

“Enough is enough”: a conversation with international human rights experts on privatisation and public services

Summary of the discussions held during the 19 October event

On 19 October 2020, the Global Initiative for Economic, Social and Cultural Rights, together with ActionAid, the East African Centre for Human Rights, the European Network on Debt and Development, the Initiative for Social and Economic Rights, Oxfam, the Society for International Development, Public Services International and the Transnational Institute, hosted a webinar titled “Enough is Enough – Privatisation and Public Services: A Conversation with International Human Rights Experts on Privatisation and Public Services.” Attended by over 400 people, this was a seminal event, bringing together for the first time seven current and former UN Special Rapporteurs and one former UN Independent Expert, working across six different mandates, to reflect on the impacts of privatisation and on building renewed momentum and strategies for the public provision of services related to economic, social and cultural rights such as health, education, water and sanitation, and housing.

The event was moderated by Magdalena Sepúlveda Carmona, Executive Director of the Global Initiative for Economic, Social and Cultural Rights and former UN Special Rapporteur on extreme poverty and human rights. The panellists were:

- Mr Philip Alston, John Norton Pomeroy Professor of Law at New York University School of Law and former UN Special Rapporteur on extreme poverty and human rights;
- Mr Juan Pablo Bohoslavsky, Professor at the National University of Rio Negro in Patagonia, Argentina, and former UN Independent Expert on foreign debt and human rights;
- Ms Koumba Boly Barry, UN Special Rapporteur on the right to education;
- Ms Leilani Farha, Global Director at The Shift and former UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context;
- Mr Léo Heller, UN Special Rapporteur on the human rights to safe drinking water and sanitation;
- Ms Tlaleng Mofokeng, UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and
- Mr Olivier De Schutter, UN Special Rapporteur on extreme poverty and human rights, and former UN Special Rapporteur on the right to food.

Mr Pedro Arrojo, who will take over the mandate of UN Special Rapporteur on the human rights to safe drinking water and sanitation in October 2020, also provided some comments at the conclusion of the panel.

The event was held with the support of Heinrich Böll Stiftung.

The full recording of the event can be found at: <https://www.youtube.com/watch?v=2zXjzgOOyCY>

PART 1 | Human rights concerns raised by privatisation

The first half of the discussion was centred on the key human rights issues raised by the privatisation and commodification of goods and services in different areas.

Koumba Boly Barry expressed concern that the enormous increase in both the presence of and power held by private actors in the education field in recent years has had severe consequences for the right to education, which has in turn been further negatively impacted by the COVID-19 pandemic. She noted that the commodification of education gives rise to a focus on maximisation of profit, rather than on human rights and access to education. Ms Boly Barry emphasised the fundamental importance of the Abidjan Principles as a tool for States to address the issue of privatisation in education.

Leila Farha discussed two points for concern raised by the commodification, or “uber commodification”, of housing. She first noted that the private mortgage-based housing schemes imposed by the World Bank and dressed up as social housing are in fact precluding those most in need, the poorest populations, from being able to access housing. She then addressed the issue of the financialisation of housing, outlining how private equity firms and pension funds (including public pension funds) have been using housing as an “extractive industry” - a place where they can park, leverage and grow capital. Ms Farha expressed concern that this, along with other manifestations of the financialisation of housing, such as Airbnb, serves to drive up the cost of housing globally, making it unaffordable for those in need, result in insecurity of tenure, and disconnect tenants from their landlords.

“The financialisation of housing is really driving up the cost of housing globally, making housing basically unaffordable and therefore insecure. Affordability and security of tenure are two hallmarks of the right to housing.”

Léo Heller outlined how the privatisation of water and sanitation services gives rise to specific human rights risks, grounded in three factors: the purpose of profit maximization that drives the private sector; the risk of corporate capture stemming from the fact that water is a natural monopoly; and imbalances of power, which reduce the ability of the State to protect the rights of affected communities and instead empower private actors. These three factors of privatisation, Mr Heller explained, give rise to six key human rights risks: (1) the draining of resources out of the water and sanitation sectors, preventing States from fulfilling their obligation to progressively realise rights using the maximum of their available resources; (2) deterioration of services; (3) unaffordability of access; (4) lack of sustainability; (5) lack of transparency and accountability; and (6) the exclusion of poorer communities and populations.

“Power imbalance is particularly common in the water and sanitation sector when you have a big company interacting, engaging with local governments.”

Philip Alston observed that neoliberalism has succeeded in distorting common wisdom and has reversed the burden of proof regarding service provision: the default assumption is now that privatisation is the best model, unless it can be established otherwise. He emphasised that international organisations - specifically the World Bank, the International Monetary Fund and the United Nations through its Sustainable Development Goals - have played a key role in the proliferation of privatisation. He noted that those living in poverty will always be “the first and greatest casualties of privatisation,” as businesses inevitably exclude those with the least amount of money to spend in their pursuit of profit maximisation.

“Clearly the biggest losers in privatisation just by definition are low-income people...if governments abdicate their responsibilities in any given sector it’s low-income people and those living in poverty who are always going to be the first and greatest casualties.”

Olivier De Schutter described privatisation as “*expropriating the community from the assets that it has contributed to building and maintaining*”, often irreversibly. He emphasised that privatisation has affected the way resources are distributed; as markets are guided by who is able to pay, they end up favouring the desires of the rich over the essential needs of the poor. Privatisation raises an issue in terms of the human rights norm of non-discrimination on grounds of social origin, in that it results in access to certain services essential being made conditional on one’s ability to pay. Mr De Schutter further noted that privatisation results in a lack of accountability as, whereas States are monitored by and are accountable to voters, those running corporations are answerable only to shareholders – which results in decisions being made in the interests of profit maximisation rather than human rights.

“Privatisation means that access to certain services or goods essential to lead a decent life shall be made conditional on one’s ability to pay.”

Tlaleng Mofokeng emphasised how privatisation has created and exacerbated power imbalances in health care. She expressed concern that the decision-making power in healthcare is centred in the hands of private sector “biomedical gatekeepers”, philanthropists and large pharmaceutical companies. She noted that the way in which power is concentrated in the health sphere impacts on who sets the agenda, and that there is a misalignment between what communities and rights-holders regard as the key priorities and what those who hold the power regard as the key priorities. She emphasised that the promotion, protection and fulfilment of human rights requires a redistribution of power in all aspects of the health system and stressed the crucial need to push back against the commodification of rights in order to protect those who are often subject to discrimination.

“You will find that there is a misalignment, or a malalignment, with what the communities on the ground have identified as their own priorities versus what funders and the private sector have identified as priorities in the quest for profit-making and privatisation...”

Juan Pablo Bohoslavsky observed that, despite the catastrophic impacts of public-private-partnerships in the health sphere, the World Bank has continued to promote privatisation in its COVID-19 response, allocating approximately \$8 billion of the lending package it announced at the start of the pandemic to the International Finance Corporation. He argued that international financial institutions should be able to be held responsible under international human rights law when, without first undertaking a human rights impact assessment, they push economic policies that are known to give rise to human rights violations, such as the privatisation of a public service like education.

“According to international law standards, international financial institutions can be held responsible for complicity for pushing economic policies that violate human rights. The knowledge of the wrongful nature of the act can be presumed if, when pushing economic policies that we know normally lead to human rights violations, such as the privatisation of a number of public services, no impact assessment is undertaken.”

PART 2 | Looking forwards: achieving rights-aligned alternatives for service provision

The second half of the discussion focused on rights-aligned alternatives for the provision of goods and services, and on strategies and actions that can contribute to achieving a shift in this area.

Koumba Boly Barry emphasised that education must be public, of quality, and inclusive. She stressed the need for free, democratic and inclusive platforms to ensure that the right to education is respected, including in the context of e learning and distance learning. She noted that investigators, communities and families all have a contribution to make in ensuring that the right to education is respected. Ms Boly Barry stressed that, while private actors can play a role in education, this must be within a human rights framework, and that private actors must be regulated and made accountable through control mechanisms they cannot circumvent. Education must be public, of quality and inclusive. She further emphasised that, whether the system is public or private, accountability is crucial in ensuring access to education, as is the participation of all stakeholders.

Olivier De Schutter observed that there is a need to go beyond the private-public distinction. He considered that the most promising alternatives to privatisation can be found in examples of communities developing their own ways of providing goods and services that are essential for a decent life, in areas such as water, health, food and housing. Mr De Schutter expressed his enthusiasm for the growth in momentum over the past ten years for the concept of the commons as a “third way” between the State and the market, or between the private and the public. He noted that the idea of the commons is very much aligned with human rights concerns - in the sense that the commons should be managed by participatory governance schemes, should be socially inclusive, should not prioritise a profit motive over other interests, and should ensure the long-term sustainability of the management of the resource or of the prioritisation of the service. Mr De Schutter posited that the commons may represent the best example of an alternative to the traditional private and state models that fits within a social solidarity economy.

“[The concept of the commons] is, I believe, very congruent with human rights concerns particularly because of the idea that the commons should be managed by participatory governance schemes, should be inclusive, should not prioritise the profit motive above everything else, and should ensure the long-term sustainability of the management of the resource or of the provision of the service.”

Léo Heller observed that there has been a massive wave of remunicipalisation in the water and sanitation sectors over the past 20 years, with hundreds of documented cases all over the world, in both developed and developing countries. He noted that this is testimony to the better performance of public services in delivering water and sanitation services to populations. Mr Heller emphasised that, while there is not one ideal model of service provision that applies in all circumstances, certain models, including the private sector model give rise to human rights risks – and these risks should be seriously considered in decision-making regarding the method of service provision.

“In the water sector there is a feeling from many civil society organisations and practitioners that public services would be more appropriate based on the [human rights] risks [of privatisation]. One indication for this is the massive wave of remunicipalisation processes of water and sanitation services that is taking place all over the world, from developing countries to developed countries.”

Tlaleng Mofokeng stressed the need to work together to generate strong, implementable recommendations. She emphasised the importance of sharing research and knowledge, and of

communities in the global South having a proper seat at the table. She noted that, while public-private-partnerships have in some cases led to positive health outcomes, she has yet to see a public-private-partnership model that takes a human rights approach to health.

"The issue of corruption and lack of transparency in the health sector generally plays a role as to why there is a lack of trust in communities when it comes to health programming and the private sector."

Regarding **possible strategies** for generating a shift to a rights-aligned approach to the provision of goods and services, **Juan Pablo Bohoslavsky** spoke of the need to build links between those working on economic, social and cultural rights and those working on the issues faced by private debtors. He emphasised the importance of building a more comprehensive narrative between household debt, weak state services and human rights violations. He also stressed the need to demand that States and international financial institutions conduct human rights impact assessments of proposed financial policies promoting the provision of goods and services through private debt schemes.

"We also need to make more effort, in my view, in demanding state actors and also international financial institutions to conduct human rights impact assessments of financial policies supporting the provision of goods and services through private debt schemes."

Philip Alston also spoke of the need to build and work in coalitions in generating a shift in this area. He noted that, while human rights standards will always be useful, human rights actors will not win this battle on their own. Mr Alston also emphasised the crucial importance of an evidence-based approach, noting that "[t]here are no studies that demonstrate that privatisation has any positive impact particularly on the poor", despite this being the prevailing narrative.

"[There is a] need for an evidence-based approach. The thing that struck me most when I started researching privatisation is that there are actually no studies that demonstrate that privatisation has positive impacts, particularly on the poor."

Leilani Farha also spoke of the need to create and build new alliances to find leverages for change. She also emphasised the importance of language and of popularising human rights and the right to housing, to make these concepts more accessible and dynamic, particularly for young people. Ms Farha observed that she has recently seen tenants rising up in new ways and has seen a lot of uptake being used in holding governments to account.

"What I'm talking about...is putting out in the public domain a competing narrative but making it loud and clear and accessible, especially to young people because young people are our energy and this is their future."

This event was co-organised by [ActionAid](#), [The East African Centre for Human Rights \(EACHRights\)](#), the [European Network on Debt and Development \(Eurodad\)](#), the [Global Initiative for Economic, Social and Cultural Rights \(GI-ESCR\)](#), the [Initiative for Social and Economic Rights \(ISER\)](#), [Oxfam](#), the [Society for International Development \(SID\)](#), [Public Services International \(PSI\)](#), and the [Translational Institute \(TNI\)](#).

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