

GENERAL COMMENT 7:

State Obligations Under the African Charter on Human and Peoples' Rights in the Context of Private Provision of Social Services

A Summary and Advocacy Tool





General Comment 7 - State Obligations Under the African Charter on Human and Peoples' Rights in the Context of Private Provision of Social Services - A Summary and Advocacy Tool

This summary was written by Roselyne Onyango, Associate Programme Officer- Africa at GI-ESCR. The summary has been reviewed by Aya Douabou, Programme Officer-Africa at GI-ESCR and José Antonio Guevara, Deputy Director at GI-ESCR.

Designed by Mikmac Estudio: Miguel Torres Carlomagno, Nahuel Condino and Martín Squiciarini

Foreword

Since the 1980s, when structural adjustment programmes were first introduced, Africa and Latin America have witnessed the fall of public social services such as education and healthcare, and the rise of their privatisation and commercialisation.

Chronic state underfunding and gradual withdrawal from its obligation to deliver quality social services made both regions conducive environments for the rise of neoliberal market logic, a situation that has deepened inequalities between the rich, who can afford commercialised social services, and those living in poverty, who cannot access those services and are consequently prevented from enjoying their economic, social, and cultural rights.

Illicit financial flows by powerful corporations, debt crises and imposed austerity measures have also weakened domestic resource mobilisation and impeded adequate social services funding in the countries of both regions.

In a bid to address these historical injustices, the African Commission on Human and Peoples' Rights took a bold step by developing General Comment 7 to reclaim the public nature of social services to ensure everyone has access to them for the realisation of their economic, social and cultural rights irrespective of their socio-economic status.

General Comment 7 is not only an instrument relevant for Africa but also for other regions that can draw inspiration from such a progressive document to reiterate States' human rights obligations to provide quality public services for all, fund them through progressive taxation and regulate the participation of private actors in their provision.

In the spirit of a South-South collaboration, it is high time Africa and Latin America join forces in light of their shared struggles and fight for a human rights-based approach to social services for the welfare of their people.

The publication by the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) of this summary of General Comment 7 seeks to contribute to that spirit of collaboration and exchange of best practices between the different regions and human rights systems.

Magdalena Sepúlveda Carmona
Executive Director
GI-ESCR



I. Introduction

The roots of State obligation to ensure the provision of social or public services trace back to Article 13(3) of the African Charter on Human and Peoples' Rights (the African Charter) adopted in 1981, which guarantees 'access to public [...] services in strict equality' before the law.

In 2007, African States developed this obligation further in the African Charter on Democracy, Elections and Governance (African Democracy Charter) by committing themselves, in Article 41, to 'provide and enable access to basic social services' to everyone under their jurisdiction. The public service sector in Africa has undergone decades of underinvestment that has led to private actors providing essential social services with the emergence of profitmaking driving their delivery. The African Commission on Human and Peoples' Rights (the African Commission) has constantly expressed concerns on the growth of private actors' involvement in social services delivery that often happens without the consideration of human rights resulting in the negative impact on the enjoyment of social services; and the need for States to fulfil their obligations under the African Charter.

General Comment 7 is a resounding response to the growing and well documented human rights concerns that have arisen from the rapid commercialisation of public services in Africa and around the world in the last decade. It provides an authoritative interpretation of existing human rights law and constitutes the most comprehensive analysis to date of human rights law regarding the provision of public services essential for the enjoyment of human rights, especially economic, social and cultural rights.

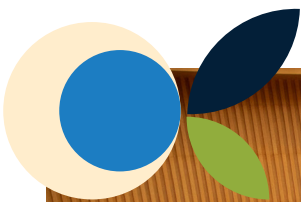


II. The Legal Foundation of General Comment 7

[General Comment 7](#) is a culmination of resolutions and guidelines that have been adopted by the African Commission over the years with reference to State obligations to provide social services such as education, health and water and regulate private actors involved in the provision of social services.

In 2019, the African Commission adopted [Resolution 420](#) on States' Obligation to Regulate Private Actors Involved in the Provision of Health and Education Services. In 2020, it adopted the [Guidelines on the Right to Water in Africa](#) which establish substantive, procedural and operational requirements for the delegation of the provision of water to private actors, thus echoing the [Abidjan Principles](#)¹. The same year the African Commission adopted [Resolution 434](#) on the Need to Develop Norms on States' Obligations to Regulate Private Actors Involved in the Provision of Social Services.

These steps led to the development and adoption of General Comment 7 in 2022.



III. The Content of General Comment 7

A General human rights standards applicable to social service provision

1 The non-commercial character of social services

Social services are not commercial products or services but essential preconditions for the enjoyment of human rights, and the emerging trend of States attempting to release themselves from the obligation of providing quality social services² is leading to the commercialisation of these services thus eroding intrinsic public function and impairing the enjoyment of human rights.³ The word 'public', in this General Comment is less concerned with the public nature of the entity delivering the services, that generally is the State, than with the practical modalities of how the service is delivered, and to what standards the service provider is held to account.


This section gives examples where private provision need not necessarily result in the commercialisation of social services but when under effective and comprehensive regulations that are democratically controlled, non-commercial private actors have the potential to contribute to ensuring universal access to social services.


2 Public service obligations and the collective interest in social services

These are the minimum requirements that States should impose all actors involved in social services delivery. These public service obligations are to ensure that social services are: (a) available to all individuals on an equal basis, without discrimination⁴, (b) accessible even in times of emergency⁵, (c) acceptable to the user⁶, (d) of the highest attainable quality⁷, (e) effectively regulated⁸, and (f) subject to democratic public accountability. Moreover, in certain situations, they should be available at no cost to the user, or at a subsidised, reduced cost below the market rate.


3 The rights to equality and non-discrimination


Article 2 of the African Charter prohibits discrimination based on fortune and makes it clear that economic status must never obstruct an individual's enjoyment of economic, social and cultural rights. However, the emergence of commercialised social services has led to increased inequalities and discriminations especially on the grounds of income since access to social services depends on fees. There is need for States to provide certain services on a low or no-fee basis, to ensure provision to everyone, regardless of their financial position.


 The non-commercial character of social services


 Public service obligations and the collective interest in social services


 The rights to equality and non-discrimination


 The right to effective participation in public affairs

 The right to access information

 Progressive realisation and temporal accountability

 Prohibition of retrogressive measures

 State obligation for the provision of social services in all circumstances

 Justiciability and access to remedies

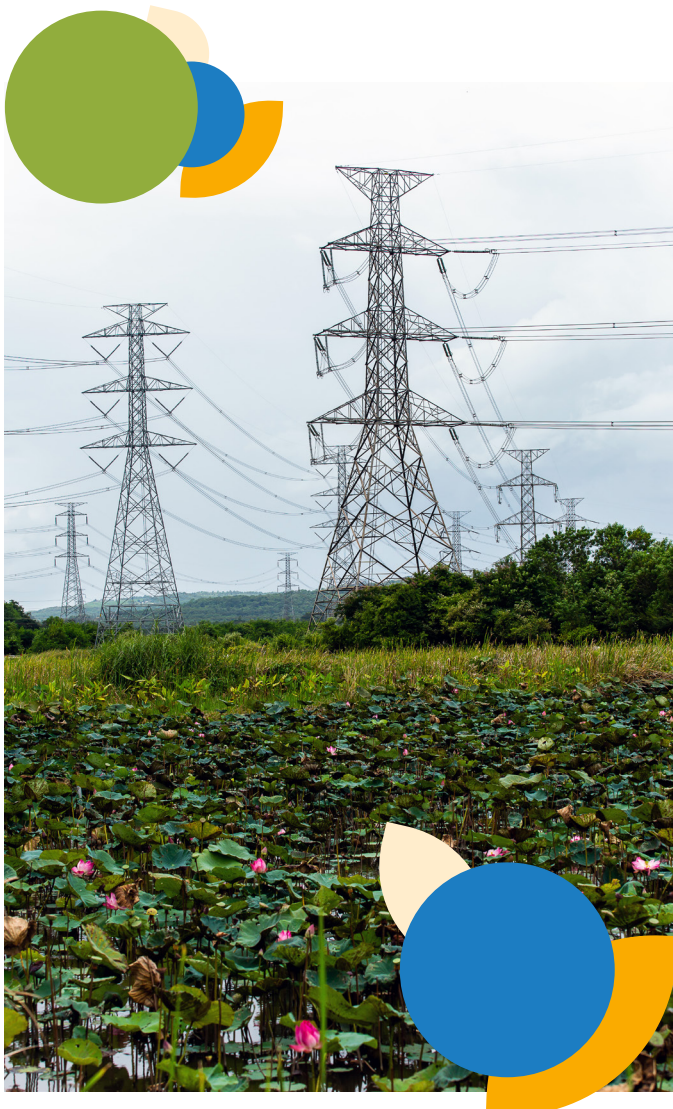


4 The right to effective participation in public affairs

The public must have meaningful influence over decisions that affect them as stated under the African Democracy Charter,⁹ Article 13 of the African Charter and General comment 25 of the Human Rights Committee¹⁰. In this way, governments can ensure that their decision-making is informed and sustainable, while also guaranteeing that public institutions are more effective, accountable, and transparent. States should actively seek out for civil society input on social service provision, and safeguard the independence of civil society organisations.

5 The right to access information

Many States in the pursuit of fulfilling their obligations under Article 9(1) of the African Charter have allowed the access to information on public sector to the general public. However, in the private sector, crucial information



is often concealed by legal, financial and procedural obstacles that are incompatible with Article 9(1) of the African Charter. Many of these laws make it impractical, or even impossible for rights-holders to access the information they need - even when this information serves the public interest.

6 Progressive realisation and temporal accountability

There is a need for States to acknowledge that progressive realisation does not mean States implementing their developments in bits¹¹ but it calls for a State's comprehensive obligation to take a series of immediate steps that achieve visible results and can be assessed over a period of time. This can be in the form of short, medium and long-term goals to achieve the availability, accessibility, acceptability and quality of social services for all without any discrimination. States must outline a clear national strategy for the provision of each social service, detailing concrete benchmarks and specific activities in order to achieve provision of social services within a definite timeframe.

7 Prohibition of retrogressive measures

A measure is retrogressive if it diminishes the enjoyment of a right's full normative content, including its availability, accessibility, acceptability, adaptability, or quality. Examples may include water disconnection¹² cuts to social security payments,¹³ and insufficient maintenance of infrastructure necessary for social service provision.¹⁴ The delegation of resources to private actors can also be regarded as retrogressive if they fail to follow the conditions under paragraphs 54-59 of the General Comment.

8 State obligation for the provision of social services in all circumstances

States can directly be held accountable when a private actor participates in social service provision and abuses human rights in the process under international human rights law even if 'the State or its agents are not the immediate cause of the violation.'¹⁵

9 Justiciability and access to remedies

States need to ensure that all the rights protected by the African Charter are justiciable in their national legal systems, and ensure that any non-judicial remedies are reinforced by judicial review.¹⁶ In transnational situations where litigation is often time-consuming and extremely expensive, there is need for State cooperation when providing effective remedies.¹⁷

B The State obligation to ensure the provision of public social services

States must ensure an effective system for the provision of quality social services in order to respect, protect, promote, and fulfil their obligations with regard to human rights. This system should be adequately funded, democratically controlled, and non-commercial in nature and centred around the following obligations:

1 The obligation to provide quality public social services directly

This obligation is rooted under Article 13(3) of the African Charter, general international human rights¹⁸ law and reflected widely in State practice.¹⁹ Human rights instruments have explicitly called on States to provide public services²⁰ such as public healthcare,²¹ public housing,²² electricity²³ and education²⁴ with a critical component of this obligation calling for States to provide these social services directly such as providing quality public education.²⁵

2 The obligation to fund public services

States must devote their resources, existing and potential, including natural, human, technological, institutional and informational resources²⁶ to execute this obligation. Sufficient resources need to be mobilised, allocated and spent in an accountable, effective, efficient, equitable, participatory, transparent and sustainable manner.





The State obligation to regulate private provision of social services

States must regulate multinational corporations, local companies, and other private actors, not simply to ensure that they do not explicitly abuse rights, but also to ensure that these private actors support, rather than undermine, broader efforts to realise economic social and cultural rights.²⁷ This regulatory interplay requires States to adopt administrative, legislative, investigative, adjudicatory and other measures to prevent, and when applicable, mitigate, investigate, punish and remedy any human rights abuses under their jurisdiction, regardless of the public or private nature of the entity providing the social service.²⁸

The obligation to establish clear 'regulatory standards' means that States create a wide range of legally enforceable rules which impose mandatory requirements on social service providers, as well as the various non-binding advisory rules, for which there is a reasonable expectation of widespread compliance.

The nature of the specific regulatory standard will depend on the social service in question, and the context it is provided in.

When establishing regulatory mechanisms, States need to ensure that there are **monitoring and evaluation**²⁹ policies also put into place. This enables States to make a context-specific situational analysis to inform its public policy, measure its progress, evaluate its performance, overall outcomes and anticipate the risk of retrogression and other human rights abuses, and institute measures to avoid them.

States have a positive obligation to remove substantive, procedural and practical barriers to remedies, including by establishing parent company or group liability regimes, enabling human rights-related class actions and public interest litigation. This is through having enforcement and accountability measures that provide access to justice and legal remedies. In case of non-compliance by private actors, States should encourage compliance in the shortest possible time through measures such as providing appropriate expertise and offering support tools and management assistance, and if non-compliance persists, by enforcing penalties.³⁰

There is also the need for States to take all the necessary steps and mechanisms in ensuring active **public participation in the regulatory process**. This can be done by deliberately involving individuals and communities in all stages of planning, decision-making, implementation, monitoring and evaluation of social service provision in a democratic and inclusive manner.

Some private actors take advantage of weak and ineffective regulatory environment by using their expertise in the industry or close proximity to the regulator to pressure authorities into adopting weak human rights protections³¹ leading to a process known as regulatory capture. To address regulatory capture, States must ensure that their regulatory institutions are immune to pressure from illegitimate interests including their public officials and elected representatives. This can be through requiring regulators to disclose any potential conflicts of interest.

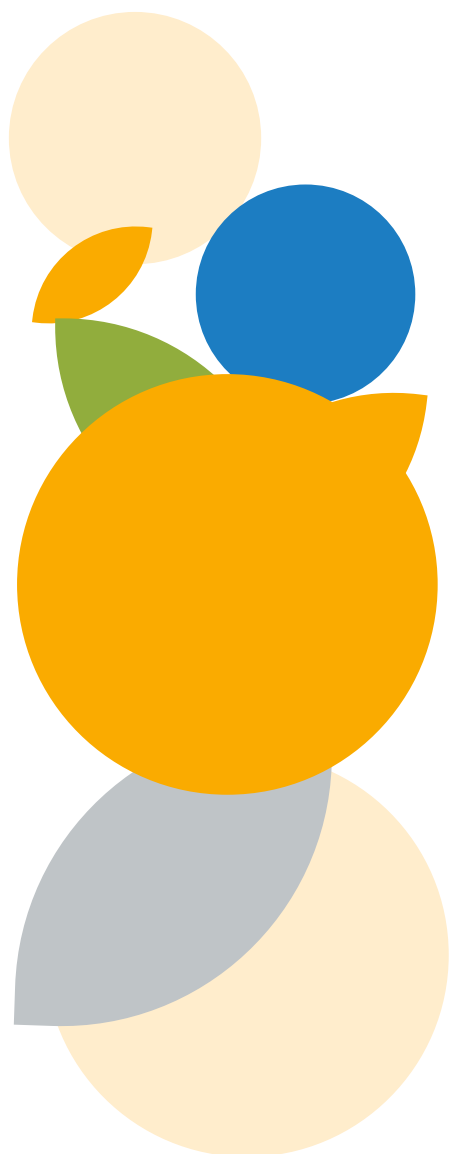


D Conditions for the delegation of public resources to support private actors involved in social service provision

Under international human rights law, the State has no obligation to delegate resources to private social service providers.³² Therefore, States are not legally obligated to provide subsidies, or other methods of support to private actors under their jurisdiction. A common mechanism for directing public resources to private actors for the provision of social services are public-private partnerships (PPPs). Still in certain contexts, especially in times of crisis or emergency, it may be necessary for States to temporarily direct public money, expertise or labour to private actors, in order to ensure social services are enjoyed by the communities that require them. When States extend resources to private actors, they must strictly observe the substantive, procedural, and operational requirements set out below.

The decision to award funding must be through a participatory, inclusive, transparent and accountable consultation process that includes human rights impact assessment.

- 1** Substantive requirements for the allocation of public funding to an eligible private actor
 - Must be a time-bound measure which the State publicly demonstrates to be the only effective option to advance the realisation of human rights in the situation in question;
 - Must not foreseeably risk or delay the development of a public social service system of the highest attainable quality;
 - Must not lead to a diversion of public resources that would constitute an impermissible retrogressive measure, in particular by lowering standards for State-delivered social services;
 - Must not constitute or contribute to the commercialisation of the delivery of social services;
 - Must not create a foreseeable risk that the funded private actor could exercise an undue influence on the service or account for such a substantial part of the system that it risks undermining economic, social and cultural rights; and
 - Must not create a foreseeable risk of any other systemic harm to other social services, paying particular attention to obligations related to non-discrimination, and equality.





2 Procedural requirements for the allocation of public funding to an eligible private actor

- There must be an adequate regulatory framework put in place addressing the due process, rules and modalities for such funding,
- The State must publicly demonstrate that the funding meets all the substantive, procedural and other requirements including the State's capacity to continuously monitor and regulate the private actor's ability to meet the applicable standards
- The decision to award funding must be through a participatory, inclusive, transparent and accountable consultation process that includes human rights impact assessment.
- The funding must be arranged in such a way that it is possible in practice to reverse it or to transfer the role of the private actor to the State.

3 Operational requirements for the allocation of public funding to an eligible private actor

- States must impose on private institutions participating in social services the same standards as those imposed on public ones.
- States must take all effective measures to overcome the inability to deliver or manage the aspect of the provision of social services which justified the provision of public funding a private actor.
- Any public funding to an eligible private institution is subject to a human rights impact assessment that is continuously used to re-evaluate the contribution of the funding to the delivery of social services
- The cost of the human rights impact assessment, regulation, and other obligations of the State must be considered as part of the evaluation of the cost of the arrangement for funding, with due consideration given to the State's obligation to deliver social services of the highest attainable quality for all to the maximum of its available resources
- States must make the continued provision of funding conditional on the fulfilment of the required standards, and ensure that all contracts permit the State to withdraw from the funding without prejudice if the standards are not met.
- States must ensure that all private actors receiving State funds for the delivery of social services make all proprietary data and material that could help to improve the public social service system available without a licence, within a reasonable time defined by law, to the relevant public authorities.

4 Private social service providers are ineligible for delegation for public funding of private actors

States must prohibit the allocation of public funding to a private actor that: contributes to an adverse systemic impact on the enjoyment of social services or undermines the realisation of human rights in any other way; abuses the rights to equality and non-discrimination, including by being selective; or expelling or sorting rights-holders, whether directly or indirectly, on the basis of the socio-economic disadvantage, or any other prohibited ground; is commercial and excessively pursues its own self-interest; charges fees that substantially undermine access to social services; does not meet any of the public service obligations applicable; and does not comply with all of its domestic or international financial obligations.



States must take all effective measures to overcome the inability to deliver or manage the aspect of the provision of social services which justified the provision of public funding to a private actor



Human rights consequences for actors other than States

This General Comment not only addresses State parties to the African Charter but also domestic and transnational private actors, as well as intergovernmental organisations, who have had well documented impacts on human rights, both positive and negative.

1 Human rights consequences for private actors under the African Charter

The African Charter imposes direct duties on private actors in Articles 27, 28, and 29.³³

To implement the duties in the African Charter, private actors must do the following:

- Put in place internal mechanisms to regularly assess any adverse impacts their operations, practices, services, and products may have on human and peoples' rights; integrate the findings of their impact assessments into corporate culture, management, and operation;
- consult with affected groups and provide platforms for meaningful participation before, during and after the project cycle; disclose financial and operational information to the public in an accessible and transparent manner, in accordance with the relevant freedom of information laws;
- pay their fair share of taxes; respect labour rights; and
- refrain from imposing or facilitating policies that would nullify or impair the State capacity to meet international human rights obligations.

2 Human rights consequences for intergovernmental actors

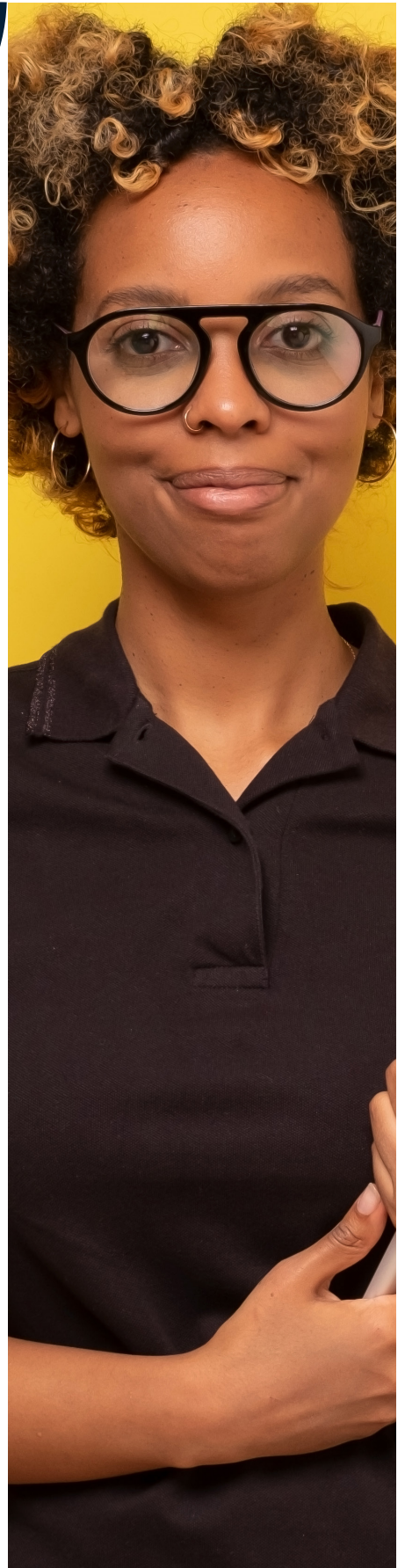
States must: closely monitor the conduct of the intergovernmental organisation, including its policies, omissions, and other acts, to ensure that it does not interfere with the enjoyment of social services; instruct their representatives to the intergovernmental organisation to oppose policies or other acts that would nullify or impair the capacity of any State to meet its social services obligations; and promote policies within the intergovernmental organisation that enhance States' abilities to respect, protect, fulfil and promote human rights.

F Reporting obligations

Under Article 62 of the African Charter, States are required to submit periodic reports to the African Commission. These periodic reports must contain the following:

1. The extent to which economic, social and cultural rights are protected by a State's constitution, bill of rights, basic law, other national legislation and if applicable the provisions made in cases of derogations, restrictions or limitations;
2. The extent to which private actors are involved in the provision of social services and any reported adverse effects of human rights;
3. The structure of the State's regulatory framework for private actors;
4. The extent to which private actors have been held accountable for human rights abuses;
5. Whether the provisions of the African Charter or any General Comment have been invoked or directly enforced by their courts, tribunals or administrative authorities;
6. Which competent authorities have jurisdiction over the implementation of human rights;
7. The judicial and other appropriate remedies put in place enabling those affected to seek redress;
8. Obstacles arising from factors outside their control that impede the universal provision of social service;
9. Whether they accept the jurisdiction of the African Court on Human and Peoples' Rights, or any other human rights mechanism and, if so, the nature and progress of all cases involving it; and
10. The budget allocations and trends, in percentages of national or regional budgets or gross domestic product, allocated specifically to the implementation of the public social services, together with disaggregated data indicating what percentage of the budget has gone to private actors involved in the provision of social services if any.





How civil society organisations can engage with this General Comment.

We recommend Civil Society Organisations (CSOs) to:

1. Disseminate General Comment 7 and/or this abridged version to remind States' authorities of their human rights obligation to provide quality social services and regulate private actors involved in the provision of social services.
2. Raise awareness on General Comment 7 with National Human Rights Institutions, which can, then, advise States on how to domesticate its provisions in their laws and policies governing the delivery of social services.
3. Encourage lawyers and the judiciary to include General Comment 7 provisions in their legal reasoning where relevant. This can possibly strengthen the justiciability of economic, social and cultural rights.
4. Bring General Comment 7 to the attention of private actors to remind them of their public service obligations when delivering social services and that they can be held accountable should they fail to provide social services in accordance with human rights standards.
5. Disseminate General Comment 7 with rights-holders to make them aware of their right to demand quality social services and hold state and non-state actors accountable when they suffer human rights violations because of a failed delivery of quality social services.

Notes

¹ *The Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education* (2019).

² African Commission on Human and Peoples' Rights, *Concluding Observations & recommendations on the 5th periodic State report of the Republic of Uganda (2010 – 2012)*, (2015), para 36(c) (noting how "[t]he increase in the establishment of private schools, [...] allegedly raises the concern of the Government gradually releasing itself from the obligation to provide quality public education") (emphasis added).

³ *Ibid.*, para 80.

⁴ African Commission on Human and Peoples' Rights, *Principles and guidelines on the implementation of economic, social and cultural rights in the African Charter on Human and Peoples' Rights* (ESCR Guidelines) (2011), para 3(a).

⁵ *Ibid.*, para 3(c).

⁶ *Ibid.*, para 3(d).

⁷ *Ibid.*, para 10.

⁸ *Ibid.*, para 7.

⁹ African Charter on Democracy, Elections and Governance, art. 12(1).

¹⁰ Human Rights Committee, *General Comment 25: The right to participate in public affairs, voting rights and the right of equal access to public service*, UN Doc CCPR/C/21/Rev.1/Add.7, para 6.

¹¹ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment 3: The nature of States parties' obligations*, UN Doc E/1991/23, para 9; UN Rapporteur on the Right to safe drinking water and sanitation, *Progressive realization of the human right to water and sanitation*, UN Doc A/HRC/45/10, para 8; African Commission 'ESCR Guidelines' (n 12 above), paras 13-15.

¹² UN Rapporteur on the Right to safe drinking water and sanitation, *Progressive realization of the human right to water and sanitation*, UN Doc A/HRC/45/10, para 57 ('A clear example of direct retrogression and a violation of human rights to water and sanitation is the disconnection of water services because of the inability to pay.').

¹³ CESCR, *General Comment 19: The right to social security*, E/C.12/GC/19, para 42 ('There is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under the Covenant').

¹⁴ UN Rapporteur on the Right to safe drinking water and sanitation, *Progressive realization of the human right to water and sanitation*, UN Doc A/HRC/45/10, para 57.

¹⁵ African Commission on Human and Peoples' Rights, Communication 301/05, Haregewoin Gabre-Selassie & IHRDA (on behalf of former Dergue officials) v Ethiopia, 7 November 2011, para 130; see also Communication 292/04, Institute for Human Rights and Development; Communication 74/92, Commission nationale des droits de l'Homme et des libertés v Chad, 11 October 1995, para 20.

¹⁶ CESCR Committee IDG v Spain, paras. 14 and 15; *General Comment 24: State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities*, UN Doc E/C.12/GC/24, paras 34.

¹⁷ UN Working Group on the issue of human rights and transnational corporations and other business enterprises, *Report on the First African Regional Forum on Business and Human Rights* UN Doc A/HRC/29/28/Add.2, para 32(b); OHCHR, *Improving accountability and access to remedy for victims of business-related human rights abuse*, UN Doc A/HRC/32/19, para 24-25.

¹⁸ CESCR, *General Comment 14: The right to the highest attainable standard of health*, UN Doc E/C.12/2000/4, para 12(a) (Where the Committee addresses States' 'core obligation' to maintain 'functioning public health and health-care facilities').

¹⁹ See for example South African Schools Act 84 of 1996, Section 34(1), (which provides that the State 'must fund public schools from public revenue'). Further, Kenyan Health Act 21 of 2017, Section 22 (requires Kenya to establish 'publicly owned health institutions, including hospitals, health centers, pharmacies, clinics and laboratories, as are deemed necessary for the promotive, preventive and rehabilitative health services.') (emphasis added). Constitution of the Central African Republic 2016, art. 8 ('The State guarantees to all the right of access to the establishments of public care as well as the benefit of adequate medical treatments provided by professionals trained and endowed with the necessary equipment') (emphasis added).

²⁰ CESCR, *Concluding observations on the initial report of Indonesia*, UN Doc E/C.12/IDN/CO/1, paras 11(b) & 12(a); CRC Committee *Concluding observations: Paraguay*, UN Doc CRC/C/PRY/CO/3, para 58(e).

²¹ CESCR, *Concluding observations on the third periodic report of the Bolivarian Republic of Venezuela*, UN Doc E/C.12/VEN/CO/3, para 27.

²² CESCR, *Concluding observations on the initial to third reports of the United Republic of Tanzania*, UN Doc E/C.12/TZA/CO/1-3; CESCR, *Concluding observations: Ethiopia*, Doc E/C.12/ETH/CO/1-3, para 20; CESCR, *Concluding observations on the initial and second periodic reports of Djibouti*, UN Doc E/C.12/DJI/CO/1-2, para 26.

²³ African Commission 'ESCR Guidelines' (n 12 above), para 33 ('States should ensure the provision of basic social services (such as water, electricity, education and health care)); African Commission on Human and Peoples' Rights Communications 25/ 89- 47/ 90- 56/ 91- 100/ 93, Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Témoins de Jehovah v DRC, 4 April 1996, para 47.

²⁴ CESCR, *Concluding Observations on the Periodic Report of Kenya*, UN Doc E/C.12/KEN/CO/2-5, paras 57-58 ('inadequacies in the public schooling system have led to the proliferation of so-called 'low-cost private schools' which has led to segregation or discriminatory access to education particularly for disadvantaged and marginalized children').

²⁵ CESCR, *General Comment 13: The right to education* UN Doc E/C.12/1999/10, para 57.

²⁶ UN Special Rapporteur on the human rights to safe drinking water and sanitation, *Progressive realization of the human rights to water and sanitation*, UN Doc A/HRC/45/10, para 20; R. Robertson, *Measuring State compliance with the obligation to devote the "maximum of available resources" to realizing economic, social and cultural rights*, 16 Human Rights Quarterly 695–697.

²⁷ African Commission on Human and Peoples' Rights, *Guidelines on the Right to Water in Africa*, para 32.5; African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights* (2011), para 7.

²⁸ CCPR Committee, *General Comment 31: Nature of the general legal obligation imposed on States Parties to the Covenant*, UN Doc CCPR/C/21/Rev.1/ Add.13, para 8 (where the Committee notes the obligation incumbent on States to 'exercise due diligence to prevent, punish, investigate or redress the harm caused by [...] private persons or entities); *Ximenes-Lopes v Brazil* IACtHR Series C 149 (2006), para 85 ('the acts performed by any entity, either public or private, which is empowered to act in a State capacity, may be deemed to be acts for which the State is directly liable, as it happens when services are rendered on behalf of the State').

²⁹ ACHPR General Comment 7, para 48.

³⁰ *ibid.*, para 49-50.

³¹ S. A. Shapiro "The complexity of regulatory capture: diagnosis, causality and remediation," 17 *Roger Williams University Law Review* (2012); GJ Stigler "The Theory of Economic Regulation," *The Bell Journal of Economics and Management Science* 3, (1971).

³² See for example: *Belgian Linguistic Case (No 2)* (1979–80) 1 EHRR 252 (European Court of Human Rights) paras 7-13; *Lindgren v Sweden*, Communication No 299/1988; UN Doc. CCPR/C/40/D/298-299/1988 (1990); *Carl Henrik Blom v Sweden*, Communication No. 191/1985, UN Doc CCOR/OP/2.

³³ African Charter of Human and Peoples' Rights.



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Authors

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