

Quality Public Services and the Realization of Human Rights

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Introduction

Public services are at the core of democratic societies founded on human rights, social and economic justice and solidarity. This is because public services contribute to delivering human rights, to redistributing wealth and to the collective public interest through the expansion of public goods.

Public goods—such as health, knowledge, water, culture, but also clean air, street lighting—have the characteristic that they are non-excludable and non-rivalrous. On the one hand, individuals cannot be excluded from their use or their use could be enjoyed without paying for it, and, on the other hand, the use by one individual does not reduce the availability to others or they can be used and enjoyed collectively.

Not only do public services contribute to the maintenance and expansion of public goods, they are designed to provide for basic needs that are essential to fulfil human rights, such as the right to health, right to education, right to social security, right to water, right to cultural life, and right to an adequate standard of living.¹ Healthcare services, drinking water and sanitation services, primary, secondary and tertiary education service, pension and other social protection services, but also electricity distribution are all public services that play a key role in the attainment of human rights.

It is therefore not surprising that several U.N. Special Rapporteurs have highlighted the impacts of different types of services on the realisation of human rights, the role of the state in overseeing and providing these services, and the impacts of privately delivered public services².

Quality Public Services

Public services mean services that are provided to the public and in the public interest. In the context of state's obligations to progressively realize human rights, there is a strong case for institutions that provide them to be public authorities, in addition to a regulatory and oversight role of the state. Yet, this is not sufficient. Community or user's participation in the design, operationalization and monitoring of these key services is an important component to ensure that services are responsive and adapted to the needs of people, and that they contribute to democratisation of society and participatory democracy initiatives. Decent working conditions that respect the right to just and favourable conditions of work, the right to equal pay for equal work, the right to just and favourable remuneration, the right to social security and the right to form and join trade

¹ Universal Declaration of Human Rights (UDHR), 1948, Art 22, 25, 26 and 27, as well as International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, Art 9 to 15, Committee on Economic, Social and Cultural Rights General Comment No. 15 on the right to water, November 2002.

² The later includes for instance UN Special Rapporteur on Adequate Housing Miloon Kothari on the privatisation of water and sanitation in 2002, UN Special Rapporteur Kishore Singh on privatization in education in 2012, and most recently UN Special Rapporteur on Extreme Poverty and Human Rights Philip Alston, in 2018, among others.

unions are another fundamental aspect³. Finally, the sustainability of the delivery and production of the service in the medium and long term is a critical component.

The table below (table 1) provides a mapping of the characteristics of ‘quality public services’ which would ensure that the above components are fulfilled.

Table 1: Key Characteristics of Quality Public Services

Public Interest	<i>Equitable</i> access to services either through universality or guaranteed entitlements that address both equity and equality aspects <i>Efficient</i> service provision that is time bound and with quality, Based on <i>solidarity</i> within society, and between users <i>Public ethos</i> of management, regulation, oversight and provision
Community Ownership	Meaningful <i>participation</i> of the community / users in decision making and implementation <i>Accountability</i> to end users, <i>Transparency</i> in policy, mandate, operations and budgets
Decent Work	Formalised employment conditions, Equal pay for equal work, Wages in accordance with the law and with experience, Social security as per the law, Freedom of association
Sustainability	<i>Financial</i> sustainability to taxpayers and contributors across generations <i>Environmental</i> sustainability especially in the context of the constraints of climate change

Source: Adapted by the author from David McDonald and Greg Ruiters (2012), ‘Weighing the Options’, in *Alternatives to Privatisation*: New Delhi.

As mentioned before, while the role of the state in the provision of public services is not sufficient, it is necessary in order to ensure the scale and the reach required by universality and fulfilling the public interest with equality and equity. Financial sustainability is compromised if part of the resources are diverted as profits by private providers. Decent work has eroded faster in the private sector compared to the private sector. The state tends to be more open to meaningful community participation than the private sector. Finally, tools to pressurise the state to respond to demands with regard to human rights are more readily available than in the face of the private sector, especially big business. Yet, there is a strong push for further expanding the role of the private sector in public services.

Challenges to Quality Public Services

Most public services need to be improved in their design, functioning and organisations

³ UDHR, 1948, Art 22 and Art 23, and ICESCR, 1966, Art 6-10.

in order to fully contribute to the realisation of human rights. Yet, in many cases, the push to dismantle or weaken existing public services is an ongoing and immediate threat. In many countries in the Asian region, such as India, Malaysia or the Philippines, governments are autonomously opting for liberalisation and deregulation policies, as well as promoting the role of the private sector in key areas of the economy, including in public services. As part of these policies, electricity systems and educational institutions have been privatised, public-private partnerships (PPP) promoted in the water and healthcare sector, and budgets for municipalities and other state institutions to provide and expand these services have stagnated or shrunk.

The impacts are known, such as in the water sector where privatisation has led to less equitable access due to higher prices, lower efficiency linked to lack of investment, difficulty to regulate private providers, loss of accountability to citizens, worsening working conditions and an erosion of the financial sustainability of the service⁴. A recent study by the ILO provides evidence of the impacts of pension privatisation in Latin America and Eastern Europe, showing that after privatisation coverage rates have stagnated or decreased, pension benefits have deteriorated, gender and income inequality have increased, governance has weakened, and workers' participation in management was eliminated.⁵ Commenting on a report that exposes how PPPs across the world drain the public purse, and fail to deliver in the public interest, Rosa Pavanelli, Public Services International General Secretary, stated "PPPs divert funding from the public purse to private bank accounts. Instead of creating for-profit structures with tax payer's money, we need investment in public goods such as health, education and water and sanitation"⁶.

Despite compelling evidence of the impacts of privatisation on quality public services, and the analysis that show the implications of privatisation for human rights (as mentioned above), such policies continue to be promoted by key global institutions and through global processes. We will look at two of these institutions that impact on public services, the World Bank and the new generation Free Trade Agreements.

World Bank: Promoting PPPs to leverage finance

The World Bank consists of two organisations (the International Bank for Reconstruction and Development, IBRD, and the International Development Association, IDA) that provides interest-free loans and grants to the governments of developing countries as well as policy prescriptions and advise.⁷ This international

⁴ David Hall (2005), 'Introduction', in *Reclaiming Public Water*, Transnational Institute and Corporate Europe Observatory: Amsterdam.

⁵ Ortiz Isabelle et al. (2018), 'Reversing Pension Privatization: Rebuilding public pension systems in Eastern Europe and Latin America', International Labour Organisation: Geneva, accessed 16 June 2019, <https://www.social-protection.org/gimi/RessourcePDF.action?ressource.ressourceId=55301>

⁶ <http://www.world-psi.org/en/report-exposes-how-ppps-across-world-drain-public-purse-and-fail-deliver-public-interest> and see 'History RePPPeated - How public private partnerships are failing' by Eurodad, available at <https://eurodad.org/Entries/view/1546956/2018/10/03/History-RePPPeated-How-public-private-partnerships-are-failing>

⁷ The World Bank group consists of five organisation, the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA) and the International Centre for Settlement of Investment Disputes (ICSID).

financial institution (IFI) states to aim at reducing poverty and supporting development, i.e. 'shared prosperity'⁸. Human rights are not known to be high on its priority agenda—in fact, it has been argued that while business performance is carefully tracked, data on human rights impacts are rarely collected or published⁹.

In the 1990s, the World Bank played a key role in promoting privatisation—through transfer of ownership of assets from the public sector to the private sector, through transfer of management (even without transfer of ownership), or through 'simulation' of the private sector, i.e. making public enterprises act as if they were private.¹⁰ This was largely anchored on prioritizing debt re-payments by cutting government subsidies, increasing (short term) revenues, while limiting the fiscal deficit. This was located within a particular model of development, which also included free market policies, an orientation towards the export market in addition to shrinking the public sector¹¹.

After years of negative experience, the World Bank and other IFIs such as the International Monetary Fund (IMF) have come to recognise the limitations of the 'privatisation agenda'. The IMF's own analysis demonstrates that the benefit of privatisation is usually only an "illusion" and highlight that privatisation has left many countries in a poor fiscal position¹². Yet the World Bank continues to push privatisation and PPPs, making it a condition of loans and key reform targets¹³.

In the current context, and especially post-financial crisis of 2008, PPPs are portrayed as a way to leverage private finance for development projects. This is for instance visible in the way they are promoted as a means of implementation of the Sustainable Development Goals, and feature prominently in the Addis Ababa Action Agenda which came out of the 2015 United Nations Conference on Financing for Development.

Data shows that since 2004 there has been a rapid growth in the money invested in PPPs in developing countries. Over an eight-year period, annual investments through PPPs increased seven-fold: from US\$ 19 billion in 2004 to US\$ 144 billion in 2012.¹⁴ IFIs, such as the World Bank, have played a guiding role in providing advice and finance for PPP projects in different sectors, through initiatives such as Billions to Trillions, and

⁸ <http://www.worldbank.org/en/about/what-we-do>

⁹ Maitri Porecha, 2 November 2018, 'Widespread privatisation marginalises the poor: UN report', Business Line, accessed on 16 June at <<https://www.thehindubusinessline.com/economy/widespread-privatisation-marginalises-the-poor-un-report/article25273116.ece>>. Also see Philip Alston (2018), 'Report of the Special Rapporteur on extreme poverty and human rights.'

¹⁰ For an analysis of the water sector see P. Raja Siregar (2002), 'World Bank and ADB's Role in Privatizing Water in Asia', accessed 16 June 2019 at <https://www.circleofblue.org/wp-content/uploads/2012/06/WorldBank_ADB_Privatization_Asia.pdf>

¹¹ World Bank. 1992. World Development Report 1992: Development and the Environment. New York: Oxford University Press. Available at: <https://openknowledge.worldbank.org/handle/10986/5975> and Mary M. Shirley, The What, Why, and How of Privatization: A World Bank Perspective, 60 Fordham L. Rev. S23 (1992). Available at: <http://ir.lawnet.fordham.edu/flr/vol60/iss6/2>

¹² <https://www.imf.org/en/Publications/Fiscal-Affairs-Department-How-To-Notes/Issues/2018/10/17/How-to-Control-the-Fiscal-Costs-of-Public-Private-Partnerships-46294>.

¹³ Despite this recognition, the IMF continues to promote PPPs in practice. See <https://www.brettonwoodsproject.org/2018/12/imf-and-world-banks-support-for-privatisation-condemned-by-un-expert/>

¹⁴ Cécilia Gondard (2018), 'History RePPPeated: How public private partnerships are failing', Eurodad: Brussels, October, available at <https://eurodad.org/Entries/view/1546956/2018/10/03/History-RePPPeated-How-public-private-partnerships-are-failing>

the subsequent Maximizing Finance for Development. These initiatives promote changes in national regulatory frameworks, as well as provide advice and finance for PPP projects. From PPPs for drinking water and sanitation supply, providing electricity through markets, private provision of healthcare services, to PPPs for social services infrastructure, all find their way into the World Bank's stated achievements.¹⁵

Free Trade Agenda in Services: Obstructing Regulation

The World Trade Organization (WTO) is the intergovernmental organization that defines the rules of international trade between countries, through negotiating agreements and monitoring their implementation. While the WTO has a complicated relation with the concept of 'development' it states that it aims at "reducing obstacles to international trade [...], thus contributing to economic growth and development"¹⁶.

Services liberalisation and deregulation have been on the agenda of the WTO since its creation, through the General Agreement on Trade in Services (GATS). However, this agenda was pushed back by developing countries, and remains limited within this institution. As parallel processes of negotiating bilateral free trade agreements (FTAs) that would take the free trade agenda forward between few actors progressed, FTAs did sometimes include a component of services liberalisation, but rarely when only involving developing countries. According to data released by the World Bank, "the restrictive impact [on international trade] of services regulations" remain high in the Asia Pacific region¹⁷.

In the face of the limited gains with the WTO and through FTAs, in 2012, about 20 countries with a broad interest in the liberalisation of services created a group to define the next steps in this agenda. They called themselves the "really good friends of services" and set an aim to negotiate an ambitious treaty to liberalise the trade of services worldwide under the name of the Trade in Services Agreement, TISA (see table 2 below for list of member countries). This process rapidly became controversial because of its secretive nature—which was envisaged to last until five years after the agreement came into force—as well as because of its content, which includes an aim to expand "regulatory disciplines" on all services sectors, including public services.¹⁸

These disciplines would curtail the ability of government to regulate at two levels. On the one hand, they would address regulations 'at the border' by providing foreign providers facilitated access to domestic 'markets'. On the other hand, they would address regulations within countries, by restricting governments' ability to regulate, purchase and provide services, even for public services—if not stated otherwise. This includes forcing public entities' (state-owned enterprises) activities into increasingly narrow logic of the competitive market—this being a precursor to their eventual

¹⁵ <http://www.worldbank.org/en/about/partners/maximizing-finance-for-development#6>

¹⁶ https://www.wto.org/english/thewto_e/whatis_e/wto_dg_stat_e.htm

¹⁷ Sherry M Stephenson (2017), 'Benefits of Services Trade Liberalisation in the Asia-Pacific Region', RMIT Australia, accessed on 16 June 2019 from <<https://www.rmit.edu.au/news/all-news/2017/local-news/benefits-of-services-trade-liberalisation>>

¹⁸ Public Services International (2014), 'TISA versus Public Services', accessed on 16 June 2019 from <<http://www.world-psi.org/en/psi-special-report-tisa-versus-public-services>>, and Ellen Gould (2014), 'The Really Good Friends of Transnational Corporations Agreement', PSI and OWINFS, accessed on 16 June from <<http://www.world-psi.org/en/psi-special-report-really-good-friends-transnational-corporations-agreement>>.

privatisation¹⁹; and also by curtailing and progressively removing policies to regulate or provide public services, through the ratchet clause, the standstill clause and the provisions on domestic regulation.²⁰ Due to the potential impacts of these clauses, especially on the provision of key services, the government of Uruguay decided to abandon the TISA negotiations in 2015, in the wake of large protests led by social movements and trade unions.²¹

While the pace of the TISA negotiations is slow, this framework of deregulation is pushed by TISA members into trade negotiations in order areas, significantly, two mega-FTAs that cover several Asian countries: the Regional Comprehensive Economic Partnership (RCEP) and the Comprehensive and Progressive Transpacific Partnership (TPP-11). The table below (see table 2) provides details of the countries involved in these two major arenas of negotiation.

The TPP-11 was signed in March 2018 and entered into force on 30 December 2018. It is a comprehensive agreement that includes a large part of the framework of services liberalisation and deregulation of TISA. While several developing countries that had signed the text are now delaying the ratification for different reasons, namely Brunei, Malaysia, and Chile and Peru, several developing countries have expressed interest to join the agreement (Indonesia, South Korea, Taiwan, Thailand and Colombia). While it is too early to comment on the impacts of this agreement for the provision of public services, civil society has raised concerns and campaigned against the ratification, such as in Chile and Malaysia²².

¹⁹ State-owned enterprises are to be obliged to abide by commercial considerations with regard to price setting, quality standards, distribution, marketing and other aspects of the supply of services.

²⁰ “The ratchet clause means that states are obliged to ensure that any measure to deregulate or open up the market to allow private companies to provide a service remains in place indefinitely. The aim of the standstill clause is to ensure that the existing level of regulation when the agreement is signed will be set as the ceiling, and any subsequent changes can only go in the direction of further deregulation. The annex on domestic regulation establishes the requirements of objectivity, reasonableness, impartiality, transparency and need as conditions that states must meet when they introduce any regulations.” See Viviana Barreto and Daniel Chavez (2017), 'TISA and state-owned enterprises', Campaign Briefing, TNI: Amsterdam and REDES: Montevideo, April, accessed on 16 June from <<https://www.tni.org/files/publication-downloads/tisa-en-2.pdf>>

²¹ See Viviana Barreto and Daniel Chavez (2017), 'TISA and state-owned enterprises: Lessons from Uruguay's withdrawal for other countries in the South', Campaign Briefing, TNI: Amsterdam and REDES: Montevideo, April, accessed on 16 June from <https://www.tni.org/files/publication-downloads/tisa-en-2.pdf>, and Roberto Bissio (2015), 'Uruguay abandons TISA', accessed on 16 June 2019 from <<http://www.world-psi.org/en/uruguay-abandons-tisa>>.

²² For more on the mobilisations in Chile see Luciana Ghiotto, 16 April 2019, 'Chile is fighting the TPP-11 hand-to-hand', bilaterals.org, accessed on 16 June 2019 from <https://www.bilaterals.org/?chile-is-fighting-the-tpp-11-hand> and for more on the implications of TPP-11 on Malaysia see Martin Khor, 7 March 2018, 'The New CPTPP Trade Pact is Much Like the Old TPP', IPS, <http://www.ipsnews.net/2018/03/the-new-cptpp-trade-pact-is-much-like-the-old-tpp/>.

Table 2: Comparison of Asia's mega FTAs

Name of Agreement	Trade in Services Agreement (TiSA)	Regional Comprehensive Economic Partnership (RCEP)	Comprehensive and Progressive Transpacific Partnership (TPP-11) ²³
Asian Countries Involved	Australia, Hong Kong, Japan, New Zealand, Pakistan, South Korea, Taiwan	Australia, Brunei, Cambodia, China, India, Indonesia, Japan, Laos, Malaysia, Myanmar, New Zealand, Philippines, Singapore, South Korea, Thailand, Vietnam	<i>Signatories</i> ²⁴ : Australia, Brunei, Japan, Malaysia, New Zealand, Singapore, Vietnam <i>Potential</i> : Indonesia, South Korea, Taiwan, Thailand
Non-Asian countries involved	Canada, Chile, Colombia, Costa Rica, European Union ²⁵ , Iceland, Israel, Liechtenstein, Mexico, Norway, Panama, Paraguay, Peru, Switzerland, Turkey and United States of America		<i>Signatories</i> : Canada, Chile, Mexico, Peru <i>Potential</i> : Colombia, United Kingdom, United States of America

The entry into force of TPP-11 has increased the pressure on RCEP negotiating countries to conclude the agreement, which had a self-imposed deadline to conclude in 2017, then 2018, and now, by the end of 2019. At the beginning of 2019, the pressure was high for developing countries such as India, Philippines and Indonesia, to make concessions and agree with the far-reaching text on the table. The component of the negotiations that would curtail the ability of the government to provide, purchase and regulate public services are similar than in TiSA and TPP-11, with the notable exception of the provisions on state-owned enterprises. In 2017, trade unions in the Asian regions and their allies in civil society published a statement highlighting their concerns with regard to the implications of RCEP for public services and the public interest²⁶.

While TPP-11 and RCEP include a component of liberalisation and deregulation of services that builds on TiSA, the former two are comprehensive agreements that encompass many more areas that have a bearing on public services, such as government procurement, intellectual property rights, the digital economy (known as eCommerce),

²³ CPTPP incorporates most of the Trans-Pacific Partnership (TPP) provisions, but suspended 22 provisions after the United States left the negotiations. The agreement is referred to as TPP-11 to underline that it is the same TPP albeit without USA.

²⁴ As of 15 June 2019, Brunei and Malaysia along with Chile and Peru have signed but not ratified TPP-11.

²⁵ Representing its 28 Member States.

²⁶ Workers call on Governments to Defend the Public Interest and Reject RCEP, Manila, 10 September 2017, accessed on 16 June 2019 from <<https://tradejusticeunions.org/workers-call-on-governments-to-defend-the-public-interest-and-reject-rcep/>>

and investment promotion and protection through private arbitration tribunals. The later, also known as the Investor State Dispute Settlement mechanism (ISDS), is highly controversial because of the immense power it gives transnational companies to enforce the rules of trade and investment treaties in their advantage²⁷. Similar provisions contained in FTAs or bilateral investment treaties have been used by companies to challenge the regulation private providers of public services, such as water-companies Suez and Agbar in Argentina, among others.²⁸

The Pro-active Agenda of Remunicipalisation

People are pushing back against expansion of private sector participation in public services. But the progressive agenda is not only defensive, it is also pro-active. This is visible in the emerging trend of remunicipalisation, or bringing back privatised services under public control. A recent report (2017) identified more than 800 cases across the world, in sectors such as water, energy, transport, education, waste management, and health care and social services.²⁹ In some cases, this also includes a component of community participation and democratisation, such as in the case of Hamburg in Germany³⁰.

Of course, this is not an easy process and it requires many factors to come together. The evidence of the failure of a private provider needs to be acted upon by the relevant government administration. Services might require to be re-organised and re-structured in order to be efficient in serving the public interest, and might require specific expertise that keeps in mind long term sustainability. The support of the unions of workers will be important for a smooth transition in times of uncertainty and to ensure that decent work is part of re-conceptualisation of the new public entity. Without a strong community base demand for democratisation of the service, control might get back with the state, but without community ownership.

Challenges also pave the way such as damaged and neglected infrastructure or accumulated debts by the private provider that create a drain in the public purse in order to render the public provider effective again. Conflicts of interest of policy makers or bureaucrats that are benefiting of the private contract might dampen the political will to act in the face of evidence. Existing international obligations that are binding and enforceable through international arbitration tribunals (known as ISDS) can be used by private companies to challenge remunicipalisation efforts, such as in the case of the energy sector in the city of Vilnius in Lithuania or electricity distribution in Albania³¹.

²⁷ See for instance Cecilia Olivet et al (2016), 'The hidden cost of corporate trade deals in Asia', Transnational Institute (TNI), Friends of the Earth International (FOEI), Indonesia for Global Justice (IGJ), Focus on the Global South and Paung Ku.

²⁸ Lavinia Steinfort (2017), 'The 835 reasons not to sign trade and investment agreements', in *Reclaiming Public Services: How cities and citizens are turning back privatisation*.

²⁹ Satoko Kishimoto, Olivier Petitjean (2017), 'Reclaiming Public Services: How cities and citizens are turning back privatisation', Amsterdam and Paris, June, accessed on 16 June 2019 from <https://www.tni.org/files/publication-downloads/reclaiming_public_services.pdf>.

³⁰ Soren Becker (2017), 'Our city, our grid: the energy remunicipalisation trend in Germany', in *Reclaiming Public Services: How cities and citizens are turning back privatisation*.

³¹ Lavinia Steinfort (2017), 'The 835 reasons not to sign trade and investment agreements', in *Reclaiming Public Services: How cities and citizens are turning back privatisation*.

A strong and broad alliance of community and users groups and movements, trade unions including of public service workers, progressive elected representatives, and technical experts and academicians and other civil society groups will be required at the local, national and international level in order to take this agenda forward. Human rights activists that believe in the importance of quality public services for the realisation of key fundamental human rights can bring strong arguments and insights to this collective struggle.