

# Human rights and privatisation in the health sector

Global Initiative for Economic, Social and Cultural Rights, ISER, Oxfam

## Project Overview

Research has shown the growth of private actors in the delivery of essential social services risks undermining States' obligations to realise economic, social and cultural rights. Privatisation in essential social services, if not adequately monitored, regulated, and controlled, could lead to violations of economic and social rights, particularly for those too poor to pay for or without the capacity to choose adequate services. In an increasingly complex and globalized world, where the role of private actors is growing, there is a need to reflect on and develop common principles, based on human rights, regarding how States and private actors interact as well as their limitations, to ensure the full realisation of human rights in the changing landscape.

Since 2014, the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) has been conducting research on the human rights impacts of [privatisation in education](#), engaging with human rights mechanisms to build a normative framework and engage with States, and mobilising partners to create a community able to address issues as they arise. Human rights norms and standards around the role of private actors in education are developing, notably through a [series of concluding observations](#) from human rights bodies and [reports](#) from the UN Special Rapporteur on the right to education. Dialogues and debates have been started in numerous countries, with various actors including the press, ministers, and civil society organisations engaging in an open discussion around the role of private actors in education. Drawing from this experience, GI-ESCR is starting to work on the role of private actors in healthcare and human rights.

GI-ESCR seeks to develop an in depth understanding of the human rights framework applicable to the involvement of private actors in health care, including State obligations where private actors are involved in the health sector. Human rights bodies including the UN Committee on Economic, Social and Cultural Rights and the UN Special Rapporteur on the right to health have occasionally addressed the issue, calling on States to conduct assessments prior to privatisation and to review privatised health systems. However, there is a lack of guidance for States on the human rights parameters to take into account prior to the decision of involving private actors in health care, and how to assess, implement, and safeguard the right to health where there has been privatisation in health systems. This project proposes to start addressing this gap by laying the foundations for developing a human rights framework to assess when privatisation poses a risk to the realisation of the right to health.

The approach will follow a similar approach as was successfully done in the education sector.<sup>1</sup> Four years ago, an initial assessment framework was developed by GI-ESCR and the Right to Education Initiative, on the basis of a few empirical cases.<sup>2</sup> This work laid the ground for a series of parallel reporting to UN treaty bodies<sup>3</sup> and engagement with other institutions to develop the normative

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<sup>1</sup> For a background, see Aubry, S. & Dorsi, D. (2016). Towards a human rights framework to advance the debate on the role of private actors in education. In *Oxford Review of Education*. Retrieved October 01, 2016, from <http://dx.doi.org/10.1080/03054985.2016.1224301>, and <http://bit.ly/GPprivatisation>.

<sup>2</sup> See <http://bit.ly/282dwpH>.

<sup>3</sup> The outcomes of which can be found here : <http://bit.ly/synthesisprivatisation>.

framework on the issue, which is now being developed into a fully-fledged set of human rights Guiding Principles on the obligations of State regarding the delivery of education by public and private schools.<sup>4</sup> The work envisaged in this project would constitute the first step of a similar path, trying also to learn from and make connexions with the education experience.

This project will support the work of GI-ESCR, including its advocacy on issues of privatisation. The project will also be conducted in close cooperation with two other organisations conducting research and advocacy on the issue, Oxfam and the Initiative for Social and Economic Rights. The organisations will work as follows:

- **Oxfam** has recently begun an eighteen-month research project on the commercialisation of development assistance for health, looking at the following donors: the UK, France, Germany, Italy and the European Commission. Complex issues arise, which include but are not limited to insufficient numbers of public health sector staff where health workers join the private sector, subsidised land and tax breaks for the private sector and the impacts of this on the public health sector. After an initial mapping of the donor projects in 2017, Oxfam will start assessing the impact of those projects – potentially including on the realisation of the right to health in affected countries - in 2018. Oxfam will:
  - Provide background information on privatisation in health
  - Share the findings and lessons learned from the project as it progresses
  - Advise on the development of the research as it relates it to its project
  - Provide feedback on the outputs of the research
  - Use the findings to inform the analysis for its project and/or future work on the commercialisation of healthcare
- **The Initiative for Social and Economic Rights (ISER)** is a Ugandan organisation that has worked for the last years in partnership with GI-ESCR to address privatisation in education in the country. ISER is starting in September 2017 a project on “Research and advocacy around private sector involvement in health governance in Uganda”. They are considering amongst other topics the forthcoming National Health Insurance Scheme and Public Private Partnerships in Health, and have indicated an interest in gaining a stronger understanding of the international human rights framework on private actors in health to support the research and eventual advocacy that will occur at the local level. ISER will:
  - Share the necessary information about the Ugandan context
  - Advise on the research based on the Ugandan experience
  - Provide feedback on the outputs of the research
  - Use the findings to inform its analysis and advocacy in Uganda
- **GI-ESCR** will directly use the research as part of its overall program on addressing the role of private actors in the delivery of essential services, and will:
  - Provide overall coordination with partners
  - Provide background research and information on privatisation and human rights
  - Make the connexion with privatisation in education
  - Ensure the use of the findings to lay the ground for future work

### Project Output

Students will research and write a 20 – 30-page report on the international human rights framework applicable to the role of private actors in health focusing on service provision (the delivery of health care) and health financing (in particular social security/health insurance). This research will help establish a clearer understanding of what international human rights law requires of States, including donor States, and identify any existing gaps in the framework. The research and report will pay particular attention to groups that may be particularly vulnerable in the context of privatisation such as

<sup>4</sup> See <http://bit.ly/GPprivatisation> and <http://bit.ly/GPprivatisationFAQ>.

women, older person, children and adolescents, minorities and persons living in poverty. The report will also include:

- A human rights analysis of the framework applicable to privatisation of health in Uganda
- A preliminary impact assessment framework, similarly as was done in education (<http://bit.ly/282dwpH>)

This report will advance the work of the organisations involved in several ways. It will directly support ISER's research and advocacy in Uganda, as it unfolds in 2017 and 2018. ISER will draw from the report to inform its analysis and use the report as an advocacy tool where relevant. It will support the research conducted by Oxfam, which will use the framework developed to inform its assessment of the impact of donor funding to private health systems and/or future work in this area. It will also serve as a basis for the future case-work and analysis of private health care that GI-ESCR and partners count on developing. The report will be published on GI-ESCR's website, circulated to key partners, and be used as the basis for the future work on privatisation in health and human rights.

Depending on resources available, we will also explore the possibility to organise a small conference on the topic of privatisation and the right to health with project partners and external stakeholders. Depending on the outcomes of the research, students could present the findings of their research and may play a small role in assisting GI-ESCR organise a conference.

The students would also have an opportunity to present their work to the UN Special Rapporteur on the right to health, Dainius Puras. Other opportunities to present the research, or turn it into other formats (e.g. academic publication) will be discussed depending on the outcomes and interest of the students.

### Project Outline

- **Phase 1: (November-December)**
  - Guided by inter-disciplinary research including from the fields of law and public health, the students will develop expertise in the issue of privatisation and the right to health.
  - Building on preliminary research conducted by GI-ESCR, the students will produce a 10-page literature and basic legal review on privatisation in health as well as development health assistance. This review will identify the level of development of knowledge on the issue, the key concerns, and the gaps. The review will also cover primary documents and secondary research on the relevant international human rights legal framework.
  - The literature review will be completed and submitted to GI-ESCR by the last day of term. GI-ESCR and partners will provide feedback before the first day of term in January 2018.
  - The students will also get acquainted with the situation in Uganda through exchanges with ISER both to anchor their reflexion in a particular case and to orientated their research around the needs on the ground. They'll also get to know more about the Oxfam project.
  - Develop a draft ethical consent form (if required)
- **Phase 2: (January-March)**
  - Engage in further research including desk research and, if appropriate, interviews of key stakeholders to better understand privatisation and its impact on the right to health, taking the case of Uganda as an example.

- Write draft report, maintaining regular communication with GI-ESCR to review work.
- Before the end of term, presentation of draft report to ISER by Skype, and Oxfam-GB in person if possible. Comments used to refine report.
- During this term, there may be (optional) opportunities for ad-hoc collaborations with GI-ESCR and partners to support their advocacy on privatisation of education.
- **Phase 3: (April -June)**
  - Finalise report by end of April.
  - Review the report and adapt for public presentation and advocacy
  - Present the report to other stakeholders. If possible and of interest, help to organise a small conference on the topic of privatisation and health (this may be held at Essex or elsewhere)
  - Hold briefing with UN Special Rapporteur on the right to health to inform him of the research

### Bibliography

UN Special Rapporteur on the Right to Health (Anand Grover) (2012), Interim report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, A/67/302

Oxfam (2009) Blind Optimism: Challenging the myths about private health care in poor countries, briefing paper.

Oxfam (2013) Universal Health Coverage: Why health insurance schemes are leaving the poor behind, briefing paper.

Oxfam (2014) A Dangerous Diversion: Will the IFC's flagship health PPP bankrupt Lesotho's Ministry of Health? briefing note.

Oxfam (2014) Investing for the few: The IFC's Health in Africa initiative, briefing note.

Chapman, A. (2014). The impact of reliance on private sector services on the right to health. *Health and Human Rights*. 16(1) 122-133

Chapman, A. (2016). *Global health, human rights and the challenge of neoliberal policies*. Cambridge University Press

de Wolf, AH and Toebes, B. (2015). Private sector involvement in healthcare and UHC: An assessment in light of the right to the highest attainable standard of health. University of Groningen, faculty of Law Research Paper No. 2015/32

de Wolf, AH and Toebes, B. (2016). Assessing private sector involvement in health care and universal health coverage in light of the right to health. *Health and Human Rights*, 18(2), 79-92

Languille, S. (2017). Public Private partnerships in education and health in the global South: a literature review. *Journal of International and Comparative Social Policy*. 33(2) 142-165

Lethbridge, J. (2017). World Bank undermines right to universal healthcare. *Brettonwoods Projects*.

Lethbridge, J. (2016). Unhealth development: The UK Department for International development and the promotion of healthcare privatisation. UNISON

O'Brien, P. (2013). The International Right to Health: State Obligations and Private Actors in the Health Care System. *Journal of law and medicine* 21(1) 194-209

Toebes, B and San Giorgi, M. (2014). Dutch realities: evaluating health care reform in the Netherlands from a human rights perspective. in Toebes, B, Ferguson, R, Markovic, R, Nnamuch, O (Eds). *The right to health: A multi-country study of law, policy and practice*. The Hague: Asser Press, p.412.

Toebes, B. (2006). The Right to Health and the Privatization of National Health Systems: A Case Study of the Netherlands. *Health and Human Rights*. *Health and Human Rights*, 9(1), 102-27

Toebes, B. (2008). Taking a human rights approach to health care commercialisation. In Cholewka, P, and Motlagh, MM (Eds). *Health Capital and Sustainable Socioeconomic Development* (pp.441-458). Boca raton/London/New York: Taylor & Francis Group

Webster, PC. (2015). Lesotho's controversial public-private partnership project. *The Lancet*. Volume 386, No.10007, p.1929-1931

Universal Health Coverage: markets, profit, and the public good. *The Lancet*. 26 June 2016

Collection of UN human rights treaty body concluding observations, attached.