

Human Rights and Privatisation Amnesty International

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Human Rights and Privatisation

Amnesty International

The State has the primary responsibility to respect, protect, fulfil and promote human rights. Access to certain services is so essential that denial of access to such services can constitute violation of human rights.

While governments are required to ensure access, international human rights instruments do not require that governments must own the production or delivery systems of essential services. This means that the State, can be, but does not have to be the sole provider of essential services.¹ Court judgments in India and South Africa, have shown that private actors can indeed play a role in the realisation of human rights.²

Nor does human rights law say that human rights can best be realised only under a particular economic or political system.³ The Limburg Principles on the Implementation of the ICESCR state: "There is no single road to their full realisation. Successes and failures have been registered in both market and non-market economies, in both centralised and decentralised political structures."⁴

¹ See UN High Commissioner on Human Rights, "Economic, social and cultural rights: Liberalisation of trade in services and human rights", Report of the High Commissioner, E/CN.4/Sub.2/2002/9, 25 June 2002

² *Krishnan v State of Andhra Pradesh* (1993). See also *Jain v State of Karnataka* (1992). In *Krishnan*, the Court held: "This does not, however, mean that this obligation (of providing access to primary schools) can be performed only through state schools. It can also be done by permitting, recognising and aiding voluntary non-governmental organisations, who are prepared to impart free education to children. This does not also mean that unaided private schools cannot continue. They can, indeed, as they too have a role to play. They meet the demand of that segment of the population who may not wish to have their children educated in state-run schools."

³ See "The international human rights treaty obligations of states parties in the context of service provision." Submission to the UN Committee on the Rights of the Child on "The private sector as service provider and its role in implementing child rights", by Paul Hunt, September 2002, Office of the High Commissioner for Human Rights, Geneva. Also see General Comment No. 3 (1990), regarding the nature of states parties' obligations, covering Art. 2(1) of the ICESCR, adopted by the Committee of Economic, Social and Cultural Rights at its fifth session, Dec 1990.

The comment says: "The undertaking 'to take steps ... by all appropriate means including particularly the adoption of legislative measures' neither requires nor precludes any particular form of government or economic system being used as the vehicle for the steps in question, provided only that it is democratic and that all human rights are thereby respected. Thus, in terms of political and economic systems the Covenant is neutral and its principles cannot be accurately described as being predicated exclusively upon the need for, or the desirability for a socialist or capitalist system, or a mixed, centrally planned, or *laissez-faire* economy, or upon any other particular approach. In this regard, the Committee reaffirms that the rights recognised in the Covenant are susceptible of realisation within the context of a wide variety of economic and political systems, provided only that the interdependence and indivisibility of the two sets of human rights, as affirmed *inter alia* in the preamble to the Covenant, is recognised and reflected in the system in question. The Committee also notes the relevance in this regard of other human rights and in particular the right to development."

⁴ The Limburg Principles were adopted by a group of distinguished experts in international law on 2-6 June 1986, in Maastricht, The Netherlands. While not binding, these principles are regarded as authoritative in

In addressing the delivery of essential services therefore, states must bear in mind their obligations under international human rights standards, including the Universal Declaration of Human Rights⁵, and the International Covenants of Civil and Political Rights⁶ and Economic, Social and Cultural Rights⁷. These international instruments lay down the state's obligations to respect, protect, promote and fulfil human rights. The ICESCR, moreover, requires states to progressively realise the ESC rights.

AI is particularly concerned with access to services which are *essential for the enjoyment of human rights*. If individuals and communities are denied such access because of their economic status, ethnic origin, gender, sexual orientation, religious persuasion, or any other arbitrary, discriminatory measure, then that action constitutes a grave violation of their human rights.⁸

Denial of access to these services could cause grave violations of physical and mental integrity of individuals and groups, and would thus constitute a human rights violation. Access to basic necessities of life is critical to sustain any society based on human dignity, and the State has an obligation to provide such services.

Privatising the delivery of essential services has often led to the false assumption that the state is no longer responsible for the realisation of rights, and that the responsibility has been sub-contracted to the private sector provider. While the private sector provider remains responsible for his legal responsibility, the state continues to be primarily accountable for the human rights responsibility.⁹

Just as the State creates institutions such as courts of law to guarantee fulfilment of civil and political rights, the State is expected to progressively realise economic, social and cultural rights. This obligation has been recognised in by the Committee on Economic, Social and Cultural Rights (CESCR) as well as under the International Covenant of Economic, Social and Cultural Rights (ICESCR).

Rights enshrined under the covenant cannot be enjoyed fully without access to certain services. For example, the right to housing depends on "sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services".¹⁰

expanding the international community's understanding of the nature of obligations generated by economic, social and cultural rights.

⁵<http://www.un.org/Overview/rights.html> and <http://www.unhchr.ch/html/menu6/1/univdecl.htm>.

⁶http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

⁷http://www.unhchr.ch/html/menu3/b/a_ceschr.htm.

⁸ In its General Comment on Discrimination, the Human Rights Committee has said that "discrimination" as used in the International Covenant on Civil and Political Rights should be understood "to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms."

⁹ See "Exploring the implications of Privatisation and Deregulation", in *Privatisation and deregulation in global perspective*, D.J. Gayle & J.N. Goodrich (eds.), New York: Quorum Books, 1990.

¹⁰ General Comment No. 4 (1991) The right to adequate housing (art.11 (1) of the Covenant) adopted by the CESCR at its 6th session, 13 December 1991, para 8(b).

Where the service itself is a right, the state has to ensure that there is no discrimination in access to specific services, and there is no denial of the service itself. Services which are rights by themselves include water, education and housing. The right to water is contained in the right to life¹¹. The right to education and housing are explicitly stated in the ICESCR.

But there are other rights related to access. Proper provision of sanitation is important, for example, to fulfil the right to health. Similarly, provision of electricity is important to fulfil a range of rights, including health (heating in winter), life (modern life-saving instruments run on electricity), and education. Access to roads is important to realise the right to adequate standard of living and free movement.

All activities considered “services”¹² are not necessarily critical for the enjoyment of human rights. Similarly, the human rights impact of privatisation is less acute when there are competing, affordable alternatives available to the society¹³. But when critical infrastructure services are privatised, and if the service itself is a natural monopoly¹⁴, then the human rights context gains critical importance.

The State’s Obligations, and how they translate in the context of ESC Rights

The state’s obligations are to *respect, protect, fulfil* and *promote* human rights. States are accountable for their human rights record. In the context of economic, social and cultural rights, states have to report periodically to the CESCR, where their performance is reviewed and recommendations made so that the states can progressively realise these rights.

In some states, such as South Africa, India, and Australia, citizens have been able to proceed against the state by using legal means for the fulfilment of their ESC rights. National and legal frameworks and mechanisms exist, which in the event of a **violation** allow the violated party to take the specific **violation** to court, and seek a legal **remedy**. The judicial process makes governments accountable, and that accountability is rooted in public recognition of the primacy of human rights.

All individuals are equal before the law; the rule of law is based on the right of non-discrimination and equality before law. A group of people evicted from public property where the group had squatted for years was able to secure remedy from the Indian Supreme Court, which asked the state to provide alternate accommodation to the concerned people, before moving them¹⁵.

¹¹ In its General Comment issued in January, 2003, the Committee for Economic, Social and Cultural Rights said: “The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights. The Committee has been confronted continually with the widespread denial of the right to water in developing as well as developed countries.” Articles 11 and 12 of the ICESCR implicitly make this connection.

¹² For example, advertising or fashion designing.

¹³ For example, healthcare in some countries in the European Union.

¹⁴ For example, water distribution. It would be a huge waste of resources to have two or more sets of city-wide pipelines to provide water

¹⁵ *Olga Tellis v State of Bombay* (1985, Supreme Court of India)

The State's obligations are derived from four key principles.¹⁶ These are:

- **Equality and non-discrimination**, which require the State to take measures to prevent discrimination, including taking affirmative measures¹⁷,
- **Indivisibility and interdependence** of rights,
- **Accountability**¹⁸, and
- **Participation**, which requires that policies must be devised, implemented and monitored in a manner that allows for popular participation.

Obligation to Respect:

In the context of delivering essential services, the duty to *respect* means that the State is responsible for ensuring the enjoyment of human rights relevant to the concerned service.¹⁹ If a state privatises a particular service, then the agreement with the private service providers must be structured such that the language is consistent with relevant human rights norms. The state must stipulate accountability measures for the private service providers and benchmarks for measuring their performance within the contracts. It must also enact legislation to ensure consumer and environmental protection, and to regulate the conduct of the private service deliverers with regard to disconnection and pricing policies. If the private sector provider fails to deliver its contractual obligations, then the State must take immediate steps to maintain access to the service, and seek compensation from the service provider by imposing penalties stipulated in the contract. The state must place similar conditions for service provision on publicly-owned service providers.

Obligation to Protect:

The State has an obligation to *protect* citizens from human rights violations. The duty to protect requires that vulnerable groups be given special protection. In relation to protecting people with disabilities, for example, the CESCR has stated: "In a context in which arrangements for the provision of public services are increasingly being privatised and in which the free market is being relied upon on to an ever greater extent, it is essential that private employers, private suppliers of goods and services, and other non-public entities be subject to both non-discrimination and equality norms in relation to persons with

¹⁶ See "Human rights, poverty reduction and sustainable development: Health, food and water", a background paper published by the Office of the High Commissioner for Human Rights for the World Summit on Sustainable Development, Johannesburg, 2002.

¹⁷ According to the Human Rights Committee (HRC), "the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the [ICCPR] ... Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant." See General Comment 18/37 [Non-discrimination], adopted by the HRC on 9 November 1998

¹⁸ According to the CESCR, "... rights and obligations demand accountability: unless supported by a system of accountability, they become no more than window dressing." See the CESCR's Statement on poverty, UN Doc.E/C.12/2001.

¹⁹ General Comment No. 14, The right to the highest attainable standard of health, adopted by CESCR at its 22nd session, 2000, para 50.

disabilities.”²⁰ In the case of water supply, the State has an obligation to prevent third parties from “compromising equal, affordable, and physical access to sufficient, safe and acceptable water”.²¹

Obligations to Fulfil and to Promote:

The State’s duty to *fulfil* includes the duty to *promote*, essential to ensuring effective public participation and access to information. The obligation to fulfil requires the adoption of positive measures that enable and assist individuals and communities to enjoy their rights.²² Additionally, there is an obligation to provide the right when individuals or groups are unable to realise the right by their own means. In relation to the right to water, for instance, the CESCR has stated: “Any payment for water services has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with water expenses as compared to richer households.”²³

Privatisation, then, does not allow the state to abdicate its responsibility to *respect, protect, fulfil* and *promote* human rights. The state has the duty to ensure that ownership of the delivery system – public or private – does not compromise accessibility, availability, quality and acceptability of basic services. Most importantly, privatisation must not result in denial of access to vulnerable and poor people to socio-economic rights. Regulatory mechanisms of private actors and assistance measures must be put in place for the state to discharge its obligations.

Responsibilities of Non-State Actors, including Companies

Do human rights obligations apply to companies? Some companies have argued that human rights treaties are signed by states, and states are primarily accountable for human rights. Being non-state actors, companies argue, they have no legal obligations towards protection of human rights. They may choose to protect human rights voluntarily, but they are not obliged under international law.

This is not true. The UDHR applies to every individual and every organ of society. The phrase, “every organ of society”, includes non-state actors, such as companies, public and private. In Aug 2003, the Sub-Commission for the Protection and Promotion of Human Rights unanimously agreed to the text of *Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*²⁴.

²⁰ General Comment No. 5 (1994) Persons with disabilities, adopted by the CESCR at its eleventh session, December 1994.

²¹ General Comment No. 15.

²² General Comment No. 14.

²³ General Comment No. 15. A similar obligation in relation to the right to health enjoins the state to “ensure provision of health care, including immunisation and ensure equal access for all to the underlying determinants of health, such as nutritiously safe food and potable drinking water, basic sanitation and adequate housing and living conditions”. General Comment No. 12.

²⁴ The Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (E/CN.4/Sub.2/2002/13) are developed at the UN Sub-Commission on the

The norms emerged out of the growing recognition in recent years that human rights responsibilities apply to companies as well. In the context of civil and political rights, for example, companies recognise that their legal responsibilities include proper training of their security forces, and that they must not violate international and national labour laws, regarding the use of forced labour and exploitative child labour. The tripartite declaration of the International Labour Organisation applies to companies. Similarly, companies are covered by sector-specific mechanisms, such as Responsible Care for the chemical industry, Forest Stewardship Programme in forest management, and the Kimberley Process Certification Scheme to regulate the trade in rough diamonds.

Over time, companies have recognised some of their responsibilities voluntarily, and established codes of conduct to govern their behaviour. While such voluntary initiatives are a good starting point towards respect of human rights, they are not sufficient. Normative approaches, like the UN Norms cited above, increasingly matter. As recent human rights literature however suggests, voluntary approaches are a necessary starting point, but companies' obligations go beyond voluntary approaches.²⁵ Companies participating in the Global Compact²⁶, an initiative of the UN Secretary-General, Kofi Annan are expected to promote human rights, and not be complicit in human rights violations²⁷. Private service providers therefore have the duty to refrain from interfering in the enjoyment of ESC rights, and an obligation to ensure that they do not jeopardise the quality, accessibility and availability of the services when they assume control.

Human rights law is based on a normative framework and privatisation, like any other public policy, must comply with human rights obligations. The Office of the High Commissioner for Human Rights has stated: "In setting comprehensive objectives for trade liberalisation that go beyond commercial objectives, a human rights approach examines the effect of trade liberalisation on individuals and seeks trade law and policy that take into account the rights of all individuals, in particular vulnerable individuals."²⁸

How do states achieve this? The Office of the High Commissioner advises that they can do so by looking beyond "narrowly-defined economic yardsticks and commercial objectives", such as recovering costs, obtaining a particular return on investment, and so on. In so doing, the State should bear in mind the needs of not only those citizens who can afford the services, but also of those who can least afford to do so, such as poor, marginalised, vulnerable and disadvantaged individuals and groups. This stems directly from the idea that the human person is the central subject of human development without discrimination.²⁹

Promotion and Protection of Human Rights. An electronic version can be found at www1.umn.edu/humanrts/links/NormsApril2003.html.

²⁵ See Beyond Voluntarism, International Council for Human Rights Policy, Geneva, 2002.

²⁶ www.globalcompact.org.

²⁷ Principle 1 says: "Businesses should support and respect the protection of internationally proclaimed human rights within their sphere of influence. Principle 2 says: (Businesses should) make sure that they are not complicit in human rights abuses.

²⁸ See UN High Commission of Human Rights, "Economic, social and cultural rights: Liberalisation of trade in services and human rights", Report of the High Commissioner, E/CN.4/Sub.2/2002/9, 25 June 2002

²⁹ The Declaration on the Right to Development, article 2 (1); see also article 2 of the Universal Declaration, "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without discrimination of any kind".

This does not mean equal treatment of everybody. Exceptions are made to allow for preferential treatment for the poor, disabled, or disadvantaged, as in affirmative action programmes. Under trade law, the State cannot distinguish between a large corporation and a marginal farmer; but interpreting human rights obligations, and taking into account the doctrine of progressive realisation under the ICESCR, the State can discriminate in favour of the marginal farmer³⁰.

In the context of delivering essential services, this would mean that the State may privatise the supply of water, but it would remain under obligation to make sure that the poor are not deprived of the quantum of water they need for their survival and to maintain an adequate standard of living³¹. In fact, under the Maastricht Guidelines, the State has an obligation to refrain from interfering with the enjoyment of ESC rights; to prevent third parties from violating such rights; and to take measures towards the full realisation of ESC rights.

AI'S HUMAN RIGHTS PRINCIPLES CONCERNING DELIVERY OF ESSENTIAL SERVICES:

1. PROTECT RIGHTS:

States have the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting from development.³² The Office of the High Commissioner of Human Rights³³ at the United Nations encourages States to ensure that they retain flexibility to use development tools to exercise their obligation by formulating policies that lead to constant improvement of the entire population. The guiding principle, then, should always be improvement of the current condition. The OHCHR³⁴ says that developing countries in particular should therefore assess the human rights impact of obligations they are likely to take on, if they are privatising activities traditionally performed by states.

³⁰ See the OHCHR comment on agriculture, E/CN.4/2002/54.

³¹ The UK, widely credited for ushering in the wave of privatisation, has legislation to protect human rights in this regard. An amendment to the British Water Industry Act 1999 has excluded the power of a water supplier to disconnect or limit water supply for non-payment from such places as private dwelling houses, children's homes, residential care homes, prisons and detention centres, schools and premises used for children's day care. Cited in *Law, Democracy and Development*, J. de Visser *et al*, 2002.

³² Declaration of the Right to Development, Article 2 (3).

³³ www.ohchr.ch

³⁴ See E/CN.4/Sub.2/2002/9, (ibid.). This important paper shows, *inter alia*, that States have obligation in the following areas:

- *Ensuring equal access for basic services.*
- *Ensuring Governments' right and duty to regulate.*
- *Encouraging interpretations of GATS that are compatible with human rights.*
- *Undertaking human rights assessment of trade policies.*
- *Providing international co-operation and assistance.*
- *Increasing dialogue on human rights and trade.*
- *Continuing future work at the Sub-Commission in matters related to trade, investment and human rights.*

2. REGULATE:

Privatisation is the means, not an end. As noted earlier, even if the State does not own the delivery system of a service, it still has an obligation to regulate that industry or service. This means if the State has decided to privatise a particular service, it does not absolve the State; it will remain responsible for regulating the conduct of that industry or service. In order to regulate and manage the services, the State must establish a clear and transparent regulatory framework. Privatised entities must remain accountable to the State and its regulators. Just as privatisation does not liberate a State from its responsibility to regulate, it does not absolve the privatised service providers from human rights obligations that the entity is expected to meet.

3. MAINTAIN ACCESS:

States are expected to realise fulfilment of ESC rights progressively. But it also means that the State should make every effort to fulfil these rights. As the United Nations Development Programme's annual Human Development Index reports show, in many countries where the State continues to own production and distribution of manufacture and services, these rights are not currently being respected. The effect of continuing these activities may cause significant fiscal problems for the States, and in some cases, lead to informal alternatives, such as private sector providing the service when the state has failed to do so.

4. NON-DISCRIMINATION:

Not only should privatised entities not discriminate between consumers of their services or products, they should also not discriminate in recruiting new staff, or in laying off their existing staff. The obligation to maintain access also means that in the event of the privatisation process failing, the State will remain under obligation to maintain the provision of essential services. If the privatised company goes bankrupt, or if the service provider pulls out of the contract, service provision and must not be affected, to ensure the protection of human rights, particularly of the poor, marginalised, vulnerable and disadvantaged individuals and groups, and they should be protected from the burden of the cost of renegotiating the contract, and the penalties that the State or the private party may have to pay. The State should impose penalties for non-performance. It must ensure that in drawing up the privatisation contract, adequate care has been taken to make sure that the State will take adequate legal steps to minimise losses and recover costs from the contracting party³⁵.

5. ASSESS IMPACT:

Adapting the policy to privatise a particular service has major ramifications, as noted earlier. Given that, the State has an obligation to conduct a thorough and proper assessment of the human rights impact of its action. Similar exercise should be undertaken if the State decides to take over services performed by a private sector provider. The intent should be to improve the human rights situation of the society. This assessment should be conducted in a fair and transparent manner, with full consultation with the affected communities, companies, and other relevant stakeholders,

³⁵ In interviews with Amnesty International in June 2003, senior World Bank economists said that where privatisation projects have not been successful, the reasons have included poor project design, unrealistic pricing, and poor management of the process. In some cases, there have been contractual flaws.

including workers. A paper from the OHCHR, too, recommends that States undertake human rights impact assessment before making major shifts in policy.³⁶

6. BE TRANSPARENT:

The process of privatisation must be open, fair, and transparent. It must be free of corruption. Recent experience from the Russian Federation, other states in the former East Bloc countries, and from Southeast Asia shows instances where decisions to privatise certain industries or services have been reached by governments behind closed doors, in an opaque manner. The resulting corruption has distorted economic choices and led to misallocation of resources³⁷.

The State should also require the privatised utility to report in a transparent manner. Regulators who require information about the pricing and costing of privatised entities must be provided full access. Privatised companies cannot absolve themselves from such reporting requirements citing commercial confidentiality.

This stems from the State's obligation to ensure the community's right to participation and the right to know. Citizens and civil society organisations should have full access to the deliberations of the regulatory authority on matters that affect them, and must have the right to representation in such matters. Decisions taken by the regulatory authority must be made in a fair and transparent manner. In order for its citizens to participate meaningfully on matters affecting them, the State must respect and ensure their right to know, by providing full access to relevant documents, contracts, and arguments justifying the decision to privatise a utility. This means the State must ensure freedom of expression and opinion, and take no steps to curb any peaceful demonstrations or opposition against privatisation.

7. PROVIDE SAFETY NET:

Privatised entities providing essential services have an obligation to guarantee access to all, particularly the poor, marginalised, vulnerable and disadvantaged individuals and groups. The right to life can be exercised only if individuals have access to certain goods and services

³⁶ In *Liberalisation of Trade in Services and Human Rights: Report of the High Commissioner*, the Office of the High Commissioner of Human Rights says: "Country-specific commitments to liberalize service sectors under GATS could have both positive and negative effects on the enjoyment of human rights. Consequently, WTO members should be encouraged to undertake assessments of the impact of the implementation of GATS on the enjoyment of human rights as part of the ongoing negotiations concerning GATS. Assessments should concern both past experience and potential effects of future liberalization commitments." E/CN.4/Sub.2/2002/9, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Fifty-fourth session, June 2002

³⁷ There is a growing international consensus on regional and global initiatives to combat corruption. Regional initiatives have been launched by the Council of Europe and the Organization of American States (OAS). The Russian Federation signed the Criminal Law Convention on Corruption of the Council of Europe in January 1999. International efforts include the Global Program Against Corruption being coordinated by the UN Office for Drug Control and Crime Prevention. In 1996, the UN General Assembly adopted a Declaration against Corruption and Bribery in International Commercial Transactions. Res. 51/191, 16 December 1996. The UN General Assembly also adopted an International Code of Conduct for Public Officials in 1996, (Res 51/59) which recognized the seriousness of the problems posed by corruption and the importance of international cooperation in action against corruption. The next year, the UN General Assembly adopted another resolution (52/87), on International Cooperation against Corruption and Bribery in International Commercial Transactions. In 1998, the UN passed another resolution, calling for international action against corruption by states (53/176). Such resolutions are important in signifying broad political agreement in the international community.

essential for survival, and essential to prevent the violation of their physical and mental integrity. This includes the right to food, the right to appropriate clothing to guard against inclement weather, and the right to shelter. The right to food includes the right to water³⁸. The right to life also includes the right to health, and hence, access to basic health services. In places with extreme climates, the right to life includes protection from extreme cold or hot weather. All individuals should enjoy these rights, irrespective of their ability to afford the means to enjoy these rights. The State has an obligation to respect and fulfil these rights. Even if the State decides to fulfil these rights by privatising these utilities or services, it remains obligated to protect such rights. And as a corollary, companies or privatised entities, which take over the provision of such rights, have an obligation to ensure access to the poor, marginalised, vulnerable and disadvantaged individuals and groups. In providing such access, the company or the privatised entity should not discriminate between users.³⁹

The State must ensure safety net to absorb the social costs of privatisation. In some cases, privatisation leads to job losses. States have an obligation to ensure that every individual can enjoy an adequate standard of living⁴⁰, and as such, the State has an obligation to create a social safety net to protect those who lose their jobs. In appropriate cases, the State should consider providing retraining to the workers so that they could be re-deployed in other industries or services. In all cases, the State must make sure that workers and their representatives as appropriate, and their right to protest peacefully is protected.

Finally, the State should protect vulnerable sections of the population from privatisation and acquisition costs. The State has an obligation to ensure that the privatised entity does not pass on the cost of the contract and the acquisition of the right to manufacture the products or provide services, to consumers and users.

³⁸ In a General Comment issued in January 2003, the Committee on Economic, Social and Cultural Rights said: "The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights. The Committee has been confronted continually with the widespread denial of the right to water in developing as well as developed countries."

³⁹ In General Comment 18, relating to Non-Discrimination, the Human Rights Committee has said that "discrimination" as used in the International Covenant on Civil and Political Rights should be understood "to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms."

⁴⁰ Article 11 of the ICESCR recognises "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."