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## International Guideposts for Essential Public Services Provision and Socio-Economic Human Rights

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# 16 International guideposts for essential public services provision and socio-economic human rights

*Marlies Hesselman, Antenor Hallo de Wolf  
and Brigit Toebes*

We started this volume with the most pressing challenges for essential public services provision (EPSP). All authors to this volume have further engaged with these challenges, and they have discussed a range of important human rights law standards and guideposts that can help address these issues.

In this chapter, we flesh out the relevant international human rights law standards for EPSP further. They are derived from the international human rights law framework, and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in particular.<sup>1</sup> This treaty protects many important EPSP-related rights, such as the right to an adequate standard of living, including food, water and housing; the right to health; or the right to education. The standards and guideposts were already briefly introduced in Chapter 1, and the most important ones are, in our view:

- the ‘AAAQ’ framework and ‘universal service obligations’;
- minimum core obligations and progressive realisation;
- non-discrimination and vulnerable groups inclusion;
- participation and accountability;
- mid-term/long-term planning and budgeting for EPSP; and
- private actor standards.

These various socio-economic human rights standards have been central focus points throughout this book project, and all authors in the volume were asked to directly or indirectly engage with and reflect on them. The purpose of this concluding chapter is to advance a human rights based framework for regulating EPSP. In doing so, we engage with existing literature and gather up the main threads from individual contributions, while presenting our own perspectives

1 International Covenant on Economic, Social and Cultural Rights (adopted by General Assembly resolution 2200A (XXI) on 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

on how these standards are relevant to EPSP. In a concluding section, we offer up a further research agenda in the area of EPSP and (IC)ES(C)R specifically.

## 1. The AAAQ framework and ‘universal service obligations’

The ‘AAAQ framework’ (AAAQ) is the first set of socio-economic human rights law standards that we consider exceptionally relevant for EPSP. The ‘AAAQ’ refers to the work of the UN Committee on Economic Social and Cultural Rights (CteeESCR) in a number of General Comments, where it sets out parameters for the ‘availability’, ‘accessibility’, ‘acceptability’ and ‘quality’ of services access.<sup>2</sup> Jointly, these AAAQ attributes define the normative expectations of ‘full’ and ‘adequate’ human rights enjoyment.

With a few notable exceptions that are discussed below, the AAAQ has received fairly little attention in academic socio-economic rights literature to date, nor apparently in policy practice.<sup>3</sup> This is remarkable, because most of CteeESCR’s General Comments explicitly refer to aspects of ‘availability’, ‘accessibility’, ‘acceptability’ or ‘quality’ of services access. Over the years, the CteeESCR has addressed the AAAQ in a range of General Comments, including on the right to housing (1991),<sup>4</sup> the right to food

2 And see in the area of EPSP specifically: UN Habitat, ‘International Guidelines on Access to Basic Services for All’ (7 January 2009) UN Doc HSP/GC/22/2/Add. 6 and HSP/GC/22/2/Add. 6/Corr.1/Rev.1, Annex, para 6(1), ‘The guidelines: [. . .] [e]ntails the right of individuals and groups to claim good quality, available, culturally acceptable, accessible and affordable basic services provided on a non-discriminatory basis, i.e., without discrimination on grounds of gender, racial or ethnic origin, religion or age’.

3 Consider e.g.: Physicians for Human Rights Tools & Resources, <http://phrtoolkits.org/toolkits/medical-professionalism/the-human-rights-basis-for-professionalism-in-health-care/aaaq-framework/>, accessed 1 August 2016; Australian Human Rights Commission, ‘Human Rights Approach to Ageing and Health: Respect and Choice’ (2012), [www.humanrights.gov.au/sites/default/files/document/publication/human\\_rights\\_framework\\_for\\_ageing\\_and\\_health.pdf](http://www.humanrights.gov.au/sites/default/files/document/publication/human_rights_framework_for_ageing_and_health.pdf), accessed 1 August 2016; M. Holst Jensen, M. Villumsen and T. Døcker Petersen, ‘The AAAQ Framework and the Right to Water – International Indicators for Availability, Accessibility, Acceptability and Quality’ (Issue Paper of the AAAQ Toolbox, Danish Institute for Human Rights 2014), [www.humanrights.dk/files/media/dokumenter/udgivelser/aaaq/aaaq\\_international\\_indicators\\_2014.pdf](http://www.humanrights.dk/files/media/dokumenter/udgivelser/aaaq/aaaq_international_indicators_2014.pdf), accessed 1 August 2016. Some have also used the acronyms ‘AAAAQ’ or ‘4As’ which may include some different parameters. E.g. Centre for Economic and Social Rights (CESR), ‘The OPERA Framework: Assessing Compliance with the Obligation to Fulfil Economic, Social and Cultural Rights’ (2012) 5, 18–21, [www.cesr.org/downloads/the.opera.framework.pdf](http://www.cesr.org/downloads/the.opera.framework.pdf), accessed 1 August 2016. However, we support using the term ‘AAAQ’ in this section, which is in line with OHCHR, ‘Who Will be Accountable? Human Rights for the Post-2015 Development Agenda’ (2013) UN Doc HR/PUB/31/1, 13, 34: ‘States must ensure social services meet certain criteria. [. . .] States would be required to ensure that MDG-related policies are designed and implemented in a manner that meets human rights criteria of availability, accessibility, acceptability (including affordability) and quality (AAAQ)’.

4 CteeESCR, ‘General Comment on the Right to Adequate Housing’ (1991) para 8 (availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; cultural adequacy; non-discrimination).

(1999),<sup>5</sup> the right to education (1999),<sup>6</sup> the right to health (2000),<sup>7</sup> the right to water (2003),<sup>8</sup> and, most recently, the right to social security (2008).<sup>9</sup> The AAAQ is most prominently recognisable in General Comment 14 on the Right to Health, which actually lists all four AAAQ attributes in order (see Box 16.1).

### **BOX 16.1 Health services and AAAQ**

The right to health in all its forms and at all levels contains the following interrelated and essential elements, the precise application of which will depend on the conditions prevailing in a particular State Party:

- (a) *Availability*. Functioning public health and healthcare facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State Party. The precise nature of the facilities, goods and services will vary depending on numerous factors, including the State Party's developmental level. They will include, however, the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs, as defined by the WHO Action Programme on Essential Drugs.
- (b) *Accessibility*. Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State Party. Accessibility has four overlapping dimensions:
  - *Non-discrimination*: health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalised sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.
  - *Physical accessibility*: health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalised groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities, and persons with

5 CteeESCR, 'General Comment 12 on the Right to Adequate Food' (11 May 1999) UN Doc E/C.12/1999/5, paras 7–13.

6 CteeESCR, 'General Comment 13 on the Right to Education' (8 December 1999) UN Doc E/C.12/1999/10, para 6.

7 CteeESCR, 'General Comment 14 on the Right to the Highest Attainable Standards of Health' (11 August 2000) UN Doc E/C.12/2000/4, para 12.

8 CteeESCR, 'General Comment 15 on the Right to Water' (20 January 2003) UN Doc E/C.12/2002/11, para 12.

9 CteeESCR, 'General Comment 19 on the Right to Social Security' (4 February 2008) UN Doc E/C.12/GC/19, paras 9–27.

HIV/AIDS. Accessibility also implies that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, including in rural areas. Accessibility further includes adequate access to buildings for persons with disabilities.

- *Economic accessibility (affordability)*: health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, 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 health expenses as compared to richer households.
  - *Information accessibility*: accessibility includes the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality.
- (c) *Acceptability*. All health facilities, goods and services must be respectful of medical ethics and culturally appropriate (i.e. respectful of the culture of individuals, minorities, peoples and communities sensitive to gender and life-cycle requirements), as well as being designed to respect confidentiality and improve the health status of those concerned.
- (d) *Quality*. As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, inter alia, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.

From a perspective of EPSP, the implications of the AAAQ need to be better understood and operationalised as important human rights guideposts for EPSP. Applying the AAAQ standards helps focus policymakers, service providers and courts' attention on the necessary attributes for EPSP.<sup>10</sup>

In terms of the content of the 'AAAQ', the CteeESCR has not always been consistent in its application and development of the AAAQ throughout its

10 E.g. note very similar concepts in UN Habitat, 'International Guidelines on Access to Basic Services for All' (7 January 2009) UN Doc HSP/GC/22/2/Add. 6 and HSP/GC/22/2/Add. 6/Corr.1/Rev.1, Annex, para 6(1), 'The guidelines: [...] [e]ntails the right of individuals and groups to claim good quality, available, culturally acceptable, accessible and affordable basic services provided on a non-discriminatory basis, i.e., without discrimination on grounds of gender, racial or ethnic origin, religion or age'.

General Comments. As said, the most explicit and complete articulation of the AAAQ can be found in General Comment 14. At the same time, it is not fully clear whether the CteeESCR has intended to be consistent in the development of the AAAQ, or whether it is, in fact, appropriate to understand the AAAQ differently for different rights and services.<sup>11</sup> In terms of deviations from the AAAQ, as outlined in General Comment 14 for the right to health, other Comments have seen AAAQ criteria omitted, rephrased or added, although various aspects appear to be found across General Comments. In summary, the aspects that are central to all General Comments include the: (i) *availability* of services (sufficient quantity); (ii) *accessibility* of services (economically and physically, subject to non-discrimination and information accessibility); (iii) *acceptability* of services (cultural acceptability, consumer acceptability, life-cycle and gender appropriateness); and (iv) *quality* of services.<sup>12</sup> But also: (v) aspects of *reliability* and *continuity* of a service appears important. As also considered by Murillo Chávarro in Chapter 14, the Colombian Constitutional Court has affirmed the relevance of the AAAQ in protecting human rights and access to EPSP in Colombia, whereas the two most central aspects are ‘access to’ and ‘continuity of’ services.

In this volume, various chapters engaged with the AAAQ further, trying to understand its meaning and implications in each context of EPSP (e.g. see Gispén, Ambrus, Houben and ten Oever, and Lane, in particular). Ambrus, for example, understands the AAAQ to be a manifestation of ‘adequacy’ of services access, which she takes as an ‘umbrella term’, and finds that the criteria laid down in the General Comment on the Right to Water show great overlap with other Comments. In fact, in only a few Comments, the CteeESCR seems to have proposed additional criteria to the AAAQ, such as ‘adaptability’ or ‘sustainability’ of services access.<sup>13</sup> In the context of CteeESCR’s Comment on the Right to Education, ‘adaptability’, for example, refers to the ‘needs of changing societies and communities’ and the ‘needs of students within their diverse social and cultural settings’.<sup>14</sup> It may be akin to ‘acceptability’, but not quite the same either, as it appears to impose an obligation to actively *respond* to changing situations.

In any case, it seems imperative, and possible, to extrapolate the AAAQ from the work of the CteeESCR, and to apply it to a range of EPSP-related rights

11 In a comprehensive 2012 report on indicators, the OHCHR seems to have suggested such a thing, although not clarified how this might work exactly, OHCHR, ‘Human Rights Indicators: A Guide to Measurement and Implementation’ (2012) UN Doc HR/PUB/12/5, 36: ‘[The AAAQ] do not in themselves replace the relevant treaty provisions. They also have to be interpreted specifically for each human right’.

12 A good example is how CteeESCR, ‘General Comment 13’ (1999) para 6(c) includes the attribute of ‘quality’ under criteria of ‘acceptability’.

13 CteeESCR, ‘General Comment 12’ (1999) para 7; CteeESCR, ‘General Comment 15’ (2003) para 8.

14 Ibid. para 6(d).

and services (i.e. even if the original General Comment does not refer to all aspects of the AAAQ explicitly, or at first sight). This is very clear from the recent work of the Danish Institute of Human Rights (DIHR), who are working on AAAQ Toolkits. The DIHR started its work by elaborating the ‘AAAQ’ in the context of the right to water, in particular by translating the AAAQ into indicators.<sup>15</sup>

The work of the DIHR is a great example of how the AAAQ criteria are highly valuable human rights standards for EPSP. The AAAQ offers a useful and authoritative tool for setting appropriate benchmarks, indicators and to engage in planning or in devising ‘universal service obligations’ (USOs) for service providers.<sup>16</sup> Not all elements of the AAAQ can be discussed here, unfortunately, but the DIHR, for example, translates and operationalises the attribute of ‘availability’ of water services into particular amounts of water that a person should (minimally and progressively) be able to consume per day, or the number of disconnections over a period of time.<sup>17</sup> In turn, ‘accessibility’ of water services is determined by the vicinity of water outlets (at household level or for important public places) and the available number of outlets per person, the waiting times at taps in case of communal access, and whether water services are equitably distributed across communities.<sup>18</sup> The DIHR then places these AAAQ requirements in a so-called ‘multi-tier’, progressive benchmarking framework, which enables States and other development actors to formulate progressive plans for EPSP, based on incremental human rights indicators of what it means to have ‘access’ (or not). For instance, the incremental indicators for ‘accessibility’ include benchmarks of ‘no access’, ‘basic access’, ‘intermediate access’ and ‘optimal access’,<sup>19</sup> which are in turn defined as: (i) water services further than 1 km removed, taking over 30 minutes to reach (no access); (ii) services accessible within a range of 1 km and 100 m (basic services); (iii) water access ‘on plot or within 5 m’ (intermediate access); and (iv) multiple taps in the house (‘optimal access’).<sup>20</sup> Availability, in turn, is measured by how much water is obtainable in a single (round) trip to the nearest water outlet (e.g. 5 litres in a jerry can when services are further than 1 km removed would be considered *insufficient* or ‘no access’).<sup>21</sup>

15 DIHR (2014); Ambrus also describes in her chapter that General Comment 15 on the Right to Water does not include all AAAQ elements listed in order, but that various elements can be derived from the Comment throughout.

16 See e.g. OHCHR (2013) 13, 34; OHCHR (2012) 32; Judith Welling, ‘International Indicators and Economic, Social and Cultural Rights’ (2008) 30 *Human Rights Quarterly* 933, 933–958; see on USOs also the introduction, and the chapters by Houben and ten Oever and Lane.

17 DIHR (2014) 32.

18 DIHR (2014) 32.

19 DIHR (2014) 35.

20 DIHR (2014) 35.

21 DIHR (2014) 35.

This manner of operationalising the AAAQ fits in very well with more recent practices and developments of devising human rights based indicators and benchmarks for all human rights.<sup>22</sup> This practice is likely to gain even more traction with the adoption of the new United Nations Sustainable Development Goals, which also require appropriate (inter)national measuring and tracking frameworks. In 2013, the Office of the High Commissioner for Human Rights (OHCHR) specifically called upon States and other development actors to use the ‘AAAQ’ in the formulation and implementation of new development goals.<sup>23</sup> The OHCHR stressed, in particular, that human rights based approaches, including AAAQ standards, would allow for better ‘accountability’ of all actors involved.<sup>24</sup> This is remarkable, since in 2012 the OHCHR’s work on indicators did not refer to the ‘AAAQ’ expressly, and even suggested that:

policy-makers, development and sometimes even human rights practitioners find it difficult to link [human rights] concepts [in General Comments] with implementation practices. This makes it difficult to directly use such standards in policymaking and in pursuing the realization of human rights. It is this gap that the work on indicators for human rights is trying to address.<sup>25</sup>

We argue that the AAAQ can and should usefully be employed by States and other actors in EPSP and human rights based planning, preferably explicitly relying on human rights law and language, or, alternatively, without necessarily relying on human rights law as such. Some might not consider the latter appropriate, considering that it takes away the human rights based nature, rationale and protection mechanisms in place for the AAAQ as human rights standards. See, on such a position, for example, Chapter 8 by Lottie Lane, who calls for recognition of greater direct human rights accountability for private service providers. Nevertheless, other chapters in this volume (e.g. Ambrus, Houben and ten Oever) argue that various organisations might already be employing the attributes of the AAAQ in their regulatory work, without using human rights standards as such. Ambrus, in particular, highlights that World

22 See e.g. OHCHR (2012); e.g. S. Engle Merry, ‘Human Rights Monitoring and the Question of Indicators’, in M. Goodale, *Human Rights at the Crossroads* (OUP 2013); A. Rosga and M. Satterthwaite, ‘Measuring Human Rights: UN Indicators in Critical Perspective’, in K. Davis, A. Fisher, B. Kingsbury and S. Engle Merry, *Governance by Indicators: Global Power through Quantification and Rankings* (OUP 2012); G. de Beco, ‘Human Rights Indicators and MDG Indicators: Building a Common Language for Human Rights and Development Organizations’, in P. Gready and W. Vandenhoele, *Human Rights in the New Millennium: Towards a Theory of Change* (Routledge 2014).

23 OHCHR (2013) 13, 34; it seems to have overturned its position.

24 OHCHR (2013); see also on the value of ESR indicators in terms of monitoring, Welling (2008).

25 OHCHR (2012) 14.



Bank policies actually reflect most aspects of the AAAQ human rights framework, even if their work appears a ‘human rights free zone’; the contributions by Houben and ten Oever, and Lane, also underscore the great similarities between the AAAQ and (the rationale for) imposing USOs in the context of EU law. As already noted in the introduction, USOs can be a very useful tool to ensure that non-discriminatory access to the ‘provision of a defined minimum set of services to all end-users at an affordable price’ is guaranteed.<sup>26</sup> USOs are being increasingly referred to in, among others, EU secondary legislation. By way of illustration, the EU Energy Directive obliges EU Member States to ‘ensure that *all* household customers [. . .] enjoy *universal service*, that is the *right* to be supplied with electricity of a *specified quality* within their *territory* at *reasonable, easily* and *clearly comparable*, *transparent* and *non-discriminatory* prices’.<sup>27</sup> In this sense, USOs are uncannily similar to the AAAQ.<sup>28</sup> According to a United Nations University study, USOs become relevant when a service is essential; when groups of consumers are prevented from accessing this service at current tariffs, unless the latter are adjusted to meet the consumers’ capacity to pay, for example through cross-subsidies; and when the lack of supply or the impossibility of gaining access inhibit consumers’ possibilities to access other markets or activities.<sup>29</sup> Again, the links to the AAAQ seem very much affirmed, and, from that perspective, a human rights based approach comes in sight.

## 2. Minimum essential levels of EPSP and progressive realisation

More so than the AAAQ, the concepts of ‘minimum essential levels’ or ‘minimum core obligations’ are well-known standards in international ESR law. They have also been subject to substantial discussion after their introduction by the CteeESCR in the 1990s.<sup>30</sup> ‘Minimum essential levels’ and ‘minimum

26 See European Parliament and Council Directive 2002/22/EC of 7 March 2002 on universal service and users’ rights relating to electronic communications networks and services (Universal Service Directive), [2002] OJ L108/51; see A. Hallo de Wolf, ‘Human Rights and the Regulation of Privatized Essential Services’ (2013) 60 *Netherlands International Law Review* 187–189. For the contributions in this volume, see Lane, Houben and ten Oever, and Gatti.

27 See Article 3 section 3, European Parliament and Council Directive 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC [2009] OJ L211/55. Emphasis added in quotation.

28 See also Hallo de Wolf (2013) 189; see, for similar observations in this book, and some critiques, also the chapters by Lane, and Houben and ten Oever.

29 O. Chisari, A. Estache and C. Waddams Price, ‘Access by the Poor in Latin America’s Utility Reform – Subsidies and Service Obligations’, Discussion Paper No. 2001/75, United Nations University/WIDER (2001) 9. See also Hallo de Wolf (2013) 188.

30 CteeESCR, ‘General Comment 3 on the Nature of State’s Parties Obligations’ (14 December 1990) UN Doc E/1991/23, para 10; A. Chapman and S. Russell (eds), *Core Obligations: Building a Framework for Economic, Social and Cultural Rights* (Intersentia 2002); Bilchitz, *Poverty and Fundamental Rights* (OUP 2008); Magdalena Sepúlveda, *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights*

core obligations' for ESR were defined by the CteeESCR mostly in its General Comment 3 (1991), and thereafter in General Comments relating to specific substantive ICESCR rights. They were formulated by the CteeESCR in particular in response to the generally progressive nature of obligations under the ICESCR, as stipulated in Article 2(1) ICESCR. Article 2(1) ICESCR notoriously reads, unlike the Covenant on Civil and Political Rights:

Each State Party to the present Covenant *undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*

[emphasis added]

As already briefly discussed in the introduction, these references in ICESCR to 'progressive realization' and 'maximum available resources' have led many commentators (and States) to voice concerns about the 'costliness' and the merely aspirational, policy-oriented nature of these rights and obligations; effectively, it appears that a lack of available '(public) resources' is an excuse for not realising ESR – even if these rights are considered legal 'rights' entailing legal 'obligations' of States in terms of their realisation after ratification of the ICESCR.

The introduction already discussed how the so-called 'tripartite obligations' to 'respect, protect and fulfil' all human rights have provided some nuanced response to these concerns, in that all human rights require continuous commitment, action and mobilisation of resources to some extent, and a mix of negative and positive (progressive) action. This is certainly also visible for civil and political rights e.g. as States go through governmental/democratic transitions, or emerge from situations of conflict, or face budgetary constraints affecting the entire administration of the State.

Apart from these obligations to 'respect, protect, and fulfil' all human rights, the CteeESCR, however, also developed another set of 'human rights obligations' to respond to the conundrum of progressive realisation and resources mobilisation, including: (i) the 'minimum core obligations'/'minimum essential levels'; (ii) the immediate obligation to plan with priority for human rights, including the core; and (iii) the obligation to internationally cooperate for ESR and to seek (international) assistance.<sup>31</sup>

(Intersentia 2003) 365–370; Gillian MacNaughton, 'Beyond a Minimum Threshold: The Right to Social Equality', in Lanse Minkler (ed.), *The State of Economic and Social Human Rights: A Global Overview* (CUP 2013); B. Saul, D. Kinley and J. Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases and Materials* (OUP 2014) 146–148.

31 CteeESCR, 'General Comment 3' (1990) paras 10–13.

This section focuses on the ‘minimum core obligations’ or ‘minimum essential levels’. In section 5, we discuss in greater detail the aspect of ‘planning’ and ‘prioritising’. Moreover, in section 6, we highlight how States can make better use of various regulatory tools to mobilise the maximum available resources to them, including from private actors within their regulatory reach, such as private services providers.

The concepts of ‘minimum core obligations’ and ‘minimum essential levels’ were first expounded by the CteeESCR in its well-known General Comment 3. It considered that the notion of ‘progressive realization’ essentially acknowledges that full realisation of all economic, social and cultural rights ‘will generally not be able to be achieved in a short period of time’.<sup>32</sup> Therefore, CteeESCR gave further instructions of what should be done immediately, or with priority, and how to ‘fulfil’ human rights progressively fully as an ongoing effort. The CteeESCR considered, in particular, on the phrasing of Article 2(1) ICESCR, that this provision ‘must be read in the light of the overall objective, indeed the *raison d’être*, of the Covenant which is to establish clear obligations for States Parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal’.<sup>33</sup> Moreover, it derived from that same *raison d’être* that while States are progressing towards full protection, ‘a minimum core obligation’ is incumbent on every State Party to ‘ensure the satisfaction of, at the very least, minimum essential levels of each right’.<sup>34</sup> In particular:

a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant. [. . .]<sup>35</sup>

In addition, on the aspect of mobilising resources and planning, it considered that:

In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that *every effort* has been made to use *all resources that are at its disposition* in an effort to satisfy, as a *matter of priority*, those minimum obligations.<sup>36</sup>

[emphasis added]

We argue in this volume that ‘resources available’ needs to be understood in a broad sense, if not the broadest sense i.e. as referring to really *all* ‘maximum

<sup>32</sup> Ibid. para 9.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid. para 10.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

available resources' at its disposition, both privately and publicly, which it could request, mobilise, or otherwise tap, including by taking appropriate legislative or regulatory measures. Looking back at the discussions on USOs for the private sector, this could arguably also entail imposing obligations on service providers to minimally or progressively ensure particular (minimum) *levels* of EPSP to *all* persons, at *affordable* cost, etc. in line with the AAAQ. In this manner, the State is engaging directly in minimal and progressive fulfilment of human rights, without necessarily using its own resources.<sup>37</sup> Actually, strictly speaking, mobilising resources to pay for minimum essential levels or fulfilling core obligation through private means can also include other options, such as concluding 'socially responsible' (public procurement) contracts and other types of regulation.<sup>38</sup> Lane, in Chapter 8, discusses some various options for engaging the private sector in human rights based EPSP in more detail, as do Zinzombe, Sellin, Gatti, Houben and ten Oever, and van der Ploeg, Vanclay and Lourenço. Also, Chapman and Russell observed in earlier writings, quite unambiguously, that the resources to be tapped for the fulfilment of ESR, including core obligations, refer to '[. . .] resources available within the society as a whole, from the private sector as well as the public. It is the State's responsibility to mobilize these resources, not to provide them all directly from its own coffers'.<sup>39</sup> Moreover, '[p]eople can pay the costs [for EPSP] themselves (directly or through taxes), the State can require private sector actors to pay the costs, and, if and when necessary, the State can pay for implementation of the right directly'.<sup>40</sup> More recently, Saul, Kinley and Mowbray also underscored the diversity of resources available, including by the private sector. They stated that 'the resources of the private sector can and should be employed, or at least redirected, towards the Covenant's goals, either through the expansion of opportunities for private gain, or by way of more equitable public distribution of private wealth'.<sup>41</sup> We already stressed that, *de facto*, it is a very common situation that private actors leverage many of the resources and investments for EPSP, both at levels of minimum provision and progressive access.<sup>42</sup> It seems that these dynamics deserve further recognition and understanding from a

37 In a recent Statement on ESR and private actors, CteeESCR noted only vaguely that 'fulfilling rights entails that States parties undertake to obtain the corporate sector's support for the realization of economic, social and cultural rights'. CteeESCR, 'Statement on the Obligations of States Parties regarding the Corporate Sector and Economic, Social and Cultural Rights' (12 July 2011) UN Doc E/C.12/2011/1.

38 UNHRC, 'Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie (Addendum: Principles for Responsible Contracts: Integrating the Management of Human Rights Risks into State-Investor Contract Negotiations: Guidance for Negotiators' (25 May 2012) UN Doc A/HRC/17/31/Add.3, paras 40–42. Specifically, see Principle 5 on conditions for 'additional goods and services provision'. See also Lane, Chapter 8.

39 Chapman and Russell (2002) 11.

40 Chapman and Russell (2002) 12.

41 Saul, Kinley and Mowbray (2014) 143–144.

42 See also, for a discussion of these points, Adam McBeth, *International Economic Actors and Human Rights* (Routledge 2010) 152–154.

human rights perspective, and be integrated in planning for minimum essential levels of EPSP.<sup>43</sup> We discuss the role of private actors in some further detail throughout the chapter, and especially in section 6.

Second, and finally, the concept of ‘minimum essential levels’ and ‘minimum core obligations’ can also be easily linked to the AAAQ and ‘multi-tiered’ benchmarking frameworks, as discussed in the previous section. We support that the first tiers of a multi-tier framework should normally refer to a ‘minimum core obligation’ or ‘minimum essential level’ (i.e. the very bare minimum level of access for all). When such minimum levels are not secured, that State is ‘*prima facie* failing’ to live up to its human rights obligations. When the first tier of access (‘basic access’) is achieved for everyone, it means only the bare minimum of human rights protection is ensured. After this, the State should start to look forward and harness and allocate more resources to progressively realise higher levels of access for all, so that adequate levels of welfare and living can be guaranteed.<sup>44</sup> While there is not sufficient space to discuss the exact content of all ‘minimum core obligations’ – they are typically articulated by the CteeESCR in its General Comments on respective substantive ICESCR rights – we argue that each set of EPS is subject to these expectations of minimum provision, also taking into account the AAAQ. Where there is uncertainty of how minimum core obligations should be understood, they can be determined by reference to the work of the CteeESCR and other treaty bodies, or important international standard-setting agencies, such as the World Health Organization and its list of ‘Essential Medicines’ (e.g. see Chapter 2 by Gispen on minimum core obligations for health and access to medicine). Similarly, minimum essential levels can be agreed through a deliberative democratic process (taking human rights standards into account), or be defined by notions taken from literature on poverty and development (e.g. about requisite levels of access to EPSP for development), e.g. drawing on a ‘capabilities’ perspective.<sup>45</sup>

In any case, it is clear that minimum essential levels, and core obligations, form a bare minimum baseline for the regulation of EPSP, and that resources need to be mobilised and redirected, immediately and with priority, to the fulfilment of such minimum levels of EPSP, in line with the AAAQ.

43 Lane in Chapter 8, and van der Ploeg, Vanclay and Lourenço in Chapter 10.

44 See also, in this respect, the links between resources, minimum priority levels, subsistence and essential services in the ‘Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights’ (8 January 1987) UN Doc E/CN.4/1987/17, para 28: ‘In the use of the available resources due priority shall be given to the realization of rights recognized in the Covenant mindful of the need to assure to everyone the satisfaction of subsistence requirements as well as the provision of essential services’; M. Ssenyonjo, *Economic, Social and Cultural Rights in International Law* (OUP 2009) 62. See also DIHR (2014) 6–7, 15–16.

45 E.g. Bilchitz (2008), who discusses the core obligations from perspective of poverty, capabilities and ESR.

### 3. Non-discrimination and ‘vulnerable groups’

The third component of the human rights framework for EPSP, the standards of non-discrimination and equality, as well as, increasingly, the protection of ‘vulnerable’, ‘marginalized’ or ‘disadvantaged’ groups, are deeply entrenched in the legal (socio-economic) human rights framework, and in the work of the CteeESCR.<sup>46</sup> In 2009, the CteeESCR adopted a General Comment on non-discrimination (General Comment 20),<sup>47</sup> in which it further elaborated the so-called ‘prohibited grounds of discrimination’ in Article 2(2) ICESCR. General Comment 20 affirms that discrimination can take place directly or indirectly against individuals or against groups, incidentally or structurally.<sup>48</sup> The CteeESCR also decided to include and define the concept of ‘vulnerable groups’ in relation to the discriminatory category ‘any other status’. It referred, in this respect, to ‘the experience of social groups that are vulnerable and have suffered and continue to suffer marginalization’, therefore requiring protection on similar terms as other discriminated persons.<sup>49</sup>

The limited reference to the concept of ‘vulnerability’ in General Comment 20 is remarkable, considering that the CteeESCR’s work is generally rife with language of ‘vulnerability’ and ‘marginalization’. In particular, the CteeESCR often specifically requires that certain ‘disadvantaged’, ‘vulnerable’ or ‘marginalized’ groups be specifically protected or empowered, including as a matter of priority and through special measures.<sup>50</sup> In the context of EPSP specifically, the CteeESCR commented on vulnerability on many occasions. For example, it stipulated, in General Comment 15 on ‘non-discrimination’, that:

Water and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds; [. . .] Even in times of severe resource constraints, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes.<sup>51</sup>

46 See e.g., for a comprehensive discussion, Saul, Kinley and Mowbray (2014) 174–238; Sandra Rajten and Manav Satija, ‘Realizing Economic, Social and Cultural Rights for All’, in E. Riedel, G. Giacca and C. Golay, *Economic, Social and Cultural Rights in International Law: Contemporary Issues and Challenges* (OUP 2014) 111–133.

47 Saul, Kinley and Mowbray (2014) 174–238; CteeESCR, ‘General Comment 20’ (2009).

48 Ibid. 174–185 discussing these variations.

49 CteeESCR, ‘General Comment 20’ (2009) para 27.

50 Saul, Kinley and Mowbray (2014) 208–210; CteeESCR, ‘General Comment 3’ (1990) para 12; CteeESCR, ‘General Comment 15’ (2013), para 44: ‘Violations of the obligation to fulfil occur through the failure of States parties to take all necessary steps to ensure the realization of the right to water. Examples include, inter alia . . . (ii) insufficient expenditure or misallocation of public resources which results in the non-enjoyment of the right to water by individuals or groups, particularly the vulnerable or marginalized. [. . .] Priority in the provision of aid, distribution and management of water and water facilities should be given to the most vulnerable or marginalized groups of the population’.

51 CteeESCR, ‘General Comment 15’ (2003) para 13.

It listed also a number of safeguards that States should take in protecting and facilitating ‘access to water for all members of society’ and that ‘inappropriate resource allocation can lead to discrimination that may not be overt’. By way of example, it warned that:

investments should not disproportionately favour expensive water supply services and facilities that are often accessible only to a small, privileged fraction of the population, rather than investing in services and facilities that benefit a far larger part of the population.<sup>52</sup>

Similar phrasings are available in other General Comments, and typically relate to minimum core obligations of the rights concerned. Already in 1991, the CteeESCR submitted on the right to housing that:

States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others.<sup>53</sup>

In CteeESCR’s General Comment 19 on the right to social security services, it considered, for example, that States are obliged to provide for and ensure access to social security systems or schemes on a non-discriminatory basis, especially for disadvantaged and marginalised individuals and groups, such as ‘crop or natural disaster insurance for small farmers or livelihood protection for self-employed persons in the informal economy’.<sup>54</sup> In addition:

where there is limited capacity to finance social security, either from tax revenues and/or contributions from beneficiaries [. . .] low-cost and alternative schemes could be developed to cover immediately those without access to social security, although the aim should be to integrate them into regular social security schemes.<sup>55</sup>

In fact, the concept of ‘vulnerability’ appears to have taken on a much more flexible, more ‘proactive’ meaning in the ESR human rights framework. It is as much about recognising direct or indirect situations of discrimination on ‘prohibited grounds’ as it is about structurally identifying who is left out due to particular conditions of ‘vulnerability’.<sup>56</sup> CteeESCR repeatedly requests

52 CteeESCR, ‘General Comment 15’ (2003) para 13.

53 CteeESCR, ‘General Comment 4’ (1991) para 11.

54 CteeESCR, ‘General Comment 19’ (2008) paras 28, 51, 59.

55 Ibid.

56 Ssjenyonjo (2009) 68–69; OHCHR (2006) para 67; UNHRC, ‘Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, on the Right to Participation of People Living in Poverty’ (11 March 2013) UN Doc A/HRC/23/36, paras 44, 47.

States to submit ‘disaggregate data’, take targeted ‘affirmative action’, or ‘special measures’ or ‘programmes’, which appears to underscore such a proactive attitude.<sup>57</sup> In addition, the OHCHR affirmed that a human rights approach to combatting poverty requires an ‘act of prioritization which protects the poor against certain trade-offs that may be harmful to them’.<sup>58</sup> The UN Independent Expert on Extreme Poverty and Human Rights submitted equally that:

Processes that do not actively reach out to new and marginalized groups will reinforce the status quo and undermine the principle of equality. Therefore, to prevent dominant groups from co-opting participatory processes, officials must be trained to detect and understand how power is exercised to control and exclude disadvantaged groups.<sup>59</sup>

Overall, vulnerability can arise from various aspects of the human condition, and various factors and circumstances in a person’s life; the concept of vulnerability is certainly subject to further theoretical understanding generally (e.g. through the work of Fineman).<sup>60</sup> Fineman considers that her vulnerability approach ‘is not focused only on discrimination against defined groups, but concerned with privilege and favor conferred on limited segments of the population by the State and broader society through their institutions’.<sup>61</sup> Perspectives on vulnerability acknowledge that causes and manifestations of inequality in society can be manifold and complex, structural, and covert, and be perpetuated by State institutions; it is important to acknowledge these challenges and continuously work on this in policy work, including in the context of EPSP.

From a perspective of EPSP and human rights, the standards of non-discrimination and vulnerability require a continuous reassessment of the accessibility of EPSP for all, again taking into account the AAAQ and equal minimum and progressive realisation of EPSP.<sup>62</sup> Such information can be collected in participative decision-making procedures and through other data collection tools. Knowledge on discrimination and lack of substantive equality (i.e. lack of EPSP enjoyment) must inform and redirect decisions about EPSP resources mobilisation, allocation, and incremental planning.<sup>63</sup> As stressed

57 See, on ‘affirmative action’ specifically, Saul, Kinley and Mowbray (2014) 208–210; see also Welling (2008) 944–945.

58 OHCHR (2006) para 22.

59 UNHRC, ‘Report of the Special Rapporteur on Extreme Poverty and Human Rights’ (2013) paras 44, 47.

60 Martha Alberta Fineman, ‘The Vulnerable Subject: Anchoring Equality in the Human Condition’ (2008) 20 *Yale Journal of Law and Feminism* 1.

61 Fineman (2008) 1.

62 MacNaughton (2013) 283 notes that minimum core levels, or ‘progressive realization’, needs to be coupled to the concept of (social) equality in order to truly see ESR fulfilment.

63 See, for similar observations, Ssjenyonjo (2009) 63.



elsewhere, ‘in the assessment of whether a state party has taken reasonable steps to the maximum available resources to achieve progressively the realization of the provision of the Covenant, the [CteeESCR] places great importance on transparent and participative decision-making processes at national level’.<sup>64</sup> In addition, decision-making has ‘to be owned by all stakeholders within the country, including the poor. This can be possible, however, only when all stakeholders, including the poor, participate effectively in all stages of policy formulation’.<sup>65</sup> This leads us to discuss the human rights requirements of ‘participation’ and ‘accountability’.

#### 4. Participation and accountability

The human rights based guideposts of ‘participation’ and ‘accountability’ are crucial requirements for adequate EPSP and ensuring ESR enjoyment.<sup>66</sup> As considered in the introduction, improved checks and balances throughout the process of EPSP, including for mobilisation and allocation of public and private resources, is a dire need. We are hesitant to refer to them only as ‘procedural guideposts’, for reasons explained below, although they do heavily rely on the design of appropriate procedural mechanisms.

Participation and accountability basically allow the relevant interests, rights and needs of all stakeholders in EPSP to be heard, taken into account and assessed. Importantly, participation and accountability allow expectations of services delivery to be set, discussed, adjusted, monitored and met.

The concepts of participation and accountability are closely related to each other, but fulfil some different aims in decision-making processes in our view.<sup>67</sup> Both are ‘umbrella concepts’, typically connoting a myriad of good intentions and plans for good governance and decision-making, such as ‘transparency’, ‘responsibility’, ‘involvement’, ‘inclusion’, ‘consultation’, ‘deliberation’, etc.<sup>68</sup> However, participation and accountability should not become empty ‘catch phrases’ or ‘dustbin[s] filled with good intentions, loosely defined concepts and vague images of good governance’.<sup>69</sup>

64 Ibid.

65 OHCHR (2006) para 63, see generally paras 63–74.

66 See e.g. OHCHR (2006) paras 22–23 and Guidelines 5 and 6.

67 See, for distinctions between ‘accountability’ and other related concepts for good governance, such as participation, e.g. Mark Bovens, ‘Analysing and Assessing Accountability: A Conceptual Framework’ (2007) 13 *European Law Journal* 447, 452–453; Mark Bovens, ‘Two Concepts of Accountability: Accountability as a Virtue and as a Mechanism’ (2010) 33 *West European Politics* 946, 946, 958–960; H. Potts, ‘Accountability and the Right to the Highest Attainable Standards of Health’ (Essex, University of Essex Human Rights Centre, 2007a) 13–14; H. Potts, ‘Participation and the Human Right to the Highest Attainable Standard of Health’ (Essex, University of Essex Human Rights Centre, 2007b).

68 Bovens (2007) 448–450; generally: Bovens (2010) 946–967.

69 Bovens (2007) 449.

Hence, in line with the work of Bovens, in another context, we give some flesh to the otherwise somewhat bare bones of (human rights based) participation and accountability in the subsequent sections. As a first analytical layer, we submit, per Bovens' work, it is useful to see these concepts either as '*virtues*' or as concrete '*mechanisms*' for decision-making in EPSP.<sup>70</sup> As '*virtues*', participation and accountability are important aspirations of 'good governance', indeed seeking to promote the various values outlined above.<sup>71</sup> As '*mechanisms*', however, they entail actual sites and opportunities for decision-making, subject to certain requirements for such mechanisms to be effective.

Importantly, this volume supports that '*virtues*' and '*mechanisms*' for participation and accountability need to go hand in hand. Lofty aspirations may be meaningless when they are not backed up by effective mechanisms, yet great '*mechanisms*' may become meaningless when not backed up by meaningful intentions.<sup>72</sup> Chapter 12 by Huanlin Lang illustrates how (the right to) participation is currently taking shape in China, but also still facing some challenges, both as a virtue and in terms of the actual mechanisms in place. The OHCHR also summed it up aptly when stating that 'participation is valuable not just as a means to other ends, but also as a fundamental human right that should be realized for its own sake'.<sup>73</sup> In other words, society and EPSP providers need to be effectively committed to the *values* of participation and accountability. Moreover, these values need to be backed up by meaningful *mechanisms* that can fulfil such values. The following paragraphs will further discuss 'participation' and 'accountability' as '*mechanisms*'.

#### **4.1. Participation**

First, participation forms an integral part of the legal human rights framework, and is often referred to in human rights practice and policy, or as part of the 'Human Rights Based Approach' to development.<sup>74</sup> As described by Mattsson in Chapter 11, UN human rights treaties include references to 'participation' typically when they are protecting certain (vulnerable) groups, such as the Women's Rights Convention (CEDAW), or Convention on the Rights of the Child (CRC).<sup>75</sup> The ICESCR, on the other hand, contains no direct reference to participation, apart from the role of education in enabling 'all persons to

70 Bovens (2010).

71 Bovens (2007) 448–450; Bovens (2010) 946, 946–967.

72 See e.g. UNHRC, 'Report of the Special Rapporteur for Extreme Poverty and Human Rights Magdalena Sepúlveda Carmona, on the Right to Participation of People Living in Poverty' (11 March 2013) UN Doc A/HRC/23/36, para 17: 'participatory processes' should not be 'pro forma, tokenistic or undertaken to give predetermined policies a veneer of legitimacy'.

73 OHCHR (2006) para 23.

74 See, for a discussion, e.g. UNHRC, 'Report of the Special Rapporteur on Extreme Poverty and Human Rights' (2013) paras 25 and onwards.

75 See, for a discussion of these provisions, Mattsson.

participate effectively in a free society'.<sup>76</sup> Yet, 'participation' features in the CteeESCR's General Comments; for example, General Comment 14 emphasises the importance of 'participation of the population in all health-related decision-making at the community, national and international levels'.<sup>77</sup> Similarly, UN Habitat draws attention to participation in its 'International Guidelines on Access to Basic Services for All', noting that 'participation of beneficiaries contributes to the delivery of services adapted to their needs'. Participation ensures that users have a 'sense of responsibility and ownership' that encourages them to care for important infrastructure and pay related charges. This is in line with assertions by Lang, in Chapter 12, who also considers that participation can lead to greater understanding of what it means to provide or enjoy a public good or service, and how citizens can be a part of universal provision and enjoyment. According to UN Habitat, beneficiaries' participation 'should be sought systematically in needs assessment, planning, decision-making, implementation and monitoring'.<sup>78</sup>

Unfortunately, the mechanisms for participation remain ill-defined in human rights law, and by international human rights supervisory bodies.<sup>79</sup> Only recently, the Special Rapporteur on Extreme Poverty and Human Rights urged human rights actors to acknowledge the right to participate for people living in poverty.<sup>80</sup> She considered, *inter alia*, that 'human rights based participation':

[...] promotes and requires the active, free, informed and meaningful participation of persons living in poverty at all stages of the design, implementation and evaluation of policies that affect them, based on a comprehensive analysis of their rights, capacity and vulnerabilities, power relations, gender relations and the roles of different actors and institutions.<sup>81</sup>

Moreover, Right to Health expert Helen Potts also drafted a very helpful document on participation for the right to health specifically, which highlights a range of requirements, sites and characteristics of 'participation' for the right to health.<sup>82</sup> For example, she points out, as do others, that 'participation' is a broad concept, and not a narrow 'right to take part in public elections'.<sup>83</sup> Participation also entails more than being merely 'educated', 'informed' or 'consulted'. We argue that in its simplest definition, the aim of 'participation'

76 Article 13(1) ICESCR.

77 CteeESCR, 'General Comment 14' (2000) para 11 (see also references to participation in paras 17, 34 and 54).

78 (UN Habitat), 'International Guidelines on Access to Basic Services for All' (7 January 2009) UN Doc HSP/GC/22/2/Add. 6 and HSP/GC/22/2/Add. 6/Corr.1/Rev.1, para 9(b).

79 See OHCHR (2006) for notable exception; see also Chapters 11 and 12 in this volume.

80 UNHRC, 'Report of the Special Rapporteur on Extreme Poverty and Human Rights' (2013).

81 *Ibid.* para 17.

82 Potts (2007b).

83 Potts (2007b) foreword by Paul Hunt.

as a human rights guidepost is to actively engage individuals and groups in the development, implementation and review of policies, standards, indicators, benchmarks or legislation, particularly aimed at including the voices and needs of more vulnerable, or otherwise under-represented, and especially affected groups.<sup>84</sup> In her chapter, Mattsson further distinguishes between various aims, needs and goals of participation for all, and she provides further thoughts on useful tools or mechanisms for participation and representation, including the elderly and children. Participation means, first of all, that participatory mechanisms should specifically aim to include these groups towards ‘active and informed’ participation at all levels of decision-making.<sup>85</sup>

As put forward by the Special Rapporteur on Extreme Poverty and Human Rights, the design of a participatory process for EPSP should always start with identifying the affected stakeholders in a ‘transparent and proactive way’, including a ‘stakeholders analysis’ aimed at identifying vulnerable or disadvantaged groups.<sup>86</sup> That this is highly relevant with respect to the provision of essential public services is illustrated by a report of the World Bank’s Inspection Panel with regard to the privatisation of the water and sanitation system in the city of Cartagena, Colombia. In this report, the Inspection Panel found that in providing a development loan to finance the privatisation of the water and sanitation system and the expansion of water and sewerage network in Cartagena, the World Bank failed to comply with its own internal policies; the World Bank did not properly identify the groups affected by the project (in this case, people from Afro-Colombian descent), and did not consult them on their willingness to pay for the connection to the service and the water tariff in particular.<sup>87</sup> The Bank’s management tried to rectify the shortcomings by asking the privatised water company in Cartagena to engage more with the affected population.<sup>88</sup>

Second, looking at the various processes and sites where ‘participation’ should be fostered, the OHCHR has identified four phases in which participatory mechanisms should be available: (1) in *preference revelation*; (2) during *policy choice*; (3) in the *implementation phase*; and (4) in *monitoring*

84 Potts (2007b) 18; OHCHR (2006) para 67.

85 Potts (2007b) 16.

86 UNHRC, ‘Report of the Special Rapporteur on Extreme Poverty and Human Rights’ (2013) para 48.

87 World Bank, Investigation Report, Colombia: Cartagena Water Supply, Sewerage and Environmental Management Project (Loan No. 4507-CO), Inspection Panel, Report No. 32034-CO (24 June 2005) 61–66, 80. See also Hallo de Wolf (n 12) 100–105, and Ambrus’ Chapter 4 in this volume.

88 More concretely, the World Bank’s management reviewed the quality of outreach strategy and activities together with the water company, ACUACAR, which then hired two social workers to strengthen community organisation of the affected groups, including participation, urban rehabilitation, and organisation of cultural activities. See World Bank, Cartagena Water Supply, Sewerage and Environmental Management Project: Inspection Panel – progress report, Report No. 38182 (12 December 2006) 7.

*and assessment* (here, a clear link to accountability comes in sight).<sup>89</sup> Specifically, ‘the process of resource allocation must permit all segments of society, especially the poor, to express their opinions with regard to priorities’,<sup>90</sup> keeping in mind that traditionally, ‘people living in poverty are left out, as they do not have enough political or financial power to make their interests count’.<sup>91</sup> This goes again to the aspect of vulnerability discussed in the previous section.<sup>92</sup> Potts also cites a number of practical mechanisms and sites for participation, such as regional and national conferences; permanent or time-bound forums; local health communities or teams; focus groups and individual interviews, citizens’ juries, public meetings, budgetary oversight, and local committee elections.<sup>93</sup> Lang considers, in Chapter 12, equally how the Chinese government is trying to set up participatory tools via media, including telephone hotlines or Wechat (the Chinese version of Whatsapp). Similarly, Mattsson discusses the role of e-services, and some of their shortcomings. In fact, it is important to adapt the means and mechanisms for participation to the capabilities and possibilities of different users (e.g. older persons, children, or those without Internet or even electricity) may not be able to participate electronically.

Interestingly, Special Rapporteur Sepúlveda Carmona recently applied the ‘AAAQ’ to the right to participation as well.<sup>94</sup> She considers that ‘the principles of equality and non-discrimination require that participatory processes and mechanisms meet the standards of *availability*, *accessibility*, *adaptability* and *acceptability* for all’.<sup>95</sup> In a 2013 report, she includes a number of highly worthwhile considerations for thinking about the design of ‘participatory mechanisms’. For example, Sepúlveda considers that the indicator of ‘availability’ of participatory mechanisms refers to ‘sufficient quantity’ of mechanisms, which are also of ‘sufficient quality’ to ‘meet the needs of the community in question’.<sup>96</sup> ‘Adaptability’, second, refers to ‘mechanisms, processes and channels’ that can adapt ‘to the local context, taking into account the specific needs of communities or individuals in different social and cultural settings’.<sup>97</sup> ‘Acceptability’ refers to roughly the same, in that the ‘cultural values, norms and practices’ of all those groups that request and use mechanisms should be protected;<sup>98</sup> participatory mechanisms must also be ‘respectful of diversity, using terminology and references accepted by the community, and the space

89 OHCHR (2006) paras 72–74. Cf. UN Habitat (2009) paras 11–23.

90 Ibid. paras 57, 67.

91 Ibid. para 67.

92 Ibid. para 67; see also MacNaughton (2013) 289–290.

93 Potts (2007b) 20.

94 UNHRC, ‘Report of the Special Rapporteur on Extreme Poverty and Human Rights’ (2013) paras 50–59.

95 Ibid. para 50.

96 Ibid. para 51.

97 Ibid. para 53.

98 Ibid. para 54.

used for participatory processes should also be culturally adequate for the community'.<sup>99</sup> Sepúlveda Carmona elaborates more concrete elements for 'AAAA'-compliant participation as well, ranging from setting appropriate meeting times that do not interfere with care or work duties, the reimbursement of (travel) costs, the need to openly acknowledge existing power relations, or the setting of the terms of meetings and appropriate levels of (in)formality.<sup>100</sup> As said, the report is a worthwhile starting point to discuss human rights compliant participation.

Finally, a last note on the 'acceptability' of participatory mechanisms, in particular for certain groups. Potts, but also Mattsson, Lang, and van der Ploeg, Vanclay and Lourenço in this volume, all stress the need to respect and find ways to deal with difference and diversity within the population when it comes to participation in EPSP.<sup>101</sup> The understanding of participation is likely to vary from one culture to another, and depends on a person's distinct needs and capabilities (e.g. not all old persons can participate through online models of participation, as discussed by Mattsson in Chapter 11); similarly, adequate participation may also require forms of representation (e.g. for children or disabled persons in terms of an Ombudsman, again discussed by Mattsson in Chapter 11).<sup>102</sup>

#### **4.2. Accountability**

Accountability is arguably directly linked to 'participation' through a final step of the participation process, as set out above. This final step is 'monitoring and accountability' for the agreed upon standards and expectations as a result of the participation process. A failure to implement these standards and expectations can be subject to sanctions and require a 'remedy'. A typical legal approach to ensuring accountability and remedies is access to a court. Yet, this is only one way to achieve 'accountability'. In this volume, we support a more dynamic understanding of 'accountability', and propose the various forms of accountability that can be useful to ensure adequate EPSP. At the same time, all accountability mechanisms are subject to similar requirements across the board.

Unfortunately, at first sight, 'accountability' appears an even more nebulous concept than 'participation' (in particular in the human rights framework); it is hardly ever referred to in treaties explicitly, although certain international accountability mechanisms certainly exist (e.g. within human rights treaties bodies). Yet, 'accountability' has gained more attention in recent years. The OHCHR considers that 'monitoring and accountability' are a part of the human rights based approach to development and submits that 'monitoring'

<sup>99</sup> Ibid.

<sup>100</sup> Ibid. paras 55–59.

<sup>101</sup> Potts (2007b) 20.

<sup>102</sup> Ibid., foreword by Paul Hunt; Chapter 11 by Mattsson.

has a twofold objective. On the one hand, it is about helping to identify, on an ongoing basis, the aspects on which duty-bearers have to concentrate to realise their human rights targets in the most expeditious and effective manner; on the other hand, it is about enabling ‘a right-holder to hold a duty-bearer to account for its failure to discharge its duties’.<sup>103</sup> Potts also uses the terms prospective (*ex ante*) and retrospective (*ex post*) accountability.<sup>104</sup> Yi Zhang, in Chapter 15, submits that accountability entails the aspects of ‘responsibility’, ‘answerability’ and ‘enforceability’. Similarly, the OHCHR also considers that ‘accountability’ depends on, but goes beyond, monitoring, as well as participation, especially in the sense that accountability ‘implies some form of remedy and reparation’, if ‘not necessarily impl[ies] punishment’.<sup>105</sup> Moreover, according to OHCHR ‘accountability’ can apply to a multitude of actors, meaning not only State authorities and the individual-State relationship; it can extend to international development actors or private corporations, including arguably private service providers in a context of EPSP.<sup>106</sup>

In the academic literature on accountability as a ‘mechanism’, Bovens defines accountability mechanisms as including at least the following components:<sup>107</sup>

- ‘an actor’ [the ‘account-giver’];
- which provides ‘information about his conduct to some forum’ [the ‘account-holder’];
- this provision of information should entail ‘explanation and justification of conduct – and not propaganda, or the provision of information or instructions to the general public’, while ‘explanation should be directed at a specific forum – and not be given at random’;
- the account-giver ‘must feel obliged to come forward – instead of being at liberty to provide any account whatsoever’;
- the accountability process must present ‘a possibility for debate and judgment by the forum, and an optional imposition of (informal) sanctions or rewards – and not a monologue without engagement’.

It is especially this latter element of the ability to judge and ‘sanction’ or ‘reward’ that distinguishes (the phase of) ‘accountability’ from (other phases of) softer ‘participation’ and monitoring. It has been suggested elsewhere, too, that ‘sanctions’ need not be punitive in nature *per se*; what matters is that ‘account-holders’ should be able to actively solicit remedies or adjustment of previous behaviour by exerting pressure on the ‘account-giver’.<sup>108</sup> Such pressure on ‘account-givers’ can come about through a wide range of ‘accountability’

103 OHCHR (2006) para 75.

104 Potts (2007a) 15.

105 OHCHR (2006) paras 76, 88.

106 *Ibid.* paras 96–100.

107 Bovens (2007) 450–452.

108 *Sec e.g.* Bovens (2010) 952.

mechanisms or processes, including of a ‘political’, ‘legal’, ‘administrative’, ‘peer review’, ‘social’, ‘fiscal’, ‘market’, ‘reputational’ – or, per human rights literature, ‘judicial, quasi-judicial, administrative, political and social’ – nature.<sup>109</sup> Chapter 15 by Zhang is again an excellent example of how greater ‘social accountability’ is sought in China by citizens mobilising and demanding responses and remedies from the State for right to health implementation through use of (social) media. These different types of accountability can be especially important when other types of accountability mechanisms fail, are unavailable or inaccessible for certain reasons. In most cases, a mix of mechanisms, or the existence of a broad range of these mechanisms, will ensure that the virtues of accountability can be met.

That courts still have an important role to play in accountability is exemplified in this volume by the chapters of Borges and Murillo Chávarro, who each deal with the role of judicial accountability in EPSP and ESR. In this sense, debates on the justiciability and court enforceability of ESR still deserve to be furthered. In any case, no matter how ‘accountability’ is sought or achieved, an accountability mechanism should ideally conform to the above elements of ‘accountability’. Moreover, Bovens lists as three effects or outcomes of ‘accountability’ processes, ‘popular control’, prevention and remedy of ‘abuse of power’, and ‘more effective governance through a learning process’.<sup>110</sup>

By way of conclusion, it is finally important to acknowledge the role and existence of various possible ‘accountability relationships’ for and within EPSP. Authors typically distinguish between ‘vertical’, ‘horizontal’ or ‘diagonal’ accountability.<sup>111</sup> Vertical accountability implies that accountability takes place between stakeholders who are in a hierarchical, principal-agent relationship, often based on (delegation of) power. Arguably, the relationship between a State and its people can be characterised this way. Horizontal accountability, on the other hand, implies there is no hierarchical ‘principal-agent relationship’, but that actors are nonetheless in an accountability relationship because one actor (significantly) affects or depends on the other’s conduct. A good example for EPSP would be a (private) service provider and failure of EPSP to (deprived) members of the public, including as based on any contractual relationships.<sup>112</sup> Finally, in many regulatory settings, ‘ombuds-men, audit offices, inspectorates, supervisory authorities and accountants’ may be tasked with ensuring accountability between two other actors, as a third ‘diagonal’ actor, again,

109 Bovens (2007) 454–457, 459, 461; Potts (2007a) 13, 17.

110 Bovens (2007) 453, 462–464; Potts (2007a) 13.

111 Bovens (2007) 460; Mattias Koenig-Archibugi, ‘Transnational Corporations and Public Accountability’ (2004) *Government and Opposition* 236–237; M. Boström and C. Garsten, ‘Organizing for Accountability’, in M. Boström and C. Garsten (eds), *Organizing Transnational Accountability* (Edward Elgar 2008) 7; Anderson, ‘Accountability as Legitimacy: Global Governance, Global Civil Society and the United Nations’ (2011) 36 *Brooklyn Journal of International Law* 841–843.

112 E.g. Koenig-Archibugi (2004) 236–237; Bovens (2007) 460.



between a service provider and user, or between the state and private providers.<sup>113</sup> In international human rights law, this could also include Special Procedures of the Human Rights Council. The academic literature has stressed the importance of regulation and regulatory bodies in the provision of essential public services, notably in the form of regulatory bodies.<sup>114</sup> All these forms of accountability can be referred to as ‘diagonal accountability’. Potentially, NGOs can be considered diagonal account holders as well, if they hold other actors to account on behalf of affected persons, rather than on behalf of themselves. Moreover, excellent examples of ‘diagonal accountability’ in EPSP are the role of Ombudsmen (e.g. as discussed by Mattsson in Chapter 11). In order to achieve appropriate ‘diagonal accountability’, certain requirements may have to be placed on the diagonal ‘account holders’ (e.g. in terms of mandates, representation, expectations and participation with those actors they mean to protect).

## 5. Longer-term planning and budgeting for EPSP on the basis of ESR guideposts

Finally, we submit, as a final guidepost for EPSP, that EPSP is impossible without adequate and progressive planning. Saul, Kinley and Mowbray consider planning ‘one of the first concrete steps States can take towards progressive realization. [This] requires not only consideration of which measures to employ, but also what resources are needed to achieve the declared goals’.<sup>115</sup> At the same time, we discuss it last, because it is important to understand the underlying standards and expectations upon which planning needs to be based.

The CteeESR has referred to an obligation to actively plan and budget for EPSP in its General Comments, as part of Article 2(1) ICESCR. It holds that even in situations where available resources are demonstrably inadequate, there remains an obligation for States to strive to ensure the widest possible enjoyment of the relevant rights, under the prevailing circumstances. The State has obligations to monitor the extent of non-realisation of economic, social and cultural rights, and it has obligations ‘to devise strategies and programmes’, in a most cost-effective way, which ‘are not in any way eliminated as a result of resource constraints’.<sup>116</sup> In fact, it is of great interest that a number of domestic

113 Bovens (2007) 460.

114 Hallo de Wolf, for example, has noted the importance of social regulation as an element of the State’s obligation to protect, and arguably as a tool to increase accountability. See Hallo de Wolf (2013) 183–187. Similarly, Graham highlights the role and challenges faced by regulatory agencies in guaranteeing access to energy, access to water, and access to telecommunications in the United Kingdom and South Africa (with regard to water) in respect of socio-economic rights. Cosmo Graham, ‘Socio-Economic Rights and Essential Services: A New Challenge for the Regulatory State’, in D. Oliver, T. Prosser and R. Rawlings (eds), *The Regulatory State: Constitutional Implications* (OUP 2010) 157–177.

115 Saul, Kinley and Mowbray (2014) 166.

116 CteeESCR, ‘General Comment 3’ (1990) paras 10–13.

courts have already reprimanded States for failing to appropriately plan and allocate resources for minimum essential levels of EPSP, even if they did not set the minimum level of protection directly.<sup>117</sup>

National planning for EPSP allows *par excellence* the coming together of the above-mentioned guideposts for EPSP. In short, planning processes for EPSP should be based on and strive to meet, as a minimum: the AAAQ; minimum essential levels as a priority for all; full protection of rights beyond that; evaluation and protection of the needs of vulnerable and disadvantaged groups; and it must integrate ‘participation’ and ‘accountability’ as virtues of planning, backed up by mechanisms. Once EPSP is achieved at a minimum level, progressive higher levels should be strived for and maintained.<sup>118</sup>

As already illustrated, effective tools for planning for EPSP should include multi-tiered benchmarking frameworks, and multi-year (5-, 10-, 20-year) plans and legislation or other regulatory instruments to ensure that all relevant actors are in line with the objectives set. This also means that when States engage in 30-year concession contracts, such concession contracts should be drafted taking the guideposts mentioned above into consideration. In case of public procurement, the terms of public procurement should be set with the guideposts in mind. In the event that EPSP, such as the provision of essential medicines, requires particular regulation of certain actors, such as patenting schemes at the international or national level (e.g. see Sellin or Zinzombe), or to control drugs (e.g. Gispén), such regulation should take into account, and comply with the guideposts as well. As we have stressed, in respect of resources, there are many ways in which resources in national and international society for EPSP might be leveraged or become available through human rights based planning and regulation. It is the task of the State to draw up an appropriate balance and strategy, but also to ensure that resources are made sufficiently available to provide the most basic public needs now, and in the future. In this respect, also the criterium of ‘sustainability’ of access to services could be added to the AAAQ framework, which can include sustainability both from an environmental or financial viability perspective.

Throughout the work of the CteeESRC, obligations to plan and budget for ESR and EPSP, at a minimum level and at a maximum level, have been affirmed clearly.<sup>119</sup> Moreover, the call for planning and budgeting on ESR and

117 The South African Constitutional Court ruled in the famous ‘Treatment Action Campaign’ that inappropriate planning and resources allocation had prevented people’s access to essential HIV/AIDS treatment. Also discussed in Saul, Kinley and Mowbray (2014) 166–169.

118 CteeESRC, ‘General Comment 4’ (1991) para 11: ‘despite externally caused problems, the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. Yet, see current hot debates on retrogressive austerity measures after the financial crisis and art. 4 ICESCR, e.g.: A. Nolan (ed.), ‘Economic and Social Rights after the Global Financial Crisis’ (CUP 2014).

119 CteeESRC, ‘General Comment 14’ (2000) para 43(f); CteeESRC, ‘General Comment 19’ (2008) para 68.

EPSP fits in well with work done on human rights based State budgeting, which is ‘relatively young’. Blyberg submits that:

[t]he distinguishing features of human rights budget work are, first of all, an explicit goal of advancing the enjoyment of human rights and, second, the use, to a greater or lesser extent, of national, regional, and international, legally binding human rights standards to analyze governments’ budgets and to develop recommendations for modification in revenue, allocations, or expenditures, or in the budget process, so as to better realize human rights.<sup>120</sup>

In our view, this volume builds on and complements these assertions, in particular by further articulating the standards and guideposts on which planning, budgeting, participation and accountability for EPSP should take shape. Taken jointly with the work on indicators, there is much exciting work to be done in this area in the future.

## 6. Private sector standards and guideposts

Finally, the role of private actors in achieving universal, human rights compliant EPSP deserves some further comment. So far, we particularly emphasised the role of the State in planning, regulating, governing and budgeting for EPSP on the basis of human rights guideposts. In this context, we already pointed out the needs, opportunities and obligations for harnessing private sector resources available in society as well (see also the introduction to this volume). An obligation to regulate resources in society and the activities of private actors in EPSP could be linked to the State’s obligation to ‘fulfil’ human rights. Moreover, we can argue that USOs, which are equally applicable to private entities involved in the provision of essential services, can be used to give further impetus to the obligation to ‘fulfil’ ESR enjoyment by States. USOs emphasise universal EPSP, and economic and physical accessibility for all, which is closely connected to the obligation to fulfil ESR based on the AAAQ.<sup>121</sup> Under the obligation to fulfil, States should establish the conditions and guarantees under which specific rights can be fully enjoyed by individuals. The obligation to fulfil may impose on States a duty to guarantee that certain essential services become or remain accessible to all at an affordable price, and that resources are mobilised and allocated to EPSP as needed. USOs are instrumental in this regard, both in terms of ensuring that services are universally provided, at affordable cost, and other AAAQ standards, and in terms of directly mobilizing private resources towards the fulfilment of human rights of previously deprived persons. See also, in this respect, Lane’s Chapter 8, or Gatti’s analysis in Chapter 6.

120 A. Blyberg, ‘Government Budgets and Rights Implementation: Experience from Around the World’, in J. Heymann, A. Cassola, M. Ashley Stein (eds), *Making Equal Rights Real: Taking Effective Action to Overcome Global Challenges* (CUP 2012) 197.

121 Hallo de Wolf (2013) 189.

Gatti particularly discusses how there needs to be solidarity among the members of society, including individuals and private service providers, so as to ensure access to EPSP. In particular, he discusses how private services, such as ambulance services, may have to be regulated to serve the public good in case of emergency. In most cases, private sector engagement entails a duty for States to ensure that adequate regulation of available resources is in place, or that resources are directed at EPSP. Yet, the *direct* role of private business actors deserves a brief discussion as well.

Given the tendency to privatise the provision of certain essential public services, and the fact that the private sector is involved in EPSP otherwise (e.g. by manufacturing medicines for medicines access, operating transport, educational facilities, water services, electricity services, but also prisons or other vital public goods and services), there is a need to determine the extent to which human rights related guideposts are applicable to private service providers. Under current international law, it is difficult or nearly impossible to apply directly the same human rights obligations that appertain to States to private actors. Of course, there are certainly developments in this area ongoing. These developments are described, for example, by Lane in Chapter 8, or van der Ploeg *et al.* in Chapter 10.<sup>122</sup> Zinzombe also makes a compelling case for the proposition that in the area of medicines access, pharmaceutical companies are first and foremost duty bearers, rather than rights holders.

From a perspective of human rights law, States that have privatised services can certainly be held directly legally responsible for abuses committed by private service providers, in particular if the provision of essential public services is considered an exercise of public authority.<sup>123</sup> MacBeth considers on this point that ‘a change in the identity of the provider of a particular service naturally does not alter the importance of that service to the realization of human rights’.<sup>124</sup> Moreover, ‘the obligations associated with the relevant rights are not transferred entirely to whoever operates a particular service’; a State can contract out EPSP, but ‘it cannot contract out of its human rights obligations associated with those services’.<sup>125</sup> A similar point is stressed by Lane in Chapter 8 and van der Ploeg *et al.* in Chapter 10.

Indirectly, or directly, States can be held accountable for not duly adopting the relevant regulatory measures required to control, guide and sanction the conduct of private entities involved in EPSP. Regulation can take place through various means.<sup>126</sup> The State can directly regulate the conduct of private actors

122 See the UN Guiding Principles on Business and Human Rights, advanced by John Ruggie, and discussed by van der Ploeg *et al.* in Chapter 10. Also see developments on a treaty on business and human rights, discussed by Lane in Chapter 8.

123 See A. Hallo de Wolf, *Reconciling Privatization with Human Rights* (Intersentia 2012) 206–222.

124 MacBeth (2010) 152.

125 *Ibid.*

126 See, in general, for a discussion on this topic, Hallo de Wolf (2013).

by setting up the necessary legal framework to modify the conduct of the latter so that it can operate in the provision of essential public services in a manner that is ESR-compatible. This could take place through concession contracts that include mandatory human rights clauses for EPS providers, through standard setting that includes USOs and relevant AAAQ criteria, and by setting up independent regulatory bodies, which are also ESR-aware.<sup>127</sup> In this context, the contributions of Lane and Gatti are illustrative of the various roles that state-sponsored regulation and regulatory bodies can play. Self-regulatory measures can be an interesting alternative to State-mandated regulation, in particular because this can make the adoption of human rights inspired values into corporate conduct more palatable. Yet the usual problem of this type of regulation is the lack of proper enforcement and accountability mechanisms to ensure actual implementation. Lane illustrates the various problems of imposing more direct human rights obligations on private actors, including through self-regulation, in Chapter 8. At the same time, van der Ploeg *et al.* highlight a range of standards for companies in terms of EPSP in project-induced displaced communities, which seem to resort to some effect. However, they also point out that there is a great need to always consider the role of the State in ultimately ensuring that human rights protection is maintained. For that reason, we plead that regulation through State-sponsored measures should always be considered, including through the imposition of ‘universal service obligations’. Moreover, taking into account the changing societal roles that businesses see for themselves vis-à-vis external stakeholders as well (i.e. looking beyond the work floor, and more towards local communities, as part of business ethics), we stress that human rights based (self-)regulation is both appropriate and necessary. Again, such regulation should also take into account longer-term planning for EPSP.

## 7. Conclusions

By way of a short conclusion, we hope that this volume forms the impetus towards a promising further research agenda on EPSP and ESR. We certainly intend to pursue this path. Throughout the volume, we have so far addressed a range of tough common challenges, but we have also set out an initial, basic human rights framework of important guideposts for EPSP.

However, these guideposts certainly are in need of further development and understanding. For example, the full content and implications of the ‘AAAQ’ are still under-explored, while work on indicators, benchmarking, planning and

<sup>127</sup> A practical example of the challenges with respect to this can be seen in the problematic privatisation of the water and sewerage system in the city of Buenos Aires, Argentina, between 1993 and 2006. In this case, the concession contract, regulatory framework and regulatory body appeared to show many faults contributing to the eventual rescinding of the privatisation and subsequent litigation before the ICSID between the companies involved and the government of Argentina. See Hallo de Wolf (2013) 193–202.

budget analysis is also progressing, but still in early stages. Similarly, the development and acceptance of human rights standards for private actors is in full swing, and will certainly provide opportunities for EPSP.

We therefore end this volume with a further call for research, in particular by encouraging multi- or interdisciplinary research, and multi-method research. Legal scholars need to look beyond their own disciplines and traditional legal theories and methods, with the aim of trying to better understand what is needed in practice, or what the challenges of human rights realisation are. The chapters in this volume that include fieldwork certainly attest to this fact (chapters by Gispén, and van der Ploeg *et al.*). These chapters are highly illustrative of some of the practical challenges on the ground. At the same time, scholars from other disciplines, policy actors, States and services providers need to become more aware of the legal human rights standards in place already, and the role they play in setting the parameters for EPSP. Further research will clarify the mutually reinforcing links between EPSP and human rights protection, which allows to really reap the promises of human rights protection, and of new development agendas. In this sense, it is telling, and hopefully promising, that while in 2009 the references to human rights were ultimately omitted from the UN Habitat International guidelines on access to basic services for all,<sup>128</sup> the 2015 United Nations Sustainable Development Goals (SDGs) unambiguously affirm that:<sup>129</sup>

They [the SDGs] seek to realize the human rights of all and to achieve gender equality. [...] The new Agenda is guided by the purposes and principles of the Charter of the United Nations, including full respect for international law. It is grounded in the Universal Declaration of Human Rights, international human rights treaties, the Millennium Declaration and the 2005 World Summit Outcome Document. It is informed by other instruments such as the Declaration on the Right to Development.

We hope this volume makes an important contribution to realising the interlinkages between socio-economic rights and EPSP, and manages to lay bare and understand the challenges and opportunities better. The human rights framework offers a powerful set of yardsticks that can be employed to improve access. The ultimate goal of both human rights and EPSP is meeting the standards of living necessary for leading a life in dignity, and achieving full human development. If we take human rights law seriously as a framework to address social injustice, and create equality and inclusive access for all, we should invest more in making these tools effective, both through research and legal practice. We invite everyone to take part in this endeavour.

128 See UN Habitat (2009) HSP/GC/22/2/Add. 6/Corr.1/Rev.1.

129 UN General Assembly Resolution 70/1, 'Transforming Our World: The 2030 Agenda for Sustainable Development' (25 September 2015) UN Doc A/RES/70/1, paras 7, 10.