



The Global Initiative  
for Economic, Social and Cultural Rights

**Submission by the Global Initiative for Economic, Social and Cultural Rights to the U.N.  
Special Rapporteur on the human rights to safe drinking water and sanitation on the issue of  
water commodification**

15 April 2021

The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) is an international human rights non-governmental organisation. GI-ESCR researches and monitors the impacts of the privatisation and commercialisation of services that correspond to the enjoyment of economic, social and cultural rights, and advocates for States to fulfil their obligations regarding the provision and regulation of these services.

## I. Introduction

1. The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) welcomes the decision of the United Nations (U.N.) Special Rapporteur on the human rights to safe drinking water and sanitation, Mr Pedro Arrojo-Agudo, (hereinafter “the Special Rapporteur”) to focus his 2021 thematic report on the issue of water commodification, and the open consultation on the same in preparation for the report.
2. This report is a welcome follow-up to the report of the previous Rapporteur, Mr Léo Heller, on human rights and the privatisation of water and sanitation services.<sup>1</sup> In his report, Mr Heller outlined how the privatisation of water and sanitation services gives rise to specific human rights risks, detailing numerous examples of water contamination, affordability crises, and corruption scandals from around the world. Mr Heller’s report added to a growing number of statements and reports from human rights monitoring bodies and experts that highlight how the privatisation and commercialisation of social services – such as healthcare, education and housing – raise many human rights concerns, including unequal access to services, reduced quality, and increased inequalities.<sup>2</sup> At a [public event held in October 2020](#), eight current and former United Nations special procedures mandate holders came together to share their concerns about the privatisation and commercialisation of services related to economic, social

<sup>1</sup> United Nations Human Rights Council (HRC), ‘Report of the Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller: Human rights and the privatization of water and sanitation services’ (21 July 2020) UN Doc A/75/208.

<sup>2</sup> HRC, ‘Report of the Special Rapporteur on the right to education, Koumbou Boly Barry, Right to education: the implementation of the right to education and Sustainable Development Goal 4 in the context of the growth of private actors in education’ (10 April 2019) UN Doc A/HRC/41/37; HRC ‘Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston’ (26 September 2018) UN Doc A/73/396; HRC ‘Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context Leilani Farha’ (18 January 2017) UN Doc A/HRC/34/51; HRC, ‘Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, Mission to Kenya,’ (February 2007) UN Doc A/HRC/4/32/Add.3 At the regional level, see also Inter-American Commission on Human Rights ‘Report on Poverty and Human Rights in the Americas’ (7 September 2017) OEA/Ser.L/V/II.164, and Inter-American Commission on Human Rights, Special Rapporteurship on Economic, Social, Cultural and Environmental Rights ‘Report on Business and Human Rights. Inter-American Standards’ (November 2019) OEA/Ser.L/V/II.

and cultural rights (ESCR), and emphasised the need to reaffirm human rights obligations regarding public services.

3. The ongoing COVID-19 crisis has underscored the importance of universal access to quality water and sanitation services and of non-commodified water services. The pandemic, which is likely to be the first in a series of global shocks related to the ecological breakdown, has shown how market-driven systems cannot be relied on to deliver on human rights and ensure access for all, and has emphasised the vital importance of quality, transparent, gender-responsive, participatory and democratically governed public services, including water management and delivery. In his report on human rights and the privatisation of water and sanitation services, Mr Heller for instance noted that, following the outbreak of the pandemic, associations of private water providers (driven by companies) insisted on their right to continue to apply their disconnection policies for those who could not afford to pay their bills, whereas associations of public operators largely committed to ensuring the continued provision of water for all, irrespective of ability to pay – which is particularly crucial in the context of COVID-19 to prevent the transmission of the disease.<sup>3</sup>
4. We echo the concerns expressed by the Special Rapporteur in his statement of 11 December 2020 regarding the creation of a futures market in water and the threat this poses for human rights. This submission proposes legal reasoning based on human rights law to further the argument made by the Special Rapporteur that, as a human right, water cannot be treated like a traded commodity. It further outlines how arguments that seek to justify the increased privatisation and commodification of water services on the basis of the climate crisis are unfounded, both from a sustainability and a human rights perspective.

### Recommendations

**We recommend that in his next report the Special Rapporteur:**

- 1. Clarify the meaning of the concepts of commodification, privatisation, commercialisation and financialisation with respect to the right to water;**
- 2. Further elaborate on how these phenomena might violate the right to water;**
- 3. Clarify States' human rights obligations with regard to water as a public service and the implications this has for the provision of water services and the governance of water as a resource;**
- 4. Reaffirm States' human rights obligations to prevent the commercialisation and commodification of water, including by preventing commercial actors from being involved in the management of water resources and services, and by not permitting water to be traded on stock markets; and**
- 5. Draw on the *Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education*, adopted in 2019, to clarify States' obligations regarding the role of private actors in the provision of water services.**

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<sup>3</sup> HRC, above n 1, para 46.

## II. Definitions

5. The Special Rapporteur's work addresses several intertwined concepts: privatisation, commercialisation, commodification and financialisation. These terms can be understood differently as there is not one set agreed definition. To facilitate the comprehension of these phenomena and their implications for human rights, we recommend that the Special Rapporteur use the next report as an opportunity to clarify these concepts with respect to the right to water. We propose the following definitions between these concepts for his consideration.
6. **Privatisation in water** could be defined as the growth of private actors' involvement or the adoption of private practices, in the water sector. This can occur in a number of ways, reflecting the different roles the private sector can play in the sector, which include ownership (through the sale of public assets to private providers), financing, management, or governance, and service provision. A common way in which privatisation in water occurs is through concession agreements, under which the State retains ownership of the water utility but transfers operation to a private company for a defined period.
7. **Financialisation** is a form of privatisation through the introduction of private finance mechanisms. The former U.N. Special Rapporteur on the right to housing described financialisation in the context of the human right to housing as referring to "structural changes in [...] financial markets and global markets whereby housing is treated as a commodity, a means of accumulating wealth and often as security for financial instruments that are traded and sold on global markets."<sup>4</sup> Based on this understanding, the financialisation of water almost always involves the commercialisation and commodification of water. One example of how financialisation may occur in the water sector is investment funds buying shares in water and sanitation companies. Thames Water in the United Kingdom, for example, was acquired in 2006 by Australian investment fund Macquarie<sup>5</sup> and then on-sold to Canadian pension fund OMERS and the Kuwait Investment Authority.<sup>6</sup>
8. **Commercialisation** could be defined as the act of using market mechanisms to gain a private benefit. Privatisation often, though not always, leads to commercialisation. The *Appeal by Francophone Civil Society against the Commercialisation of Education* defines commercialisation as the "transformation of education into a profit-making commodity."<sup>7</sup> Commercialisation in the water sector can be seen, for example, in the French multinational companies Suez and Veolia being awarded contracts for the provision of water services in numerous regions throughout India.<sup>8</sup>
9. **Commodification** is closely related to, and is often a consequence of, commercialisation. Commodification has been defined "a process within which economic value is assigned to something not previously considered in pure economic terms"<sup>9</sup> and as referring to the extent

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<sup>4</sup> HRC 'Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context, Leilani Farha' (18 January 2017) UN Doc A/HRC/34/51.

<sup>5</sup> Erik Swynghedouw, "Troubled waters: the political economy of essential public services", in José Estaban Castro and Léo Heller (eds), *Water and Sanitation Services: Public Policy and Management* (Zed Books, 2009).

<sup>6</sup> William Turvill, "Australian investment bank Macquarie sells last of its stake in Thames Water to Canadian and Kuwaiti funds" (City A.M., March 2018) <https://www.cityam.com/australian-investment-bank-macquarie-sells-last-its-stake/> accessed 14 April 2021.

<sup>7</sup> Various, "Appeal by Francophone Civil Society Against the Commercialisation of Education" (2016) <<http://nevendezpasleducation.org/wp-content/uploads/2017/07/Appeal-eng.-against-commercialisation.pdf>> accessed 14 April 2021.

<sup>8</sup> Observatoire des Multinationales, "Reviving the Old Demons of Water Privatisation? Water in India" (Stop Corporate Impunity, n.d.) <<https://www.stopcorporateimpunity.org/reviving-the-old-demons-of-water-privatisation-veolia-in-india/>> accessed 14 April 2021.

<sup>9</sup> Manuel Couret Branco, "The Case Against the Commodification of Social Protection" (United Nations Research Institute for Social Development, 2014) <https://www.unrisd.org/80256B3C005BE6B5/search/6A8E91A3625AA61AC1257D4F003869B2> accessed 7 April 2021.

to which an individual's access to a service is dependent on their market position.<sup>10</sup> Considering that the right to water requires everyone to be able to access water, irrespective of their market position, treating water as a commodity may thus in essence conflict with water as human right.

10. The above terms apply to the various dimensions of water management, including the **provision of water as a service** (for instance, through tap water at home) and the **governance of water as a resource** (for instance, rules that apply to the use of a water source). Water can be privatised, commercialised, commodified, or financialised as a service or a resource. The trading of water on stock markets is an example of the commodification of water through the governance of water as a resource.
11. The Special Rapporteur calls for inputs on the specific phenomenon of 'commodification'. We propose that he address this phenomenon as part of a broader reflection on the different forms of involvement of private actors and practices in water services and governance. To this end, we propose that he also clarify the terms privatisation, commercialisation and financialisation and provide a better understanding on how these phenomena could violate or be in contradiction to the right to water.

### III. Water as a public service

12. Water has long been recognised as being a "public good". In its General Comment 15 on the right to water (2003), for instance, the U.N. Committee on Economic, Social and Cultural Rights (hereinafter the "CESCR") stated that water is "a public good fundamental for life and health".<sup>11</sup>
13. A number of U.N. human rights treaty bodies and special procedures experts have also referred to water as a "public service".<sup>12</sup> In its Concluding Observations on the third and fourth periodic reports of the Marshall Islands, for instance, the U.N. Committee on the Rights of the Child recommended that the State party "[t]ake prompt measures to end de facto discrimination against all groups of marginalised and vulnerable children [...] including through targeted programmes ensuring equal access to **all public services, in particular to adequate food, water, sanitation**",<sup>13</sup> and, in its statement on social protection floors, the CESCR referred to "the social protection floors element of ensuring availability, continuity and access to **public services such as water, sanitation**".<sup>14</sup>
14. In its General Comment 24 (2017), the CESCR highlighted that private actors involved in areas "where the role of the public sector has traditionally been strong" should "be subject to strict

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<sup>10</sup> Clare Bamba, 'Cash Versus Services: "Words of Welfare" and the Decommodification of Cash Benefits and Health Care Services' (2005) 2 J. Soc. Policy 195.

<sup>11</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)' (January 2003) E/C.12/2002/11, para 21.

<sup>12</sup> See, for example, UN Committee on the Elimination of All Forms of Racial Discrimination 'Concluding observations on the combined twenty-first to twenty-third periodic reports of Pakistan' UN Doc CERD/C/PAK/CO/21-23, para 38; CESCR 'Concluding observations on the combined second to fourth periodic reports of the former Yugoslav Republic of Macedonia' (15 July 2016) UN Doc E/C.12/MKD/CO/2-4, para 9; UN Committee on the Elimination of Discrimination against Women 'Consideration of reports submitted by States parties under article 18 of the Convention: India' (3 November 2010) UN Doc CEDAW/C/IND/CO/SP.1, para 35; and HRC 'Report of the independent expert on minority issues, Gay McDougall. Addendum: Mission to Greece' (18 February 2009) UN Doc A/HRC/10.11/Add.3, para 97.

<sup>13</sup> UN Committee on the Rights of the Child 'Concluding observations on the combined third and fourth periodic reports of the Marshall Islands' (27 February 2018) UN Doc CRC/C/MHL/CO/3-4, para 14 (emphasis added).

<sup>14</sup> CESCR 'Social protection floors: an essential element of the right to social security and of the sustainable development goals. Statement by the Committee on Economic, Social and Cultural Rights' (15 April 2015) UN Doc E/C.12/2015/1, para 6/ (emphasis added).

regulations that impose on them so-called ‘public service obligations’<sup>15</sup>. “Public service obligations” is a legal concept that can be understood as meaning obligations that the actor in question “would not shoulder if it were following its own commercially driven interest.”<sup>16</sup> From a human rights perspective, “public service obligations” in the context of water provision includes requirements regarding universality of access, continuity of service, quality and user participation.<sup>17</sup>

15. As a public service, water is required by human rights law to be accessible to all irrespective of economic or social situation and without discrimination,<sup>18</sup> of a sufficient quality,<sup>19</sup> responsive to the needs of those they serve,<sup>20</sup> adequately funded,<sup>21</sup> participatory,<sup>22</sup> transparent<sup>23</sup> and accountable.<sup>24</sup>
16. Recognising water as a public service also means that it must be governed publicly, for the public interest. This will often - although not always - require the State involvement. The *Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education* adopted in 2019 (hereinafter “the Abidjan Principles”) define “public educational institutions” as those institutions that are (1) recognised by the State as public educational institutions, (2) effectively controlled and managed by the State or genuine representatives of the populations they serve, and (3) not at the service of any commercial or other exploitative interest that undermine learners’ right to education.<sup>25</sup> Applying this logic to water means that the provision of water services and governance of water as a resource must meet the same parameters, and be organised in a democratic and non-commercial way, with public control, for the public good.
17. There are a diverse range of models for the provision of water that could meet these parameters, including organising water as a *common*, whereby local communities design their

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<sup>15</sup> CESCR, ‘General Comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities’ (10 August 2017) E/C.12/GC/24, para 21.

<sup>16</sup> Herbert Smith Freehills LLP, “Public service obligations” (Lexology, 2007) < <https://www.lexology.com/library/detail.aspx?g=ceb3dab31-d94b-4909-86e2-4643899308a3>> accessed 7 April 2021.

<sup>17</sup> CESCR, General Comment No. 15, above, n 7, para 21.

<sup>18</sup> See, for example, CESCR ‘General Comment No 13: The right to education’ (8 December 1999) UN Doc E/C.12/1999/10; HRC ‘Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda. Addendum – Mission to Mozambique’ (4 June 2014) UN Doc A/HRC/26/28/Add.1, para 83(c); Committee on Migrant Workers (CMW) ‘General Comment 1 on migrant domestic workers’ (23 February 2011) UN Doc CMW/C/GC/1; CMW ‘General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families’ (28 August 2013) CMW/C/GC/2; UN Committee on the Elimination of Racial Discrimination (CERD) ‘CERD General Recommendation XXX on Discrimination Against Non Citizens’ (1 October 2002); CESCR ‘Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights’ (13 March 2017) UN Doc E/C.12/2017/1.

<sup>19</sup> See, for example, HRC ‘Report of the Special Rapporteur on the right to education, Kishore Singh. Addendum: Mission to Bhutan’ (3 June 2015) UN Doc A/HRC/29/30/Add; CESCR ‘Concluding observations on the initial report of South Africa’ (29 November 2018) UN Doc E/C.12/ZAF/CO/1.

<sup>20</sup> See, for example, HRC ‘Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context’ (30 December 2013) UN Doc A/HRC/25/54/Add.2 and CEDAW ‘General Recommendation No. 37 on Gender-related dimensions of disaster risk reduction in the context of climate change’ (7 February 2016) UN Doc CEDAW/C/GC/37.

<sup>21</sup> See, for example, E/C.12/KAZ/CO/2; CRC/C/PRK/CO/5; CESCR ‘Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights’ (17 April 2020) UN Doc E/C.12/2020/1.

<sup>22</sup> See, for example, CERD ‘Concluding Observations: Kazakhstan’ (6 April 2010) UN Doc CERD/C/KAZ/CO/4-5; HRC ‘Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, James Anaya. Addendum: Report on the situation of Indigenous Peoples in Nepal’ (20 July 2009) UN Doc A/HRC/12/34/Add.3; CESCR ‘Concluding observations on the fourth periodic report of New Zealand’ (1 May 2018) UN Doc E/C.12/NZL/CO/14.

<sup>23</sup> Guiding Principles on Extreme Poverty and Human Rights (18 July 2012) UN Doc A/HRC/21/39, para 43; HRC ‘Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda’ (11 March 2013), UN Doc A/HRC/23/36 paras 73 and 86.

<sup>24</sup> CRC ‘Concluding Observations: Finland’ (3 August 2011) UN Doc CRC/C/FIN/CO/4; CESCR ‘Concluding observations on the second periodic report of Kazakhstan’ (29 March 2018) UN Doc E/C.12/KAZ/CO/2.

<sup>25</sup> Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education (13 February 2019)

<<https://static1.squarespace.com/static/5c2d081daf2096648cc801da/t/5dc414bb9f409d285dc9abf2/1573131454068/Online+version+A4+WE+B+COUV%2BTEXTE+THE-ABIDJAN-PRINCIPLES+Nov+2019.pdf>> accessed 10 April 2020.

own rules to manage and to provide water as a human right.<sup>26</sup> What matters in terms of human rights law is that States ensure that water is provided in a democratic and non-commercial way, with public control, for the public good.<sup>27</sup> This is to be distinguished from commercial service provision that treats water as a commodity.

18. This understanding of water as a public service has important implications for the consideration of the commodification of water, as laid out in the next section.

#### IV. States' obligations regarding private actors' involvement and private practices in water

19. Human rights law establishes a number of requirements with respect to the involvement of private actors and the use of private practices in the provision and governance of water, that stem from the understanding of water as a public service.
20. With regard to water services, human rights law imposes **limitations regarding the delegation of water services to private actors, and regarding the types of actors that may be involved in water provision and governance.** The *Guidelines on the Right to Water in Africa adopted by the African Commission on Human and Peoples' Rights* (hereinafter "the Guidelines") require that any delegation of water services meet substantive and procedural requirements.<sup>28</sup> In particular, water services must not be delegated where the delegation would "constitute or contribute to the marketisation or commercialisation of water",<sup>29</sup> and, more generally, private actors' involvement in water must not "lead to the commercialisation of water."<sup>30</sup> These obligations are becoming well-established under human rights law, and reflect similar standards laid out in the Abidjan Principles (Guiding Principles 64 – 73).
21. The Special Rapporteur should expressly note in his report that the human rights understanding of water as a public service means that **only non-commercial actors** may be involved in in water services and governance. Non-commercial actors are those whose primary goal or incentive is to realise the right to water. Non-commercial actors may be governmental, at either the national or local level, societal, such as civil society organisations or community-based groups, or may be non-commercial companies. Commercial actors, by contrast, drawing from the definition provided in the *Appeal by Francophone Civil Society against the Commercialisation of Education*, are those for which one of the primary goals or incentives (although not the only goal) is to trade water and to protect their own interest rather than serving the public interest. They view water as a commodity, which results in particular in a willingness to expand their activities and their model by competing with other institutions, increasing their turnover, or growing their profits. These institutions are defined largely by their commercial interests rather than their legal structure. In most cases, commercially-orientated institutions are in opposition to the notion of institutions that fulfil a public service mission and are integrated, or are preparing to be integrated, into the public system.

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<sup>26</sup> There are numerous examples of community-based models for the management and provision of water. See, for example, Alexander Dwinell and Marcela Olivera, 'The water is ours damn it! Water commoning in Bolivia' (2014) *Community Development Journal* 144 and Ugo Mattei, 'Institutionalizing the Commons: An Italian Primer' in Peter Weibel (ed), *Global Activism: Art and Conflict in the 21<sup>st</sup> Century* (MIT Press, 2015).

<sup>27</sup> Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education (13 February 2019)

<sup>28</sup> African Commission on Human and Peoples' Rights (ACHPR) 'Guidelines on the Right to Water in Africa' (Banjul 16 - 30 July 2019), para 32.

<sup>29</sup> *Ibid.*, para. 32.2.

<sup>30</sup> *Ibid.*, para. 32.8



22. Water must therefore not be opened up to the market logic through the involvement of commercial actors at any stage of the process – from financing to delivery. Inviting speculation in water through the creation of water futures markets, a process that involves commercial actors, is one way in which this may occur. As this may “constitute or contribute to the marketisation or commercialisation of water”, as described under the Guidelines, and undermine water as a public service, this is incompatible with the right to water.

#### V. The climate emergency cannot be used as a justification to privatise and commodify water

23. Water is the primary medium through which the effects of the climate crisis will be felt, as higher temperatures and unpredictable weather conditions lead to drought and increasing water scarcity.<sup>31</sup> The effects of climate change are, however, increasingly being used as a justification for the increased involvement of the private sector in water governance. The International Finance Corporation (hereinafter “the IFC”) has, for instance, argued that, in a context of growing water scarcity, “involving the private sector in water infrastructure will help ensure sustainable access to water services” and that States should explore “a range of options available to support private investments and improve efficiency in the water sector, from full privatization of assets to small-scale management contracts”.<sup>32</sup> In order to achieve such “efficiency”, the IFC has stressed that water prices must “recoup the full costs of supply and reflect water scarcity”, lamenting that “most water tariffs in developing countries only recoup about 20 percent of their full cost.”<sup>33</sup> With public finance deemed a risk to “crowding out commercial finance,” climate induced water scarcity is framed as an as “an opportunity for private investment”.<sup>34</sup>

24. As the former U.N. Special Rapporteur on extreme poverty and human rights, Mr Philip Alston, made clear in his report on climate change and poverty, the “assumption that privatisation will promote access to water in a time of growing water scarcity is profoundly troubling”.<sup>35</sup> Rising prices of the type explicitly anticipated by the IFC will have an adverse impact on communities living in poverty, the profit incentive of private actors operating to the detriment of norms such as equality and non-discrimination.<sup>36</sup> Dependence on private financing can also result in funds not flowing to areas in which there is the greatest need, and may represent a failure of States’ to fulfil their obligations to maximise their available resources so as to progressively realise economic, social and cultural rights.<sup>37</sup>

25. The notion that increased private involvement in water governance will enhance sustainability is also sorely misplaced. As indicated by the former Special Rapporteur, Mr Heller, in his report on human rights and the privatisation of water and sanitation services,

<sup>31</sup> UN Water 'Water and Climate Change' (UN Water, 2021) <<https://www.unwater.org/water-facts/climate-change/>> accessed 12 April 2021.

<sup>32</sup> International Finance Corporation (IFC) 'Creating Markets for Climate Business: An IFC Climate Investment Opportunities Report' (International Finance Corporation, 2017) <[https://www.ifc.org/wps/wcm/connect/efab8303-2918-4fc2-b4ee-00260c4d9777/IFC-Climate\\_Investment\\_Opportunity\\_Creating\\_Markets.pdf?MOD=AJPERES&CVID=l-sCYLz](https://www.ifc.org/wps/wcm/connect/efab8303-2918-4fc2-b4ee-00260c4d9777/IFC-Climate_Investment_Opportunity_Creating_Markets.pdf?MOD=AJPERES&CVID=l-sCYLz)>. The Inter-American Development Bank has also sought to promote public-private-partnerships (PPPs) as uniquely well placed to incorporate concerns of climate resilience. See, inter alia, Inter-American Development Bank 'Climate Resilient Public Private Partnerships: A Toolkit for Decision Makers' (Inter-American Development Bank, 2020) <<https://publications.iadb.org/publications/english/document/Climate-Resilient-Public-Private-Partnerships-A-Toolkit-for-Decision-Makers.pdf>> accessed 10 April 2021.

<sup>33</sup> IFC, above n 20, at 98.

<sup>34</sup> *ibid*, at 99.

<sup>35</sup> HRC 'Report of the Special Rapporteur on Extreme poverty and human rights: Climate change and poverty' (17 July 2019) UN Doc A/HRC/41/39, para 49.

<sup>36</sup> *ibid*. See also HRC 'Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston' (26 September 2018) UN Doc A/73/396.

<sup>37</sup> See HRC, above n 1, paras 23-27.

the private sector's incentive to maximise short term profits often results in a reduction in long term investments in water services.<sup>38</sup> This constrains the capacity of private actors to account and strategically plan for the worsening effects of climate change, leading to unsustainable results in the longer term.

26. The recent establishment of the first market in water futures represents a similarly misplaced attempt to respond to the effects of climate change by commodifying scarce water resources. Launched by the CME Group in California, the futures market ostensibly responds to growing demand and “heightened climate concerns” by providing buyers with an indication of expected water prices in the future, and allowing them to hedge against exposure by locking in prices and managing the “risk associated with the scarcity of water”.<sup>39</sup>
27. As the Special Rapporteur has highlighted, the futures market invites speculation from investors, which may lead to speculative bubbles, volatility and higher prices, all of which all of which would make it more difficult for less wealthy actors to secure access to water resources.<sup>40</sup> The likely speculation from investors with no need for water further means that this market is unlikely to ascribe water a price that accurately reflects its availability, thus undermining its capacity to act as a tool to manage climate-related risks.<sup>41</sup>

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<sup>38</sup> *ibid*, para 38 – 40.

<sup>39</sup> CME Group 'Nasdaq Veles California Water Index (NQH2O) Futures' (CME Group, 2020) <<https://www.cmegroup.com/trading/equity-index/us-index/nasdaq-veles-california-water-futures.html>> accessed 12 April 2021.

<sup>40</sup> UN Officer of the High Commissioner for Human Rights (OHCHR) 'Water: Futures Market Invites Speculators, Challenges Basic Human Rights - UN Expert' (OHCHR, 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26595&LangID=E>> accessed 12 April 2021.

<sup>41</sup> Susan Lea Smith 'Water on Wall Streets: Understanding the Evils of Water Futures Markets' (World Council of Churches, 2021) <<https://www.oikoumene.org/blog/water-on-wall-streets-understanding-the-evils-of-water-futures-markets>> accessed 12 April 2021.