

UNEDITED

The Private Sector as Service Provider and its Role in Implementing Child Rights¹

Background to the Discussion

In accordance with rule 75 of its provisional rules of procedures, the Committee on the Rights of the Child has decided to devote periodically one day of general discussion to a specific article of the Convention or to a child rights theme in order to enhance understanding of the contents and implications of the Convention

At its 29th session, in January 2002, the Committee decided to devote the day of discussion in 2002 to the theme “The private sector* as service provider and its role in implementing Child Rights”.

*(*In this context, the private sector encompasses businesses, non-governmental organizations and other private associations, both for profit and non-profit.)*

In an outline prepared to guide the general discussion (for the full text of the outline, see CRC/C/114, annex VIII), the Committee pointed out that the aim of the day of discussion would be the impact of increasing participation of non-state actors in the provision and funding of state-like functions on the implementation of the Convention of the Rights of the Child. The Committee emphasized that while it was entirely conscious that the business sector could impact children’s rights in a wide variety of ways, it had chosen to focus on exploring the various issues emerging from privatisation and the assumption by non-governmental organizations or businesses of traditional state functions, i.e. in the health and the education sector, in the provision of institutional care, legal assistance, treatment of victims etc., given the high relevance of this trend to the work of the Committee.

Despite numerous references to the responsibilities of the States parties to international human rights treaties vis-à-vis private sector activities, the Committee noted that the implementation of rights guaranteed in the Convention was often impeded by States parties’ lack of capacity or unwillingness to adopt measures in light of article 4 to ensure respect of the provisions of the Convention by actors in the private sphere. It considered it thus useful to explore possibilities for guidance both for private actors and the government for the implementation of the Convention on the Rights of the Child by private actors involved in the provision of services which have traditionally been provided by States parties and fall within the realm of their obligations under the Convention. The main objectives of the day of general discussion therefore were as follows:

Scope of action of private actors

- To explore different types of public-private partnerships in services of particular relevance to the implementation of the CRC, and assess the direct

¹ Excerpted from CRC/C/121, 31st Session, 20 September 2002.

and indirect, and positive and negative impact on the full realization of the rights of the child. Discussions will include, but are not limited to, accessibility and affordability, quality, sustainability and reliability, safety, privacy etc.;

Legal obligations

- To specify the obligations of State parties in the context of privatisation and/or private sector funding in terms of positive obligations, ensuring non-discrimination of access, equitable and affordable access, especially for marginalized groups, as well as assuring quality and sustainability of service provision. Obligations with respect to regulation and monitoring of the activities of the private sector including the observance of a rights-based approach of their service provision will be specified. Finally the availability of remedies for rights holders, i.e. children, will be identified;
- To identify and strengthen awareness of the responsibilities and obligations of private service providers, both for profit as well as not-for profit, under the Convention on the rights of the Child;

Governance

- To assess the implications of private sector involvement in service provision on governance issues, in particular on participation, accountability, transparency and independence. One key issue is how the increasing role of civil society in providing these services can enhance participation in governance. A second concern is how to maintain and improve accountability and transparency when services are partially or entirely funded by non-state actors. The question of whether private entities involved in service provision, either directly or indirectly, are, or can be made, accountable through the political process, could be addressed.

Models and guidelines

- To identify possible models of implementation for State parties with regard to private actors, and develop guidelines, which would include standard-setting for private service providers as well as monitoring and regulation by State parties and accountability of organizations in the private sector.

The Committee further decided to structure the day of discussion according to two working groups which discussed issues of partnership/programme management, accountability and governance. The two working groups were to discuss these main three topic areas from the perspective of actors contracting out services (i.e. Governments, donors) and the perspective of private service providers.

As for previous thematic discussions, the Committee invited representatives of United Nations organs, bodies and specialized agencies, as well as other competent bodies, including non-governmental organizations, research and academic organizations and individual experts, to contribute to the discussion. State parties were also invited to attend and encouraged to participate actively. In light of the theme of the day of

general discussion, representatives of the private sector, particularly business, as well as International Financial Institutions were particularly encouraged to participate.

A series of background papers had been submitted on the topic over the past few months by a variety of NGOs, academic institutions, independent experts and UN agencies, which were circulated prior to the event and ranged from theoretical analyses of stakeholder responsibilities to case studies on private service provision in areas such as health, education, and water as well as the privatization of prisons. A list of the contributions is contained in annex.....

Representatives of the following organizations and bodies participated in the day of general discussion:

Permanent Missions to the United Nations Office at Geneva

Bangladesh, Chile, Canada, Costa Rica, Côte d'Ivoire, Czech Republic, Egypt, Estonia, Germany, Ghana, Jordan, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Nigeria, Pakistan, Slovenia, Sri Lanka, Switzerland, Syrian Arab Republic, Turkey and United Arab Emirates

United Nations entities and specialized agencies

International Labour Organization (ILO), United Nations Population Fund (UNFPA), United Nations Children's Fund (UNICEF), World Bank and World Health Organization (WHO)

Non-governmental organizations and business

3d Associates, Amnesty International, Bertarelli Foundation, Bureau international catholique de l'enfance (BICE), Central Union for Child Welfare (CUCW) Finland, Center for Human Evolution Studies (IPV-CEU), Italy, Centre international de référence pour la protection de l'enfant dans l'adoption, Service Social International (CIR/SSI), Centre on Housing Rights & Evictions (COHRE), Children's Rights Alliance for England (CRAE), Child Rights Information Network (CRIN), Coordination des ONG pour les droits de l'enfant (CODE), Defence for Children International, et la section Suisse, ECPAT International, Elimination of Child Labour in Tobacco (ECLT) Foundation, Federation for the Protection of Children's Human Rights, Japan, Fundación Intervida, Spain, Humanitarian Accountability Project, Initiative for Public-Private Partnerships, Institut International des Droits de l'Enfant (IDE), Institute for Child Rights and Development, Canada, International Association for the Child's Right to Play (IPA), International Federation Terre des Hommes, International Youth Foundation/ Global Alliance for Workers & Communities, MEDACT and Health Counts, Ministry of Social Affairs and Housing, Suriname, National Service for Minors (SENAME), Chile, Netherlands Institute for Care and Welfare (NIZW), Organisation internationale pour le développement de la liberté d'enseignement (OIDEL), Switzerland, Organisation des Volontaires Acteurs du développement - Action Plus (OVAD-AP), Togo, Rebound Group 4, Save the Children Alliance, incl. affiliates from the UK, Sweden, South Asia and Italy, Scottish

Alliance for Children's Rights (SACR), SOS-Kinderdorf International, Vaccine Fund, WEMOS Foundation, World Organisation Against Torture (OMCT), World Vision International

Other organizations and individuals

Bruce Abramson, Judith Bueno de Mesquita, Human Rights Centre, University of Essex, UK, Uche Ewelukwa, University of Arkansas, School of Law, USA, Perrine Lhuiller, University of Essex, UK, Steven Malby, Stelle Malcher de Macido Vieira, Alison Mawhinney, Institute of Governance, Queen's University, Belfast, Prof. David Price, University of Northumbria, UK, Manisha Solanki, London School of Economics, UK, as well as the Specialized Commission on Family, Switzerland.

Summary of the Discussion

The meeting was opened by the High Commissioner, who, inter alia, suggested that participants may wish to particularly reflect on the role that public-private partnerships could play in societies emerging from war such as East Timor or Kosovo as well as in poverty alleviation. The important question was not whether the provision of services by public or private actors was better, but rather how we can ensure that the appropriate services are delivered to all children. Emphasizing that this day of discussion must lead to concrete results regarding the welfare of children, he also noted the shockingly low level of awareness of the majority of the public about human rights treaties such as the Committee on the Rights of the Child.

The Chairperson of the Committee, Mr. Jaap Doek subsequently pointed out that the theme of the Day of Discussion does not naturally flow from the Convention on the Rights of the Child, as it is States that are parties to the Convention. He said that nevertheless, realities on the ground are different. In this context, he emphasized that while the Committee welcomed the role of non-state actors, including NGOs and businesses, it was increasingly concerned at the growing trend of privatization, including in the provision of services addressing basic needs including health, education and water. He underlined that these developments gave rise to a lot of questions which are difficult and complex and had not yet been fully addressed. In fact, these questions had never been addressed by a human rights treaty body before.

The first part of the morning meeting was devoted to a presentation by Paul Hunt, member of Committee on Economic, Social and Cultural Rights (CESCR) and Special Rapporteur on the right to health, on the legal obligations of the State in the context of service provision for children by private actors, drawing primarily on the experience of CESCR, although noting that he spoke in a personal capacity. He pointed out that the difference between the Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child may require a different approach, but that this topic was very much a work in progress for everyone. He further noted that international human rights law was neither for nor against privatization of service provision. In particular, he highlighted General Comment 14 of CESCR, which provides the fullest examination of how the CESCR understands the nature and the scope of states' obligations under the Covenant. While focusing on the right to health, he intended to shed light on generic issues around states'

obligations in the context of service provision. Main areas highlighted included the need to clarify the normative content of the right to health. In this context, four elements had been identified, namely, availability, accessibility, acceptability and good quality. He noted that the main legal obligations arising from that normative content were the three obligations to respect, protect and fulfil. In sum, he noted that a State could not privatize its international human rights obligations, and must take reasonable measures to ensure that privatized services were consistent with international human rights – for instance, non-discriminatory and within the reach of all sectors of society. He furthermore emphasized the need to ensure accountability, and the corresponding requirement of adequate monitoring and setting of indicators and benchmarks. Finally, he noted that national policies, including privatization, should be preceded by an independent, objective and publicly available assessment of the impact on the respective right. Private-sector delivery should therefore involve explicit consideration and respect of international human rights law at all stages, including policy formulation, monitoring and accountability arrangements.

The participants then divided into two working groups for the rest of the morning meeting to address the issue of how legal obligations under the Convention of the Rights of the Child translate into practice on the ground from the perspective of actors contracting out services for children (i.e. Government, donors) as well as from the perspective of private service providers, respectively. Working group I was facilitated by John Hilary, Safe the Children UK, who also served as rapporteur. Working group II was facilitated by Agnes Callamard, Humanitarian Accountability Project. The Rapporteur was Jaap Doek. Both working groups focused on three main issues, namely partnership/programme management, accountability and governance, from the respective perspectives. Most of the issues discussed are reflected in the recommendations adopted by the Committee. It was particularly welcomed that several State parties participated actively in the discussion.

The discussion in Working Group I concentrated heavily on the business sector and the responsibility of the State in regulating and monitoring its operations. The view prevailed that the ultimate goal of service provision, and the motive driving it, i.e. for-profit or not-for-profit was of crucial importance. In this context, it was equally highlighted that public services had in many cases not fulfilled the obligation to provide services to all appropriately. The discussion was guided by a focus on two main areas, namely the scope of action applicable when the State involves the private sector in service provision and whether or not such involvement would be in the best interest of the child and if so under what circumstances, as well as the issue of regulation, what forms it should take and how accountability should be ensured, for instance through national legislation, international codes, remedies and other means as appropriate. Consideration was also given to restrictions of the ability of State parties to regulate, for instance in the context of loan agreements with international financial institutions and international cooperation in the context of WTO and GATS.

Participants pointed out that as a result of privatization, cross-subsidization, which is an essential element of public service provision would be rendered difficult, thus increasing the vulnerability of groups unable to pay for services themselves. Furthermore, service provision by non-state actors was pointed out to limit the State's ability to plan the overall provision of services in one sector. It was noted that there was a need for the State to always maintain a basic capacity in order to work in

partnership with the private sector, as well as maintaining its decision-making power and its monitoring responsibilities. The primary focus should thus be on how the State can manage the process of privatization in a way that ensures child rights and whether it can ensure that non-state actors respect the Convention in all phases of the process: programming, budgeting, delivery, contracting, monitoring, and, when necessary, remedy.

There was general agreement amongst the participants in WG I that in addition to the four general principles of the Convention (arts. 2, 3, 6 and 12), article 4 is a fundamental provision to be considered by State parties when dealing with non-state service providers.

Moreover, in the context of accountability, the need for both national and international regulatory frameworks was raised, noting that self-regulation was insufficient. In this context, the complexity of financing, which makes scrutiny more difficult was raised. Aside from the need for regulations, a system of enforcement of such regulations through, inter alia, inspectors, as well as the need for an independent monitoring body were equally highlighted. It was suggested that the CRC be incorporated into national legislation so that laws and policies could be challenged on that basis. Examples of private sector regulation were provided, again highlighting the importance of strict monitoring.

The policies of the international financial institutions and the lack of integration of human rights or child rights into their programming or in the assessment process was raised by several participants. Building on the experience of CESCR, it was suggested that the CRC be more proactive in including in the dialogue both with recipient State parties as well as donor Governments whether or not they ensure that human rights are included in assessments, negotiations and programming. It was pointed out however that even if a State party does not take into account the rights when negotiating with international financial institutions, it nevertheless remains bound by its legal obligations under the Convention and has to ensure compliance through other means.

Other issues receiving heightened attention included the question of corruption and its paralyzing impact on government and public services, including in the areas of education, health and water, as well as participation and involvement of civil society as an essential element in privatization. The importance of such involvement called for clear guidelines on participation. It was suggested that participation from the perspective of the child be further addressed.

The discussions in Working Group II focused on non-state actors themselves, for-profit and not for profit, with a strong focus on the possible existence of accountability gaps to beneficiaries and the identification of mechanisms to increase accountability, i.e. through self-regulation initiatives. While taking a similar view as working group I on the in-sufficiency of self-regulation arrangements for private service providers, the group nevertheless believed that in situations where the Government's role was weak or non-existent, due to factors such as the emergence from armed conflict and violence, disaster, or situations where international donors/actors directly subcontract non-state actors without any Government involvement, self-regulation was indispensable. Therefore, there was a clear

awareness of the need for the private sector itself to ensure that service provision is carried out in accordance with international standards, particularly the Convention.

Several participants provided examples of how their respective service provision is being regulated, for instance through various partnership arrangements. Several criteria which should form an integral part of self-regulation frameworks were developed, including the adoption of a “Code of Ethics” or similar document, which should reflect and complement the Convention and its four general principles, and should be developed collectively amongst the various stakeholders. The need for monitoring of the implementation of the Code of Ethics, if possible by independent experts, as well as the development of a system of sanctions for non-compliance was considered of utmost importance. Accordingly, indicators and benchmarks should be developed as a pre-requisite for establishing accountability. Participants furthermore felt that the institution of a system enabling various partners to challenge each other was a vital element to the successful functioning of monitoring systems. Finally, the existence of a complaints mechanism, so as to render self-regulation more accountable, including to beneficiaries, was considered essential, particularly in light of the general principles stipulating the right of the child to express his or her views freely, and have those views be given due weight in accordance with the age and maturity of the child (art. 12). The issue of accountability of UN specialized agencies as well as donors was raised in this context, however without leading to any specific recommendations.

At the same time, whenever possible, State parties were recommended to conclude very specific contracts, ensure independent monitoring of implementation, as well as transparency of the entire process when privatizing/contracting out services. Highlighted in this context was the role of corruption as well as the need to build the capacity of State parties to enter into and monitor collaboration agreements with the various non-state actors, inter alia, in light of the Convention. The concept of partnership and the importance of creating alliances and building bridges with different partners assumed primary importance throughout the discussion. Expectations on the part of non-state actors to the State party focused on the provision of a supportive and protective environment. The importance for the Committee to further elaborate on the principle of child participation as provided for by the Convention was highlighted. Recommendations also included for the CRC to develop a model statement for NGOs and other non-state actors to express their commitment to respect the rights of the child as enshrined in the Convention.

During the afternoon, the working groups met again to further discuss the relevant issues and develop several theses and practical proposals which were presented and opened for discussion in plenary in the afternoon. Regarding WGI, emphasis was placed on the continuing responsibility of State parties for implementation of the Convention, including policy choices regarding the presence and increased involvement of private service providers, as well as the need for participatory assessments. A second point referred to the need to include children’s rights in negotiations with international financial institutions. Finally, the issue of accountability and the in-sufficiency of self-regulation was considered of primary importance. WG II presented the outcomes of its work, and while agreeing with the assessment regarding the insufficiency of self-regulation emphasized the need for private actors themselves to take measures to make themselves more accountable. The

criteria which should form an integral part of self-regulation frameworks were presented accordingly. Its conclusion as to its expectations from State parties, i.e. with regard to providing a supportive and protective environment were further elaborated. The above topics were discussed at the ensuing plenary discussion after a brief presentation by the World Bank representative about the World Development Report 2004 the topic of which will be “Making Services Work for Poor People”.

Based on the findings of the working groups and the plenary discussion, **the Committee adopted the following recommendations:**

Legal obligations

1. The Committee recognizes that State parties to the Convention on the Rights of the Child have the primary responsibility for compliance with its provisions with regard to all persons within its jurisdiction. They have a legal obligation to respect and ensure the rights of children as stipulated in the Convention, which includes the obligation to ensure that non-state service providers operate in accordance with its provisions, thus creating indirect obligations on such actors. The State continues to be bound by its obligations under the treaty, even when the provision of services is delegated to non-state actors.
2. Under article 4 of the Convention, State parties have an obligation to undertake all appropriate legislative, administrative and other measures for the implementation of the rights in the Convention and to devote the maximum amount of available resources to the realization of economic, social and cultural rights of the child. The obligations under article 4 remain even when States rely on non-state service providers.
3. The Committee would like to re-emphasize that in accordance with paragraph 3 of the Convention on the Rights of the Child, *“in all actions concerning children, whether undertaken by **public or private** social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”* (Art. 3 (1)) and that *“state parties shall ensure that institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision”* (Art.3 (3)). It thereby establishes the obligation of the State party to set standards in conformity with the Convention and ensure compliance by appropriate monitoring of institutions, services and facilities including of a private nature.
4. Along the same lines, the general principle of non-discrimination as enshrined in article 2, as well as the right to life and to maximum survival and development (art.6), assume particular importance in the context of the current debate, with the State party equally being obliged to create standards consistent and in conformity with the Convention. For instance, privatisation measures may have a particular impact on the right to health (art 24), and the right to education (arts.28 and 29), and States parties have the obligation to ensure that privatisation does not threaten accessibility to services on the basis of criteria prohibited, especially under the

principle of non-discrimination. Such obligations of the State party are also applicable in the context of article 4.

5. Furthermore, article 25 of the Convention on the Rights of the Child specifically calls for a periodic review of the treatment and the circumstances of children who have been placed by the authorities for the purpose of care, protection or treatment of their health, including private facilities, thus establishing obligations for the State party for the setting of standards and monitoring vis-à-vis the private sector.
6. The Committee recognizes that responsibilities to respect and ensure the rights of children extend beyond the State, including individuals, parents, legal guardians, and other non-state actors. In this context, the Committee refers to General Comment 14 of the Committee on Economic, Social and Cultural Rights on the right to the highest attainable standard of health, paragraph 42 which states that *“While only States are parties to the Covenant and are thus ultimately accountable for compliance with it, all members of society – individuals, including health professionals, families, local communities, intergovernmental and non-governmental organizations, civil society organizations, as well as the private business sector – have responsibilities regarding the realization of the right to health. State parties should therefore provide an environment which facilitates the discharge of these responsibilities.”*
7. In the context of its reporting obligations, State parties should identify the amount and proportion of the State budget spent on children through public and private institutions or organizations in order to evaluate the impact and effect of the expenditures and also, in view of the costs, the accessibility, and the quality and effectiveness of the services for children in the different sectors, and include such information in its initial and periodic reports.

Recommendations to State parties

8. The Committee recommends that State parties take appropriate legislative measures and establish a permanent monitoring mechanism aimed at ensuring that non-state service providers respect the relevant principles and provisions of the Convention, especially article 4. In particular, all service providers must incorporate and apply to their programmes and services all relevant provisions of the Convention, as well as each of the four general principles set out in the provisions concerning non-discrimination (art.2), the best interests of the child (art. 3), the right to life survival and development (art. 6), and the right of the child to express his or her views freely, and have those views be given due weight in accordance with the age and maturity of the child (art. 12). Particular importance should also be attributed to the principle of child participation as stipulated in articles 12 to 17 with regard to service provision. The Committee recommends that State parties regularly evaluate services provided by non-state service providers – irrespective of whether the service has been specifically contracted by the State - in terms of availability, accessibility, acceptability and quality and overall compliance with the Convention and condition funding on, inter alia, compliance with the Convention. *(Note: The Committee defines accessibility in the same manner as the Committee on Economic, Social and Cultural Rights in its*

General Comments 14, meaning non-discrimination, physical accessibility, economic accessibility and information accessibility).

9. The Committee further encourages all Governments to ensure that for all service sectors, beneficiaries, in particular children, have access to an independent monitoring body, and where appropriate judicial recourse, that can ensure the implementation of their rights and provide them with effective remedies in case of violations.
10. Furthermore, the Committee recommends that State parties provide a supportive and protective environment which enables non-state actors – whether non-profit or for-profit - providing services to children to do so in full compliance with the Convention.
11. The Committee recommends that State parties, when considering contracting out services to a non-state provider – either for-profit or non-profit, or international or local – undertake a comprehensive and transparent assessment of the political, financial and economic implications and the possible limitation on the rights of beneficiaries in general, and children in particular. In particular, such assessments should determine the manner in which the availability, accessibility, acceptability and quality of the services will be affected. Similar assessments should also be carried out for services provided by non-state service providers that may not have been specifically contracted by State parties.
12. In order to ensure that assessments adequately address both financial and non-financial issues, the Committee recommends that such assessments include the Ministries of Health, Education, Justice, Social Welfare, Finance and other relevant ministries as well as any mechanism for the coordination of policy on children, an Ombudsperson or national human rights institution, non-governmental organizations, corporations and other relevant civil society actors. Furthermore, the Committee recommends that State parties also facilitate the participation of the local communities using the services in the assessment process, with a particular focus on children and families and vulnerable groups.
13. The Committee further recommends that States undertake assessments of the potential impact of global trade policies concerning the liberalization of trade in services on the enjoyment of human rights, including children's rights. In particular, the Committee recommends that these assessments should be undertaken prior to making commitments to liberalize services within the context of WTO or regional trade agreements. Further, if commitments to liberalize trade in services are made, the effects of those commitments should be monitored on the enjoyment of the rights of children and the results of monitoring should be included in States reports to the Committee.
14. The Committee recommends that State parties when privatizing or contracting out services to non-state actors enter into detailed agreements with the service providers, ensure independent monitoring of implementation as well as transparency of the entire process, so as to contribute to the process of accountability. State parties are encouraged to seek technical assistance, as

required, in order to build the capacity of the State to enter into and monitor implementation of the relevant collaboration and partnership agreements.

15. The Committee also reminds State parties of its previous recommendations from the day of the commemorative meeting of the 10th anniversary of the Convention in which the Committee recommended that: “in any decentralization or privatization process, the Government retains clear responsibility and capacity for ensuring respect of its obligations under the Convention”.

Recommendations to non-state service providers

16. The Committee calls on all non-state service providers to respect the principles and provisions of the Convention on the Rights of the Child. It further recommends that all non-state service providers take into account the provisions of the Convention on the Rights of the Child when conceptualizing, implementing and evaluating their programmes, including when sub-contracting other non-state service providers, in particular the four general principles set out in the provisions concerning non-discrimination (art.2), the best interests of the child (art. 3), the right to life survival and development (art. 6), and the right of the child to express his or her views freely, and have those views be given due weight in accordance with the age and maturity of the child (art. 12).
17. To that end, the Committee encourages non-state service providers to ensure that service provision is carried out in accordance with international standards, especially the Convention. It further encourages non-state service providers to develop self-regulation mechanisms which would include a system of checks and balances. To that end, the Committee recommends that when developing self-regulation mechanisms, the following criteria be included in the process:
 - i. The adoption of a Code of Ethics, or similar document, which should reflect the Convention and should be developed collectively amongst the various stakeholders and in which the four general principles of the Convention should figure prominently;
 - ii. The establishment of a system for monitoring the implementation of such code of ethics, if possible by independent experts, as well as the development of a system of transparent reporting;
 - iii. The development of indicators/benchmarks as a pre-requisite for measuring progress and establishing accountability;
 - iv. The inclusion of a system enabling various partners to challenge each other regarding their respective performance in implementing the Code;
 - v. The development of an effective complaints mechanism, to render self-regulation more accountable, including to beneficiaries, particularly in light of the general principle stipulating the right of the child to express his or her views freely, and have those views be given due weight in accordance with the age and maturity of the child (art. 12).

18. Furthermore, the Committee encourages non-state service providers, particularly for-profit service providers, as well as the media, to engage in a continuing process of dialogue and consultation with the communities they serve and create alliances and partnerships with different stakeholders and beneficiaries in order to enhance transparency and include community groups in decision-making processes and where appropriate in service provision itself. Service providers should collaborate with communities, particularly in remote areas or with communities composed of minority groups, in order to ensure that services are provided in compliance with the Convention, and in particular in a manner that is culturally appropriate and in which availability, accessibility and quality are guaranteed for all.

General recommendations

19. The Committee recommends that State parties, intergovernmental organizations, civil society organizations as well as all types of non-state service providers continue to review experiences in relation to service provision, consider best practices, and explore the impact of different types of providers in specific service sectors on children's rights.
20. The Committee encourages all international organizations or donors providing services or providing financial support to service providers, particularly in complex emergencies or politically unstable situations, to act in compliance with the provisions of the Convention and ensure compliance by their partners delivering services. In particular, organizations and donors providing financial support to service deliverers should regularly evaluate their services in terms of availability, accessibility, adaptability and quality and ensure that all beneficiaries, in particular children and their families, have access to remedies.
21. The Committee recommends that policies and programmes for service provision, undertaken as part of economic or fiscal reform initiated at the national level or by international financial institutions, do not in any way compromise the possibility of public or non-state service provision. It further encourages States parties and the IMF, the World Bank and regional financial institutions or banks to take carefully into account the rights of children, as enshrined in the Convention and other relevant international instruments when negotiating loans or programmes.
22. Emphasizing the importance of good-governance and inter-sectoral transparency, the Committee also recognizes the risk of corruption that is also inherent in the privatization process and recommends that State parties effectively address the risk of corruption when contracting out services to non-state providers. In this regard, the Committee also recommends that State parties take measures to prevent the establishment of monopolies by non-state service providers.
23. The Committee recommends that, in order to ensure economic accessibility, policies on services, in particular health care services and education, be formulated so as to reduce the financial burden on low income groups, particularly the poor, for example by reducing and eliminating user fees for those groups not being able to afford them, in particular the poor. This can be done either by

introducing alternative pre-payment mechanisms, such as national insurance or general taxation, or by introducing non-discretionary, equitable and non-stigmatizing interventions to reduce the user fees for such groups.

24. The Committee welcomes the work of special rapporteurs of the Commission on Human Rights and treaty bodies in exploring the impact of the private sector service provision on human rights and encourages all international human rights mechanisms and procedures, in particular other treaty bodies and the Special Rapporteurs on Housing, Health and Education respectively, to explore further these impacts.
25. It has further been recommended that the Committee on the Rights of the Child elaborate a model statement for non-state actors so as to encourage and facilitate their expressing commitment to respect the rights of the child as enshrined in the Convention, irrespective of their relationship with the State and whether for profit or not-for profit.

List of submissions received (original language(s) only)

1. OHCHR, “The issue of private service provision in the UN Human Rights System”
2. Luigi Citarella, Member of the Committee on the Rights of the Child, “International responsibility and privatization”
3. Paul Hunt, Rapporteur of the UN Committee on Economic, Social and Cultural Rights; UN Special Rapporteur on the Right to Health; Director of the Human Rights Centre, University of Essex, “The international human rights treaty obligations of State parties in the context of service provision”.
4. World Vision International, “Preventing the privatisation of responsibility: the need to build regulatory linkages between State commitments and providers of services”
5. Save the Children (Sweden), “Social service provision through civil society organizations”
6. Alison Mawhinney (Queen’s University, Belfast), “Harmonising Governance and Human Rights”
7. ARCH, “Implications for the Rights of the Child of Private Sector Involvement in Education”
8. EDAL, “Education Business Partnerships”
9. Partners New Zealand, “Growing the Future”
10. Bruce Abramson, “Child-rearing vs. Child care”

11. SOS Kinderdorf International, “Private child care services working with the state on quality standards and on implementing the rights of the child”
12. University College London, “Public private partnership in the UK – the private finance initiative, Health Policy and Health Services Research Unit”
13. Children’s Rights Alliance for England (CRAE), “The Private Sector as Service Provider and its Role in Implementing Child Rights”
14. Save the Children (UK), “The Private Sector as Service Provider and its Role in Implementing Child Rights”
15. Save the Children (South Asia), “Private Sector Involvement in Education: A perspective from Nepal and Pakistan”
16. WaterAid (UK), “Water and sanitation services”
17. International Association for the Child’s Right to Play, “The private sector as service provider and its role in implementing children’s rights, applied to the right to play”
18. Bruce Abramson, “Who has legal obligations under the CRC?”
19. UNICEF, “The private sector as service provider and its role in implementing child rights”
20. World Organisation Against Torture (OMCT), “Privatisation of basic services, public order and law enforcement within the context of the rights of the child”
21. Theophilus Kofi Gokah (Cardiff University), “ Private sector as service provider and its role in implementing child rights”

Letters or statements submitted directly to the Committee, or circulated at the discussion day (not available on the Internet):

22. Slovenia
23. Pakistan
24. The Howard League for Penal Reform, UK
25. Asociación Nacional de Defensa de la Adopción y el Acogimiento de Menores (DAGA), Spain
26. ONG Tomorrow Children, Benin
27. First Foundation Project, New Zealand
28. IBFAN