

African Commission launches landmark General Comment on public services

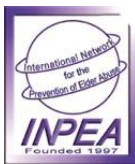
Banjul, 25th October 2022

66 civil society organisations welcome the publication yesterday of the African Commission on Human and Peoples' Rights (African Commission) landmark **General Comment detailing States' obligations with regard to public services, such as education, healthcare and water**. This is a major step forward to consolidate the human rights and legal framework, in a context where public services have emerged as one of the critical tools to address the climate, health, food, and inequality crises of the last years.

[General Comment 7 on State obligations under the African Charter on Human and Peoples' Rights in the context of private provision of social services, launched by the African Commission](#), 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. In particular, the General Comment:

- **Recalls the non-commercial nature of public services** (paras. 11-14), and that “the provision of social services is an inherently public activity” (para. 15).
- **Emphasises that States must impose a range of “public service obligations”** on all actors involved in public service delivery, which requires “in particular that social services are made available to all individuals, regardless of their geographical location, at a specified quality, and, depending on the circumstances, at no cost to the user, or at a subsidised, reduced cost below a market rate” (para. 16).
- **Details States' obligation to directly provide public services** (para. 36) and to fund them adequately, including through “fair and progressive taxation” (para. 38).
- **Elaborates on the obligation to regulate any private provision of social services** to ensure that, where they are involved, private actors “support, rather than undermine, broader efforts to realise economic, social and cultural rights” (section D).





- **Sets the substantive, procedural and operational limitations** for the delegation of public resources to private actors involved in social service provision, setting public-private partnerships (PPPs) as an exception that must be justified rather than the norm (section E).

This General Comment is a resounding response to the growing and well documented human rights concerns that arose from the rapid commercialisation of public services in Africa and around the world in the last decade. Issues of systemic discrimination in access to education or healthcare, corruption, violation of labour rights, and failure to provide public services have been regularly [brought to the attention of the African Commission](#) as well as of [other human rights bodies](#) in the last years, in countries ranging from Kenya and South Africa, to Italy, Chile, and Nepal. It follows recent developments in the international human rights law framework, such as the African Commission's [Guidelines on the Right to Water in Africa](#) (2019) and the [Abidjan Principles on the Right to Education \(2019\)](#) that similarly emphasise the States' obligations to publicly provide and fund public services and to effectively regulate any private involvement.

The undersigned organisations call on African States to implement this General Comment in full and urge other regional human rights bodies and the UN human rights system to emulate this historic development.

Allana Kembabazi, Programme Manager, Initiative for Social and Economic Rights (ISER) said *'We welcome the African Commission providing guidance to States on this. ISER's research has found a detrimental impact on the poor and vulnerable when States fail to effectively regulate private actors in social services. States cannot abdicate their role to provide public social services.'*

Arnold Kwesiga, Manager, Business and Human Rights Unit at the Centre for Human Rights, University of Pretoria said *'The Centre for Human Rights commends the African Commission on this milestone and calls on States to develop and strengthen measures that ensure deliberate implementation of the General Comment.'*

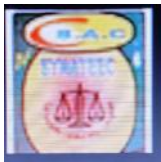
Delphine Dorsi, Director, Right to Education Initiative said *'Once again the African Commission paves the way. After being the first human rights body to recognise the Abidjan Principles on the right to education, it now stresses the fundamental role of public services in the realisation of economic, social and cultural rights and provides a framework for the regulation of private actors.'*

Ebenezer Durojaye, Head of the Socio-Economic Rights Project at the Dullah Omar Institute, University of the Western Cape noted that *'This important norm will ensure accountability on the part of States and private actors in the provision of public services in Africa as a human rights imperative.'*

Magdalena Sepúlveda, Executive Director of Global Initiative for Economic, Social and Cultural Rights said: *'The standards set in this General Comment on private actors delivering public services is a ground-breaking advancement in the interpretation and application of human rights law with regard to public services. We call on other human rights monitoring bodies to follow the example of the African Commission.'*

This General Comment sets international standards that will be relevant in Africa and beyond. The signatory organisations call on other regional and on United Nations human rights bodies to follow the model set by the African Commission to lay out the human rights framework regarding public services. They also call on African and all other States to implement this General Comment in full and use it as guidance to ensure that their laws and policies meet their human rights obligations.





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Notes:

The “General Comment 7 on State obligations under the African Charter on Human and Peoples’ Rights in the context of private provision of social services” was launched during the 73rd Ordinary Session of the African Commission, which is the African Union Organ mandated by Article 45 of the African Charter on Human and Peoples’ Rights (the African Charter) to promote and protect human rights on the continent, and to interpret the African Charter. The text was formally adopted in July 2022, following a two-year process since [Resolution 434](#) of March 2020 that mandated the African Commission’s Working Group on Economic, Social and Cultural Rights to develop norms on States’ obligations to regulate private actors’ involvement in the provision of social services. This resolution also builds on the May 2019 [Resolution 420](#), emphasising the ‘State Obligation to Regulate Private Actors Involved in the Provision of Health and Education Services’.

Signatories:

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| 1. Abibinsroma Foundation | 33. Free Trade Union Development Center, Sri Lanka |
| 2. Actionaid | 34. Friends of the Disabled Association |
| 3. Al-Haq | 35. Global Initiative for Economic, Social and Cultural Rights |
| 4. Alliance Globale Pour L’education et le Developpement (Agede Niger) | 36. Good Health Community Programmes |
| 5. Amnesty International | 37. Human Rights Watch |
| 6. Association of People for Practical Life Education | 38. In the Public Interest |
| 7. Association pour le Développement Economique, Social, Culturel Quartier Las-Palmas Nouakchott/Sebkh | 39. Initiative for Social and Economic Rights (ISER) Uganda |
| 8. Association Tagadirt | 40. Institute for Justice & Democracy in Haiti |
| 9. Bangladesh Institute of Human Rights (BIHR) | 41. International Network for the Prevention of Elder Abuse (INPEA) |
| 10. Brazilian Campaign for the Right to Education | 42. JusticeMakers Bangladesh |
| 11. CENADEP | 43. Make Mothers Matter (MMM) |
| 12. Centre de Formation et d’Action pour le Développement CFAD en sigle | 44. Mouvement Ivoirien des Droits Humains (MIDH) |
| 13. Centre D’encadrement des Personnes Opprimees (CEPO) | 45. National Initiatives for Child Survival |
| 14. Centre for Human Rights, University of Pretoria | 46. ODDES |
| 15. Coalition ASO EPT Niger | 47. ONE |
| 16. Coalition Education | 48. ONG EVEIL |
| 17. Community And Family Aid Foundation-Ghana | 49. Pakistan Fisherfolk Forum |
| 18. Community Legal Education Center | 50. Pamoja Trust |
| 19. CONAMEPT | 51. Peoples Health Movement Kenya |
| 20. Congrégation N.D du Charité du Bon Pasteur | 52. Phenix for Sustainable Development |
| 21. Coordination Nigerienne pour l’Education à la Non-violence et à la Paix (CONEN VP NIGER) | 53. Plan For Hope Initiative Uganda-PHIU |
| 22. COSYDEP | 54. Reseau Nigerien pour la Defense des Droits de l’Enfant et de la Fe |
| 23. CRI East Africa - Center for Research & Innovations in East Africa | 55. Right to Education Initiative |
| 24. East African Centre for Human Rights | 56. RIP-EPT |
| 25. École ensemble | 57. Section de la Ligue des droits de l’homme d’Évreux-France |
| 26. Economic and Social Rights Centre - Hakijamii | 58. Society for International Development (SID) |
| 27. Egyptian Initiative for Personal Rights (EIPR) | 59. Success Capital Organisation |
| 28. End Water Poverty | 60. SYNATEEC |
| 29. Equal Education Law Centre | 61. Syndicat National des Agents de la Formation et de l’Education du Niger (SYNAFEN NIGER) |
| 30. Eurodad | 62. The Human Rights and Privatization Project, Center for Human Rights and Global Justice, NYU School of Law |
| 31. European Federation of Public Service Unions (EPSU) | 63. Tribune jeunes pour le droit au Mali (TRIEU-Mali) |
| 32. Fédération Nationale des Enseignants et éducateurs sociaux du Congo/Union Nationale des Travailleurs du Congo | 64. Uganda Reach the Aged Association |
| | 65. University of the Western Cape |
| | 66. Veille Citoyenne Togo |

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