Privatising human rights – the impact of globalisation on adequate housing, water and sanitation

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While the debate continues at the international level on whether or not globalisation can bring benefits to the world’s poor, the fact remains that the deepening inequalities of income and opportunity between and within nations has led to an increase in the number of people without adequate and secure housing. The human rights of people and communities to housing, water and sanitation—guaranteed under international law and commitments of development targets made at global summits including the Millennium Summit and the World Summit on Sustainable Development—continue to erode as the process of privatisation deepens and accelerates. It is time to rethink the current global economic and social policies and to recommit ourselves to the human rights principles and standards that offer the only real paradigm for improving the lives of millions of the poor.

It is estimated that 600 million urban dwellers and over a billion rural persons now live in overcrowded and poor quality housing without adequate water, sanitation, drainage or garbage collection. More than 1.2 billion people still have no access to safe drinking water, and 2.4 billion do not have adequate sanitation services. This grave situation puts lives and health continually at risk. It also threatens a range of human rights, including the right to adequate housing. Globalisation policies have accelerated the trends towards privatising human rights, such as water, often leading to the violation of the rights of the poor.

While the debate continues at the international level on whether or not globalisation can bring benefits to the world’s poor, the fact remains that the deepening inequalities of income and opportunity between and within nations has led to an increase in the number of people without adequate and secure housing. The human rights of people and communities to housing, water and sanitation—guaranteed under international law and commitments of development targets made at global summits including the Millennium Summit and the World Summit on Sustainable Development—continue to erode as the process of privatisation deepens and accelerates. It is time to rethink the current global economic and social policies and to recommit ourselves to the human rights principles and standards that offer the only real paradigm for improving the lives of millions of the poor.

UN human rights bodies have been increasingly concerned with the deleterious impacts of privatisation on the realisation of human rights.¹ Most recently, in September 2002, the Committee on the Rights of the Child had a day of general discussion on the role of private sector service providers, and in November 2002, the Committee on Economic, Social and Cultural Rights (CESCR) adopted General Comment No. 15 on the right to water.² This report reviews some of these recent developments as well as the preliminary results of research undertaken for my work as UN Special Rapporteur on Adequate Housing.³

1 See also the work of the UN Special Rapporteurs on «The Right to Food» (Mr. Jean Zeigler) and «The Right to Drinking Water and Sanitation» (Mr. El Hadji Guisse) at www.unhchr.ch.

The right to an adequate and secure home

Every woman, man, youth and child has the human right to a secure home and community in which to live in peace and dignity. This human right has received global recognition and is firmly established in a number of international human rights instruments,¹ most notably in the International Covenant on Economic, Social and Cultural Rights. By ratifying these treaties and instruments, States have voluntarily accepted the obligations to progressively realise the right to food, health, adequate housing and a range of other rights and services, including water and sanitation, which are essential for the well being of their citizens.

Globalisation and the process of increasing economic integration have limited the capacity of States to provide adequate resources for fulfilling the economic, social and cultural rights of their citizens, including housing and essential social services. Several macroeconomic factors influence the availability of resources for social spending, including:

• Small or even negative returns from trade liberalisation by developing countries, particularly Least Developed Countries;
• Financial volatility following deregulation of capital flows coupled with interest rate hikes which affect access to credit and mortgages;
• Increased land speculation as a result of more competition for prime locations in rapidly globalising cities, which often forces out low-income residents to less desirable locations with poor service availability;
• Heavy burdens of debt servicing;
• Fiscal constraints and austerity measures imposed by the IMF and the World Bank which are primarily designed to reduce public spending, and invariably lead to reductions in financial allocations to social sectors; and
• The process of public sector reform, particularly through decentralisation and privatisation.

Increased competition among cities to attract capital and businesses for generating employment and sources of tax revenues has led to widening inequalities between cities, with consequent discrepancies in the level of essential services provided to citizens. In the urban housing sector, reliance on market mechanisms has tended to result in neglect of the poor. The continuing deterioration of conditions faced by the majority of the poor around the world has caused tremendous concern that unfettered globalisation cannot bring about the fulfilment of economic, social and cultural rights, including the right to adequate housing.

4 See www.unhchr.ch/housing/i2echou.htm.
Notwithstanding the constraints and difficulties placed upon them, central governments still have an important role to play in reconciling macroeconomic policies with social objectives, keeping in mind the primacy of their human rights obligations. Governments have the responsibility to make targeted interventions in order to ensure universal access to public services, including water and sanitation, on a fair and equitable basis; this is fundamental for the fulfilment of the right to adequate housing.

Privatisation of water and sanitation

Water is essential to human life and to all life on Earth. The freshwater resources are part of the global commons, a collective resource, not a private commodity to be bought, sold or traded for profit. Access to drinking water is one of the key aims of the UN’S Millennium Development Goals (MDGs) to be achieved by 2015, and is directly linked to the achievement of other MDGs related to poverty, food, health and housing.

Sanitation has been historically accorded less attention, despite even lower rates of access and the great need for more support to this area. Some 2.4 billion people worldwide are estimated to lack adequate access to sanitation, more than twice the number of persons who lack access to safe drinking water. Sanitation is an important component of adequate housing, and is related to other rights including the right to life, health, food, and even to security and education. A welcome development is the recent establishment of a new target, agreed at the World Summit on Sustainable Development, to halve the number of people without access to sanitation services by 2015.

Privatisation of water and sanitation services warrants close attention when assessing the impact of globalisation on the right to adequate housing. Without access to potable water the right to adequate housing loses its meaning. A clear State obligation contained in General Comment No. 15 is the responsibility to ensure that no household should be denied the right to water on the grounds of their housing or land status and that «deprived urban areas, including informal human settlements, and homeless persons, should have access to properly maintained water facilities». The CESCR has also continually elaborated on the matter of the indivisibility of human rights and the inter-relatedness of the right to adequate housing with other economic, social and cultural rights.

Striking the balance between the promised gains of privatisation in terms of economic efficiency and reduced cost of services and its social costs is a very complex and delicate matter for many governments and international policy institutions. In fact, corporate globalisation, and its clear expression of privatisation of services, is one of the greatest threats to universal access to clean drinking water and sanitation. By turning a social good and scarce resource into an economic commodity, the world’s economic and policy planners claim that existing water resources can be managed and consumed efficiently in accordance with competitive market principles. However this is far from the truth, and there are many important reasons for opposing privatisation.

From a human rights perspective, three primary lessons can be drawn from experience with the privatisation of water services:

Private businesses put too much emphasis on profits and cost recovery

Privatisation often leads to rate increases. Cash-strapped and indebted governments are pressured through IMF and World Bank policies to raise consumer fees for water in order to attract private sector investment in the water services. In many cases, companies get profit guarantees written into consumer fees for water in order to attract private sector investment in the water services. In many cases, companies get profit guarantees written into their contracts. Another concern is that the World Bank and regional development banks often advocate for «unbundling» of services, which separates the profitable and unprofitable areas of water and sanitation services.

The unprofitable sectors such as infrastructure, sewage treatment, providing water to slum settlements and rural water service, remain in the public sector. Unbundling the water services sector and making subsidies explicit is considered part of the groundwork necessary to provide private water companies with attractive investment packages.

Privatisation often leads to job losses. Massive layoffs are common as companies try to minimise costs and maximise profits. Often, services and water quality are put at risk due to understaffing; thus lay-offs have a double negative impact as they hurt consumers as well as the workers involved.

Services to vulnerable groups are inadequate and of poor quality

Privatisation often results in reduced access by the poor to basic social services. In developing countries, finding safe and affordable water is a daily struggle for the majority poor population. In many cities and towns in developing countries, between 50% and 70% of the population live in slums and squatter settlements without adequate housing or basic services. Many of the poor end up paying up to twenty times more than the rich for water. Higher prices for water mean the poor have to use less or go without. Risks to service delivery stemming from privatisation—interruptions in service or deterioration in the quality of water—pose serious health hazards. These can occur in any number of scenarios related to privatisation, for example in cases of projects failing (Tucuman, Argentina), of contracts becoming unworkable (Dolphin Coast, South Africa), of the company failing (Azurix, Buenos Aires province, Argentina), of socially unsustainable price increases (Cochabamba, Bolivia), and of corruption and distorted accounting (Grenoble, France). The increase in water prices has a particularly adverse impact on the poor due to their inability to access clean water and can pose serious health risks.

Private operators are not accountable to the public

Privatisation can reduce accountability and local control. In many cases governments make long-term deals with the water companies, granting them exclusive distribution rights, thus sanctioning monopolies. Multinational corporations are accountable to their shareholders, not to the citizens in the countries where they operate. There have been cases of corruption in the privatisation process, where the system of checks and balances is weak. Contract workings and details are usually done behind closed doors and this encourages bribery, while the common citizens, who are directly affected, are kept in the dark.

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5 In General Comment No. 15, the CESCR categorically states that: «The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realisation of other human rights… Water should be treated as a social and cultural good, and not primarily as an economic good».

6 For example, if residents use less water than predicted, companies can raise rates so profits do not fall below a predetermined level.

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9 For example, in South Africa, water charges imposed in 1999 forced some poor people in Kwagulu-Natal to rely on polluted river supplies for their water. Public health officials trace a 2001 cholera outbreak, which killed dozens, to the water pricing policy. General Comment No. 15 states that «violations of the obligation to respect follow from the State party’s interference with the right to water. This includes… discriminatory or unforfetable increases in the price of water.»

10 The World Bank promotes the French system of water privatisation through concessions. However, this system was discredited by an official French audit report in 1997. According to the report, the system suffers from corruption, lack of transparency and lack of competitiveness. The French newspaper Le Monde warned that the French system «left elected councillors on their own, without support, to deal with conglomerates wielding immense political, economic and financial power». David Hall, PSRIU – World Bank – Politburo of Water Privatisation, www.bicusa.org/doc/ohtm/psriu_water.htm.

11 Allegations of corruption have occurred in many regions of the world. For example, the French multinationals Suez-Lyonnaise and Vivendi were convicted in France of paying bribes to obtain water concessions. Yet the WB has continued to support these companies. In South Africa, protesters claimed that Suez-Lyonnaise was taking excessive profits, grossly overcharging for its services, and leaving the municipality unable to pay its workers a living wage.
There is a need to strengthen the participatory monitoring mechanism, as it is extremely difficult to reverse privatisation once implemented. Multilateral trade agreements provide corporations with powerful legal recourse. Legal claims for compensation by private water companies make terminating contracts prohibitively expensive. Ensuring that local needs are addressed through wider community participation is an essential factor in promoting broader accountability. In the Philippines, where cost recovery is well above the Asian average, water districts have an organisational structure that provides representation for users. In the state of Rajasthan, India, a civil society organisation, Tarun Bharat Sangh, has shown remarkable results by working with villagers to regenerate groundwater through environmental restoration.12

Privatisation also undermines water quality and ecological sustainability. Water companies work to weaken water quality regulations and environmental standards when they are perceived as increasing the costs of doing business. Also, encouraging consumption is a typical strategy of any private corporation driven by the profit motive. In 1996, a World Bank team led by John Briscoe—now in charge of water policy—criticised leakage levels of between 1% and 5% in Germany's public sector system for being too low. According to the report, water should be allowed to leak away if the cost of stopping the leak is greater than the price for which the water could be sold at a profit. Briscoe's team not only thought that the private water companies would cause more water waste—they encouraged it.13

Aware of the bleak water predictions, corporations are in a rush to obtain access to water, which they can sell at huge profits. Mass extraction of water from its natural sources can result in ecological imbalances such as aquifer depletion and groundwater contamination.14 Once aquifers are depleted or contaminated, they are almost impossible to restore.

In light of these concerns, it is important to note that some of the best practices found in water and sanitation provision in developed and developing countries are publicly operated. The vast majority of people in North America, Europe and Japan receive water and sanitation services from publicly owned and operated facilities. These often compare favourably in terms of efficiency with privately operated facilities. Some examples of reforms of public sector water undertakings can be found in São Paulo, Brazil; Debrecen, Hungary; Lilongwe, Malawi and Tegucigalpa, Honduras.15 Indeed, a multi-country comparison of public service delivery in developing countries found that «purely public water supply systems were among the best performing services overall».16

**Women and inadequate housing, water and sanitation**

The consequences of having inadequate or no access to water are devastating—especially for women and children.17 When water is not readily available it is particularly the women and children who have to spend a large amount of time fetching water back to their houses. This has detrimental impact on their health, security and education. It has been found that where there are no latrines girls are more likely to go to school than boys, but girls (and women) who are more likely to be kept at home to look after family members. This leads to reduced school attendance and poorer educational performance. Studies have also found that the access to sewage disposal often depends on the sex of the head of household; for example in Nairobi, Kenya, about 9.2% of female-headed households used the bush for fecal disposal, whereas in the male-headed households the rate dropped to 2.2%.22

In many countries, women and men do not enjoy equal access to basic resources and services. Female-headed households have less access than males, and if the services are privatised then the problem increases. Greater attention needs to be paid to the discrimination women face and to policies and measures adopted to alleviate it. There is also a need for laws and policies that regulate or define the habitability of housing to take into consideration the special needs of women.23

**International cooperation**

The Millennium Declaration adopted by the General Assembly recognised «solidarity» and «shared responsibilities» as fundamental values essential to international relations in the twenty-first century.24 Such recognition is necessary for the essential task of evolving strategies for distributive justice, including land reform and increases in social spending on areas critical to the realisation of the right to adequate housing, such as access to potable water and sanitation. Such a reallocation or redistribution needs to be balanced with targeted support from international cooperation, including «joint» and «separate» action by States, as called for by the general obligations to international human rights instruments.

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12 E/CN.4/2002/59 (see footnote 3).
13 David Hall, op. cit.
17 An estimated 2.2 million people in developing countries, most of them children, die every year from diseases associated with lack of access to safe drinking water, inadequate sanitation and poor hygiene. See www.unicef.org
18 According to the Water Supply and Sanitation Collaborative Council, the average distance that women in Africa and Asia walk to collect water is 6 km. The weight of water that women in Africa and Asia carry on their heads is about 20 kg. From «WASH Facts and Figures», Information sheet.
21 Also, equity issues need to be kept in mind not only as between men and women but also between rich and poor women, as women from different socio-economic situations have different needs, which affect their level of interest and participation in various activities. See Gender Issues in Watershed Management by Vasudha Pangare, Oikos, India, 2002.
23 These queries and points have been raised in the Questionnaire on women and adequate housing developed by the Special Rapporteur on adequate housing, available at www.unhchr.ch/housing.
24 General Assembly resolution 55/2, paragraph 6.
In achieving these objectives, it is critical to recognise the obligations on States implicit in the legal provisions on international cooperation, given the current global reality of growing income disparities and attendant increases in poverty and marginalisation. Serious attention must be paid to the need to assist developing countries in their efforts to improve the housing and living conditions of the poor and inadequately housed, through «joint and separate action» as provided in article 2.1 of the Covenant on Economic, Social and Cultural Rights, including by ensuring that States’ international policies, or policies evolved at multilateral fora and institutions, are formulated so as to respect the full realisation of economic, social and cultural rights for all.

The solidarity and fraternity dimensions of international cooperation under international human rights instruments create the imperative that no action may be taken nor global social policies adopted which could inhibit States’ abilities to implement the commitments they have to their people stemming from their obligations under these instruments. Most recently, in General Comment No. 15 on the right to water, the CESCR stated: «To comply with their international obligations in relation to the right to water States parties have to respect the enjoyment of the right in other countries. International cooperation requires States parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries.» The comment continues, «Steps should be taken by States parties to prevent their own citizens and companies from violating the right to water of individuals and communities of other countries.»

States also need to examine policies—those of their own and of others—towards international institutions and international agreements, to ensure they are consistent with covenanted obligations on the right to adequate housing, including access to basic social services. Such reviews should include the human rights implications of World Trade Organisation trade agreements, particularly the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), country assistance agreements and agreements with the World Bank and IMF, as well as poverty reduction strategies such as the Poverty Reduction Strategy Papers (PRSPs).

Numerous UN human rights bodies have urged caution in the face of the existing international thrust on trade in services. The human rights obligations both at the national and international levels give a clear warning to the negotiators of trade agreements to step back from the expansion of any agreements such as GATS, that leads to the privatisation of social services and the entry of corporations into the arena of providing social goods such as water. Such a step would, given the experience thus far, effect negatively on the realisation of human rights. Human rights obligations, in fact, provide legal instruments for conscientious states to argue against the expansion of global trade and investment agreements into the sphere of recognised human rights.

The way forward

It is essential that policies and programmes for international cooperation be aimed at assisting States to develop strategies for social justice and equitable distribution of resources and opportunities, including through land reform and well-targeted spending on essential social services such as credit, potable water, electricity, heating and sanitation. In areas where these services are inadequate, more sensitive planning mechanisms need to be established so that the needs of the poor can be appropriately addressed.

In assessing whether privatisation is the correct option and in monitoring the privatisation of essential social services, it is important to employ a human rights approach. Such an approach would be aimed at achieving sustainable development and poverty reduction; it would take into account gender perspectives and empower people by ensuring their participation; it would ensure that subsidies are guaranteed for those who cannot afford to pay.

Such an approach would also sharpen focus on key «gaps»—the divide between the «haves» and the «have-nots»—in different sectors and highlight the accountability of institutions of governance. The areas where some of the most problematic gaps appear are: water supply and sanitation, gender equity and empowerment, and institutional and financial restructuring. Sanitation, for example, is deemed to be a key determinant of vulnerability to water-related diseases, and the «sanitation gap» may indicate where investment in water supply should be redirected towards sanitation and hygiene improvements. A comparable gap between reality and official statistics is also evident.

Local authorities and organisations of civil society in many cities around the world are seeking to provide alternative approaches to urban development and management. Among these is the «Human Rights Cities» initiative, in which towns and cities have made commitments to implementing participatory budgets, preparing local development plans or attempting to guide municipal decision-making by adopting a human rights framework, implementing thoroughgoing decentralisation of administration and decision-making through democratic processes.

This brief review has shown the urgency of undertaking systematic research across the world to assess the impact of privatisation of housing, water and sanitation on the human rights of low-income and marginalised communities. It is essential that we develop human rights-based indicators and benchmarks to assist in the implementation of human rights (and MDG’s) relevant to these issues. The primary role for States and civil society is to ensure the rigorous implementation of human rights principles and instruments. This will ensure that national and international trade, investment and debt policies and agreements are designed with respect to the rights of individuals and communities. It will also ensure that the principles that guide neo-liberal approaches on the privatisation and commodification of housing, water and sanitation, such as «cost recovery» and «unbundling», can be challenged by the human rights principles of «non-discrimination and equality», «progressive realisation» and «accountability». Failure to grasp the enormous potential that human rights have for sustaining environment and development and ensuring social justice will only lead to a world where we will witness dispossession and homelessness on an even larger scale.

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