Submission to the Human Rights Council resolution 52/8 on promoting human rights and the Sustainable Development Goals through transparent, accountable and efficient public service delivery.

07 November 2023

Introduction

The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) welcomes the opportunity to provide inputs to the Office of the United Nations High Commissioner for Human Rights for the upcoming report on the role of public service delivery in the promotion and protection of human rights and in the achievement of the Sustainable Development Goals that will be presented to the Human Rights Council at its fifty-sixth session.

Rights-aligned public services are a key demand of contemporary social movements. In this context, numerous civil society organisations, developed ***The Future is Public: Global Manifesto for Public Services*** to serve as a tool to mobilise a civil society movement to demand public services, providing a concrete alternative to the dominant neoliberal narrative that has failed to ensure a dignified life for all.[1] Furthermore, from 29th November to 2nd December 2022, over 400 representatives from more than one hundred countries, from grassroots movements, advocacy, human rights, and development organisations, feminist movements, trade unions, and other civil society organisations, met in Santiago, Chile, and virtually, to discuss the critical role of public services for our future.[2]

This submission is grounded in this context and based on GI-ESCR research, with a focus on how to provide quality public education and healthcare services that are gender transformative, sustainable, and financed through progressive taxation. It answers questions 1, 4, 7 and 8 of the OHCHR questionnaire.

(1) What are the main challenges identified in your country/region in relation to public service delivery? Please address both institutional and practical barriers in your response.

Education

Since the 1980s, in response to budgetary crises, many countries in sub-Saharan Africa have been compelled to implement Structural Adjustment Programmes (SAPs) under the guidance of the International Monetary Fund and the World Bank.[3] Regrettably, one of the significant consequences of these policies has been a substantial reduction in state funding allocated to essential public services, such as education. This decline in State support for the education sector,

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[1] *The Future is Public: Global Manifesto for Public Services* (2021), available at: https://futureispublic.org/globalmanifesto/manifesto-en/.

[2] Our Future is Public: Santiago Declaration for Public Services (2022), available at: https://peopleoverprof.it/campaigns/our-future-is-public?id=13579&lang=en.

[3] UNESCO, "Effects of structural adjustment programmes on education and training. Paris: UNESCO; Oringer, J. "Structural Adjustment Programs" (1998); Rimmer, D. "Structural Adjustment in Africa" (1995).

combined with the introduction of flexible regulations favouring private entities, has led to a remarkable proliferation of private actors in numerous countries worldwide.[4]

A comprehensive study conducted by the Mouvement Ivoirien des Droits Humains (MIDH), with support from GI-ESCR, involved field data collection from 194 individuals and organisations across five localities within Côte d'Ivoire.[5] The research revealed that the primary determinant influencing parents' choices for students attending private primary or secondary schools is proximity to the family home. Notably, 72% of surveyed parents at the primary level and 85% at the secondary level prioritised this factor. Alarmingly, 44% of parents with children in primary school and 36% with children in secondary school reported the absence of public schools in their vicinity. The limited availability of public schools is materialised by a lack of space. Moreover, access to public schools is impeded by inadequate working conditions, overcrowding, and teacher and student strikes. These obstacles are exacerbated by the fact that Côte d'Ivoire has significantly reduced its spending on education since 1992, from over 5% of GDP to barely 4% today. This raises concerns about the allocation of funds to the private sector, diverting resources from the development of a robust public education system. For instance, during the 2019-2020 school year, the Ivorian government disbursed approximately 82 billion FcFa (125 million Euros) to private schools.

Similarly, a study conducted by the Coalition des Organisations en SYnergie pour la Défense de l'Éducation Publique (COSYDEP), with support from GI-ESCR, in Senegal, unveiled that 74% of interviewed parents resorted to sending their children to private schools not by choice but by obligation; private schools being the only educational provision available to them.[6] Furthermore, as a consequence of the State's insufficient funding of public education, parents are compelled to bear a substantial portion of the schools' operational expenses through various fees, even in public institutions. This financial burden on parents persists, further exacerbating the challenges faced by students.

GI-ECR is also conducting, in partnership with other organisations, a participatory action research on access to quality education in an informal settlement in Kenya and desk research on the need to conceptualise and regulate Alternative Provision of Basic Education and Training Schools (APBET) in Kenya. Both research reports have found that parents in the informal settlements have opted to educate their children in low-cost private schools due to the inadequacy, overcrowding and high admission fees associated with enrolling children in public schools.[7]

In a Working Paper titled 'Public Education Works: Lessons from Five Case Studies in Low- and Middle-Income Countries,' authored by Dr. Marina Avelar and Dr. Frank Adamson and supported by 12 civil society organisations, including GI-ESCR, a critical issue highlighted is the lack of

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[4] GI-ESCR and Coalition Éducation, "The State of privatisation of education in Francophone Africa: Crossroads of perspectives" (2022).

[5] Mouvement Ivoirien des Droits Humains (MIDH) and GI-ESCR, "L'impact de la privatisation et de la marchandisation de l'éducation sur le droit à l'éducation en Côte d'Ivoire au regard des Principes d'Abidjan" (2022).

[6] Coalition des Organisations en SYnergie pour la Défense de l'Éducation Publique (COSYDEP) and GI-ESCR, "Privatisation et marchandisation de l'éducation au Sénégal" (2022).

[7] Olivier Habimana et.al, "Exploring the effects of the COVID-19 Pandemic on Low Cost Private Schools in Nairobi, Kenya" (2022)

sustained financial and political commitment by states, which stands as a significant impediment to the development of an adequate public education system.[8] The document showcases positive examples of countries that consistently increased public expenditure on education over the years, underscoring the pivotal role of constant funding increments in achieving educational progress. Additionally, the paper draws attention to other challenges, particularly prevalent in rural areas, such as the shortage of schools, inadequate infrastructure, and a shortage of qualified teachers. For instance, in 2010, despite around 15% of the Brazilian population residing in rural areas, a staggering 80,600 schools were closed in these regions, exacerbating educational inequalities between rural and urban areas.

Finally, within the Latin American region, together with SUMMA, the Laboratory for Research and Innovation in Education for Latin America and the Caribbean, and the Right to Education Initiative (RTE), amidst the first constitutional process in Chile, GI-ESCR produced a report highlighting how the constitutional design impacts and shapes the provision of public education in the country.[9] Within a system that since the 1980's lacks a preferential treatment to public education, and conversely enables public-financed private schools to discriminate on the basis of religious beliefs or the civil status of parents, among many others causes, the report argues that the human rights dimensions of education and its public provision must inform all the legal structure of country, specially departing from its constitution, which constitutes the first structural barrier to the public education provision.

Healthcare

The Committee on Economic, Social and Cultural Rights (CESCR) has emphasised that the right to health includes universal access to available, accessible, acceptable and quality healthcare services. Specifically, the CESCR highlights that the right to health encompasses "the provision of equal and timely access to basic preventive, curative, rehabilitative health services and health education" as well as "regular screening programs."[10] Across several low- and middle-income countries, the lack of adequate public financing for healthcare is a barrier to develop rights-aligned healthcare delivery. A recent report on Kenya highlights that domestic public spending on health was 9% of general government expenditure in 2018 (figure 2),[11] far below the target of 15% which the African Union States agreed to in the Abuja Declaration.[12] Likewise, general government spending on health represented 2.17% of GDP as of 2018,[13] a figure that is even lower in Nigeria (0.57% of GDP) or Côte d'Ivoire (1.2%). In Nigeria, there is also a concerning decreasing trend,

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[8] Avelar M. and Adamson F., "Public Education Works: Lessons from Five Case Studies in Low- and Middle-Income Countries" (2021).

[9] González, J. et al., Constituyamos Otra Educación…una Mejor Sociedad es Posible.

[10] CESCR, General Comment No. 14, UN Doc. E/C.12/2000/4 (2000), para 12 and 17.

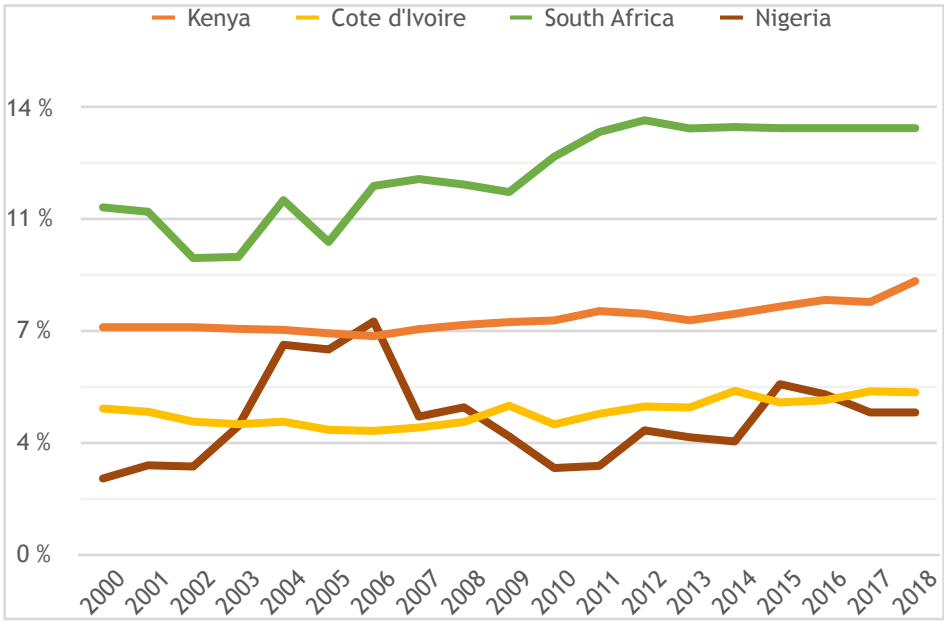
[11] WHO Global Health Expenditure Database, *Domestic general government health expenditure (% of general government expenditure)* (2022) <https://data.worldbank.org/indicator/SH.XPD.GHED.GE.ZS> accessed 29 January 2022.

[12] WHO, 'The Abuja Declaration: Ten Years On' (2011) <https://www.who.int/healthsystems/publications/abuja_report_aug_2011.pdf?ua=1> accessed 25 October 2021.

[13] Ibid.

with health spending as a share of general government expenditure decreasing from 7.3% in 2006 to as little as 4.4% in 2018.[14]

Figure 1: Healthcare spending as a share of total government spending (%) over 2000-2018, selected comparable African countries.



Lack of sufficient public financing translates in lack of available healthcare delivery. The WHO estimated that around 14% of COVID-19 patients require hospitalisation, including oxygen support, and that 5% required a ventilator.[15] However, according to media reports, there were just 297 ventilators available in the whole country against the estimated 4,511 that would be needed in Kenya during a peak in the pandemic.[16] Likewise, Nigeria has been struggling to cope with the pandemic. In addition to oxygen shortages, the country lacks emergency services, healthcare facilities, as well as ventilators, therapeutics, acute care beds, physicians, and testing kits.

Secondly, the already limited resources are often not fully spent for the realisation of the right to health. In Kenya, these few resources are mostly accessible to those that can pay for services in for-profit health facilities. For instance, in Nairobi, according to 2020 data, almost 50% of all

[14] WHO Global Health Expenditure Database, *Domestic general government health expenditure (% of general government expenditure)* (2022) <https://data.worldbank.org/indicator/SH.XPD.GHED.GE.ZS> accessed 29 January 2022; see also: BudgIT, 'Nigeria: Heath Budget Analysis' (2021) <https://yourbudgit.com/wp-content/uploads/2018/04/Nigeria-Health-Budget-Analysis.pdf> accessed 25 October 2021.

[15] Ibid.

[16] Ibid.

intensive care beds are in private for-profit hospitals, against 35% is in public hospitals, and 15% in non-profit ones.[17]

(4) What percentage of eligible individuals and households do not claim and/or benefit from public services in your country (non-take up)? What are the barriers that hinder them from accessing public services to which they are entitled? How can non-take-up be reduced?

Education

The aforementioned studies of Senegal and Côte d'Ivoire exemplify the percentage of individuals in private schools versus public schools, which has been particularly marked by lethargic development rates of the public sector.

In Senegal, a striking imbalance exists in the growth rates of public and private education across different levels. For instance, at the primary school level, although the majority of schools are public, the public sector experienced an average annual growth rate (AAGR) of a mere 1.7% between 2013 and 2018. In sharp contrast, the private sector witnessed a considerably higher AAGR of 6.4% during the same period. A similar trend is observed at the secondary level, with the public education sector registering an AAGR of 1.46% between 2013 and 2018, while the private sector recorded a higher AAGR of 2.30%.

Furthermore, in Senegal, the prominence of the private sector is particularly evident at the pre-primary level, where a substantial proportion of students are enrolled. Out of a total of 252,330 pre-school children, a significant 109,976 (43.06%) attend private institutions. In elementary education, private schools cater to 365,557 out of a total enrolment of 2,171,967 students, constituting 16.08% of the student body. Similarly, in general middle school, the private sector serves 135,557 pupils out of a total enrolment of 746,497, accounting for 18.20% of the student population. Yet, the extensive growth of the private education sector, coupled with the relatively low level of development in the public sector, constrains parents' choices when seeking quality public education options.

In the case of Côte d'Ivoire, the study underscores a noteworthy shift in the proportion of students enrolled in private primary schools over the years. While this proportion sharply declined from over 20% in the early 1970s to 9.58% in 1992, it has exhibited a consistent upward trajectory since then. By 2019, the percentage of pupils in private primary schools had risen to 15.5%, with a noticeable acceleration in growth during the 2010s. This shift highlights a discernible trend towards increased reliance on private education options in the country.

To enhance the uptake of public services, particularly in education, among eligible individuals and households, it is imperative to ensure that the public system undergoes substantial development in line with the annual population growth. Achieving this goal is contingent upon the presence of both sufficient financial resources and political commitment.

[17] Data can be downloaded at this address: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7371160/ accessed 14 January 2022. Data were provided by the Kenya Healthcare Federation Survey (2020) to researchers for the following article: Edwine W Barasa, Paul O Ouma and Emelda A Okiro, 'Assessing the Hospital Surge Capacity of the Kenyan Health System in the Face of the COVID-19 Pandemic' (2020) 15 PLOS ONE e0236308.

Healthcare

In both Kenya and Nigeria, marginalised population face information, financial and geographical barriers in accessing healthcare services and healthcare insurance.

As regards healthcare insurance, socioeconomic and employment status often act as grounds of discrimination in accessing it, which in turn worsens healthcare access inequalities. In Kenya, only 19% of the population had any form of healthcare insurance as of 2018.[18] This low percentage is concerning because enrolling in insurance schemes can prevent medical debt and catastrophic health spending. By contrast, between 2013 and 2018, an academic study estimated that the number of people that have been pushed into poverty because of out-of-pocket healthcare spending more than doubled.[19] This leaves individuals exposed to medical debt and catastrophic health expenditure.

Furthermore, individuals living in informal settlements face disproportionate challenge in accessing healthcare services. According to a 2020 report, Mathare informal settlement hosts 200,000 people.[20] The same report mapped a total of 31 facilities in the area, 70% of them being clinics and dispensaries.[21] The report also show that 85% of these facilities are in the hands of individual business owners, while 12% is owned by NGOs and 3% by the public.[22] The report also finds that there is only one hospital in the settlement, and it is public.[23]

Marginalised individuals, when unable to obtain medical care in public establishments, are left with a diverse network of private providers, including faith-based, non-profit, and for-profit ones. From the 47 interviews and three focus groups we conducted in three urban informal settlements of Nairobi, it emerged that several for-profit providers are unsafe, and offer substandard medical care, including widespread episodes of misdiagnosis, lack of referral to the appropriate level of care and unnecessary treatment. Our report also found that, across the three settlements where the study was conducted, individuals experience information and financial barriers in accessing medical services and healthcare insurance, with these barriers being exacerbated amidst the COVID-19 pandemic. This could result in discrimination in accessing healthcare services based on relative wealth and income, education level, employment status or access to information. These barriers can also interact, causing the risk of intersectional discrimination. Meanwhile, in less than 10 years, between 2013 - 2021, the share of for-profit health establishments in Kenya grew from 33% to 43%.

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[18] Ministry of Health, Kenya Household Health Expenditure and Utilization Survey (2018), https://globalinitiativeescr.sharepoint.com/:b:/g/EfNiZR8V5BhEpMA6uaKbLa0BGAo67LrhYh4dnQUTOGsKg?e=a11HB1, accessed 09 February 2022, p. 55.

[19] Salari Paola and others, 'The Catastrophic and Impoverishing Effects of Out-of-Pocket Healthcare Payments in Kenya, 2018' (2019) 4 BMJ Global Health e001809.

[20] United Nations Habitat, *The case of Mathare* (June 2020), https://unhabitat.org/sites/default/files/2021/08/the_case_of_mathare_final.pdf, accessed 15 March 2022.

[21] Ibid.

[22] Ibid.

[23] Ibid.

(5) Please refer to challenges and good practices of public services delivery to persons belonging to groups in situations of vulnerability and marginalization including persons living in poverty, women and girls; children and youth; ethnic, national and linguistic minorities; persons with disabilities; indigenous peoples; migrants; and older persons.

Education

Obstacles and effective strategies regarding public service delivery are showcased in the aforementioned Working Paper titled 'Public Education Works: Lessons from five case studies in low-and middle-income countries'.

One of the key challenges in many regions around the world is the lack of inclusive policies that specifically target vulnerable and marginalised groups. Without comprehensive policies, the unique needs and challenges of these groups may be overlooked, perpetuating disparities in access to essential services.

Other significant challenges include the limited access to quality education, inadequate infrastructure, a shortage of well-trained teachers, and insufficient resources which often hinder educational opportunities for marginalised populations, especially in rural areas. This limitation on access to education can exacerbate existing inequalities.

However, several good practices were highlighted in the Working Paper, offering insights into how to improve public service delivery for these groups. For instance, in Ecuador and Bolivia, education initiatives aim to incorporate indigenous knowledge and values into the curriculum. This approach recognises the importance of traditional knowledge and seeks to create a more inclusive and culturally sensitive educational system, valuing the wisdom of indigenous peoples. Moreover, the concept of "Buen Vivir" in Ecuador and Bolivia represents an alternative approach to development that prioritises ecological balance, harmony with nature, and community well-being over relentless economic growth. Education is seen as a tool to transform economic and social structures while promoting cultural affirmation, aligning with the worldview of indigenous peoples.

In Brazil, social movements like the Landless Workers Movement (MST) have played a vital role in expanding education access and quality for rural populations. MST schools, integrated into the public system, prioritise principles of radical democracy, social justice, and community engagement. These schools provide education not only to children but also to young adults and older individuals who previously had limited access to formal education.

Participatory governance is another crucial aspect of these good practices. MST schools exemplify how involving local communities and governments in school management fosters a sense of ownership and ensures that educational solutions are locally relevant. This approach challenges the notion that only private providers can expand education access effectively.

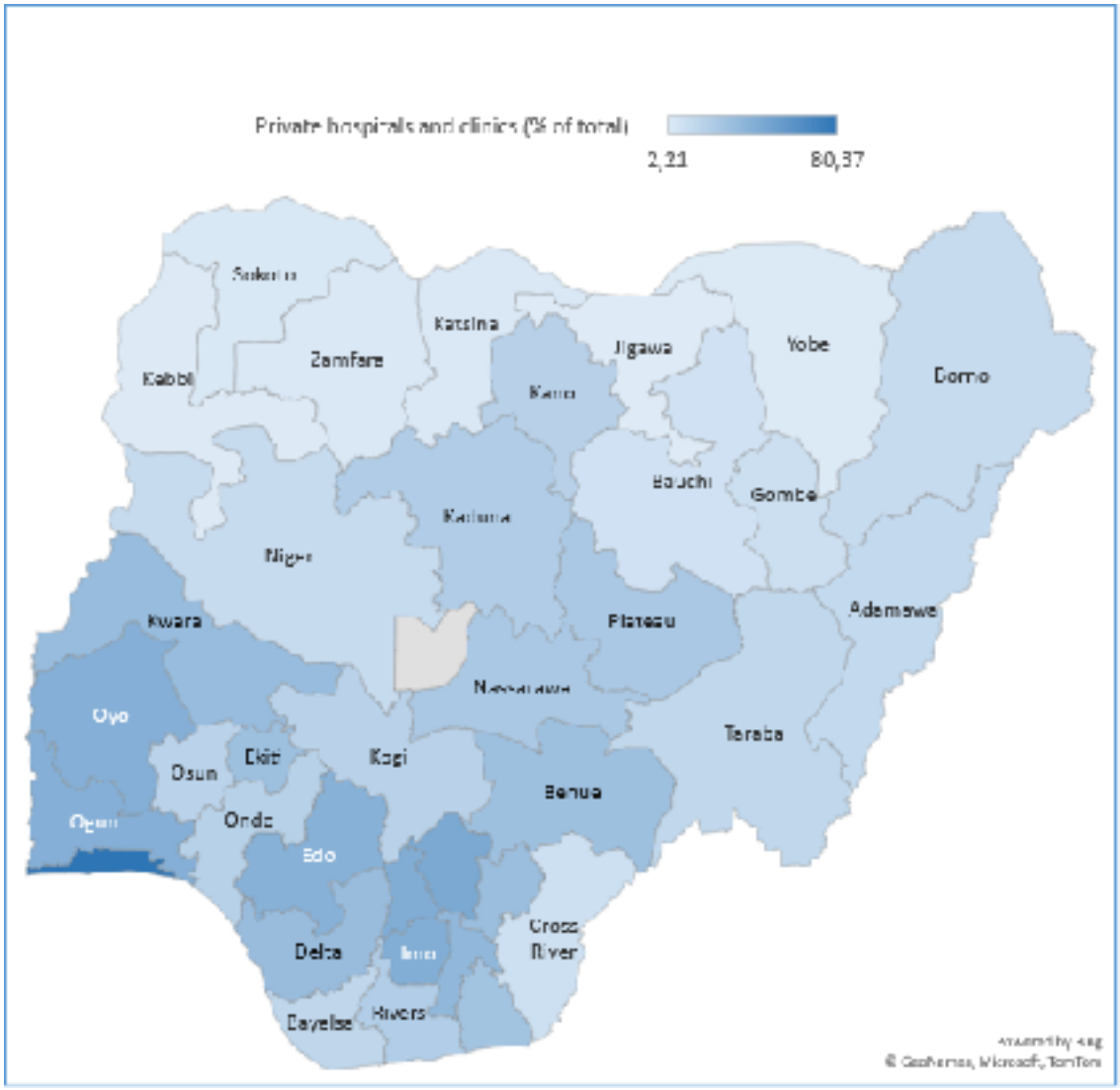
Despite these positive examples, challenges persist in ensuring equitable access to education and other public services for marginalised groups. Budget cuts have led to school closures in some regions, undermining the right to education. Additionally, tensions between social movements and governments can hinder progress. Nevertheless, these examples offer valuable insights into promoting inclusive education through community engagement, culturally sensitive approaches, and partnerships between social movements and governments.

Healthcare

Strong public healthcare services are fundamental in realising the right to health for all, especially for marginalised groups. In Kenya, a WHO survey shows that 80% of respondents belonging to the poorest quintile declare to seek healthcare services in the public sector, against only 19% in the private.

Likewise, in Nigeria, public healthcare services are fundamental for the poorest. As shown in Figure 2, the formally registered private sector, which provides an estimated 60% of all medical services, is concentrated in the relatively wealthier Southern regions in cities such as Lagos, serving the well-off. By contrast, these services are less present in the poorer Northern regions. Furthermore, as illustrated by our interviews in Lagos and Port Harcourt, most private healthcare actors in informal settlements appear to be at the lowest end of the quality spectrum, employing unqualified and untrained staff in informal, often unregistered, facilities. The latter are the services most likely used by those living in poverty in low- and middle-income countries.

Figure 2: Distribution of private hospitals and clinics in Nigeria.



Source: This figure is from Global Initiative for Economic, Social and Cultural Rights (2021) The failure of commercialised healthcare in Nigeria during the COVID-19 pandemic - Own elaboration on data from the Nigeria Health Facility Registry (HFR), https://hfr.health.gov.ng/statistics/tables. Data for this map can be downloaded here.

Indigenous people

To realise the economic, social, and cultural rights of indigenous peoples, it is essential to guarantee their universal access to good quality public services, without marginalisation, discrimination, or exclusion. Doing so also reduces inequalities between indigenous and non-indigenous populations. GI-ESCR developed a policy brief to advance the understanding of States' obligations regarding their provision of public services to indigenous peoples.[24] The Brief is based on an analysis of international human rights treaty bodies' work and highlights the main requirements that public services should meet to fulfil indigenous peoples' needs.

To ensure indigenous peoples' equal access to public services, States should remove procedural and institutional barriers that discourage them from accessing public services. Moreover, public services should be economically affordable and physically accessible. States must make public services available to all on an equal basis and without discrimination. States must make sure that public services cover the places that indigenous peoples inhabit, even when they are remote. They also need to provide information about these services in a culturally appropriate manner and in languages that indigenous peoples speak. They must mobilise the resources required to provide public services, in a manner that is transparent, equitable and meets needs. To overcome the inequalities between indigenous and non-indigenous populations, public services must be of high quality. Low-quality public services worsen the historical and systemic discrimination against indigenous peoples, further impeding the realisation of their economic, social, and cultural rights.

Public services for indigenous peoples need to be culturally appropriate. This means that they need to be provided in ways that are relevant to, suitable for, and respectful of the culture and cultural rights of indigenous individuals and communities. The design, implementation, and evaluation of services essential for the realisation of rights such as education, health, water and sanitation, must genuinely consider the culture and values of indigenous peoples. Public services should also be gender-just.

To understand the specific disadvantages of indigenous peoples and to address their needs, it is critical to promote their effective and meaningful participation, and secure their free, prior, and informed consent, during the design, governance, and evaluation of public services. Indigenous peoples, and particularly indigenous women, must be empowered to actively participate in shaping and implementing measures that directly affect them.

States must also make sure that public services delivered to indigenous peoples are accountable and transparent. States must establish bodies to regulate and monitor human rights in the context of service delivery and guarantee the transparency of public services.

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[24] GI-ESCR, "Ensuring Public Services for Indigenous Peoples: Human Rights Standards" (2022).

(7) How is the participation of private actors in public service delivery regulated and monitored in your country/region? Please share challenges and good practices.

Education

The regulation and monitoring of private actors' involvement in public service delivery, especially within the education sector, are guided by both international human rights law and national legislation. A pivotal reference in this context is the Abidjan Principles on the human rights obligations of States to provide public education and regulate private involvement in education.[25] These Principles were the result of a three-year participatory consultation and drafting process and garnered support from eminent experts in education, international law, and human rights. They have received recognition from various United Nations and regional human rights institutions and mandate holders focusing on the right to education.[26]

However, it is crucial to acknowledge that even when local legislation is in place, its practical implementation can be deficient, as underscored in our brief titled 'The State of Privatisation of Education in Francophone Africa: Crossroads of Perspectives.'[27] This brief draws parallels between the aforementioned research conducted in Senegal and Côte d'Ivoire and research conducted in Madagascar by the Coalition Nationale Malgache pour l'Education pour Tous (CONAMEPT) and Mali by Tribune Jeunes pour le Droit au Mali (TRIJEUD).

For instance, findings from the research in Mali revealed that in Commune III of Bamako District, only 30 to 40% of the private institutions visited complied with the specifications necessary for obtaining authorisation to operate. Despite this non-compliance, some schools continue to operate without any apparent concern for these regulations. In Senegal, inadequate regulation of private institutions has resulted in a lack of regular monitoring. National education inspectors cited logistical limitations and an inspector-to-teacher ratio that can be as high as 1:200 in certain areas. In Côte d'Ivoire, the survey discovered at least one unauthorised primary school in each of the research areas, and in Senegal, 5% of the schools in the field survey sample were unauthorised.

The rampant growth of private schools in Kenya has also meant that many of them, especially the low-cost private schools and Alternative Provision of Basic Education Institutions (APBET schools) are not registered and lack the standards as required under the Registration Guidelines for Basic Education Institutions, 2021. A government mapping of 1,677 APBET school in 2019 showed that only 213 (12.7%) of the mapped schools were registered with the Ministry of Education, and among these 163 (76.5%) were registered as private schools and 33 (15.5%) were registered as

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[25] Abidjan Principles on the human rights obligations of States to provide public education and regulate private involvement in education (2019).

[26] Recognition includes the European Committee of Social Rights (2020); the African Commission on Human and Peoples' Rights (2019 and 2020); the Human Rights Council – United Nations General Assembly (2019 and 2020); the Inter- American Commission on Human Rights (2020); the United Nations High Commissioner for Human Rights (2019); and the United Nations Special Rapporteur on the Right to Education (2019), among others.

[27] GI-ESCR and Coalition Éducation, "The State of privatisation of education in Francophone Africa: Crossroads of perspectives" (2022).

APBET or had a provisional APBET registration certificate[16], implying that only 9.9% (21) of the total schools were effectively registered as APBET schools. [28][17]

In all these studies, the urgent need to strengthen the regulation of private schools emerged as a recurring theme. Recommendations included enhancing inspection and monitoring mechanisms for private schools in Côte d'Ivoire by allocating increased human and financial resources to this purpose. In Mali, a suggested measure was to close any existing institutions lacking valid authorisation, and in Senegal, it was proposed to bolster the monitoring and compliance of the private education sector. In Kenya, there have been calls to review policies around the registration of schools, especially that of low-cost private schools and APBET schools, as required under the Basic Education Act, so as to enable easier monitoring and regulation of all schools.

Additional issues stemming from the lack of regulation and oversight of private schools encompassed precarious working conditions for teachers. This was particularly exemplified by underqualified private school teachers found in all countries. For instance, in Madagascar, recruitment criteria did not mandate academic qualifications. In Côte d'Ivoire, the 1992 Agreement between the State and non-religious private school promoters stipulated that teachers must hold, at a minimum, a baccalaureate degree and a teaching license issued by the competent Ministry. However, 53% of respondents in the study did not meet these legal requirements, and 47% of private primary school teachers surveyed reported lacking a teaching license. In Mali, several private schools struggled with a chronic shortage of qualified teachers, primarily due to relatively low remuneration levels.

Insufficient wages is another pressing concern. In Côte d'Ivoire, salaries offered in private schools often fell below the legal minimum. A staggering 86.7% of private primary school teachers surveyed claimed that their remuneration did not comply with the Agreement between the State and non-religious private promoters. At the secondary school level, 85.7% of respondents received salaries below the threshold outlined in the Agreement. During the COVID-19 crisis, 80% of primary school teachers surveyed reported not receiving payment. A similar situation unfolded in Mali, where short-term teachers were left without compensation due to school closure during the pandemic. In the Ankadinandriana municipality in Madagascar, private school teachers are paid way below the SMIG (minimum wage) of 168,000 ariary (about $48 at the time of the research).

Moreover, the studies revealed insufficient social protection measures. In Mali, 72% of teachers in the surveyed schools in Bamako District's Commune III were recruited based on non-written agreements, and only 28% had contracts in compliance with legal provisions. Same in Côte d'Ivoire where many of private institution teachers work without formal employment contracts. In Senegal, 39% of the monitored schools were not up-to-date with their social security contributions.

Furthermore, it is imperative to establish a foundation of transparent education governance that benefits both learners and their families, as well as education authorities. This transparency should extend to all education providers, including private entities, obliging them to report on their

[28] National Council for Nomadic Education in Kenya, "Mapping of Basic Learning Institutions Operating in the Informal Settlements of Nairobi County Report" Ministry of Education (2019)

procedures, decisions, and performance consistently and transparently.[29] Additionally, both private institutions and states must be held accountable for any violations of human rights in the field of education. This scrutiny becomes particularly relevant in light of the criticisms levied against Bridge International Academies (BIA), the largest commercial chain of low-fee pre-primary and primary private schools.

BIA, established in 2007, underwent rapid expansion, garnering support from private and multilateral development finance agencies under the premise of providing affordable and high-quality education to impoverished communities. [30] However, a series of controversies raised concerns among observers and education experts, prompting scrutiny of the company's performance and its educational model. Some donors, such as the World Bank's International Finance Corporation (IFC), even divested from BIA.[31]

Critiques of BIA encompass a range of issues, including independent research revealing that BIA's fees and practices effectively exclude the poor and marginalised; documents from Ministries of Education in Kenya and Uganda demonstrating BIA's repeated failure to adhere to the rule of law, including minimum educational standards; internal BIA documents shedding light on poor labour conditions; and media reports citing concerns related to freedom of expression and a lack of transparency, among others. [32]

The most recent and alarming issue surrounding BIA is a media report detailing child sexual abuse allegations at Bridge International Academies in Kenya.[33] These reports have raised questions about the World Bank's International Finance Corporation (IFC) support on BIA and how it turned a blind eye to the abuse for years, even entering into a non-disclosure agreement (NDA) with the company.[34]

Finally, the legitimation of private participation on the provision of education is also a pressing issue. For example, in the case of Chile, our work highlights how its constitution, along with its interpretations –especially those provided by the Constitutional Court- open ample spaces for the private delivery of education.[35] In fact, the constitutional text limits the State to a subsidiary role, enabling its action only when there is a 'market failure'. Thus, the State can only provide

[29] GI-ESCR, *Transparency of private commercial education providers: A case study of Bridge International Academies* (2022).

[30] Ibid.

[31] "Civil society groups celebrate IFC's divestment from profit-driven school chain Bridge International Academies" (2022).

[32] For more information, consult the open letter signed by 174 civil society organisations, calling investors to cease support to Bridge International Academies (2017); open letter signed by 88 civil society organisations calling investors to concerning evidence regarding Bridge International Academies (2018); a statement calling Bridge International Academies to respect and comply with Ugandan Government order to close its schools (2018).

[33] Grim, R., Wadekar, N. ""Neutralize Adler" Whistleblower: The World Bank Helped Cover Up Child Sex Abuse at a Chain of For-Profit Schools it Funded" (2023).

[34] For more information consult Demanding Accountability: Joint Statement in Response to Reports of a Child Sexual Abuse Cover Up at the World Bank (2023).

[35] González, J. et al., Constituyamos Otra Educación…una Mejor Sociedad es Posible.

educational services in those population segments or geographical territories where private actors do not wish to participate. The seriousness of this situation is that, in practice, this means that the State must provide a lower quality education service, or at least never superior quality than the private, in order to avoid falling into unfair competition within the educational market.

Therefore, it is paramount not only to enact legislation but to ensure its effective implementation. Within the framework of regulating and monitoring private actors involved in the education sector, immediate attention should be directed toward enhancing the working conditions of private school teachers. This objective can be achieved through measures such as the recruitment of qualified teachers, advocating for salary increases in private schools, and ensuring job stability for teachers. Furthermore, there is a pressing need for stringent oversight mechanisms, and private actors must be held to rigorous standards of accountability and transparency. Moreover, when human rights are violated, States and private actors must be held responsible.

Healthcare

States have specific obligations when private healthcare actors are included in healthcare financing and provision.[36] The report 'Private actors in health services: towards a human rights impact assessment framework', published in 2019 by GI-ESCR, the Initiative for Social and Economic Rights, and the University of Essex provides a first review of the existing standards on the right to health in the context of private actors' involvement. Building on an analysis of the jurisprudence, it lists the main human rights obligations regarding the right to health, including the following State obligations:

- to protect the right to health when a third party is involved.
- to ensure that any private involvement in healthcare does not undermine the accessibility, availability, acceptability, and quality of healthcare.
- to assess privatisation plans to ensure that that they do not interfere with the fulfilment of the right to health at the maximum of their available resources.
- to ensure that healthcare privatisation does not reduce the level of the enjoyment of the right previously granted.
- to strictly regulate and monitor private healthcare actors. When private actors provide services in areas where the public sector has traditionally been strong, they should be 'subject to strict regulations that impose on them so-called 'public services obligations': (…) private healthcare providers should be prohibited from denying access to affordable and adequate services, treatments or information.'[37]

The human rights framework on the right to health has increasingly addressed the involvement of private actors in healthcare delivery. United Nations human rights treaty bodies have been

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[36] UN Human Rights Council, 'Protect, respect and remedy: a framework for business and human rights: report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie' (7 April 2008) A/HRC/8/5.

[37] CESCR, 'General Comment No. 24: State obligations under the ICESCR in the context of business activities' (10 August 2017) E/C. 12/GC/24.

progressively reflecting on the human rights implications of private sector involvement in healthcare, calling on States to assess the impact of any privatisation plans on the right to health, to prevent any negative impact on marginalised groups, and to monitor and regulate private healthcare providers.[38]

Comparative research in low- and middle-income countries highlights the potential public health impacts of private sector engagement in healthcare. In 2012, a systematic review[39] showed that private sector providers more frequently violated medical standards of practice and their use was associated with poorer outcomes and inequalities, even if private health facilities presented reduced waiting times in comparison to the public healthcare sector.[40] According to the same study, private healthcare providers were less efficient than public providers, partly due to private health providers' incentives for unnecessary testing and treatments.[41] Interestingly, when the definition of a private sector included unlicensed and uncertified providers, most patients appear to access private healthcare provision. However, when only licensed providers were included, most people accessed public healthcare.[42] Reports from GI-ESCR on Kenya,[43] Nigeria[44] and Italy[45] further validated these findings.

(8) Describe economic policies, legislation, promising practices, or strategies and national, regional or local processes aimed at:

- **increasing social spending, through national and local budgets, for the provision of public services;**
- **addressing structural discrimination in the provision of public services;**
- **maximizing available resources for the provision of public services;**
- **preventing corruption and associated illicit financial flows in the provision of public services;**
- **reallocating public expenditure for the provision of public services**

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[38] Global Initiative for Economic, Social and Cultural Rights (GI-ESCR), 'Compendium on United Nations Human Rights Treaty Bodies' Statements on Private Actors in Healthcare' (June 2021) <https://www.gi-escr.org/publications/compendium-of-united-nations-human-rights-treaty-bodies-statements-on-private-actors-in-healthcare> accessed 08 November 2021.

[39] Sanjay Basu and others, 'Comparative Performance of Private and Public Healthcare Systems in Low- and Middle-Income Countries: A Systematic Review' (2012) PLoS Medicine.

[40] Ibid.

[41] Ibid.

[42] Ibid.

[43] Global Initiative for Economic, Social and Cultural Rights, 'Patients or Customers? The impact of Commercialised Healthcare on the Right to Health in Kenya during the COVID-19 pandemic (2021) DOI: 10.53110/RPCN4627.

[44] Global Initiative for Economic, Social and Cultural Rights and Justice & Empowerment Initiative (2022) 'The failure of commercialised healthcare in Nigeria during the COVID-19 pandemic. Discrimination and inequality in the enjoyment of the right to health. DOI: 10.53110/ZYQT7031.

[45] GI-ESCR, 'Italy's Experience during COVID-19: the Limits of Privatisation in Healthcare' (2 June 2021).

Country's capacity to guarantee the enjoyment of human rights is closely related to fiscal policy. In other words, it depends to a large extent on their tax, budget and spending decisions. There is growing recognition that fiscal policy, in addition to being a key instrument for guaranteeing human rights, is subject to the commitments and obligations that States have assumed at the regional and international level, as well as in their own national constitutions. Over the years, the human rights bodies that make up the universal system have established the relationship between fiscal policy and human rights.

Therefore, to ensure that everyone can access quality healthcare and education, it is fundamental to collect public resources fairly and progressively and redistribute them to funding public healthcare and education services, so that everyone can access quality services irrespective of their ability to pay. In particular, the Principles for Human Rights in Fiscal Policy affirm that 'States must use fiscal policy to eradicate structural discrimination and promote substantive equality, integrating in a cross-cutting manner the perspectives of populations who suffer from discrimination in the design and implementation of such policies, and adopting affirmative action when necessary'.[46]

The Initiative for Human Rights Principles in Fiscal Policy, a coalition of 7 national and international organizations, with the overall aim of making decisive progress in bringing taxation and fiscal policy-making in line with human rights principles in Latin America and the Caribbean, as well as other regions.

It is also relevant to highlight that on July 27-28 in Cartagena de Indias, Colombia, sixteen countries celebrated the ***Latin American and Caribbean Summit for an Inclusive, Sustainable and Equitable Global Tax Order*** and agreed to set up a regional platform to cooperate in tax policies in the region, as well as to have a stronger voice in international tax negotiations at the OECD/UN. The new body will promote dialogue and the exchange of information, with the aim of achieving progressive and fairer taxation, combating tax evasion, and mobilizing the necessary resources to guarantee quality, universal and sustainable public services.

The objective of the Latin American tax summit is to confront tax havens and ensure greater coordination among the region's governments towards a fairer, more equitable and transparent global taxation.

In term of the governance, Colombia was designated to hold the pro tempore presidency of the new platform for the next 12 months, while the Economic Commission for Latin America and the Caribbean (ECLAC) will assume its Technical Secretariat. It was also agreed that the voice of organisations and social movement will be heard through a "civil society council" that will participate in the forthcoming steps and debates.

This is a timely call for Latin America, which, if followed by the countries of the region, would help to build a roadmap to face the systemic crises of the region and build a regional bloc towards global negotiations on fiscal matters. Adopting positive measures to reform the international financial and tax system would make it possible to comply with the obligations of States to respect,

[46] Principles of Human Rights in Fiscal Policy (2022), available at: https://www.cesr.org/sites/default/files/2021/Principles_for_Human_Rights_in_Fiscal_Policy-ENG-VF-1.pdf

protect and fulfill human rights at the national and extraterritorial levels, raising sufficient resources to finance quality public services that correspond to the enjoyment of human rights. [47]

On the civil society side, GI-ESCR, together with other organisations, has developed ***The Future is Public: Global Manifesto for Public Services*** to serve as a tool to mobilise a civil society movement to demand public services, providing a concrete alternative to the dominant neoliberal narrative that has failed to ensure a dignified life for all. The manifesto positions public services as the foundation of a fair and just society and of the social pact that implements the core values of solidarity, equality, and human dignity. It advances a series of ten principles for universal quality public services in the 21st century and outlines how funding universal quality public services is possible. Among the principles that underpin quality public services, there is the requirement that these be adaptable, responsive, and transformative to those they serve, which includes racial and linguistic minorities and indigenous peoples.[48] It also requires public services, such as healthcare and education, to be committed to equality and to recognise and actively challenge power imbalances, structural and systemic discrimination, and systems of oppression.

Universal quality health and education services that fulfil human rights can only be realised through predictable, accountable, and sustainable funding mechanisms. The Global Manifesto reinforces that health and education services cannot be left to the market. Unlike a commodity, their value is determined by the role they play in fulfilling human dignity, rather than their market position. It is thus fundamental for these populations to ensure that public healthcare and public education services exist for everyone, regardless of status or ability to pay.

Relevant Publications:

Related to Public Services in general:

- The Future is Public: Global Manifesto for Public Services (2021).

Related to Health:

- GI-ESCR, "Healthcare Systems and the Commercialisation of Healthcare. A Glossary" (2023).
- GI-ESCR, "Compendium on United Nations Human Rights Treaty Bodies' Statements on Private Actors in Healthcare" (2022).
- GI-ESCR, "Patients or Customers? The Impact of Commercialised Healthcare on the Right to Health in Kenya during the COVID-19 Pandemic" (2022).
- GI-ESCR and JEI, "The Failure of Commercialised Healthcare in Nigeria during the COVID-19 Pandemic. Discrimination and Inequality in the Enjoyment of the Right to Health" (2022).

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[47] Principles of Human Rights in Fiscal Policy (2022), available at: https://www.cesr.org/sites/default/files/2021/Principles_for_Human_Rights_in_Fiscal_Policy-ENG-VF-1.pdf

[48] *The Future is Public: Global Manifesto for Public Services* (2021), available at: https://futureispublic.org/globalmanifesto/manifesto-en/.

- GI-ESCR, "Italy's Experience during COVID-19: the Limits of Privatisation in Healthcare" (2021).

Related to Education:

- GI-ESCR and Coalition Éducation, "The State of privatisation of education in Francophone Africa: Crossroads of perspectives" (2022).
- Mouvement Ivoirien des Droits Humains (MIDH) and GI-ESCR, "L'impact de la privatisation et de la marchandisation de l'éducation sur le droit à l'éducation en Côte d'Ivoire au regard des Principes d'Abidjan" (2022).
- Coalition des Organisations en SYnergie pour la Défense de l'Éducation Publique (COSYDEP) and GI-ESCR, "Privatisation et marchandisation de l'éducation au Sénégal" (2022).
- GI-ESCR, "Transparency of private commercial education providers: A case study of Bridge International Academies" (2022).
- Avelar M. and Adamson F., "Public Education Works: Lessons from Five Case Studies in Low- and Middle-Income Countries" (2021).
- Abidjan Principles on the human rights obligations of States to provide public education and regulate private involvement in education (2019).
- "Constituyamos Otra Educación…Una Mejor Sociedad es Posible - 10 nudos constitucionales en educación y experiencias internacionales destacadas para inspirar el debate nacional" (2020).

Related to Public Services and Indigenous Peoples:

- GI-ESCR, "Ensuring Public Services for Indigenous Peoples: Human Rights Standards" (2022).

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