Global Justice Academy

From Rights to Contracts

Model Clauses for Public-Private Contracts to Ensure the Right to Health

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Introduction

This report introduces a set of contract clauses designed for public-private partnerships (PPPs) in healthcare services, which are aimed at upholding the fundamental human right to health. As healthcare systems increasingly collaborate with private entities to deliver essential services, there is a growing need to ensure that these contracts prioritise realising the right to health.

Collaboration between the public and private sector ranges from private entities supporting publicly operated services to the full privatisation of specific services. Public-Private Partnerships (PPPs) operate as contracts whereby a state authority delegates the provision of certain services to private entities.

Several characteristics of public-private partnerships are:

- The private provider and public body are two separate legal entities.
- The object of the contract is the provision of a service to individuals.
- The persons impacted usually do not pay the private provider and the costs for using the service are borne by the state.
- The contracts are often in place for a long time.

While a state entity can contract out the provision of a health service, it cannot contract out its domestic or international human rights obligations. To this end, the proposed clauses ensure that the contractual framework align with international human rights

law, emphasising the realisation of the right to health as the foundation of the contract.

The clauses address key aspects of healthcare provision, including service accessibility, quality control, non-discrimination, accountability, and transparency. By embedding these principles into public-private contracts, these clauses aim to bridge the accountability gap between the private and public sector, ensuring that healthcare services reach vulnerable and underserved populations effectively and equitably. Through these clauses, this report seeks to provide a foundational tool for lawyers, policymakers, and businesses committed to realising the right to health within public-private healthcare collaborations.

The Mismatch of Contracts and the Right to Health

Previous research published by the authors emphasised that there is an inherent mismatch between how PPPs are constructed and what the right to health demands.[1] The research demonstrates that, if countries continue to use PPPs, there needs to be a different approach to how contracts are negotiated, drafted and implemented.

One of the main issues with the current contractual framework is that it does not factor in how key characteristics of PPPs form obstacles to the realisation of social rights. Examples of this include: i) their long lifecycle; ii) the need for adaptations during that time to ensure progressive realisation; iii) the need for quality to be assessed in the context of the right to health; iv) the need to

[1] For more, see for example Hoekstra, J., Yanes, LF (2023) Reimagining Private-Public Contracts in the Health Sector: in the Quest for a Right to Health Approach' in *Beyond Building Green: Linkages and gaps in sustainable public procurement of infrastructure and human rights* (edited by Professor Olga Martin-Ortega and Laura Treviño-Lozano. Edward Elgar

address the impact on rights-holders; v) the need for services to be adapted to what right-holders need (and therefore the need for stakeholder participation throughout the contract); among many others.

Our previous research has demonstrated that, even if we are to accept that privatisation can enhance the realisation of social rights (which is already contested), the contractual framework in which PPPs are operating is inadequate for this purpose. PPPs enable an environment in which rights – at the very least – cannot be progressively realised.

A different approach to PPPs, one that focuses more on public objectives and human rights standards, is therefore imperative. If privatisation cannot occur without ensuring international human rights obligations, it should not happen at all.

The present report aims to address such mismatch and shortcomings, providing concrete clauses that could help improve the contractual framework of health related PPPs. Some might criticise these clauses as they impose more onerous obligations on the private provider than current standard contracts. However, they constitute the very basic minimums required to ensure the full realisation of the right to health. If state authorities cannot guarantee these basic minimums in their contractual agreements, they should not be outsourcing any of its inherent human rights obligations.

The Corporate Responsibility to Respect Human Rights

Whilst the state is the duty holder of international human rights obligations, there is a global recognition that corporations have a responsibility to respect human rights.

The UN Guiding Principles on Business and Human Rights (UNGPs), unanimously endorsed by the UN Human Rights Council in 2011, require businesses to avoid infringing on the human rights of others and to address adverse impacts with which they are involved (Principle 11.)

The UNGP require companies to implement a human rights due diligence process, enabling companies to identify, prevent, mitigate, and account for any human rights impacts that may arise from their operations. This responsibility extends to a company's entire value chain, including subsidiaries, business partners, and other connected entities.

Despite the non-binding nature of the UNGPs the corporate responsibility to respect human rights has acquired legal and normative authority through its widespread acceptance by governments, businesses, courts, trade associations, and other non-government organisations.

Human rights due diligence is the core process companies should engage in to demonstrate how they are meeting the corporate responsibility to respect human rights. Contract clauses play an important role as they are the means through which contracting partners can create accountability.

The Private-Public Contract and the Right to Health

Given all the above considerations, the contract needs to reflect the state’s obligation to respect, protect, and fulfil human rights, as well as recognise the private provider’s independent corporate responsibility to respect human rights.

The model clauses in this report focus on the realisation of the right to health in the contract and do not address any other contractual issues. The realisation of the right to health within the contract is demonstrated not just through the inclusion of these clauses but also through the interpretation of the overall contract. The parties need to ensure using the realisation of the right to health as a foundational principle of the contract, ensuring therefore that the entire contract is constructed through a human rights lens.

Contract design plays a key role in ensuring that the parties are in a position that they can fulfil their obligations. Clauses should be precise and clear as to what is required of the parties. Clauses should be capable of being fulfilled and verification of adherence to the clauses should be possible. There should be clear remedies available upon breach of contract which address the human rights impact caused by this breach. The model clauses here proposed can be adapted to suit a specific jurisdiction and a specific health service.

The clauses strive to strike a balance between the needs of the contracting parties for certainty and stability and the needs of the persons impacted for transparency, accountability, and due diligence to promote the respect and realisation of human rights

Recognising services as human rights

Health is, first and foremost, a fundamental human right. Recognised in the Constitution of the World Health Organisation in 1946, the right is protected through various internationally legally binding agreements. These include the International Covenant on Economic, Social, and Cultural Rights (1966), the UN Convention on the Rights of the Child (1989), the Convention on the Rights of Persons with Disabilities (2006), among other treaties.

The clauses in this section recognise some of the most basic aspects of the human right to health, aimed at ensuring the contract is shaped by the pillars of the right.

I. RIGHT TO HEALTH

The Parties to this Agreement acknowledge that the provision of services established in it responds to the state's obligation towards realising the human right to the highest attainable standard of physical and mental health. Therefore, the obligations set forth in this Agreement will be implemented and interpreted in according to the laws and standards enshrined in international human rights law, in particular, of the International Covenant of Economic Social and Cultural Rights and the [X regional human rights treaty: for the Americas (San Salvador Protocol); for Europe (European Social Charter) or; for Africa (Banjul Charter)].

II. NON-DISCRIMINATION

The Private Provider is strictly forbidden to deny services to any individual or community based on race, colour, sex, language, religion, political or other opinion, national or social origin,

property, birth, disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, economic and social situation, or any other status.

III. PROGRESSIVITY

The Parties acknowledge that health services are required to be constantly and continuously improved, as to guarantee the highest possible quality for the individuals and communities that they are intended for. For such purposes:

A. When the facilities and equipment are owned by the Private Provider, the provider is obliged to repair, change, and modernise all of its equipment and technology. The provider must, therefore, perform an annual assessment of all of its equipment, to ensure that it performs adequately. The provider will be evaluated on the usage of its reasonable financial means in improving its equipment and services.

B. When facilities and equipment are owned by the state, the provider must inform the state of the need to change, repair or modernise relevant necessary equipment. Under these circumstances, the Private Provider will be held liable for the financial costs of the equipment that have been damaged due to negligent or inadequate use.

C. The Private Provider is responsible for the constant training of all of its personnel, in order to ensure that all of the services provided are performed according the highest standard of medical and ethical treatment.

Adequacy of rights-based services

To ensure that the delivery of services and goods are compliant with the right to health, state authorities must ensure they are meeting certain conditions of adequacy. Referred to in international law as the 'normative content' of rights, these conditions critically need to be embedded within the contractual agreement of any health service PPP.

IV. AVAILABILITY

The Private Provider will ensure that services are made available in reasonable and adequate time and schedule, in accordance to the particularities of the service and/or the necessities of the end-users.

V. ACCESSIBILITY

The Private Provider will guarantee that services are physically and financially available to all targeted users. For such purposes:

A) When the facilities are owned by the state, the Private Provider shall inform the competent state authority of the need to improve the facilities in order to ensure access to all. This will include:
   1) Adequate facilities to ensure that those with physical and mental disabilities can access the service facilities.
   2) Public transportation systems that can allow users to access to the facilities within a reasonable cost and time.

B) When the provider is entrusted in providing a service with its own facilities, it is obliged to ensure that its facilities are within a reasonable physical reach of the targeted

population, and that the facilities are adequate for all users, including those with disabilities.

C) The Private Provider must ensure that there are necessary mechanisms available to adequately allow those users with mental disabilities to access such services. This must include the adequate training of all personnel.

D) The Private Provider will ensure that no financial barriers are placed on the user, which can limit the effective enjoyment of the health service being provided.

VI. ACCEPTABILITY

The Private Provider agrees that the provision of services must be respectful of individuals' cultural practices and beliefs, in accordance with medical ethics. Consequently, the Private Provider must guarantee that its services are provided strictly on a consensual basis, which respects the autonomy of its end-users.

VII. QUALITY

The Private Provider is obliged to ensure good quality in the provision of [X] services, guaranteeing that they are scientifically and medically appropriate. For such purposes, and taking into account all directives by the World Health Organisation and [Country X] Ministry of Health, the Private Provider must ensure the existence of:

1) Qualified and skilled medical personnel;
2) Scientifically approved and unexpired drugs and equipment;
3) Safe and adequate facilities; and

4) That the service meets the quality benchmarks agreed in Clause [X]

Due Diligence

Human Rights Due Diligence is at the core of the United Nations Guiding Principles on Business & Human Rights and is now becoming a part of domestic law in several countries. Through the exercise of human rights due diligence the parties demonstrate how they uphold the corporate responsibility to respect human rights.

VIII. HUMAN RIGHTS DUE DILIGENCE

A) Commitment to Human Rights Due Diligence:

The Private Provider acknowledges and agrees to conduct comprehensive human rights due diligence throughout the term of this Agreement to identify, prevent, mitigate, and address actual or potential adverse human rights impacts associated with its operations, supply chain, or other business relationships.

B) Scope of Due Diligence:

The due diligence process shall include, but is not limited to:

1) Assessing human rights risks and impacts in connection with the performance of this Agreement.
2) Meaningful consultation with relevant stakeholders, including affected communities, workers, and civil society organisations, as appropriate.
3) Draw on internal and external human rights expertise.

4) Integrate findings across the private provider's relevant functions and processes.

5) Implementing measures to prevent or mitigate identified risks.

6) Monitoring and reporting on the effectiveness of these measures.

The Private Provider shall give particular consideration to marginalised communities and groups in situations of vulnerability. Special consideration must be placed to disabled people, women, children, LGBT+ people, older people, ethnic monitories, people in socio-economic disadvantage situations, migrant workers, indigenous peoples, among others.

C) Reporting and Transparency

The results of the human rights due diligence exercise shall be included in the yearly non-financial reporting statement of which the particulars are specified in clause XI on Non-Financial Reporting.

D) Remedial Action

If adverse human rights impacts are identified, the Private Provider shall take timely and appropriate remedial action in consultation with affected parties and report these actions to the Public Authority.

E) Compliance with Standards

The Contractor shall ensure its due diligence processes align with internationally recognised human rights frameworks, including the UN Guiding Principles on Business and Human Rights.

D) Breach and Remedies

Failure to conduct human rights due diligence as stipulated in this Clause shall constitute a material breach of this Agreement, entitling the Public Authority to pursue remedies in accordance with Clause XIII.

Participation

Grounded in the idea that individuals and communities have a fundamental role in determining the way in which its health services and policies are delivered, participation is considered by the Alma-Ata Declaration as a 'right and duty to participate individually and collectively in the planning and implementation of their health care.' The model clause on third party rights seeks to find a balance between the needs of the contracting partners for certainty, minimising disruption to the contract from external factors, and the rights of persons impacted by the contract.

IX THIRD PARTY RIGHTS

A. The clauses of this Agreement are enforceable solely by the Parties to this Agreement, and no shareholder, employee, agent of any Party or any other Person shall have the right to enforce any clause of this Agreement or to compel any Party to this Agreement to comply with the terms of this Agreement. Nothing in this Agreement shall confer any rights on any person (other than the Parties hereto) pursuant to statutory obligations [insert relevant statutory provisions]

with the following exceptions:

1) Persons impacted that have exhausted the internal grievance mechanism that the Private Provider is contractually obliged to

provide (see clause XIV) and who are not satisfied with the result of the grievance procedure.

2) Persons impacted that fall in this category shall be entitled to sue upon the following provisions of the Agreement: [Insert relevant clauses]

3) Persons impacted will need to notify the Private Provider within 6 (six) months of the end of the grievance procedure of their decision to start proceedings. Proceedings should be started within 1 (one) year of the end of the grievance procedure. This clause does not affect any statutory rights of the impacted person.

4) Under this clause organisations with sufficient public interest shall be able to sue upon the provisions mentioned in 2) if so, requested by a person impacted that falls under 1) of this clause.

B. The courts of X shall have jurisdiction for any disputes arising under this clause. This clause is governed by the law of X and should be interpreted with an overall regard to a duty of good faith and with regards to the principles underlying this Agreement, including its domestic and international human rights obligations.

C. The rights of the Parties to terminate, rescind, or agree any amendment, waiver, variation, or settlement under or relating to this Agreement are not subject to the consent of any third party, except if otherwise specified under Clause X Transparency.

Transparency

Under international human rights, health services must ensure that they are transparent at all time, without undermining the confidentially of patients. As explained by Prof Paul Hunt, transparency is particularly important in health services as it 'enables individuals and communities to promote their own health, participate effectively, claim quality services, monitor progressive realisation, expose corruption, hold those responsible

to account.' This requirement is essential, regardless if the provision of a health service is in the hands of a private provider, the state, or a non-profit organisation.

Therefore, the contract should be publicly available and health services should ensure that they are transparent in how they meet their obligations under the contract. Disclosure and reporting focus ensure that all stakeholders can understand the terms and conditions of the contract and how the private provider identifies and addresses human rights issues.

X. TRANSPARENCY

A) The contents of this Agreement and any associated documents [namely....] that form part of the Agreement shall be made publicly available free of charge by the Public Authority. A hard copy will be available to consult in an office designated by the Public Authority within the geographical area where the Private Provider operates. This can be consulted by any member of the public in normal business hours. A digital copy will be made available on the website of the Public Authority. This should remain available until 2 (two) years after the termination of the Agreement.

The Public Authority should ensure that the non-financial reports, the Agreement, and associated documents [namely....] are either available on the same webpage or that a link is added from one page to the other to ensure the documents can be consulted together.

If any variations to the Agreement are made during the period that the Agreement is in vigour these variations should be incorporated in publicly available copies within 2 (two) months after these variations have been agreed by the Parties.

B) The following information and clauses are exempted from the requirement under A) and do not need to be made publicly available:

1) Any issues related to the intellectual property rights of the Private Provider.

2) Any trade secrets of the Private Provider.

3) Financial information that can be deemed as commercially sensitive.

4) Sensitive personal data.

5) Any information that legally cannot be made publicly.

The Parties should justify why specific information has not been made public and this justification should be made publicly available alongside this Agreement.

This Agreement should be made public in its entirety following the requirements in A). Those parts which fall under the exemptions in B) should be blotted out so the public can understand how much of this Agreement is not public.

It is understood by the Parties that the Agreement is made public with the goal that all Stakeholders can understand how this agreement ensures that the Parties respect, protect, and fulfil human rights. Therefore, if specific information is not publicly disclosed this should not diminish the understanding of how the parties meet their human rights obligations.

This is without prejudice to any disclosure which is required pursuant to [insert reference to legislation containing public disclosure obligations] as well as any other legal obligations placed on the Parties.

C) Once the Private Provider and the Public Authority have agreed on the terms and conditions of the Agreement but before signing the Agreement, this Agreement should be made available to elected representatives in the geographic area where the service will be executed to ensure democratic accountability. These elected representatives are: (….) (….)

This should be done at least 60 (sixty) days before the Agreement is due to enter into force.

If the elected representatives have any concerns with regards to the content of this Agreement, they should raise these concerns with the Public Authority. The Public Authority is obliged to issue a response to the elected representatives. If the elected representatives are not satisfied with this response, the Parties should take into account these objections in the contractual negotiations.

Elected representatives should in particular pay attention on how the Agreement affects the Accessibility, Availability, Acceptability, and Quality (AAAQ Framework) of the right to health.

XI. NON-FINANCIAL REPORTING

A) The Private Provider shall file a non-financial statement to the Public Authority every year. The statement shall cover the approach of the provider towards human rights and how the Private Provider has met its human rights obligations (as determined by this Agreement) and responsibilities (under the United Nations Guiding Principles on Business & Human Rights.) The information contained should be useful, relevant, complete, and accessible.

B) The statement should include:

1. The policies of the Private Provider in relation to matters discussed in XI A).

2. The human rights due diligence undertaken by the Private Provider as established in Clause VIII Human Rights Due Diligence. The Private Provider should disclose material information on potential and actual impacts of their operations on right-holders.

3. The functioning of the grievance mechanism of the Private Provider (this should include the number of cases filed during the year, average response time, results of user satisfaction survey, and other information necessary to understand the functioning of the grievance mechanism)

4. The steps the Private Provider will take in response to the results from its policies and human rights due diligence and (from the second report onwards) the results of the implementation of the steps taken in the previous year

5. The non-financial report should take into account the relevant national and international frameworks, in particular the International Covenant on Economic, Social, and Cultural Rights and the UN Guiding Principles on Business and Human Rights and must contain information on how the provider approaches these frameworks.

C) The statement should include how the Private Provider has complied with this Agreement.The provider will provide information on how it met the quality benchmarks and targets agreed in this Agreement. If the Private Provider has not met the agreed targets it should explain why this is the case and present an action plan on achieving compliance the following year.

This shall include information to how the obligation of progressive realisation is being met in accordance to its maximum available

resources. This could include for instance: new technologies, and procedures, improvements of facilities, further training and specialisation of staff etc.

E) From the 2nd (second) year onwards, the Private Provider should incorporate a comparison with the previous year's report.

F) The non-financial statement should be filed to the Public Authority. The statement covers the previous year and should be filed before the 6th (sixth) month of the new year. A year is a period of 12 months which runs as determined by the parties: [insert here]. The Public Authority will make the statement public within 2 (two) months after this have been filed to the Public Authority. The non-financial statement will be made available to the public free of charge. A hard copy will be available to consult in an office designated by the Public Authority within the geographical area where the service provider operates and can be consulted by any member of the public in normal business hours. A soft copy will be made available on the website of the Public Authority. The non-financial statement should be made public for a period of minimum 5 (five) years. The private provider must also publish the non-financial statement on their website for a period of minimum 5 (five) years.

G) There is no prescribed format for the statement, the following should be taken into account:

1) The statement should be accessible and understandable for a wider public. It should contain definitions of the terms used, an explanation of the methodology on how the information was compelled, and any other information necessary to understand the statement and the context in which the statement is made. The terminology should be consistent throughout the statement.

2) The statement should present material in an objective manner and consider favourable and non-favourable aspects.

3) It should be possible to compare this year's statement to the previous year. Therefore, the format should not be changed significantly from year to year. Small changes in the format can be made if this does not undermine the comparability of the report.

4) Should the state enact any statutory provisions that require a form of non-financial reporting, transparency, or due diligence this should be executed according to the law, notwithstanding the report filed as part of this Agreement. Such a statement mandated by the law should be made available alongside the non-financial report filed as part of this Agreement.

Monitoring

Accountability includes the monitoring of conduct, performance, and outcomes under the contract.The state has a specific duty to ensure that the right to health is realised and must be able to monitor whether the contractual provisions put in place for this realisation are adhered to.

XII. ACCOUNTABILITY

A) The Public Authority has the obligation to monitor the adherence of the Private Provider to the Agreement.

The Public Authority and the Private Provider will make an Agreement on the exact form this monitoring will take. This could consist of regular meetings, self-reporting, evaluation, and/or inspection visits. The Parties need to agree on the methods that will be the most efficient and that ensure a complete understanding of how the Private Provider meets its obligations under the Agreement.

[insert here agreed methods and frequency of monitoring]

The following aspects should be taken into account with respect to monitoring:

1) Monitoring should be objective and fair, and the Parties should act in good faith.

2) Monitoring should take into account any risks (existing and future non compliance.

3) Monitoring is a continuous process and requires cooperation between the Parties.

4) The Parties should be transparent towards one another and provide the necessary information to ensure monitoring can take place unhindered.

5) The Public Authority recognises the need for the Private Provider to carry out its obligations under the Agreement without undue hindrance and will take this into account when monitoring compliance.

The Public Authority shall make an annual report on how well the Private Provider complies with the Agreement.

This report shall be submitted in first instance to the Private Provide within 2 (two) months after the Public Authority has finished the report. The Private Provider will have 2 (two) months to respond to this report.

If the Parties find non-compliance, they will together agree on an action plan to ensure compliance to the Agreement. The next monitoring report should incorporate how Parties adhere to the action plan.

B) Every 5 (five) years this Agreement will be subject to a periodic review between the parties.

The Parties will compile a statement on

1) Adherence of the Parties to this Agreement.

2) Functioning of the health service with a focus on the AAAQ Framework and the progressive realisation of the right to health.

3) Need for any changes to this Agreement following the review.

This statement should be made available to the elected representatives in the geographic area where the service is located. The monitoring reports of the years in between periodic reviews should also be made available to the elected representatives. These should scrutinise the statement, in conjunction with the non-financial reports and the monitoring reports.

If the elected representatives do not agree with the content of the statement, they should formulate the exact issues on which they do not agree and present these to the Public Authority.

The Public Authority should formulate a response to these issues which will be made available to the elected representatives.

The Parties should take into account these concerns when deciding on any variation to the Agreement following the periodic review.

C) On the expiry date of this Agreement the Private Provider shall ensure that all information that the Private Provider has in its control or possession and relates to the Persons impacted of the service is handed over to the Public Authority or destroyed depending on what is agreed. This includes any information that has been passed down to sub-contractors, employees, agents, assignees, or other Parties.

D) The provisions of this clause are without prejudice to the application of [insert relevant statutory law].

Redress

There is a strong consensus that remedial justice - wiping out the consequences of a wrong - is a general principle of law. In a practical sense, the principal acknowledges that rights can become meaningless if there are no consequences when they are breached. In this sense, a lack of remedies for breaches to people's right to health creates the perception that health services are charity, rather than a right protected in international human rights law

Therefore, a contractual framework that can create gaps to accountability and access to remedy is not only questionable but can put into question the fulfilment of a state's international legal obligations. Taking into account that businesses will have to ensure the obligations owned to the right to health by the state in the deliverance of a service, PPP contracts must ensure remedies are available to those whose rights might be affected.

In this sense, remedies concern:
1) Remedies between contracting partners for breach of contract.
2) Remedies for persons impacted if the service falls short of the contractual promises.

The contracting parties can sue upon the contract according to inserted dispute resolution mechanism clause for breach of contract. Remedies for breach of contract will be determined according to the rules of the applicable law. It is recommended that the parties insert a liquidated damages clause for any breaches which cannot be ascertained easily.

Specific performance (implement) should be considered as a primary remedy under the contract as it is more suitable for breaches of clauses on non-financial reporting, human rights due diligence, monitoring, and grievance mechanisms, whereby the objective losses of the parties are difficult to establish.

XIII. Remedies for Breach of Contract

This clause operates specifically in relation to breach of contract for any human rights impact and can be included within a wider remedies clause for other breaches of contract.

A) Identification of Breach

In the event of a breach of any human rights responsibilities & obligations under this Agreement by either Party, the non-breaching Party shall provide written notice of the breach to the breaching Party, specifying the nature of the breach and any corrective action required. The breaching Party shall have [number] days from receipt of the notice to remedy the breach, unless otherwise agreed in writing.

B) Available Remedies

If the breaching Party fails to remedy the breach within the specified period, the non-breaching Party shall be entitled to the following remedies, as applicable:

1) Specific Performance: Require the breaching Party to perform its obligations under this Agreement. This should be considered the primary remedy under the contract for any breach of human rights responsibilities & obligations.

2) Monetary Damages: Claim compensation for any losses, costs, or damages incurred as a direct result of the breach.

3) Termination: Terminate the Agreement in accordance with the termination provisions herein and seek compensation for any resulting damages.

4) Equitable Relief: Pursue injunctive relief or other equitable remedies as deemed necessary to prevent or mitigate further negative impact human rights.

C) Limitation of Liability

The breaching Party's liability for damages shall be subject to any limitations specified in this Agreement, except in cases of gross negligence, wilful misconduct, or violation of applicable laws.

D) Dispute Resolution

Any disputes regarding the breach or application of remedies shall be resolved through the dispute resolution mechanism outlined in Clause [insert reference to dispute resolution clause].

E) Mitigation of Loss

The non-breaching Party shall take reasonable steps to mitigate any losses arising from the breach of contract.

XIV. GRIEVANCE MECHANISMS

The Private Provider will establish and ensure the existence of an operational-level grievance mechanism which individuals and communities can directly access. Such mechanism shall be defined by the following conditions:

A) Individuals and communities will be allowed to access such mechanism when they have been negatively affected by the services provided, in circumstances such as:
   1) The Private Provider has not afforded the user with quality services that are scientifically and medically appropriate;
   2) The individual's traditions or beliefs has not been ensured in the provision of given service;

3) Services have not been made available within a reasonable amount of time;
4) Individuals or communities have been negatively treated differently, amounting to a discriminatory practice;

B) Based on the United Nations Guiding Principles on Business and Human Rights, the Private Provider must guarantee that its operational grievance mechanism complies with international standards, ensuring that it is legitimate, accessible, predictable, equitable, transparent, and rights-compatible, continuously improving, based on engagement and dialogue.

C) The mechanism must enable trust for intended stakeholders, and it must be clear and transparent, allowing users to access it without any financial or administrative barriers. The mechanism can be insourced or outsourced, but should be composed by a group of individuals that can guarantee expertise, independence, and neutrality.

D) The mechanism must be prompt and effective, providing an initial answer to any complain within 1 (one) month. The mechanisms must resolve all complains within less than 6 (six) months, with due consideration for exceptional cases.

E) Publicly available information – in appropriate forms and languages – regarding the mechanism must exist both on the webpage of the provider as well as on the premises of the service. The mechanisms shall ensure the existence of adequate assistance for those who may face particular barriers to access, such as persons with physical or mental disabilities.

Beyond Health PPPS

While the present clauses are centred on the right to health, their general approach can be replicated in other contracts related to the provision of social rights services. Public-Private contracts related to the provision of food; clothing; education; water; housing; cultural services; among others, can all take a similar approach. Contracts will have to be adapted to consider the particularities of each human rights (including for example the unique normative content of each right), but in general terms, the model clauses used here can serve as a guideline for the development of other contractual agreements. Obligations such as progressive realisation, non-discrimination, transparency, accountability, and redress, are applicable to all economic, social, and cultural rights. Therefore, the general framing of these clauses can be adapted to other relevant social rights PPPs.

For PPPs in Scotland, where the authors work and reside, embedding these model clauses could be an important implementation mechanism of the requirements set forth in section 6(6) of the UNCRC (Incorporation) (Scotland) Act 2024.

About the Authors

★ **Dr Johanna Hoekstra** is a lecturer in commercial law at the University of Edinburgh. Previously, she worked as a lecturer at the University of Essex and at the University of Greenwich. She is a member of the Global Business and Human Rights Scholars Association and an associate member of the Business, Human Rights, and Environment Research Group at the University of Greenwich. Johanna researches in the areas of business & human rights and international contract law. Johanna holds a PhD in Law from the University of Essex, an MSc in European Public Policy from Birkbeck College and a Master in international law from the University of Bordeaux.

★ **Dr Luis F Yanes** is an international human rights lawyer, who is currently the Scottish Human Rights Commission's expert on economic, social and cultural rights. He has worked for more than 16 years both in practice and academia across Europe, Africa and the Americas. He has been a Human Rights Specialist at the Inter-American Commission on Human Rights; a Research Fellow at the Global Business Initiative on Human Rights; an Associate Lecturer at the University of Essex and the Universidad Católica Andrés Bello; a Visiting Scholar at the University of Pretoria; a Legal Officer at the Program of Action in Education in Human Rights; a consultant for several non-governmental and international organisations; among other roles. Luis is currently a Guest Lecturer at the University of Edinburgh. He writes these clauses in his academic capacity.