The Global Initiative
for Economic, Social and Cultural Rights

Human rights bodies' statements on private actors in health systems

Synthesis paper – version 1 – November 2018

UN human rights bodies comments on privatisation in health

The Committee on Economic, Social and Cultural Rights (CESCR), Committee on the Rights of the Child (CRC), Committee on the Elimination of Discrimination Against Women (CEDAW), and on one occasion the Committee against Torture (CAT), have raised concerns relating to private actors in healthcare systems when reviewing State parties. These institutions, known as treaty bodies, are established by various international treaties. Concluding observations are remarks and recommendations given by a treaty body after the periodic review of a State Party. They are quasi-legal interpretations of how the human rights obligations of a State should be interpreted and applied. The Special Rapporteur on the right to health (UNSR right to health) has also raised concerns in country mission reports.

These bodies have called on states to conduct human rights assessment prior to privatisation and review privatisation.

STATE	BODY AND DOCUMENT	KEY EXTRACTS
Algeria	**Special Rapporteur on right to health, Mission visit to Algeria A/HRC/35/21/ Add.1** 20 April 2017	34. The Special Rapporteur observed that, **owing to the quality of care provided in the public sector and the dissatisfaction of service users, the private sector was growing fast and in an unregulated manner**. **This was leading to a dual system that offered better quality care for those who could afford to pay out of pocket or travel abroad to be treated, thereby increasing inequalities in access to health care.**
Bahrain	**CRC, Concluding Observations, CRC/C/15/Add. 175 11 March 2002**	13. While noting information provided by the delegation with respect to increased investments in the health and education sectors, **the Committee is concerned about the increasing trends towards the privatization of these sectors and the potentially negative consequences this may have on the enjoyment of economic, social and cultural rights by all children in Bahrain.**

Bulgaria	**CESCR Concluding Observations**, E/C.12/1/Add.37 8 December 1999	6. The Committee **notes with satisfaction that despite the privatization of health services, medicines will continue to be distributed free of charge to the disadvantaged groups of society, and that mental health services will remain public.**
Croatia	**CESCR Concluding Observations, E/C.12/1/Add.73 5 December 2001**	34.The Committee recommends that the **State party carefully review the probable effects of its plans to privatize portions of the national health-care system on the most disadvantaged and marginalized sectors of society, including, in particular, the unemployed and underemployed, the homeless and those living in poverty.**
Egypt	**CESCR, Concluding** Observations, **E/C.12/EGY/CO/2-4, 13 December 2013**	21. The Committee is concerned that **health-care expenditure as a percentage of the budget of the State party has declined significantly; resulting in a fragmented and increasingly privatized health-care system.** It is also concerned that this results in a large percentage of the population, particularly those in vulnerable situations, being excluded from health insurance and deprived of access to health facilities, goods and services… The Committee recommends that the State party **increase public spending on health** with a view to providing health insurance for all, non-discriminatory access to health facilities, goods and services, provision of essential medicines, access to reproductive, maternal and child health care and immunization against major infectious diseases.
El Salvador	CESCR, Concluding Observations, E/C.12/SLV/CO/2 27 June 2007	24.The Committee considers that the budget allocated for the health sector is insufficient in order to provide adequate coverage for the population, in particular for vulnerable groups. It notes that **access to health services is limited owing to the lack of financial means allocated by the State party to the public sector**, and **by the preference for a private-sector approach to the management, financing and provision of services, to the detriment of those who are unable to pay for such services**.
Hungary	**CEDAW Concluding Observations, CEDAW/C/HUN/CO/7-8 26 March 2013**	8. … The Committee also notes **the widespread privatization of health**, education and other social services in the State party and is **concerned that this may hinder the enjoyment of rights under the Convention**. 9. The Committee urges the State party to: **…** (d) **Ensure that the policy of the privatization of health,**

		education and other services does not deprive women of continuous access to good quality basic services in the field of economic, social and cultural rights.
India	CRC, Concluding Observations, **CRC/C/IND/CO /3-4,** 7 July 2014	63. The Committee notes the various policies and programmes in place in the State party to improve children's health and their access to health services. However, it is deeply concerned about the persistence of **disparities in the quality of and access to health services between urban and rural areas** as well as the **State party's increasing reliance on the private sector to provide health services**. It is also concerned about the **high cost of health services for the population** and the **lack of regulation of the quality of services provided**. …The Committee recommends that the State party: (a) Strengthen its efforts to address, as a matter of urgency, the existing disparities in access to and quality of health services, including by **establishing partnerships with the private sector so as to increase access to, and affordability of, health services** and by **regulating the services that they provide**;
India	CESCR, Concluding Observations, E/C.12/IND/CO /5 8 August 2008	38. The Committee notes with concern that the universal health-care scheme in the State party falls short of providing for universal coverage, excluding a considerable portion of the population. The Committee is also concerned that the **quality and the availability of the health services provided under the scheme have been adversely affected by the large-scale privatization of the health service in the State party, impacting in particular on the poorest sections of the population**. 78. The Committee recommends that the State party **substantially increase funds allocated to public health** and to **provide additional incentives in order to prevent further loss of medical professionals from the public health services**. The Committee also urges the State party to take all necessary measures to ensure universal access to affordable primary health care. The Committee also requests the State party to provide information on the **measures to regulate the private health-care sector.**
India	**CEDAW, Concluding Observations, CEDAW/C/IND /CO/3,** 2 February 2007	40. … In addition, the Committee is concerned that **the privatization of health services has an adverse impact on women's capacity to access such services**. 41. … It calls upon the State party to **balance the roles of public and private health providers in order to maximize resources and the reach of health services**. It calls upon the State party to **monitor the privatization of health care and its impact on the health of poor women** and provide such information in its next periodic report.
India	**Special Rapporteur on**	18. The Special Rapporteur was concerned about the massive, crippling crisis in India's health workforce. In many areas, life-saving

	the right to health, A/HRC/7/11/Add.4 29 February 2008, Note on mission to India	care is unavailable to women giving birth. **Rural and disadvantaged areas are those most likely to be without a provider in public facilities. This compels many women either to go without any care at all, or to go to the private sector for life-saving services that should be publicly for free. Recourse to the private sector impoverishes many women and their families.** 21. The Special Rapporteur notes that, under international human rights law, **governments have a binding legal obligation to ensure that third parties, including the private sector, are respectful of individuals' and communities' human rights**. Especially in the absence of adequate self-regulation, **this requires a State to establish an appropriate, effective, regulatory framework**. 22. There are about 1.4 million health practitioners in India. Only about 10% of them are in government service. In other words, **the Indian private health sector is enormous. Crucially, it is largely unregulated**. Also, to a large extent, the public health authorities act as both provider and regulator, whereas it is clear that these functions should be separated. In other words, **the existing monitoring and regulation of both the private and public health sectors is inadequate**. 23. Accordingly, the Special Rapporteur recommends that **autonomous Health Commissions be established, at the federal and State levels, reporting to their legislatures, to monitor and regulate the private and public health sectors, to ensure that they deliver quality health services to all.**
Kenya	**CAT Concluding Observations,** **CAT/C/KEN/CO/2** **19 June 2013**	27.The Committee welcomes the waiver on maternity fees in public hospitals, but remains concerned about ill-treatment of women who seek access to reproductive health services, in particular the ongoing practice of post-delivery detention of women unable to pay their medical bills, including in private health facilities. The Committee is further concerned by occurrences of forced and coerced sterilization of HIV positive women and women with disabilities (arts. 2, 12 and 16). **The Committee urges the State party to strengthen its efforts to end the practice of forcible detention of post-delivery mothers for non-payment of fees, including in private health facilities.**
Lebanon	**CEDAW, Concluding Observations,** **CEDAW/C/LBN/CO/4-5** **24 November 2015**	41. The Committee… … It is also concerned about **the insufficient monitoring of private health-care providers, which are the majority providers of specialized health services for women.** 42. The Committee recommends that the State party … **take measures to adequately monitor the performance of private**

		health-care providers…
Lebanon	CESCR Concluding Observations, **E/C.12/LBN/CO/2 24 October 2016**	10. The Committee is concerned that, as no public budget has been adopted since 2005, the budgeting process lacks democratic approval and oversight and that the current sectoral allocations no longer correspond to the needs and priorities in the State party. The **Committee also notes that a considerable part of the public budget for health and education is spent on contracts for the delivery of services by private schools and private medical facilities** (art. 2 (1)). 11. The Committee calls on the State party to overcome the political obstacles to engaging in a regular budgetary process so as to ensure **accountability and adequate allocations to priority needs and sectors. The Committee also recommends that the State party review whether the practice of contracting out the delivery of basic services to private actors constitutes an optimal use of available resources to ensuring Covenant rights without discrimination.**
Lebanon	**CRC Concluding observations,** CRC/C/15/Add. 169 21 March 2002	42. … **The Committee is deeply concerned that children do not enjoy equal access to quality health care owing to the high cost of health care and the failure of insurance schemes to provide full coverage, and in part to the domination of the health sector by the private sector and significant differences between the quality of the care provided by the public versus the private sector**.
Malawi	**ACHPR, Concluding Observations and Recommendations** on the Initial and Combined Periodic Report of the Republic of Malawi on the Implementation of the African Charter on Human and Peoples' Rights (1995 – 2013)	104. Urgently strengthen on-going initiatives to reduce the high rate of maternal and infant mortality in Malawi including by eliminating all barriers to maternal health services in the country**, increasing budgetary allocation to the health sector to at least 15%** of total annual budget in line with the Abuja Declaration, and also **promoting human rights-based and people-centred private-sector investment in the health sector**
Mongolia	**CEDAW, Concluding observations, A/56/38(SUPP), 1 Jan 2001,**	251.The Committee expresses **concern that poverty is widespread among women as a consequence of privatization and other factors linked to the transition to a market economy**. 267.The Committee expresses its **deep concern at the negative**

		impact of privatization on women's access to adequate health care and education. 268.The Committee calls upon the Government to **ensure that these services are not reduced and that, in particular, the areas of health and education do not suffer as a result of privatization**.
Pakistan	**CEDAW, Concluding Observations,** **CEDAW/C/PAK /CO/4 27 March 2013**	31. The Committee is concerned about the high maternal mortality rate in the State party, women's lack of adequate access to family planning services, including contraceptives, restrictive abortion laws and the large number of women resorting to unsafe abortions, as well as the lack of adequate post-abortion care services. It is further **concerned at the wide privatization of the health system and the inadequate budget allocated to the health sector, in particular with regard to sexual and reproductive health-care services, especially in rural remote areas**. 32. The Committee calls upon the State party: **(e) To ensure that the privatization of the health sector and the devolution to the provinces of the main health competence do not reduce further the already limited health services accessible to women.**
Pakistan	**CESCR, Concluding Observations,** **E/C.12/PAK/C O/1 23 June 2017**	75. The Committee is concerned at the **very low level of public funding allocated to the health sector**; the insufficient coverage of the National Health Insurance Programme; and **the weak public health system that has led to the heavy reliance on private health services.** It is particularly concerned at the high maternal mortality rate as well as the high infant mortality rate. 76. The Committee recommends that the State party make all efforts to **increase public expenditure in the health sector**; to further expand the coverage of the National Health Insurance Programme; to **strengthen its public health system with a view to providing free quality basic health services to all, including disadvantaged and marginalized individuals, and to reduce the maternal, infant and under-5 mortality rates**.
Poland	**CESCR, Concluding Observations** **E/C.12/POL/CO /5 2 December 2009**	29. The Committee notes with concern the **continuous decrease in public spending on health and the negative consequences thereof on the enjoyment of right to health.** The Committee is also concerned that **the gradual privatization of health care risks making it less accessible and affordable** (art. 12). **The Committee recommends that the State party increase its budget allocation for health in order to meet the growing number of emerging health-care issues in the country and ensure that privatization of the health system does not impede the enjoyment of the right to health, in particular for the disadvantaged and marginalized individuals and groups.**

Republic of Korea	**CESCR Concluding Observations**, **E/C.12/KOR/CO/3** 17 December 2009	22. The Committee is concerned that the rapid pace of economic growth — of unprecedented proportions in Asia — that has turned the country into the twelfth-largest economy has not been matched by greater fulfilment of economic, social and cultural rights, in particular for the most disadvantaged and marginalized individuals and groups. In this regard, the Committee is concerned that 8.2 per cent of the total population, and in particular some disadvantaged and marginalized individuals and groups, are excluded from the national basic livelihood security system, which, in principle, guarantees a "national minimum" to people living in the most disadvantaged conditions, in the absence of an established national social safety net. The Committee is therefore **concerned at inadequate public social expenditure and the high level of privatization of social services, including health care**, education, water and electricity supplies, **which has led to greater difficulties in the access and use of such services by the most disadvantaged and marginalized individuals and groups**. The Committee, noting the information provided by the State party that the national basic livelihood security system is under review in relation to the "duty to support" standard or wealth standard and universal access to the system, **urges the State party to conclude the review expeditiously and guarantee access to the system for persons that have not completed a minimum period of stable living, including the homeless and those living in shelters.** 30. **The Committee is concerned that, despite the medical benefit programme, disadvantaged and marginalized individuals do not have adequate access to medical services in privately run hospitals, which constitute 90 per cent of all hospitals.** The Committee is also concerned that the national health insurance scheme only covers around 65 per cent of total medical expenses and that, as a result, out-of-pocket payments are substantial (art. 12). **The Committee urges the State party to increase expenditure for health care and to take all appropriate measures to ensure universal access to health care, at prices that are affordable to everyone,** and draws the attention of the State party to its general comment No. 14 (2000) on the right to the highest attainable standard of physical and mental health.
Uganda	**Special Rapporteur on the right to health, Mission to Uganda, E/CN.4/2006/48/Add.2** **19 January**	21. … Other problems reportedly include corruption in the form of drug "leakage" into the private sector, as well as requests for informal payments by health personnel in some areas. The second participatory poverty assessment (PPA) report found that although "cost-sharing" has been abolished, community members still often have to make under-the-table payments. The PPA2 notes that people are concerned that drugs "leak" to private facilities, which are largely

	2006	run by government health workers.
Viet Nam	CESCR, Concluding Observations, **E/C.12/VNM/CO/2-4 15 December 2014,**	22. The Committee is concerned that, in spite of the progress achieved in expanding enrolment in health insurance, its low coverage among workers in the informal economy as well as the co-payment requirement impedes access to health care among disadvantaged and marginalized groups. The Committee notes also with concern the limited availability of quality health-care services, particularly in remote areas. Additionally, the Committee is concerned at the health protection divide in the society and at the **adverse impact of privatization on the affordability of health care.** The Committee recommends that the State party: (a) Step up efforts to improve health insurance coverage in the informal economy and undertake campaigns to encourage disadvantaged and marginalized groups to participate in the insurance; (b) Ensure that health insurance co-payments remain affordable for all, including socially disadvantaged groups, and expand the list of prescribed medicines under the insurance scheme so as to limit out-of-pocket payments; (c) **Invest in the improvement of the quality of health-care services in community health centres and district hospitals. The Committee refers the State party to its general comments No. 19 (2007) on the right to social security and No. 14 (2000) on the right to the highest standard of health.**
Viet Nam	Special Rapporteur on the right to health, A/HRC/20/15/Add.2, Mission Visit 4 June 2012	12. **Privatization, however, poses numerous challenges to ensuring full realization of the right to health, particularly for the poor and near poor. Privatization of health care often results in a number of troubling outcomes, including increased inequity in the accessibility of health care and greater out-of-pocket expenditures. For example, since the introduction of health insurance in Viet Nam, household health expenditure has grown to approximately 60 per cent of all total health expenditure. These outcomes result from a reliance on profit-generation to ensure the continued existence of the health system, in contrast to a public system funded largely or entirely by the State. While in many cases the substitution of State-delivered services with private services may be acceptable or even an improvement, it is unlikely that the private sector will fill all the gaps left by the effective withdrawal of the State from the health sector. Studies have demonstrated that privatization of health care in Viet Nam has already led to a growth in inequity and has reduced access for some populations, as hospitals increasingly tailor the quality of health services according to patients' ability to pay.** 13. One of the primary responsibilities of the State under the right to health, however, is to ensure that all persons have access to

		affordable health care. The Special Rapporteur commends Viet Nam for its commitment to ensuring health care for all, as discussed below, but notes that the **Government should remain vigilant in order to prevent privatization from negatively impacting the realization of the right to health.** 17. **Privatization and decentralization have resulted in partial private ownership of public hospitals. In some instances, this has led to an increase in the abuse of services, including unnecessary testing and the use of high-tech services, over-prescription of medicines and patient overload.** 23. These results are exacerbated by the predominant use of the fee-for-service payment mechanism in Viet Nam. The Ministry of Health has recommended that Viet Nam continue to ―assess and implement joint ventures, business partnerships and participation of private investors in investments in curative care facilities. **The Special Rapporteur encourages the Government to take a cautious approach, in line with its previous decision to temporarily halt the sale of shares in public hospitals due to concerns relating to equality and efficiency. All further decisions to ―equitize‖ (part-privatize) public health entities must be critically assessed in the light of deleterious impacts on the right to health, and the impact on accessibility for vulnerable groups in particular**. 61. The Special Rapporteur urges the Government of Viet Nam to consider the following recommendations pertaining to its health system and health financing: (a) **Complete an official assessment of the effects of privatization on the health system, including its impact on the right to health and the accessibility of health goods and services for the poor, near poor and ethnic minorities;** (b) **Consider alternative revenue-generating mechanisms for provincial-, district- and commune-level health-service providers, such as progressive taxation;**
Zambia	**CESCR Concluding Observations**, E/C.12/1/Add.1 0623 June 2005	48.The Committee recommends that the State party undertake all necessary measures to guarantee an adequate standard of living, including through **the provision of social safety nets for the most disadvantaged and marginalized groups, in particular those women and children who have been the hardest hit by structural adjustment programmes, privatization and debt servicing.** In this context, the Committee recommends that the State party provide in its next periodic report detailed information and disaggregated statistical data on the impact of the measures undertaken to reduce the level of extreme poverty and to ensure an adequate standard of living for the disadvantaged and marginalized groups. The Committee also refers the State party to its statement adopted on 4 May 2001 on poverty and the International Covenant on Economic, Social and Cultural Rights (E/C.12/2001/10)