

HOW CAN WE ASSESS THE IMPACT OF THE PRIVATE SECTOR IN HEALTH CARE ON THE REALISATION OF THE RIGHT TO HEALTH?

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BACKGROUND

The involvement of private actors in health services is widespread. To realise the right to health, including universal health coverage, it is important to be able to assess the impact of the operations of these private actors to determine whether they support or undermine the realisation of the right to health, and where there is a negative impact, what elements of their involvement impede progress towards this goal and how these elements can be addressed. This poster reflects on a preliminary Impact Assessment Framework in the form of a checklist that can be utilised to explore the impact of the operations of the non-state actors involved in health care delivery against human rights standards. The prompting questions in this framework can be used by civil society, academics or judges to assess the situation against existing legally binding human rights law, and inform the State to effectively implement measures to ensure their obligations to respect, protect and fulfil the right to health are met.

SOURCES: This pilot Impact Assessment Framework is drawn from various legal texts including international treaties, interpretive texts on the treaties (including interpretive principles, General Comments, and Concluding Observations), and case law. We assessed how these texts codify the right to health, and key prompting questions identified to initiate an exploration of the role of private actors in line with this. Some questions posed can be applied to both the public and private healthcare sector, to help explore any challenges around achieving the right to health across the two, with others focused on private actors' role.



INDICATORS/CRITERIA FOR ASSESSMENT

- a. Availability**
 - Is the availability of health workers in the public sector affected by the growth of the private sector?
 - How does private actor involvement affect the availability of essential medicines as defined by the World Health Organization?
- b. Accessibility**
 - Does the health system ensure access without discrimination?
 - Does private actor involvement influence the distribution of facilities between urban and rural areas?
 - Does private actor involvement affect the cost of health insurance or health care?
 - Are there effective measures in place to ensure that life-saving treatment is provided regardless of the ability to pay?
- c. Acceptability**
 - Do private actors in health respect:
 - the cultures of individuals, minorities, peoples and communities?
 - the perspectives and needs of women, men, older persons and adolescents?
 - Are private insurance providers accepting all? Are there parameters which inform selection of patients through e.g. health, employment or financial status?
 - Are there measures in place to safeguard the autonomy of individuals in making decisions about their health and in the use of healthcare services?
- d. Quality**
 - Are privately provided health goods, facilities and services of adequate quality?
- e. Core Obligations**
 - How does private actor involvement affect:
 - equitable distribution of all health goods, facilities and services, including for vulnerable groups?
 - provision of essential medicines and primary/health care?
 - health strategies and plan of action?
 - reproductive, prenatal and maternal, and child health care?
 - provision of adequate training for health personnel, including on human rights?
- f. Maximum available resources**
 - What are the trends in state spending on health and how do they relate to any changes in the level of private actor involvement in the sector?
- g. Impact on vulnerable groups**
 - Are vulnerable groups being impacted by private actor involvement?
 - Are there effective measures in place to ensure that vulnerable groups are not discriminated against by private health care and insurance providers?
- h. Participation**
 - Is participation by vulnerable groups enabled and encouraged?
 - Have primary stakeholders been given a say in determining accountability standards for private healthcare providers?
 - Have steps been taken to incorporate the feedback and decisions of primary stakeholders in the process of privatisation?
- i. Regulation**
 - Is there adequate regulation of private actors?
 - Has the state entered into bilateral investment treaties or investor-state contracts that affect its ability to regulate effectively, for example by providing extensive protection for the 'legitimate expectations' of the investor and allowing the investor access to international arbitration?



ACCOUNTABILITY OF PRIVATE ACTORS

- a. Monitoring**
 - Has the State enacted procedural steps to assess the impact and role of private actors in healthcare?
 - Have adequate indicators and benchmarks been determined to measure the effects of non-state involvement?
- b. Review**
 - Are independent review mechanisms regularly reviewing the impact of private involvement in health, including the relevant laws and policies?
 - Are mechanisms in place to ensure the results of the review are taken into account in future laws and policies?
- c. Access to remedies**
 - Is there access to remedies against right to health abuses by private actors?
 - Do people have information about remedies?
 - Can people access legal counsel and/or other relevant support?
 - Are there judicial and non-judicial avenues of recourse against human rights abuses by private actors?
- d. Transparency**
 - Is the right to receive and impart health-related information respected by private actors, including for vulnerable groups?
 - Are policy processes relating to the role of private actors transparent?



EXTRATERRITORIAL OBLIGATIONS

The following considerations are relevant to donor states' obligations:

- a. Development cooperation**
 - Are foreign states funding private actor involvement that is harmful to the right to health?
 - Are foreign states requiring promotion of private actors as a precondition for the provision of funds?
 - Are donor states exercising due diligence, including by conducting human rights impact assessments?
- b. Obligations concerning activities of corporations and other private entities in their territory**
 - Are states regulating the extraterritorial activities of their corporations and other private entities?
 - Where private providers have the nationality of a foreign state or have their main centre of activity in a foreign state, does this state have regulation in place to require the provider to exercise human rights due diligence covering its own activities and those of subsidiaries and business partners?
 - Are states putting in place remedies that are adequate for transnational cases?
 - Are states cooperating in the provision of remedies?
 - Are remedies available for groups as well as individuals?
 - Are victims participating in the determination of appropriate remedies?
 - Are states removing substantive, procedural and practical barriers to remedies in transnational cases?