

UN Committee on the Rights of Child

Day of Discussion on

**THE PRIVATE SECTOR AS SERVICE PROVIDER  
AND ITS ROLE IN IMPLEMENTING CHILD RIGHTS**

Friday, 20 September 2002  
Office of the High Commissioner for Human Rights  
Palais Wilson, Geneva

Submission by

**The Office of the High Commissioner for Human Rights (OHCHR),  
Geneva**

*OHCHR submission to the Committee on the Rights of the Child's discussion day on "The private sector as service provider and its role in implementing child rights." Geneva, 20 September 2002*

### **The issue of private service provision in the UN human rights system**

In numerous fora, the UN system has recognized the significant impact of private actors – both businesses and civil society organizations – on the enjoyment of human rights. The growing interest in the impact of private actors in the provision of services such as health, education and other traditionally public services is relatively recent. This interest reflects both the rising trend towards privatizing public services in many industrialized countries as well as the recognition of the significant role of private sector in filling the gap in public services in many developing countries. In Lebanon, two-thirds of children go to private schools and 95 per cent of hospital care is provided by the private sector.<sup>1</sup> In Mauritania, 80% of secondary school enrollments are at private schools,<sup>2</sup> and in Uttar Pradesh, India, one-quarter of all children are enrolled in private unaided schools.<sup>3</sup> At least a third of Portugal's nursery and pre-primary facilities are provided by the private sector,<sup>4</sup> whilst 80% of Chile's child protection budget is allocated to private actors.<sup>5</sup> And in the US, 9.1% of federal prisoners are held at privately managed detention facilities.<sup>6</sup>

Until now, the primary focus of the UN human rights system has been on the impact of private actors in the provision of detention, health, education and water services. Presumably this list will grow as the liberalization of trade in services expands in future.<sup>7</sup> For now, this paper is intended to basic reference document outlining when and where the UN human rights system has addressed the issue of service provision by private actors.<sup>8</sup>

#### Detention services

One of the first UN human rights organs to look into the provision of a service by private actors was the Working Group on Detention (now called the Working Group on Administration of Justice) of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities (now the Sub-Commission on the Promotion and Protection of Human Rights). Following an initial debate on the issue in 1989, the Sub-Commission prepared a proposal and then an outline

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<sup>1</sup> CRC/C/SR.751

<sup>2</sup> Sosale, S., *Trends in Private Sector Development in World Bank Education Projects*, World Bank, 2000

<sup>3</sup> Watkins, K., *The Oxfam Education Report*, Oxfam GB, 2001

<sup>4</sup> CRC/C/SR.732

<sup>5</sup> CRC/C/SR.763

<sup>6</sup> US Office of the Inspector General, "The Department of Justice's Reliance on Private Contractors for Prison Services", Report No. 01-16, July 31, 2001

<sup>7</sup> Under the GATS agreement, investigation and security services are considered a potential area for trade liberalization. The Commission on Human Rights has begun looking into the issue of increasing activity by private security companies in the military field and its impact on human rights. See for instance, the reports of the meetings of independent experts on "the traditional and new forms of mercenary activities as a means of violating human rights" in 2001 (E/CN.4/2001/18) and 2002 (forthcoming).

<sup>8</sup> More information on legal obligations will be provided in the opening plenary session of the discussion day. For a preliminary discussion of the issue, please see the outline of the day at <http://www.unhchr.ch/html/menu2/6/crcdod4.htm>

of a study on the privatization of prisons.<sup>9</sup> Unfortunately, the Commission on Human Rights decided not to authorize the Sub-Commission to carry out a full study. Nevertheless, the outline, by Claire Palley, provides interesting historical background on the movement towards privatizing detention services, which has arisen primarily in North America, Australia, France and the UK, and also delineates the arguments for and against the privatization of prisons.

According to Palley's outline, one of the outcomes of the Sub-Commission's study should have been to develop a set of minimum rules to govern State practices in contracting out prison services, and she provides a comprehensive list of issues that should be addressed.<sup>10</sup> Although this set of minimum rules on privatization was never developed, various treaty bodies have increasingly worked to enforce existing minimum rules on the deprivation of liberty in cases when States have subcontracted out detention services to private actors. For instance, in the examination of New Zealand's report to the Human Rights Committee, Justice Baghwati, the Chairperson expressed concerns that the monitoring mechanism set up by New Zealand was not sufficient to ensure accountability during the transfer of prison management to private actors, which risked increasing human rights violations.<sup>11</sup> In another case, the Committee Against Torture expressed its appreciation at the Kingdom of the Netherlands' assurances that all of its legal obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment would continue to be enforced despite the fact that prison services in the Netherlands Antilles were being handed over to the private sector.<sup>12</sup>

### Health and Education Services

It is the treaty bodies and Special Rapporteurs that have been the most active in assessing the impact of private service providers on the right to education and to the highest attainable standard of health. Several Committees, as well as the Special Rapporteur on Violence against Women, have shown concern that the privatization of formerly public health and education services have had a negative impact on vulnerable populations.<sup>13</sup> Repeatedly, treaty bodies have asked States to monitor and report back on how they have ensured that vulnerable groups still have full access to quality health and education services following privatization.<sup>14</sup> Yet, at the same time, there has been recognition that private sector actors – both profit and non-profit – can play a constructive role in providing services where the public sector has been unable to do so. For instance, the Committee on the Rights of the Child recommended to Mozambique that in the

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<sup>9</sup> E/CN.4/Sub.2/1991/56 and E/CN.4/Sub.2/1993/21

<sup>10</sup> See E/CN.4/Sub.2/1993/21, paras. 76-82

<sup>11</sup> UN Press Release, "Human Rights Committee concludes examination of New Zealand's report", 75<sup>th</sup> session, 10 July 2002

<sup>12</sup> See A/55/44, paras.181-188

<sup>13</sup> See the Special Rapporteur on violence against women, its causes and consequences report on "Economic and social policy and its impact on violence against women" to the 56<sup>th</sup> Commission on Human Rights, E/CN.4/2000/68/Add.5

For concerns regarding impact of privatization, see the Committee on the Elimination of Discrimination against Women's recommendations to Mongolia (CEDAW/C/2001/I/ADD.7), or Committee on Economic, Social and Cultural Rights to the Ukraine (E/C.12/1/Add.65), or the Committee on the Rights of the Child's recommendations to Finland (CRC/C/15/Add.53) and Croatia (CRC/C/15/Add.52).

<sup>14</sup> See the Committee on Economic, Social and Cultural Rights recommendations to Algeria (E/C.12/1/Add.71), and Venezuela (E/C.12/1/Add.56), or the Committee on the Elimination of Discrimination against Women's recommendations to Spain (A/54/38, paras.236-277).

field of education, the Government “promote coordination between the public and private sectors to ensure a sustainable supply of textbooks, basic learning materials development and training activities”.<sup>15</sup>

These examples illustrate that the primary issue of concern to treaty bodies and Special Rapporteurs has not been the question of who provides services, but rather whether services – irrespective of who provides them - are provided in a manner that ensures the end users right to education or the highest attainable standard of health. For instance, the Committee on Elimination of Discrimination against Women specifically asks State parties to report “on how public and private health-care providers meet their duties to respect women's rights to have access to health care.”<sup>16</sup> In assessing this, Committees and Special Rapporteurs focus on the extent to which services are available, accessible, acceptable and of an appropriate quality for all parts of society.<sup>17</sup> Thus, the Committee on Economic, Social and Cultural Rights praised Bulgaria’s policy to ensure that medicine remained free of charge for disadvantaged groups, despite having privatized primary health care services.<sup>18</sup> In this regard, it is also interesting to note that the Special Rapporteur on Education has never specifically looked at the issue of private service provision, but has, however, done extensive work on the impact of fees, when levied by either public or private institutions, on the right to education.<sup>19</sup>

#### Water services

Currently, only the Special Rapporteur on the Right to Adequate Housing has directly addressed the issue of private water service provision. In his report to the 58<sup>th</sup> Commission on Human Rights in 2002, the Special Rapporteur examined the potential risks of privatization of water services when cost recovery or profit-making are the primary goal.<sup>20</sup> The Sub-Commission has requested a study on the relationship between the enjoyment of economic, social and cultural rights, the right to development and the question of access to drinking water and sanitation, which is expected to include the issue of privatization of water services. The study, which is expected to be completed in 2003, is a result of a working paper on the right of everyone to access to drinking water supply and sanitation services.<sup>21</sup> Similarly, the Committee on Economic, Social and Cultural Rights is working on a General Comment on the right to water, which is likely to include issues related to private service providers.

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<sup>15</sup> CRC/C/15/Add.172

<sup>16</sup> CEDAW General Comment no. 24 on Women and Health

<sup>17</sup> The Committee on Economic, Social and Cultural Rights’ outlines the concept of available, accessible, acceptable and adaptable in its General Comment no. 13 on the right to education, and in the General Comment no. 14 on the right to health, the Committee focuses on availability, accessibility, acceptability and quality. In both General Comments the Committee is clear that these apply to all service providers (see also General Comment no. 5 on disability, para. 12 in this regard).

<sup>18</sup> E/C.12/1/ADD.37

<sup>19</sup> E/CN.4/2002/60, E/CN.4/2001/52

See also the Special Rapporteur’s report on her mission to the United States of America in 2001, E/CN.4/2002/60/Add.1

<sup>20</sup> E/CN.4/2002/59

<sup>21</sup> E/CN.4/SUB.2/1998/7 and see also the supplement E/CN.4/SUB.2/2000/16

In conclusion, it is apparent that there is still much more research to be done on the impact of private service providers and their role in implementing human rights. Only a few service areas have been explored, although this is expected to broaden as more members of the World Trade Organization move to liberalize trade in services. In this regard, the Sub-Commission has requested the Office of the High Commissioner for Human Rights to submit a study on the human rights implications of the liberalization of trade in services to its 54<sup>th</sup> session in July-August 2002.<sup>22</sup> Moreover, aside from the Special Rapporteur on Violence against Women, there has been little investigation of the impact of private service providers on specific groups in society. A recent workshop of the Sub-Commission's Working Group on Indigenous Populations looked at the question of whether private actors exploiting natural resources on indigenous land have a responsibility to establish infrastructure and services to those communities, but did not address the impact of these service providers.<sup>23</sup> Therefore, the outcome of the Committee on the Rights of the Child's day of discussion will provide an important contribution to the continuing debate on private service providers, and hopefully be a catalyst for further discussion within various service sectors and different communities.

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<sup>22</sup> E/CN.4/SUB.2/RES/2001/4 and E/CN.4/Sub.2/2002/9

<sup>23</sup> E/CN.4/Sub.2/AC.4/2002/3