Sindh Institute of Urology & Transplantation, Aga Khan Hospital and Medical College Foundation, Sindh Madressatul-Islam, Newport Institute of Communication & Economics, Sir Syed University of Engineering & Technology, Shaukat Khanum Memorial Cancer Hospital & Research Centre, and Ziauddin Medical University — all land allottees in the said area. The property is located in an area spread over 15,500 acres, given to 30 different parties, believed to be designated for various educational and health purposes, and declared "Education City Karachi". Nestlé bought the property for a price of PKR 500'000, double the price paid by the other parties, with the intention to invest USD 10 million and extract 306 million litres of water annually, for the sale of 228 million litres of bottled water. Ironically, the plant was not planned to meet the needs of the people of Karachi or the South of Pakistan, but for US forces at Afghanistan's Kandahar Air Base.¹⁴⁴ The plaintiffs argued that Nestlé's industrial ambitions defeated the very purpose of the area.¹⁴⁵ Nestlé argued that the property was allotted after approval of the provincial cabinet and the department of industries. Furthermore, Nestlé claimed at the end of the dispute that the area was never declared for a single, non-industrial purpose, and the company presented various public officials to promote this position. The plaintiffs, however, could prove that the area was dedicated to education and health services since 1999, and the Sindh High Court (Karachi) held that water extraction by the proposed bottling plant would "*diminish water deposits in the aquifers rapidly and shall adversely affect the plaintiffs' right to use the underground water according to their genuine needs*".¹⁴⁶ The case is still open, regarding the plant and the investment, since Nestlé continues to legally challenge the decision of the Sindh High Court (Karachi). Nevertheless, one has to keep Nestlé's self-commitment in mind, namely that it "consult[s] with local communities on water issues", which was obviously not the case in Karachi.¹⁴⁷

In addition to criticism of Nestlé's ambitions to expand and explore new markets in Pakistan, its leading brand 'Pure Life' as such is criticised as not fulfilling the promises it

makes. As shown in the Prologue above, the Pakistan Standards & Quality Control Authority (PSQCA) has served a notice to the management of Nestlé in Pakistan for selling its brand 'Pure Life' without proper authorisation.¹⁴⁸ As the national member body of the ISO, IEC and OIML, the PSQCA is monitoring and implementing the ISO guidelines and other national quality benchmarks.¹⁴⁹ Among other sources of water, the implementation of the Compulsory Certification Marks Scheme includes bottled drinking water.¹⁵⁰ Nestlé received licenses for their brands 'Pure Life', Ava, Fontalia, but these were not renewed due to certain non-conformances with the set conditions, such as payment of a prescribed marking fee. After authorities threatened to declare Nestlé's business illegal, Nestlé responded by depositing part of its fee with certain conditionality. These conditions have led to further negotiations between PSQCA and Nestlé, which are held behind closed doors. One can only assume that in the end a deal will save Nestlé's bottled water business and the Government's interest in taking a share of Nestlé's profits.

The work of the PSQCA with regard to bottled water standardisation goes back to the findings of PCRWR about the bad quality of bottled water in general. In its last findings about bottled water in January 2004, PCRWR stated that 54.54 percent of Pakistan's bottled water is unsafe for consumption because 31.81 percent are contaminated with arsenic and 27.27 percent is bacteriological tainted.¹⁵¹ PCRWR therefore recommended stronger enforcement by PSQCA in order to combat "improper enforcement of quality standard by the concerned department".¹⁵² Although Nestlé's brands were not among the unsafe brands, this was not always so. In 2003, Nestlé's 'Pure Life's quality was also contested. Because Nestlé did not confirm with its own statements on its label, it was recognized as "*one imported brand (claimed) is found unsafe for human consumption*".¹⁵³ As shown above, the director of PCRWR additionally claimed in an interview that Nestlé's brands 'Pure Life' and AVA were devoid of minerals and, therefore, unfit for human consumption. Finally, the quite populist statement that regular use of mineral water causes bone deformities led to a legal dispute between Nestlé and the director of PCRWR.¹⁵⁴ One can wonder why Nestlé is in the recent reports not mentioned. A general statement about quality of bottled water by PCRWR states that firms in the bottled water business that still "*reflect more interest in money making than quality control measures have labelled chemical composition arbitrarily*".¹⁵⁵

The Ministry of Environment, which acts as Pakistan's Environmental Protection Agency, recently stated that "*bottled water users are quickly discovering that all bottled water is not the healthy drinking water they want (...) [and] infrequent testing for contaminants and sporadic inspection of processing plants must be solved before bottled water can be assumed to be sanitary as even regular tap water*".¹⁵⁶ Cases of contaminated bottled water causing epidemic illnesses in whole areas are common.¹⁵⁷ The problem is two-fold: On the one hand, refilling of brand-named bottles is an obvious problem.¹⁵⁸ On the other hand, reckless production often leads to bad quality. Nestlé is not immune to these allegations. As shown in the Prologue above, Nestlé's water is considered insufficient for consumption by the National Health Centre in Islamabad. These findings led to the Supreme Court of Pakistan's decision to declare Nestlé's water poisonous and furthermore to allege that Nestlé was taking advantage of rail passengers as particularly captive buyers, as no hygienic water was available at platforms and inside trains.¹⁵⁹

9. Human Rights Concerns about Nestlé's 'Pure Life'

In Pakistan, groundwater is the main source for drinking water.¹⁶⁰ United Nations Educational, Scientific and Cultural Organization (UNESCO), based on research in the Province of Sindh, suggests that “*groundwater extraction at the present rate obviously exceeds the renewable volume [...] in many exploitation areas and is not sustainable long term*”.¹⁶¹ Pakistan does not have an integrated water management policy which could limit excessive groundwater exploitation. As examples from Sindh are showing, existing groundwater monitoring systems are insufficient for establishing reliable data.¹⁶²

Nestlé's production of 'Pure Life' and the related extraction of groundwater are obviously exceeding the renewable volume and can therefore be considered as not sustainable. Although this finding is in contradiction with Nestlé's own Corporate Business Principles, it only raises certain human rights concerns while not automatically constituting a violation as such. In order to judge these human rights concerns, one has to identify a direct impact of Nestlé's 'Pure Life' production and distribution on peoples' human rights, like the right to water, health, food or freedom from discrimination.

9.1. Impact of Nestlé's 'Pure Life' Production on Local Communities

Where the groundwater extraction exceeds renewable resources a two-fold problem occurs. First, the groundwater level is lowered. Second, saline effluents and overflowing leads to declining ground water quality.¹⁶³

9.1.1. Unregulated Groundwater Exploitation

Since surface water use is highly regulated, the exploitation of groundwater in Pakistan – with the exemption of the Province Balochistan – is limited by minimal legislation and in practice not regulated at all.¹⁶⁴ Even new institutions such as the Pakistan Council of Research in Water Resources (PCRWR) or the Pakistan Environmental Agency (EPA) are facing the problem of lacking legal authority.¹⁶⁵ The World Bank Project “Pakistan Punjab Private Sector Groundwater Development Project” (1996-2002) concluded that the lack of regulation of the use of groundwater is one of the major obstacles for its sustainable use. Furthermore, the World Bank stated that uncontrolled groundwater management creates environmental problems, because the discharge is superseding the recharge from surface water and results in declining groundwater level. Although the focus of the World Bank project shared the governmental objective of irrigation for food production, it concluded that irrigation is drying up wells and hand pumps, and this is a “*system lacking equity in true sense*”.¹⁶⁶ The World Bank gave approximately USD 2.8 million for a regulatory framework, which was however never enacted.¹⁶⁷

What was acknowledged more than ten years ago, with regard to food production, now has to be stated in reference to drinking water. In Punjab's non-urban settlements, 6.4 percent of households get their water supplied as piped water, while 8.27 percent get

their water from tube-wells and 76.88 percent from hand pumps. In the Lahore district – the area surrounding Nestlé’s ‘Pure Life’ production – only 8.49 percent get their water provided by pipes, while 9.27 percent rely on 24 tube-wells and 78.76 percent on 204 hand pumps.¹⁶⁸ Available data, from 2002, shows that the city of Lahore operates more than 316 tube-wells, in order to provide 90 percent (4.11 million) of its inhabitants with tap water. A tube-well usually explores the deep ground water at a level of 300–600 ft (90–180 meter). The deep ground water is safe and sufficient for drinking while the shallow water, gained at a depth of 50 – 60 ft (15 – 18 meter), is mainly insufficient for consumption.

Tube-wells excavate 2-3 cubic-feet or 56-85 litres per second. In 10 hours of operation, a tube-well can provide 2.04-3.05 million litres of water. Taking into consideration water losses during the purification and production process, Nestlé’s market share in Pakistan, as well as exports, represents an estimated two or three tube-wells of water. In comparison, approximately 340 tube-wells are operated for public water services in Lahore’s urban and rural areas. Although Nestlé’s operations are only a small share of the overall exploitation of groundwater, there are two differences in regard to the other tube-wells. First, Nestlé is using the water for industrial purposes and for profit, while the other tube-wells are extracting groundwater for use as drinking water or for food production. The latter has priority over corporate interests. Second, while the use of groundwater in Punjab is not regulated and not sustainable at all, Nestlé should rely on its own Business Principles and self-commitments with regard to human rights and sustainable water use instead of taking advantage of the absence of regulation.

9.1.2. People’s Human Rights and Governmental and Corporate Responsibilities

Individual use of water has priority over its use for industrial and agricultural purposes and for profit. Under the circumstances explained above, one is able to conclude that the production of Nestlé ‘Pure Life’ has a direct impact on people’s access to water. Excessive groundwater exploitation lowers the groundwater level and jeopardizes the availability of water. Since water is not only in use for drinking and hygienic purposes but in rural areas mainly for food production, Nestlé’s business activities also interfere with people’s right to food. In addition, lack of water causes health issues, such as water-related diseases due to use of insufficient water. Finally, the excessive extraction of groundwater also violates the right to property and use of groundwater of land owners in the neighbourhood of Nestlé’s plant.

Independent studies show that the rapid expansion of the built-up areas in urban centres, such as Lahore, and the increased and unregulated private exploitation of groundwater for domestic consumption have led to a decline in the water table of approximately 1.4 meter annually.¹⁶⁹ The PCRWR estimates a decline of 1–11 ft (30–3.35 meter).¹⁷⁰ Due to this extensive extraction and the decline of the shallow water and deep groundwater levels, pumps and wells dry out. The cost for new or deeper wells jeopardizes peoples existing access to water, and people become dependent on owners of tube-wells and water sellers. The use and exploitation of groundwater in Punjab is

already discriminatory, and the public and industrial exploitation worsens this situation.¹⁷¹

It is foremost the responsibility of the Government of Pakistan and the Provincial Authorities of Punjab and Lahore to protect the people affected by Nestlé's production methods. But regulation is weak. Recently, the Pakistan Minister of Privatization and Investment stated: "*large companies (...) did not face facilitation problems because of their access to the top leadership in Pakistan*".¹⁷² There should be no doubt about Nestlé's access to top leadership. Well-established over decades, it is present in any board or institution that matters. For example Nestlé Milkpak Ltd. is represented by its Chairman in the National Academic Council of Pakistan's Institute for Policy Studies. This institution is the think-tank for policy oriented-research that assembles the who's-who of media, economics, science, politics, administration and armed forces.¹⁷³ This access to top leadership ensures transnational corporations that they can act autonomously as long as they maintain these connections. With these connections, there is less hope for the poor that their position will be improved and their human rights will be protected.

Beside the primary, governmental responsibilities for human rights, corporations also have their own responsibilities. As shown above, where public officials are unwilling or unable to protect the human rights of their people, corporations have their own specific responsibilities for the human rights that are affected by their business practices. In this case, Nestlé would have the obligation to evaluate the impact of its water extraction on the affected areas and to compensate any disadvantaged parties. Finally, Nestlé itself incorporated the Universal Declaration of Human Rights,¹⁷⁴ via its commitments in the United Nations Global Compact, into its guiding business principles. In addition Nestlé claims that "*As the world's leading food and beverage company, and the world leader in bottled waters, Nestlé has a responsibility towards the sustainable use of water resources*".¹⁷⁵ Taking this into consideration, Nestlé has to be held accountable for not complying with its own commitments. In this regard, Nestlé violates its own business principles if the unsustainable extraction of groundwater leads to the drying out of existing systems of water access and food production.

9.2. Distribution and Consumption

As shown above, insufficient water quality mostly affects the poor, who have little power to change policies and priorities and who cannot afford alternatives, such as bottled water, filtering and boiling. The Government of Pakistan officially admitted that "*richer households are substantially more likely to have water piped to a tap in the household*".¹⁷⁶ Furthermore, the Government of Pakistan acknowledged that the engagement of corporations, which extract groundwater and sell it as bottled water, might be one of the factors working against water quality improvement because it has reduced the political pressure for improvement by this part of society whose voices are valued and heard.¹⁷⁷

In these circumstances, bottled water remains the only additional source of safe water. Nestlé's 'Pure Life' has developed to meet these new demands. "[It] originated in the

global need for a safe family drinking water with a pleasant taste, affordable price and tailored to local preferences."¹⁷⁸ But again, Nestlé is far from this self-commitment in Pakistan.

In 2002, the average monthly household income in Pakistan was PKR 7,168 – consisting of PKR 9,904 in urban and PKR 6,031 in rural areas.¹⁷⁹ In 2001, the average monthly wage was estimated as PKR 3,134.¹⁸⁰ Taking only the lowest 60 percent of income into consideration, the monthly average household income in urban areas was PKR 6,127 and in rural areas PKR 4,936. This average of PKR 5,186 monthly income for one household is not spent for water, especially not for bottled water. Only a small proportion of households pay for drinking water at all. Among the population as a whole, only 17 percent of households pay for water and this proportion reaches only 7 per cent in rural areas.¹⁸¹

The price of a 1.5 litre bottle of Nestlé's 'Pure Life' (and other brands) costs around PKR 22 (USD 0.38). This same amount of money provides a meal for a family of four. Taking into consideration that the United Nations estimate a daily need of five litre water per person,¹⁸² the satisfaction of that need with bottled water would cost approximately PKR 2,200 (USD 38.60) per month. Multiplying this for a family of only four people, the expenses for bottled water would exceed the average monthly income. Bottled water therefore offers no alternative for insufficient water supply. If families used this as a substitute, they would indebt their families or sacrifice the satisfaction of other human rights, such as education, food or shelter. This conclusion is also made by the United Nations Development Programme in Pakistan, which considers bottled water as an expensive alternative that is not affordable for the part of the population most affected by insufficient water supply.¹⁸³

Even Nestlé confessed before it started to produce 'Pure Life' that "*the fact that everybody can't afford 'Pure Life' is unfortunate, but does that mean we shouldn't sell it at all?*"¹⁸⁴ From this perspective, it is reasonable that Nestlé focused its marketing on urban centres, railway and bus stations and highway stops. To conclude, one has to say that Nestlé 'Pure Life' in Pakistan is not an affordable alternative for the great portion of the population without access to safe drinking water. Rather the introduction of bottled water in Pakistan is an attempt to initiate the bottled water culture, where water is a status symbol and a way of life for the rich.

This hidden business objective is questionable and should be unveiled. It is not justifiable from a perspective of human rights. Truly, the distribution of public services – such as water – along the lines of social status would be discrimination and as such a human rights violation. But a private corporation is still in the position to define its market objectives independently and to target only certain, potential groups of customers. Nevertheless, Nestlé's market strategy is in contradiction with its own commitments to human rights and sustainable development, which matter from a moral point of view.

9.3. Health Related Aspects

As shown previously, Nestlé's 'Pure Life' production is extracting groundwater and thus lowering its level. In cases where this leads to the dry-out of local water supplies, this also

can risk people's human right to health. Insufficient water resources are the main cause of diseases. If existing water supplies diminish, people have to rely on unsafe water sources.

In addition to this indirect effect on people's health, it was explained above that Nestlé is under ongoing allegations that its bottled water, especially 'Pure Life', is not in compliance with national quality standards. Lack of data and ongoing disputes hinder an exact judgement of these allegations. Nevertheless, one can conclude that if Nestlé's 'Pure Life' is not safe and sold anyway, then this is a direct violation of people's right to water and to health.

10. Outlook and Recommendations

To solve the water crisis and lack of drinking water the Government of Pakistan, international agencies, and NGOs must play an active role.¹⁸⁵ First, of all the Government of Pakistan should acknowledge a water crisis and start to collect sufficient data.

Second, the focus on agricultural-related water issues has to be shifted to the individual and the poor as a discriminated majority of Pakistan's population. The Government of Pakistan has to acknowledge the right to affordable, safe and sufficient water, as well as other related human rights, and it has to adopt a national policy that leads to their fulfilment. Being poor in Pakistan means that "*there is nowhere and no one to turn to for support or justice. They do not live a life – they merely exist, alienated from society at large.*"¹⁸⁶ In this regard, access to justice and empowerment of the poor is a main task for public authorities, international donor and development organizations, and NGOs.

Third, the extraction of groundwater should be regulated and more efficiently monitored. Lack of regulation is not only an obstacle for development and accountability, but it is also the violation of the government's obligation to protect people's human rights from corporate interference. Non-sustainable water extraction and industrial use has either be stopped or compensated by specific projects on water management and environment. In addition, a long-term financial pool to address the harms of water extraction should be established, which will provide compensation to local communities. Finally, the established authorities, such as the Provincial Irrigation and Drainage Authority and the Environmental Protection Authority should ensure that groundwater monitoring is undertaken and that they have a mandate to initiate policies to address groundwater management and quality problems.¹⁸⁷

Lastly, Nestlé should be held accountable for its commitments with regard to human rights and sustainability. On the one hand, there should be efficient law enforcement with regard to quality standards. The lack of funds and the weak regulatory position of institutions like PCRWR and PSQCA have to be addressed within governmental authorities, as well as through civil society institutions. The cross-subsidizing of the quality control programmes, with a rate imposed on each bottle, might be one opportunity to provide proper funding.¹⁸⁸ If Nestlé fails to comply with Pakistan's law, it has to bear consequences, instead of using its "access to top leadership". Any political deal will create a loophole in the rule of law and lead to a lack of accountability. Nestlé's failed compliance with its Corporate Business Principles should also be addressed by its shareholders and cause a public debate in its host country Switzerland.

Finally, Nestlé's disobedience with the United Nations Global Compact and its self-commitment to human rights should lead to a debate within the members of the United Nations Global Compact, especially its NGO-members. Nestlé's questionable approach to the Global Compact as "*based on the recognition that development and poverty reduction depend on prosperity which can only come from efficient and profitable business*"¹⁸⁹, has to be debated by other members of the Global Compact.

Annex I (Availability and Quality of Drinking Water)

Source of Water Supply (in percent)													
Year	Reported Institution / Organisation	Population (159 million) ⁱⁱ				Urban (32,5 percent) ⁱⁱⁱ				Rural (67,5 percent)			
		Pipe	Tube-well / Well	Hand-Pump	Other*	Supply				Supply			
						Pipe	Tube-well / Well	Hand-Pump	Other*	Pipe	Tube-Well / Well	Hand-Pump	Other*
1998	Housing Indicators 1998 Census ^{iv}	32.26	9.96	47.14	10.65	65.04	4.45	26.99	3.52	17.25	12.48	56.36	13.91
2003	Mouza Census Report 2003 ^v									7.64	12.80	60.05	19.51
Sufficient Quality of Water Resources (in percent)													
2001	Arcadis Euroconsult ^{vi}			10				10				10	
2004	PCRWR Report 2004 ^{vii}					approximately 50					approximately 30 (case study Indus Basin)		
2005	Interviews			5-10				5-10				5-10	
Access to / Availability of Water (in percent)													
2000	UNDP HDR 2004 ^{viii}			90									
2000	Pakistan Water Sector Strategy ^{ix}							60				53	
2003	UNDP Pakistan Country Report 2003 ^x			63									
2003	Pakistan Human Condition Report 2003 ^{xi}			63				83				27	
2003	Mouza Census Report 2003 ^{xii}											78.47 (sweet water)	
Access to safe and sufficient drinking water (in percent)													
2003	UNIDO ^{xiii}			56						10-45			
2005	Conclusion **			25.61				30		3.82	2.56	12.01	8.68
										23.5			

* Other supply includes river, canals, springs and water tanks

** Average between interviews and reliable resources about availability in relation with quality

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