



**#4**

# The Commons and Public Services: A New Way Forward or an Alternative to Human Rights?



## Context of GI-ESCR's Engagement

In recent decades, many States have taken steps to commercialise public services. In this context, 'commercialisation' means adopting market-driven approaches and practices to deliver public services. 'Public services' (also called 'social services') are essential to realising economic, social, cultural and environmental rights. They include education, healthcare, social security, care, housing, energy, and water and sanitation.

Through commercialisation, States have placed services and resources that were publicly owned and managed in private hands. Private activity has a role in certain economic transactions. However, the commercialisation of public services is associated with specific human rights concerns. It increases inequalities and segregation, disproportionately harms the most disadvantaged, often lowers quality and diminishes democratic control in areas essential for human dignity.

The commercialisation of public services has often gone hand in hand with corporate capture of public decision-making. Powerful multinational corporations increasingly influence sectors critical for functioning democracies, such as education curricula and the production of vaccines. Moreover, the private sector's presence at the heart of social services has influenced policymaking in ways that advantage corporations, typically by favouring public-private partnerships that transfer funds from public to private actors, in many cases despite clear evidence of their ineffectiveness.

The commercialisation and privatisation of public services have increased inequality and entrenched power disparities, putting profit and greed ahead of people's rights and ecological and social well-being. It adversely affects workers, service users and communities, and its costs and damages fall disproportionately on those who are historically disadvantaged.

Since 2020, GI-ESCR has sought to identify alternatives to privatisation and to traditional State-centred models for providing goods and services to address these challenges. In particular, it has explored systems that enable local communities to design their own rules, manage resources and provide certain services for the benefit of their members. One of these was the movement for the Commons.

In 2020, GI-ESCR organised a series of workshops to foster a dialogue between leading figures from the Commons and human rights. This initiative contributed to our broader work to build an interdisciplinary movement and mobilise collectively to confront the powerful interests and institutions that drive the commercialisation of services relevant to economic, social, cultural and environmental rights.



## Key questions

What alternative approaches might deliver equitable, universal and affordable public services and, therefore, realise economic, social and cultural rights? What economic and political arrangements could achieve people's economic, social, cultural and environmental rights more fairly and accessibly? Which actors or institutions can represent the interests of most people in society better than private companies? Without arguing that everything needs to be done by the State, what are the alternatives to democratic public ownership? What role can organised communities or other forms of collective authority play in providing services? How promising are such alternatives for the realisation of human rights?

This collective effort led to 'Our Future is Public' (OFiP22), an unprecedented gathering of movements and NGOs working for public services and against privatisation held in Santiago, Chile, from 29 November to 2 December 2022.

The conference was attended in person or virtually by nearly one thousand delegates from 113 countries, representing 567 organisations that work in a wide range of public services, from education and health to care, energy, food, housing, water, transportation and social protection. All the participants sought to address the harmful effects of commercialising public services, to reclaim democratic public control and to reimagine a genuinely equal and human rights-oriented economy that works for people and the planet.

OFiP22 adopted the Santiago Declaration, which calls for universal access to high-quality, gender-transformative and equitable public services as the foundation of a fair and just society. During 2023, following the commitments from the Declaration, GI-ESCR continued to work transversally and in solidarity with other CSOs and movements to build collective analysis, develop joint activities, strengthen the frameworks on the critical role of public services for the realisation of economic, social and cultural rights and its financing through progressive taxation policies.

This briefing summarises what emerged from our discussions with representatives from the movement for the Commons and highlights the potential for future cooperation. We encourage others to continue exploring definitions of the term 'public' as well as the values and practices that the Commons and human rights movements share.



## Briefing

### The original Commons

Historically, most human communities across the globe were economically inclusive. Members who participated in and contributed to their community had access to and shared its economic resources. Almost by definition, members could only become destitute (without economic resources or 'landless') if the community banished them.

Characteristically, such societies also took their dependence on nature for granted; they held the natural world in reverence. The resources of the natural world were borrowed, not owned. The notion of 'private property' was not present.

In many respects, the last several thousand years have been a struggle to displace and subjugate this form of economy. Communities that still practise it are largely confined to forests, marginal land, or areas that are difficult to access. However, some of the values that underpin this culture have been preserved for centuries by indigenous peoples, in the land management practices of numerous peasant communities and in the remnants of common land in many societies.

Gradually, nevertheless, it was displaced by two competitive but complementary forms of economy. One (which frequently evolved via kingship) established 'public ownership' of land and natural resources, controlled by institutions of the State. The other established the principle of private property, and the right to exploit privately owned land and economic resources for personal or institutional gain.

Both grounded their legitimacy in the modern rule of law. They are distinct from the community economy in this and in their assumption that the natural environment is a resource that can be owned, mined and exploited.



## The modern Commons movement

The history of the modern Commons movement is too rich to summarise here, but it emerged in the 1970s, and its prominence increased after Professor Elinor Ostrom won the Nobel Prize in economics in 2009 for her work on how communities of users manage and pool resources. Ostrom argued that the Commons offers an alternative to centralised management of resources by the State (nationalisation) and the rule of markets (privatisation). Debate initially focused on decentralised and democratic governance of material resources, such as forests, but came to include a wide range of material and non-material goods and services.

Very broadly, the Commons model has influence at two levels. At the international level, certain spaces (notably Antarctica, the open oceans and the atmosphere) are recognised to be Global Commons (territories unclaimed by any State). In parallel, a grassroots movement champions practices that share resources rather than exploit them for profit and asserts that the resources of the natural world are held in trust and must be respected.

*“This fledgling Commons Sector includes myriad traditional commons of forests, farmland, fisheries and water irrigation in rural settings, but it also extends to countless digital commons such as free and open source software, Wikipedia and platform co-operatives, not to mention urban commons, local food and agriculture systems, alternative currencies and financial co-ops and many others.*

*What unites these highly diverse communities? They are asserting a different universe of value than that of the market price system. They share a basic commitment to production for use, not market exchange or profit. They assert the right of communities to participate in making the rules that govern themselves and the importance of fairness and transparency. As commoners, they claim the responsibility to act as long-term stewards of resources they depend upon.”*

Schumacher Center for a New Economics

As noted in the background introduction, a wide range of actors work to promote and defend the quality of public services, and human rights organisations like GI-ESCR do so because, in modern societies, they are the means through which essential economic, social, cultural and environmental rights are delivered.



Before the twentieth century, core services (water and sanitation, health, education, housing, social protection) were absent or thinly scattered and almost always provided by private actors. In the course of the twentieth century, States gradually assumed responsibility for such services and richer countries aspired to make them available to all their citizens (universal provision). From the 1980s, an increasing number of States began to devolve public services. States continued to finance their provision where this was necessary to secure universal provision. However, private actors (both profit-based companies and not-for-profit organisations) were charged with their delivery or even replaced public services altogether (privatisation).

This has generated a fierce argument between proponents and opponents of privatised services. GI-ESCR and supporters of public services argue that privatisation has made provision more unequal, lowered the quality of services, and excluded marginalised and less prosperous populations from access to essential forms of protection.

At the same time, proponents of public services recognise that the argument is framed narrowly. Generally, it has been presumed that State provision of public services is the only (and only appropriate) alternative to privatised delivery. Yet the State does not command public trust in many post-colonial societies and is also widely mistrusted by the minorities, marginalised communities and poorer populations who benefit least and suffer most from privatisation.

Some of those who campaign for improved and universal public services are therefore asking whether alternatives to State provision need to be considered. Do we need to reconceive our vision of public services to fit the 21st century? Can we modernise the ways in which our societies meet the essential needs of their members in a manner that is equitable, universal and affordable?

### **The Potential of the Commons Approach**

The movement for the Commons seems to have potential in this context, first of all, because it has deep legitimacy for thousands of indigenous communities and marginalised rural populations across the world, and secondly, because its modern expression has relevance in a wide range of public spaces (see the quote above).

Nevertheless, it is not as evident how a Commons approach can be applied at scale to deliver water and sanitation, health, housing, education and social protection in modern (frequently urban) environments. What issues need to be considered? To what degree might a Commons approach enrich our capacity to deliver essential services to people? What are the limits of its potential?



## Strong features

### It advances a local and collective vision.

- The more decisions and operations are devolved, the more relevant and effective a Commons approach becomes. It is likely to be particularly effective when decisions are local, resource pools are small and relations are 'face to face'.
- The Commons model offers a different way to imagine relationships, society and the future. It invites us to consider collective rather than individualised solutions, promotes a non-market logic and reframes power relationships. It is a collective social approach that is willing to imagine systems change.
- Because it takes a territorial and local approach, it resists uniformity. Given the right conditions, a Commons approach could assist States and other actors in encouraging heterogeneity, local experimentation and difference.

## ENERGY

In Spain, energy is heavily privatised. A restrictive law prohibits the establishment of new electricity distribution networks, creating a monopoly in the sector. Recognising the scale of energy poverty, [Enginyeria Sense Fronteres](#) (ESF) drafted a municipal energy manifesto that calls for democratic energy management and a Commons perspective.

One problem encountered by energy cooperatives is that families living in energy poverty have less agency or involvement in cooperative governance. Because energy cooperatives have also found it difficult to access finance, ESF argues that the State should enable energy to be managed more locally. This would give cooperatives access to funding.



### **It promotes accountability and participation.**

- It could strengthen the accountability of public services. The commons approach expects communities to shape rules, at the local level, in the immediate environment. It complements and could enrich current understandings of the right to participate and strengthen participation in practice.
- It complements and can enrich efforts to highlight and address asymmetries of power and structural causes of poverty and inequality.
- It affirms the value of human beings. Human rights actors consider people as rights-holders and experts on their own lives; commoners assert the importance of fairness and transparency and the right of communities to govern their own affairs as stewards of the resources on which they depend.

### **It affirms humanity's place in the natural world**

- It grasps the interconnectedness of nature and human societies and the dependence of humans on the natural environment, attitudes that lie at the heart of indigenous worldviews. This thinking is increasingly accepted by the wider public, and by scientists and policymakers.

### **It has deep legitimacy**

- The Commons movement legitimises communities and community perspectives. This is of great importance to indigenous societies and many marginalised populations that face discrimination.

### **It challenges the 'public/private' dichotomy**

- The concept of the commons offers a different way of thinking about ownership and resources and raises questions about the private/public dichotomy.
- It provides a new lens for examining the paired terms 'public and private' and 'State and market', making it clearer that these pairs describe different things and outcomes.
- Many actors, including some human rights actors, want to go beyond a traditional State-centred conception of 'public services'. The definition of 'public educational institution' in Guiding Principle 2 of the Abidjan Principles is very similar to the understanding of the Commons in that it is not limited to educational institutions that are controlled and managed by the State but also includes educational institutions that are controlled and managed by genuine representatives of the populations they serve. A Commons approach may help efforts to find a "third way" alternative to market models.





### It contests profit-driven models of public service

- It sheds light on the differences between profit and other forms of prosperity. Whereas private markets declare they are driven by profit, States are generally presumed to embody the public interest, even though many States have actively pursued economic growth by extracting surpluses from natural resources and people. The Commons champions a different model of prosperity. Economic growth is not a core precondition. Its aim is to create an inclusive economy in which people can invent their own solutions, thrive and be valued in terms of the contributions they make.

## WATER

Faced by rapid privatisation of Italy's public services in the first decade of this century, activists won widespread public support for a Commons approach to water distribution in the city of Naples. However, legal restraints and political resistance confined the scope of reforms. There were also problems with financing. Initially, a water parliament was established, with representatives of different sectors, including civil society, but subsequently, the programme was overseen by a commissioner. The project proved the depth of public support for a Commons approach but also revealed some specific operational and political obstacles that need to be overcome.

In Cochabamba, Bolivia, privatised water delivery systems in the city exist alongside traditional communal water systems on the edge of the city. The traditional systems commanded public support even though they had some technical weaknesses. In this case, the government was the principal obstacle to adopting a Commons approach. It ostentatiously championed the right to water but interpreted this to imply State oversight and control. By refusing to allow communities to make their own decisions, the Bolivian State destroyed commons-based initiatives.



### It resets the role of the State

- The Commons model is not inconsistent with service delivery by the State, but it promotes a bottom-up, sideways approach that challenges State bureaucracy and control.
- It can help clarify the State's enabling role. States have a duty to guarantee individual freedoms and provide essential goods and services, but they also license social experiments, create space for civic engagement and permit commons-based activities. Many States impede these things or fail to support them adequately. Potentially, the adoption of a Commons model would spread such benefits. The co-cities movement in Bologna offers an example of such enabling.
- Reconceiving the State as an "enabler" might also help us to move beyond the State/market dichotomy.

## HOUSING

In Thailand, the Baan Mankong programme ("secure housing" in Thai) is a progressive government programme implemented by the [Community Organizations Development Institute \(CODI\)](#), that enables residents to transform their informal settlements into legal housing, including through the provision of community-saving systems and credit. Through the Baan Mankong program, communities have full authority to negotiate land deals and tenure directly with public or private landowners, including the owner of the land they currently occupy. In Bang Bua, one of these projects, the residents formed cooperatives and negotiated a 30-year lease of public land at a nominal rent. The lease is in the name of the cooperative. This is the first time that public land has been used in Thailand for community housing supported by the State and shows how a community can work together to fill gaps in State provision.

In Eastern Europe, new housing cooperatives have emerged in response to the widespread and rapid privatisation of housing after the dissolution of the Soviet Union. [MOBA Housing SCE](#) is a network of cooperatives in Belgrade, Budapest, Ljubljana, Prague and Zagreb that was formed to make housing more accessible and affordable. Members of each cooperative collectively maintain and finance their multi-apartment building. The cooperative owns the land and building and raises the finance for its construction - though accessing finance has been a major obstacle.



## Questions to consider

What evidence is there that a Commons model has successfully met the needs of large populations, or successfully managed the distribution of a large volume of resources?

In principle, there is no reason why the Commons approach cannot be scaled up, for example, by devolving decisions and decentralising accountability recursively. If it has been done recently, it would be useful to evaluate the experience. If it has not been done successfully, it would be helpful to understand why.

Some have criticised the Commons approach in practice on the grounds that communities are not always internally equitable or democratic. It would be useful to assess the degree to which this general criticism is fair. Do any features of the approach inherently create injustices?

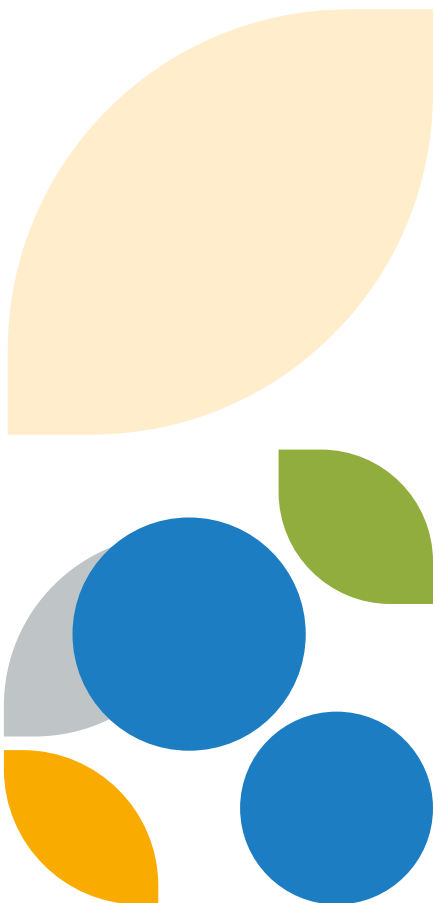
The original notion of community was self-recognising: a community was composed of the people who lived in it together, sharing resources and participating in common activities. Outside such groups, and where communities form for specific sub-purposes and do not live together, the notions of 'community' and 'the commons' they share become less distinct and less robust; members are less accountable to the group and 'the commons' approximates more closely to interest. Does this matter? If it does, at what point does a true 'community of the commons' degrade into an 'interest group'?

## Thinking forward

As noted in the introduction, GI-ESCR is looking for alternatives to privatisation and wants to think in fresh ways about the nature of public services and their delivery.

The Commons approach offers a different way to imagine a more fair and equal future for society. It invites us to search for solutions founded in community rather than radical individualism, which certain readings of human rights have tended to strengthen, and challenges the authority of market-based theories, which have successfully incorporated some interpretations of human rights. In both respects, the approach reframes power relationships. Commons models take a collective social approach to societal engagement and can embrace the need for systems change.

Hoping that others will explore more deeply the contribution the Commons can make to public services, the State and human rights, GI-ESCR will continue its work to deepen the understanding of public services and achieve their universal delivery.



## About the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR)

The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) is an international non-governmental organisation. Together with partners around the world, GI-ESCR works to end social, economic and gender injustice using a human rights approach.

The 'Pushing the Frontiers of Economic, Social and Cultural Rights' series aims to foster collective reflection among activists, practitioners, organisations and communities on how we can, together, further develop the human rights framework as an axis and tool for transformative change to tackle imbalances of power, social and economic injustices, and environmental degradation. Our previous publications in this series can be found on our website: [www.gi-escr.org](http://www.gi-escr.org).

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