

ACHPR / Res. 420 (LXIV) 2019: Resolution on States' Obligation to Regulate Private Actors Involved in the Provision of Health and Education Services

The African Commission on Human and Peoples' Rights (the Commission) meeting at its 64th Ordinary Session held from 24 April to 14 May 2019 in Sharm El Sheikh, Egypt

Considering its mandate to promote and protect human and peoples' rights under the African Charter on Human and Peoples' Rights (the African Charter) in particular Article 16 on the right to enjoy the best attainable state of physical and mental health and Article 17 on the right to education;

Considering the increasing involvement of private actors in social service delivery in Africa and their recognition in the African Union Agenda 2063 and the United Nations 2030 Agenda for Sustainable Development;

Recalling the Pretoria Declaration on Economic, Social and Cultural Rights in Africa (2004); the Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights (2010); the State Party Reporting Guidelines for Economic, Social and Cultural Rights in the African Charter on Human and Peoples Rights (2012); Resolution ACHPR/Res.141 (XXXVIII) 2008: on Access to Health and Needed Medicines in Africa, Resolution ACHPR/Res. 346 (LVIII) 2016: on the Right to Education in Africa,

Recalling also General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14.2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and General Comment No. 3 on the African Charter on Human and Peoples' Rights on the Right to Life (Article 4);

Considering the African Charter on the Rights and Welfare of the Child and "Agenda 2040: Fostering an Africa fit for children" of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), particularly Aspiration 4 which seeks to ensure that every child survives and has a healthy childhood and Aspiration 6 which seeks to ensure that every child benefit fully from quality education.

Considering all relevant regional and international norms and standards including the U.N. Committee on the Rights of the Child's General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights, the U.N. Committee on Economic, Social and Cultural Rights' General Comment No. 24 on State Obligations Under the International Covenant on Economic, Social and Cultural Rights In The Context of Business Activities, the Abidjan Principles on the Human Rights Obligations of States to Provide Public Education and to Regulate Private Involvement in Education, and the Human Rights Council

Resolutions A/HRC/29/7, A/HRC/32/22, A/HRC/35/2 and A/HRC/38/9 on the Right to Education;

Recalling that the Pretoria Declaration on Economic, Social and Cultural Rights in Africa (2004) expressed concern about the privatisation of essential services as a constraint to the realization of economic, social and cultural rights;

Concerned that the growth of private actors' involvement in health and education services delivery often happens without the consideration of human rights resulting in growing discrimination in access to these services, a decrease in transparency and accountability, which negatively impact the enjoyment of the rights to health and education;

Concerned that some bilateral donors and international institutions increasingly put pressure on States Parties to privatize or facilitate access to private actors in their health and education sectors, without consideration for State Parties' obligations under the African Charter;

Reaffirming that State Parties are the duty bearers for the protection and fulfilment of economic, social and cultural rights, in particular the right to health and education without discrimination, for which quality public services are essential;

Noting the positive impact that private actors can have in their contribution to the realisation of these rights;

The Commission:

1. Calls on States Parties to the African Charter to take appropriate policy, institutional and legislative measures to ensure respect, protection, promotion and realization of economic, social and cultural rights, in particular the right to health and education and to:
 - i. Fulfil their obligation to guarantee the full enjoyment of the right to the best attainable state of physical and mental health and the right to education in accordance with the African Charter, other regional and international standards in accordance with the principles of availability, affordability and quality.
 - ii. Adopt legislative and policy frameworks regulating private actors in social service delivery and ensure that their involvement is in conformity with regional and international human rights standards;
 - iii. Ensure through effective regulatory systems, the protection of access to health care and needed medicines, from the negative actions of third parties and in particular, actions that would affect access for vulnerable groups and marginalized communities;

- iv.** Ensure that privatization in education does not exacerbate discrimination against children, in having access to quality education, particularly girl children, children with disabilities and vulnerable and marginalized children;
 - v.** Ensure that the involvement of private actors in the provision of social services is a result of a participatory policy formulation process and continues to be subject to democratic scrutiny and to the human rights principles of transparency and participation;
 - vi.** Considers carefully the risks for the realization of economic, social and cultural rights of public-private partnerships and ensure that any potential arrangements for public-private partnerships are in accordance with their substantive, procedural and operational human rights obligations, and do not violate the norms and principles of the rights contained in the African Charter;
 - vii.** Ensure through regular impact assessments that the involvement of private actors in the provision of health services and education does not create systemic adverse impacts on human rights;
 - viii. Ensure access to an effective remedy for violations of the right to health and education or other human rights violations by private actors involved in the provision of health and education services;
2. Reminds private actors of their responsibility to respect economic and social rights, particularly the right to health and education and to refrain from infringing on human rights as they engage in the provision of these services.

Done in Sharm El Sheikh, Egypt, on 14 May 2019