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International Labour Organization

UNITED NATIONS HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER



Right to Social Security

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Right to Social Security

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Contents

Introduction **6**

I. What is the right to social security? **9**

A. Definition 9

B. The right to social security under international law 9

1. Recognition of the right to social security in international and regional human rights instruments 10
2. International social security standards adopted by the International Labour Organization 12

C. Key elements of the right to social security 14

1. Legislative and policy framework 14
2. Social security schemes 14
3. Social risks or contingencies 16
   a. Health care 16
   b. Sickness 17
   c. Old age 18
   d. Unemployment 19
   e. Employment injury and occupational diseases 20
   f. Family and child support 21
   g. Maternity 21
   h. Disability 22
   i. Survivors, including orphans 23
4. Elements of the right to social security 24
   a. Availability 24
   b. Adequacy 24
   c. Accessibility 26
   d. Participation 27

D. The link between the right to social security and other rights 28

II. What are the obligations of States and other actors to realize the right to social security 31

A. Cross-cutting principles of non-discrimination and gender equality 31

B. Obligations of States to respect, protect and fulfil the right to social security 32

C. Core obligations and progressive realization 34

D. Obligations with international dimensions 37

E. Obligations of non-State actors 38

III. What does it mean to adopt a rights-based approach to social security? 41

A. Developing comprehensive legal and policy frameworks 41

B. Strengthening the State's role as guarantor of the system 43

C. Allocation of adequate funding 44

D. Applying a gender-responsive approach 46

E. Paying special attention to disadvantaged individuals and groups 48

1. Workers in the informal economy 49
2. Children and families 52
3. Persons with disabilities 53
4. Older persons 55
5. People living in poverty 56
6. Migrants, asylum-seekers, refugees and internally displaced persons 58

F. Implementing universal social protection systems 61

G. Anchoring poverty reduction interventions in human rights norms and principles 62

H. Coordinating relevant policies 64

I. Monitoring progress 65

J. Establishing complaint and redress mechanisms 66

IV. Key issues relating to universal social protection systems 69

A. Are universal social protection systems possible only in high-income countries? 69

B. Do austerity programmes lead to retrogressive measures? 70

C. Should States prioritize certain types of social security mechanisms in order to achieve universal social protection? 73

D. Does social security cover only those in formal employment? 74

Annexes 76

I. Glossary 76

II. Useful resources and links 80

Introduction

The right to social security is a central piece of the human rights architecture. Where it is implemented, it enables the realization of many other human rights, guaranteeing human dignity when people are faced with risks which affect them along their life course. The right to social security also lies at the core of a social contract within societies and has contributed to achieving sustainable economic and social development and social justice. Its realization requires all members of society to be adequately protected on a basis of social solidarity and collective financing in the event of major social contingencies throughout their life cycle. By ensuring access to health care and income security, it prevents, or at least alleviates poverty and reduces vulnerability, social exclusion and inequality, while supporting economic development and prosperity.

The right to social security has a strong anchorage in international law. The Declaration of Philadelphia (1944) prompted the International Labour Organization to assist its members to extend social security measures to provide a basic income to all in need of such protection and comprehensive medical care. The right to social security was then proclaimed in article 22 of the Universal Declaration of Human Rights, which provides that everyone, "as a member of society, has the right to social security".[1] In addition, article 25 (1) of the Declaration explicitly includes the right to social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond the control of rights-holders, while article 25 (2) provides that motherhood and childhood are entitled to special care and assistance and all children, whether born in or out of wedlock, shall enjoy the same social protection. Two prominent human rights and labour treaties

[1] During the negotiations leading to the adoption of the Universal Declaration of Human Rights, the concept of social security evolved from a shorter definition to include other matters, including a proposal to consider it as an economic right and bring it under the right to a decent standard of living. There was also a call for international cooperation, in particular for the realization of the right to social security. Most of these issues resurfaced in the period of intergovernmental negotiation of the text of the International Covenant on Economic, Social and Cultural Rights. The right to social security (art. 9) became the shortest provision in the Covenant, but all the other elements included in the broad notion of social security that shaped the discussion in the context of the Declaration became autonomous rights under articles 6 to 8 (labour rights), article 10 (the protection of the family, in particular mothers, children and young persons) and article 11 (an adequate standard of living). Finally, the Covenant echoes the call for international assistance and cooperation (art. 2 (1)).

were adopted based on the Declaration: the International Covenant on Economic, Social and Cultural Rights of 1966 and the ILO Social Security (Minimum Standards) Convention, 1952 (No. 102).

During economic, financial, social, public health or environmental crises and periods of recession, access to health care and income security can prevent, or at least alleviate poverty and reduce vulnerability, social exclusion and inequality, while at the same time stimulating aggregate demand, thereby serving as an economic stabilizer.[2] In effect, the wide range of countries that provided specific social protection measures in response to the coronavirus disease (COVID-19) pandemic made its consequences less severe on those most affected. However, unfortunately, in many cases, these responses failed to move beyond temporary, narrowly targeted safety nets.

Gaps in social security coverage remain, deepening inequalities. For the first time, more than half of the world's population (52.4 per cent) are covered by at least one social protection benefit, increasing from 42.8 per cent in 2015. While this constitutes important progress, an alarming 3.8 billion people remain entirely unprotected.[3] Insufficient protection of children and families has a negative impact on access to education, health and other goods and services, with a detrimental effect on social and economic mobility. Vulnerable population groups are left behind, unable to share in the general economic growth in their countries. Gaps in the coverage, comprehensiveness and adequacy of social protection systems are associated with significant underinvestment in social protection. Globally, only 4.8 per cent of GDP is spent on public social protection to ensure income security for people of working age, with significant gaps in unemployment, sickness and disability protection.[4]

The full realization of the right to social security is an essential component of the robust public policies that are indispensable for a sound and sustainable recovery from the various crises and it is a fundamental dimension of a

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2 ILO, 2021e, *World Social Protection Report 2020-2022: Social protection at the crossroads – in pursuit of a better future*, p. 30. See also ILO, Resolution and Conclusions concerning the second recurrent discussion on social protection (social security), International Labour Conference, 109th session, 2021.

3 ILO, 2024, *World Social Protection Report 2024-26: Universal social protection for climate action and a just transition*, Geneva.

4 Ibid., p. 104.

human-centred approach to sustainable development.[5] Many countries are now at a crossroads in relation to the evolution of their social protection systems. Irrespective of their level of development, they are confronted with a choice between reinforcing their social protection systems or falling back on an approach of minimalist provision.

This fact sheet aims to:

- Unpack the content and key elements of the right to social security
- Clarify the obligations of States and other actors and provide examples of policy options for their implementation
- Provide guidance for social security systems, in line with the norms and principles set out in international human rights instruments and international social security standards, to achieve universal social protections
- Address the challenges confronting social security/social protection systems.

[5] ILO, 2021e, *World Social Protection 2020-22: Social protection at the crossroads – in pursuit of a better future*, Geneva.

I. What is the right to social security?

A. Definition

Social security, or social protection,[6] is the protection that a society provides to individuals and households to ensure access to health care and guarantee income security throughout their lives. This covers various life contingencies, such as sickness, unemployment, maternity, old age, disability, employment injury, or the loss of the main income earner. Social security systems are composed of a variety of mechanisms providing cash or in-kind benefits, including goods and services. The provision of high-quality public services is also a key element of social security systems in ensuring essential health care and basic income security.

As provided in article 9 of the International Covenant on Economic, Social and Cultural Rights, everyone, as a member of society, has the right to social security. States have the duty to respect, protect and fulfil this right. The right to social security encompasses the right to have access to both social insurance schemes (contributory) and social assistance schemes (non-contributory), with the principal aim of combating poverty and inequality (see glossary). Non-contributory schemes, and particularly social assistance schemes, should therefore also be seen as fulfilling rights, and not as a form of charity.

B. The right to social security under international law

The right to social security has a strong anchorage in international law. The core elements of the right to social security were outlined in a succinct yet visionary manner in the Declaration of Philadelphia of 1944. Adopted alongside the Declaration of Philadelphia, the Income Security Recommendation, 1944 (No. 67), and the Medical Care Recommendation, 1944 (No. 69), set out the blueprint for building comprehensive social security systems covering all members of society through a variety of mechanisms or schemes.

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[6] In this fact sheet, the concepts of "social security" and "social protection" are considered to be interchangeable and to refer to all measures aimed at providing income security and health care to all in need of such protection, including in the event of sickness, disability, maternity, employment injury, unemployment, old age, death of an income-providing family member, or in relation to caring for children. These measures should be financed collectively through contributory, non-contributory (tax) mechanisms, or a mix of both, to achieve the pooling of risks. As such, "social security" should not be read as a synonym for social insurance, nor should the term "social protection" be read as limited to means-tested social assistance measures targeting the poorest and most vulnerable members of society.

Social security was fully recognized as a human right in the Universal Declaration of Human Rights. The tripartite constituents of ILO then adopted an entire body of standards substantiating the right to social security, the most notable of which is the Social Security (Minimum Standards) Convention, 1952 (No. 102). The right to social security, including social insurance, was also recognized by the International Covenant on Economic, Social and Cultural Rights in 1966.[7]

In 2008, the Committee on Economic, Social and Cultural Rights, the United Nations body responsible for monitoring the implementation of the International Covenant on Economic, Social and Cultural Rights, issued a general comment to guide States parties in their compliance with the obligations under article 9 of the Covenant.[8] The ILO Social Protection Floors Recommendation, 2012 (No. 202) also provides a strong normative action-oriented response aimed at guiding States to close the extensive social protection gaps that still exist globally and charting the way towards achieving universal social protection.

1. Recognition of the right to social security in international and regional human rights instruments

The International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to social security, including social insurance (art. 9). The Committee on Economic, Social and Cultural Rights, in its general comment No. 19 (2008) on the right to social security, elaborated on the normative content of this right and the obligations of States parties and other actors, and provided guidance on the implementation of this right at the national level.

In addition, the right to social security is recognized in numerous international human rights legal instruments:

- the International Convention on the Elimination of All Forms of Racial Discrimination (art. 5 (e) (iv))[9]

[7] There are currently 172 States parties to the International Covenant on Economic, Social and Cultural Rights.

[8] Committee on Economic, Social and Cultural Rights, general comment No. 19 (2007).

[9] Although the International Convention on the Elimination of all Forms of Racial Discrimination already required States parties to prohibit and eliminate racial discrimination in the enjoyment of the right to social security, it was the inclusion of the right to social security in the International Covenant on Economic, Social and Cultural Rights that represented the decisive step forward for the inclusion of the right in subsequent human rights treaties asserting the realization of this right as a positive obligation of States with respect to specific groups.

- the Convention on the Elimination of All Forms of Discrimination against Women (art. 11 (e))
- the Convention on the Rights of the Child (art. 26)
- the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art. 27)
- the Convention on the Rights of Persons with Disabilities (art. 28)

The right to social security is also recognized in regional human rights instruments in Africa, Americas, the Arab States, Asia and Europe.

The African Charter on Human and Peoples' Rights includes the protection of women and children. It also declares that older persons and persons with disabilities shall have a right to special measures of protection in keeping with their physical or moral needs,[10] which would naturally include income support benefits, health care and social services. The African Union has adopted a Protocol to the African Charter on Human and Peoples' Rights.

A comprehensive provision on the right to social security is contained in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the San Salvador Protocol) of 1988.[11] The Social Charter of the Americas, adopted by the General Assembly of the Organization of American States in 2012, also refers to social protection policies and programmes.[12]

The Arab Charter on Human Rights, adopted by the Council of the League of Arab States in 2004, provides that States parties shall ensure the right of every citizen to social security, including social insurance.[13]

The Association of Southeast Asian Nations (ASEAN) Human Rights Declaration guarantees that every person has the right to social security, including social insurance where available, which assists him or her to secure the means for a dignified and decent existence.[14]

The European Social Charter, adopted by the Council of Europe in 1961, states in Part I that all workers and their dependants have the right to

[10] Art. 18 (3) and (4).

[11] Art. 9 (1) and (2) on the right to social security.

[12] Art. 14.

[13] Art. 36.

[14] Art. 30 (1).

social security; anyone without adequate resources has the right to social and medical assistance;[15] and everyone has the right to benefit from social welfare services.[16] In 1996, the Charter was revised to include a new and fundamental right to protection against poverty and social exclusion (the revised European Social Charter). The Council of Europe also developed the European Code of Social Security (1964) and its additional Protocol, which mirror ILO Convention No. 102 and aim at higher commitments from States parties in the regional context.

2. International social security standards adopted by the International Labour Organization

International labour standards, including conventions (or protocols) and recommendations, developed and adopted by representatives of Governments and of workers' and employers' organizations are recognized as providing the normative content of the right to social security. In particular, the Income Security Recommendation, 1944 (No. 67) and the Medical Care Recommendation, 1944 (No. 69) envisaged comprehensive social security systems and the extension of coverage to all, and laid the foundations for Convention No. 102.

Convention No. 102 continues to occupy a prominent place as the international reference treaty setting out a systemic vision of social security. Over 70 years since its adoption, it has greatly influenced the development of social security programmes at the national level, even in countries that have not ratified the Convention.

Convention No. 102 was the first international treaty to group together all nine branches of social security (also known as "risks" or "contingencies") – medical care, sickness, unemployment, old age, employment injury, family benefits, maternity, invalidity and survivors. It remains the sole international instrument that establishes agreed qualitative and quantitative minimum standards in terms of the persons covered and the level, qualifying period and duration of the benefits to be provided for all the branches. It is grounded in a set of core financing, governance and administrative principles, including: the responsibility of the State; rights defined by law; minimum levels of protection for both contributory and non-contributory

[15] Article 12 (2) requires States parties to commit to maintaining the social security system at a satisfactory level at least equal to that required for ratification of ILO Convention No. 102.

[16] Arts. 13–14.

schemes; the collective financing and financial sustainability of schemes; participatory management; and transparency and compliance mechanisms.

Convention No. 102 also allows States to extend their international obligations in unison with the progressive development of their national systems, while ensuring the application of the core principles and the provision of a minimum level of social security.

The Social Protection Floors Recommendation, 2012 (No. 202), maps out a strategic vision for the progressive achievement of universal social protection based on two main axes: (1) building and maintaining a national social protection floor that guarantees access to essential health care and basic income security throughout the life cycle; and (2) extending higher levels of protection to as many people as possible as soon as possible, guided by ILO social security standards.

The normative architecture developed by the world's governments, workers and employers' organizations within ILO is currently composed of nine up-to-date conventions and nine recommendations. They are divided into two groups of standards, namely 'harmonization' standards and 'coordination' standards. While they share the principles enshrined in Convention No. 102, the standards adopted subsequently set higher benchmarks with respect to the persons covered and benefit levels for thematically regrouped contingencies. They also establish coordination rules for migrant workers and their families:[17]

Harmonization standards:

- the Income Security Recommendation, 1944 (No. 67), and the Medical Care Recommendation, 1944 (No. 69)
- the Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)
- the Social Security (Minimum Standards) Convention, 1952 (No. 102)
- the Employment Injury Benefits Convention (No. 121) and Recommendation (No. 121), 1964
- the Invalidity, Old-Age and Survivors' Benefits Convention (No. 128) and Recommendation (No. 131), 1967
- the Medical Care and Sickness Benefits Convention (No. 130) and Recommendation (No. 134), 1969

[17] All of the nine contingencies, with the exception of family benefits, are thus covered by a more advanced standard. These instruments can be consulted in the Database of International Labour Standards (NORMLEX).

- the Employment Promotion and Protection against Unemployment Convention (No. 168) and Recommendation (No. 176), 1988
- the Maternity Protection Convention (No. 183) and Recommendation (No. 191), 2000
- the Social Protection Floors Recommendation, 2012 (No. 202)

Coordination standards:

- the Equality of Treatment (Social Security) Convention, 1962 (No. 118)
- the Maintenance of Social Security Rights Convention, 1982 (No. 157), and the Maintenance of Social Security Rights Recommendation, 1983 (No. 167)

C. Key elements of the right to social security

1. Legislative and policy framework

In line with international human rights instruments and social security standards, the right to social security has to be guaranteed in domestic legal systems. A constitutional guarantee of the right to social security raises the importance of the right and lays a foundation for subsequent implementing legislation. Such a guarantee also provides a basis for the right to be asserted in the courts. A constitutional guarantee can be instrumental in preventing the retrogression of the right, for example, in the context of austerity and fiscal adjustment programmes. In national practice, constitutional provisions on the right to social security generally affirm social security as an individual right and define the obligations of the State as the duty bearer for its realization.[18]

States should adopt legislation, as well as a national social security strategy and action plan, for the realization of this right. All social security systems and schemes should be embedded in a legal framework.

2. Social security schemes

While no two social security systems are alike, the essential components of the right to social security, as established by the international human rights framework, must be observed in all circumstances.

[18] ILO, *The right to social security in the Constitutions of the world: Broadening the moral and legal space for social justice*. ILO Global Study, vol. 1: Europe, Geneva; ILO, *Derecho a la seguridad social en las constituciones del mundo: Ampliando el espacio moral y legal para la justicia social*, vol. 2: Geneva, 2023.

In order to achieve universality, social protection systems must encompass various collectively financed mechanisms and schemes:

- **Contributory or insurance-based schemes:** These schemes provide cash and in-kind benefits. They are financed by compulsory contributions from workers and employers, often also with the participation of the State. Such schemes generally protect employees and self-employed workers. But they may, as in the case of national health insurance schemes, cover all residents. Contributory schemes may also be open to voluntary affiliation, although globally voluntary schemes have not proved to be an effective means of extending social protection to unprotected groups.
- **Non-contributory schemes:** These are financed through general taxation and provide protection, in cash or in kind, for various groups of people, such as persons with disabilities, children and people living in poverty. They may be universal and cover all residents through, for example, universal social pensions, or they may target certain disadvantaged individuals and groups, for example through means-tested social assistance benefit schemes for individuals and families living in poverty.
- **Other forms of social protection:** Community or occupation-based, or mutual benefit schemes, may also be part of the social security system, on condition that they conform to the essential elements of the right to social security. In many countries, social services for various groups, such as children, older persons, persons with disabilities, homeless persons, women and survivors of gender-based violence, are also under the purview of social security systems, generally with the involvement in their administration of non-profit and for-profit partners.
- **Supplementary schemes:** These are usually operated by private insurance companies and supplement existing social protection systems by offering additional coverage beyond that provided by general schemes. States retain responsibility for overseeing such schemes and establishing an adequate regulatory framework for their creation, funding and operation so as to ensure that they observe core principles, notably in terms of affiliation requirements and financial governance and investment rules.

All schemes should be embedded in a clear and easily accessible legal framework, set transparent eligibility criteria and provide a direct indication of the nature and level of benefits.

In all circumstances, States retain overall and primary responsibility for setting up and implementing a rights-based social security system aimed at realizing the right to social security for all. The existence of well-coordinated contributory and non-contributory schemes has proved to be a pre-condition for building and maintaining universal social protection systems. In many developing countries, large scale non-contributory schemes are necessary, as many people lack the economic capacity to participate in an insurance-based system. Moreover, much of the workforce is engaged in the informal economy and faces difficulties in accessing contributory social insurance schemes, which are often linked to employment in the formal economy. Importantly, many countries have also started subsidizing contributions in whole or in part for those who cannot afford them. Such subsidies often help to extend coverage to previously excluded groups, including through the formalization of employment, by pooling risks and costs based on social solidarity principles, as opposed to creating parallel systems targeting vulnerable groups.

In Cabo Verde, non-contributory pensions, in combination with the contributory scheme, cover about 84.8 per cent of the population above the pensionable age and provide benefits of around US$53 a month (20 per cent above the national poverty line). Furthermore, in 2006, the National Centre of Social Pensions and the Mutual Health Fund were created to provide financial support for pensioners to purchase medicines from private pharmacies, as well as a funeral allowance (ILO, 2021e, *World Social Protection Report 2020–22: Social protection at the crossroads – in pursuit of a better future*, p. 174).

3. Social risks or contingencies

There are nine principal life-cycle risks or contingencies for which health care and income security should be provided.

a. Health care

In accordance with ILO social security standards, access to health care, including maternity care, without hardship, is an integral part of comprehensive social protection systems.[19] All members of society should have access to health care without suffering financial hardship and

[19] Convention No. 102, arts. 8, 10 and 49; Convention No. 130, art. 13; and Recommendations Nos. 69, 134 and 202.

without discrimination, irrespective of whether or not they are employed.[20] The range of health care interventions necessarily includes preventive and curative measures with a view to maintaining or restoring health, in recognition that good health is essential to human well-being and productivity.

Access to health care without hardship is therefore an integral part of national social protection floors and should be guaranteed through nationally defined goods and services that meet the criteria of availability, accessibility, acceptability and quality, as defined by international instruments and the human rights treaty bodies. As a minimum, such interventions should include access to general practitioner and specialist services, essential medication and necessary hospitalization without financial hardship. Access to a minimum level of prenatal, childbirth and postnatal care, including hospitalization when required, should be provided free of charge. In cases in which the health system includes private or mixed services, access should be affordable and free from discrimination.

In the event of sickness, access to health care without hardship should be provided until recovery. National legislation should ensure that, in the case of diseases requiring prolonged medical care, such as cancer and diabetes, medical care is not suspended. The provision of sickness cash benefits, which cover loss of income during sickness, should not be a reason for denial of access to health care without hardship.

b. Sickness

The right to social security requires governments to establish systems and schemes that provide cash benefits to cover periods of loss of earnings for those who are temporarily incapable of working due to ill-health.[21] This assistance should also be provided to persons who have to isolate or quarantine[22] due to public health requirements and are not able to work remotely, especially during pandemics and other health crises. From a public health perspective, sickness benefits in such cases can have a significant impact in curtailing the spread of disease, as clearly demonstrated during the COVID-19 pandemic.[23] Moreover, sickness benefits should also be

[20] Recommendations Nos. 69 and 202.

[21] ILO, "Sickness benefits: An introduction", ILO brief, 2020.

[22] Recommendation No. 134, para. 8.

[23] ILO, "Sickness benefits during sick leave and quarantine: Country responses and policy considerations in the context of COVID-19", ILO brief, Social Protection Spotlight, 2020.

available for those caring for a sick dependant.[24] Such measures can promote gender equality in sharing unpaid care and support work when they cover both women and men family members responsible for caring for a sick person.

Sickness benefits should be adequate and, in principle, be paid until recovery, although national legislation may set a maximum period for their provision.[25] The duration should be extended in the case of diseases requiring prolonged care.[26] This is especially important for the medical coverage of persons with long-term illnesses who may, after repeated absences, be considered to be no longer capable of performing their work and may therefore lose their jobs. As such, it is important for the system to allow sickness benefits to cover long-term and chronic diseases, and to be converted into a disability benefit if the beneficiary is considered as being permanently incapable of performing work following the expiry of the period of sickness benefit.[27]

c. Old age

Social security schemes should guarantee access to old-age pensions at a legally defined age. In principle, in accordance with international social security standards, this age should not be higher than 65 years. However, it may be adjusted to an earlier or later age, taking into account, for example, the nature of the occupation, particularly for work in hazardous occupations, or an increase in healthy life expectancy and the capacity of older persons to work.[28] The level of pensions should be predictable and, at the very least, be sufficient to guarantee a dignified life for all older persons until their death.[29]

Pension systems should be composed of both contributory and non-contributory schemes for those unable to access a contributory pension. In some countries, pension systems include a tax-financed universal pension pillar based on residency, which can address some gaps in coverage, particularly of women and workers in the informal economy. They may also co-exist alongside supplementary mechanisms, usually based on individual

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[24] Recommendation No. 134, para. 10.

[25] Convention No. 102, art. 18; Convention No. 130, art. 16.

[26] Ibid.

[27] Convention No. 102, arts. 14 and 54.

[28] Convention No. 102, art. 26; Convention No. 128, art. 15; Recommendation No. 131, paras. 6–7.

[29] Convention No. 102, arts. 65–66; Convention No. 128, art. 29; Recommendation No. 202, para. 8.

savings, with the aim at providing higher earners with a higher income in retirement.[30] As in the case of all long-term benefits, it is important for adjustments of the level of pensions to be carried out periodically based on the cost of living and the level of earnings in the country so as to avoid the erosion of the value of benefits.[31]

Special attention should also be paid to gender gaps in pensions due to different retirement ages for women and men; lower labour force participation and higher levels of part-time and temporary work and informal employment among women; the gender pay gap; and women's disproportionately high share of unpaid care work.[32]

d. Unemployment

Unemployment protection schemes aim to compensate for the loss of, or decrease in earnings due to the inability to obtain or maintain suitable employment.[33] They are a key element of social security systems and labour market policies, particularly in times of economic downturn and in the context of flexible labour markets and new forms of work. Efficient unemployment protection schemes should have, as a crucial corollary, an effective national employment service with broad coverage that is capable of assisting jobseekers to find work.

The COVID-19 pandemic illustrated the importance of introducing or expanding coverage of loss of earnings due to partial unemployment[34] or temporary suspensions of work.[35] Persons in situations of long-term unemployment who exhaust the period of entitlement to benefits, as well

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30 ILO, 2024, "Ratification and application of the Social Security (Minimum Standards) Convention, 1952 (No. 102): A gateway for achieving rights-based universal social protection", Global Advocacy Brief.

31 Convention No. 102, arts. 65–66; Convention No. 128, art. 29.

32 See for example Committee on Economic, Social and Cultural Rights, concluding observations on the fourth periodic report of Israel (E/C.12/ISR/CO/4); and concluding observations on the third periodic report of the Republic of Moldova (E/C.12/MDA/CO/3); Committee on the Elimination of Discrimination against Women, concluding observations on the eighth periodic report of Belarus (CEDAW/C/BLR/CO/8); concluding observations on the combined seventh and eighth reports of China (CEDAW/C/CHN/CO/7-8); and concluding observations on the combined fourth and fifth periodic reports of the Republic of Moldova (CEDAW/C/MDA/CO/4-5); and ILO, "Closing gender gaps in social protection: What workers' organizations need to know", policy brief, Geneva, 2022.

33 Convention No. 102, art. 20; Convention No. 168, art. 10; Recommendation No. 176, para. 14.

34 Coverage of partial unemployment could include persons in part-time work who are seeking full-time work.

35 Convention No. 168, art. 15; see also, ILO, "Unemployment protection in the COVID-19 crisis: Country responses and policy considerations", ILO brief, Social Protection Spotlight, 2020.

as others who are facing difficulties in finding employment, such as first-time jobseekers, women, young workers, persons with disabilities, older workers, migrant workers and workers affected by structural change, should be entitled to other forms of protection, such as special programmes to promote job opportunities.[36] Persons in these categories should also have access to a social protection floor,[37] which could be implemented, for example, by establishing a minimum guaranteed income, means-tested social assistance benefits for working-age persons living in poverty who are seeking employment or facilitated access to an early old-age pension.

Unemployment protection schemes have the greatest impact when they have the dual objective of guaranteeing adequate income security in the event of partial or full loss of employment and promoting decent work.[38] This can be achieved through unemployment insurance or assistance, or an employment guarantee, with strategic links to employment promotion measures, the formalization of employment and active labour market policies. For this purpose, it is necessary to coordinate social protection policy with a comprehensive employment policy comprising macroeconomic, trade, investment and industrial dimensions.[39]

e. Employment injury and occupational diseases

States should ensure the protection of workers in the event of employment injury and occupational diseases through adequate benefits in the form of access to health care free-of-charge and periodical cash benefits to replace the suspension of earnings resulting from temporary or permanent incapacity for work.[40] Employment injury schemes should cover partial and total disability, as well as the loss of support suffered by dependants as a result of a worker's death. Entitlement to benefits should not be subject to the length of employment, duration of insurance or payment of contributions.[41] Long-term benefits should be periodically readjusted to ensure that they maintain their purchasing power.[42]

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36 Convention No. 168, art. 26.

37 Recommendation No. 202, para. 5 (c).

38 Convention No. 168, arts. 2 and 7.

39 ILO, 2021e, *World Social Protection Report 2020-22*, p. 162.

40 Convention No. 102, art. 32; Convention No. 121, art. 6.

41 See Committee on Economic, Social and Cultural Rights, general comment No. 19 (2008), para. 17.

42 Convention No. 102, arts. 65–66; Convention No. 121, art. 21.

Traditionally, most employment injury schemes did not cover compensation for infectious diseases, due to the difficulty of determining whether or not an infection was work-related. However, in many countries, compensation was provided for workers infected by COVID-19.[43]

Employment injury schemes should also encompass or be coordinated with rehabilitation and re-employment services to enable beneficiaries to obtain suitable employment and be reintegrated into the labour market.[44] Coverage of the cost of constant help or attendance is also recommended for persons with long-term care needs.[45]

f. Family and child support

Family benefit should be provided to cover the responsibility for the maintenance of children and should include either periodic payments or the provision of food, clothing, housing, holidays or domestic help, or a combination of all of these.[46] Benefits are crucial to realize the right of children to education and personal development and for the eradication of child poverty and child labour.

Family benefits should be guaranteed for all children, irrespective of their residency status.[47] While, in accordance with international labour standards, family benefits are to be provided at least until the child reaches the age of 15, or for as long as schooling is compulsory, under international human rights law, family benefits are provided until the child reaches the age of 18 or more.[48]

g. Maternity

Mothers should receive special protection for a reasonable period before and after childbirth, including prenatal and postnatal health care.[49] In particular, medical benefits should include prenatal, childbirth and postnatal care, and

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43 ILO, 2021e, *World Social Protection Report 2020-22*, p. 137.

44 Convention No. 102, art. 35; Convention No. 121 and Recommendation No. 121.

45 Recommendation No. 121, para. 11.

46 Convention No. 102, arts. 40 and 42.

47 Recommendation No. 202, para. 6.

48 The Convention on the Rights of the Child states in article 1 that "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."

49 International Covenant on Economic, Social and Cultural Rights, art. 10.

hospital care where necessary.[50] Working mothers should also be granted paid leave, or leave with adequate social security benefits, but the cost of such income replacement should be borne collectively, not individually by employers.[51] Such arrangements prevent discriminatory practices detrimental to the labour market situation of women.[52] Maternity cash benefits should be at a level that ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.[53] They should be provided for a period determined by law which should be, as a minimum, 12 weeks, unless a longer period of maternity leave is required or authorized by national law.[54] These benefits should be accompanied by other maternity protection measures, including the prohibition of discrimination based on maternity, protection from work that is potentially harmful to the woman and child during pregnancy and breastfeeding, as well as the guarantee of being able to rest and recover around childbirth.[55]

Paternity, parental and adoption benefits are also important in this context as a means of promoting the reconciliation of work and family responsibilities and redressing the unequal distribution of unpaid care work.[56]

h. Disability

Persons with disabilities are entitled to disability-inclusive social security, provided in a dignified manner.[57] As a minimum, income security should be provided in the event of full disability, and national schemes should

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[50] Ibid.; Convention No. 102, arts. 47 and 49; Convention No. 183, art. 7.

[51] Convention No. 102, art. 71; Convention No. 183, art. 6 (8).

[52] International Covenant on Economic, Social and Cultural Rights, art. 10.

[53] Convention No. 102 requires this amount to be at least 45 per cent of previous earnings; articles 4 (1) and 6 (2) and (3) of Convention No. 183 states that it should be at least two thirds of previous earnings or a comparable amount.

[54] Convention No. 102, art. 52.

[55] Convention on the Elimination of All Forms of Discrimination against Women, art. 11 (2) (b); Convention No. 183 and Recommendation No. 191.

[56] Convention on the Elimination of All Forms of Discrimination against Women, art. 5 (b); Recommendation No. 191, para. 10; Workers with Family Responsibilities Convention (No. 156) and Recommendation (No. 165), 1981. See also ILO, *A Quantum Leap for Gender Equality: For a Better Future of Work for All*, Geneva, 2019; ILO, *Achieving gender equality at work*. General Survey on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Workers with Family Responsibilities Convention, 1981 (No. 156), the Maternity Protection Convention, 2000 (No. 183), the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111), the Workers with Family Responsibilities Recommendation, 1981 (No. 165) and the Maternity Protection Recommendation, 2000 (No. 191), International Labour Conference, 111th Session, Report III (Part B).

[57] Convention on the Rights of Persons with Disabilities, 2006, preamble, arts. 2, 23 (5) and 28 (1) and (2) (c)); Convention No. 102, arts. 53–54; Recommendation No. 131, para. 25.

progressively include partial disability.[58] Disability benefits should be provided as long as the disability persists and should take into account the additional expenses incurred as a result of the disability, as well as disability-related support to ensure economic empowerment. Disability schemes should also be designed to enable and promote active participation in employment and society. States should therefore seek to coordinate disability benefits closely with other social, economic and employment policies, such as effective access to health care, including sexual and reproductive health care, and the necessary employment and rehabilitation services to allow the persons concerned to engage in suitable employment.[59]

i. Survivors, including orphans

Dependent survivors, including orphans, are entitled to benefits upon the death of an income earner.[60] Survivors' benefits may be subject to the condition that beneficiaries are incapable of supporting themselves, such as those who are attending education and dependent spouses who are not engaged in gainful activity.[61] Historically, national legal frameworks have often focused on protecting widows, although there is now a trend to equalize conditions of access to survivors' benefits for men and women. Surviving family members should be provided with assistance in accessing social security schemes, particularly when endemic diseases, such as HIV/AIDS, tuberculosis and malaria, or natural disasters or conflicts, leave them without family and community support.[62] Where the right to survivors' benefits for spouses is conditional upon the attainment of a prescribed age, beneficiaries below that age should be provided with the necessary assistance and facilities, including training and placement facilities, to ensure that the loss of the income-earner does not lead to the denial of any human rights.[63]

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[58] Recommendation No. 131, para. 5.

[59] Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) and Recommendation (No. 168), 1983.

[60] Article 60 of Convention No. 102 defines the contingency as including "the loss of support suffered by the widow or child as the result of the death of the breadwinner; in the case of a widow, the right to benefit may be made conditional on her being presumed, in accordance with national laws or regulations, to be incapable of self-support."

[61] Convention No. 102, art. 60; Convention No. 130, art. 21.

[62] Committee on Economic, Social and Cultural Rights, general comment No. 19 (2008), para. 21.

[63] Recommendation No. 131, para. 9.

4. Elements of the right to social security

a. Availability

Social security benefits should be available for the principal life risks. They should be provided in the form of transfers in cash or in kind, or a combination of both, and therefore consist of a periodic payment or the provision of goods or services. In line with Convention No. 102 and Recommendation No. 202, benefits should be rooted in the principles of collective financing and social solidarity, for example from active to older persons, the healthy to persons suffering from ill health, or the affluent to persons with small means.[64]

The social protection system, which is generally composed of a variety of schemes, should be operational throughout the national territory. The State has the overall responsibility for its effective administration and supervision. Systems should be organized to reach out to and effectively protect all persons, particularly the most disadvantaged and marginalized, without discrimination on any of the prohibited grounds set out in article 2 (2) of the International Covenant on Economic, Social and Cultural Rights.[65] In order to ensure universal coverage, in line with Recommendation No. 202, States should make available contributory and non-contributory schemes to implement their national social protection floor. States should also progressively provide higher levels of protection, including through social insurance schemes. The system and its individual schemes should be financially sustainable, with due regard to social justice and equity, so that the right to social security can be realized for present and future generations.[66]

b. Adequacy

Benefits, whether in cash or in kind, must be adequate in nature, amount and duration in order to enable everyone to realize their rights to social security, to health and to an adequate standard of living. This implies that, as a minimum, benefit levels should ensure effective access to essential goods and services, defined as necessary at the national level, and thereby

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[64] Convention No. 102, art. 71; and Recommendation No. 202, para. 3.

[65] Article 2 (2) of the International Covenant on Economic, Social and Cultural Rights prohibits discrimination on the basis of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

[66] Committee on Economic, Social and Cultural Rights, general comment No. 19, para. 11; Recommendation No. 202, para. 3 (k).

secure, as a minimum, protection against poverty, vulnerability and social exclusion and enable a dignified and healthy life.[67]

The withdrawal, reduction or suspension of benefits should also be based on grounds that are reasonable, clearly defined, periodically reviewed and subject to due process.[68] Benefits should be predictable,[69] which means that their level and duration should be defined by law and guaranteed through sound and sustainable financing.

Periodic payments to compensate for loss of earnings under social insurance schemes should replace lost earnings, with due regard to family responsibilities. The amount of benefit should be as high as is practicable without impairing the will to resume work where resumption is a possibility. They should be monitored regularly to ensure that beneficiaries are able to afford the goods and services necessary for the realization of their human rights.[70] There should be a reasonable relationship between earnings, paid contributions and the amount of the relevant benefit.[71] Benefits should be provided in a timely manner and periodically. Lump sums are not considered to offer adequate protection.[72]

Under non-contributory systems, such as social assistance schemes, benefits may correspond to the monetary value of a set of necessary goods and services, national poverty lines, income thresholds for social assistance or other comparable thresholds established by national law or practice. They may consider regional differences, and should in all cases be sufficient to ensure a dignified life.[73] In addition, benefits provided over long periods, such as old-age pensions, should be adjusted at least in relation to substantial changes in the general level of earnings or in the cost of living to ensure that they maintain their purchasing power.[74]

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67 Recommendation No. 202, paras. 2 and 8 (b).

68 Article 69 of Convention No. 102 covers the limited situations that may give rise to a total or partial suspension of benefits.

69 Recommendation No. 202, para. 3 (c).

70 Recommendation No. 67, para. 22.

71 Recommendation No. 67, para. 23.

72 Convention No. 102, arts. 16, 22, 28, 36, 42, 50, 56 and 62.

73 Recommendation No. 202, para. 8 (b); Convention No. 102, art. 67.

74 Convention No. 102, arts. 65 (10) and 66 (8); Convention No. 128, art. 29.

With specific reference to the right to health, adequacy is measured in terms of affordability, availability, accessibility and quality.[75] The health care provided should comprise: both general-practitioner and specialist out- and in-patient care, including domestic visitation; dental care; nursing care at home or in hospital or other medical institutions; the care provided by qualified midwives and other maternity services at home or in hospital; hospitalization or stays in other medical institutions; and, in so far as possible, the requisite dental, pharmaceutical and other medical or surgical supplies, including artificial limbs.[76]

ILO social security standards provide a useful framework for the design of adequate levels of periodic payments, with reference to the level of earnings in each country, as well as duration and entitlement conditions for contributory and non-contributory benefits.

c. Accessibility

Coverage: All persons should be covered by the social security system without discrimination. In order to ensure universal coverage, non-contributory schemes are necessary to cover the most disadvantaged and marginalized groups.

Eligibility: Qualifying conditions for benefits have to be reasonable, proportionate and transparent. The withdrawal, reduction or suspension of benefits should be circumscribed, based on grounds that are reasonable, subject to due process and provided for in national law.

Physical accessibility: Beneficiaries should have physical access to social security services in order to register, access benefits, make claims and collect the information they deem necessary for the realization of the right, with particular attention being paid in this regard to persons with disabilities, older persons, indigenous peoples, minorities, migrants and persons living in remote or disaster-prone areas, or areas affected by armed conflict.

Affordability (economic accessibility): Social security contributions must be reasonable and proportionate. Governments should ensure that they are also affordable for those with low incomes, if necessary, through

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[75] Recommendation No. 202, para. 5 (a).

[76] Recommendation No. 69, para. 21; Convention No. 102, art. 10.

subsidies.[77] The direct and indirect costs and charges associated with paying contributions must be affordable for all and must not compromise the realization of other rights. Expenses related to the receipt of benefits, such as the cost of transport to social security offices, should be reduced as far as possible, for instance by using postal services and individual bank accounts. Social security contributions and out-of-pocket payments by beneficiaries for medical care should not result in undue hardship for the persons protected.[78] There should be no out-of-pocket payments for health services in the case of maternity and employment injury.[79]

Information and procedural accessibility: Individuals and organizations should have access to information in a clear and transparent manner. Entitlement conditions for benefits (eligibility criteria) and other useful information should be translated into simple user-friendly, disability-inclusive and age-sensitive language, without concepts that are difficult to understand or ambiguities in the explanations. If there are significant minority language groups in the country, such information should be made available in their language(s). Governments should make procedures for claiming benefits simple and efficient and establish complaint mechanisms through which people can seek redress in the event of the violation of their right to social security. Special measures should be taken to ensure access by groups that may not have the necessary digital literacy skills and/or digital devices.

d. Participation

Employers' organizations, trade unions and other organizations representing beneficiaries, including workers in informal work arrangements and pensioners, should either participate or be consulted in a meaningful and effective manner in the formulation, implementation and evaluation of social security policies. This is crucial, as effective policies offer an important means of addressing national gaps in social protection and the related

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[77] Recommendation No. 67, para. 26 (8) and (9); Recommendation No. 69, paras. 12, 13, 75, 76, 78 and 79.

[78] Recommendation No. 67, para. 26; Convention No. 102, art. 71.

[79] See the report form for Convention No. 102.

priorities.[80] In this regard, Recommendation No. 202 places emphasis on the establishment of institutional structures for effective participation in policy processes, rather than relying on ad hoc consultations.[81] Meaningful participation also requires different power relations to be taken into account and building the capacity of all stakeholders. This includes access to information. In this regard, the State assumes the overall and primary responsibility to ensure that the social security system guarantees the right of individuals and organizations to seek, receive and impart information on the system in a clear and transparent manner and has in-built accountability mechanisms to ensure the responsibility of central and local authorities and other implementing bodies as duty bearers. Beneficiaries should also be able to participate in the administration of social security schemes and systems, and particularly schemes not administered by public entities.[82] Women should be represented in all these processes as fully fledged stakeholders.

D. The link between the right to social security and other rights

All human rights are interdependent and indivisible. The right to social security is an enabling right for the realization of other human rights. Inversely, there is also strong evidence that social protection is strengthened by the realization of other economic, social and cultural rights. In other words, these rights should be seen as an inseparable and mutually supportive package, in which the fulfilment of one set of rights depends on and supports the fulfilment of others.

Economic, social and health crises, such as the COVID-19 pandemic, illustrate the critical role of social protection in enabling and reinforcing other rights. At the same time, such crises also reveal that other measures are necessary to supplement the enjoyment of the right to social security.

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[80] In paragraphs 3 (r) and 13 of its Recommendation No. 202, ILO recognizes the importance of social dialogue and social participation, particularly for the formulation of national social security extension strategies; Committee on Economic, Social and Cultural Rights, general comment No. 19 (2008), para. 69; Behrendt, C., Saint-Pierre Guilbault, E., Stern-Plaza, M., Umuhire, V., and V. Wodsak. 2017. "Implementing the principles of Social Protection Floors Recommendation, 2012 (No. 202)", Chapter 3, in Dijkhoff, T., and G. Mpedi (eds.), *Recommendation on Social Protection Floors: Basic Principles for Innovative Solutions*, Kluwer; ILO, *Social protection assessment-based national dialogue, A global guide*, Geneva, 2016; ILO (forthcoming), "Planning for a More Socially Just Future: Findings from an Analysis of National Social Protection Policies and Strategies, 2011-2020".

[81] Recommendation No. 202, para. 19.

[82] Convention No. 102, art. 72.

Examples include: mainstreaming non-discrimination and gender equality in all sectoral policies; improving health facilities, goods and services; promoting the transition of workers from the informal economy to the formal economy; promoting just and favourable conditions of work in the context of the challenges related to the many transitions and transformations of contemporary societies; subsidizing and improving social housing units in order to avoid over-occupation and unhealthy living conditions; improving public transport; adopting programmes to support the family and its members; combating inequalities through income redistribution and access to basic services; and ensuring quality education and cultural and recreational opportunities for all.

Access to high-quality public services is key to ensuring the equal and effective enjoyment of the right to social security for all. For example, to ensure effective gender equality and an equal sharing of unpaid care and support work, it is necessary to combine maternity, paternity, parental and family benefits with access to quality childcare services. Similarly, rehabilitation and long-term care and support services are important supplements to disability benefits and old-age pensions. Access to public employment services is essential, in conjunction with unemployment benefits, for the promotion of full, productive and decent employment, particularly in view of the disproportionate representation of women workers in the informal economy and non-standard forms of employment.

Social protection measures in response to the COVID-19 pandemic

Responses to the COVID-19 pandemic raised enormous challenges for the protection of human rights. They accentuated inequalities, disproportionately affecting vulnerable population groups. Governments responded by taking urgent and extraordinary measures to generate fiscal spaces in several areas. Social security systems were the most important channel to protect the health and incomes of people and provide support to the labour market. This was done, among other measures, by: extending existing benefits or introducing new benefits for workers, employers and families affected by the pandemic, guaranteeing household incomes and reducing the risk of job losses; establishing support measures for workers who had to take leave to look after children who could not attend school or childcare services, or other family members; extending unemployment benefits and providing support for the maintenance of employment relationships, as well as

social benefits guaranteeing a minimum subsistence; providing health and social support benefits to immigrants and refugees, irrespective of their status or regularization process; and creating emergency shelters.

For example, in Jordan, unemployment benefits were extended to workers in crisis-affected sectors. In Mongolia, the value of the monthly child benefit was increased fivefold for six months. In Togo, through a high-coverage income programme, support was provided to informal workers by facilitating their registration through mobile applications. In Spain, a new permanent guaranteed minimum income programme was introduced, covering 2.3 million vulnerable people. In Somalia, the Baxnaano programme was introduced to provide – for the first time – social cash transfers to 1.2 million people.

Note and source: For more examples of good practices in strengthening social protection during the COVID 19 pandemic, see the OHCHR Overview on the Right to Social Security; ILO, 2021e, *World Social Protection Report 2020-22*; and the ILO Social Protection Platform.

II. What are the obligations of States and other actors to realize the right to social security

A. Cross-cutting principles of non-discrimination and gender equality

Through their ratification of international human rights treaties,[83] States undertake to immediately eliminate any formal or *de jure* discrimination established by law by repealing or amending such discriminatory legislation and to adopt measures to eliminate *de facto* discrimination. The cross-cutting principles of non-discrimination and equality should be interpreted in conjunction with the substantive rights guaranteed by the respective treaties.

States are under the obligation to guarantee that the right to social security is enjoyed without discrimination on any ground.[84] Tackling discrimination requires a comprehensive approach involving the adoption of a range of laws and policies for the establishment of statutory protection and compliance mechanisms. These include measures to ensure that adequate social protection benefits, quality public services and progressive taxation systems mitigate the inequalities that exist in societies or that arise or are exacerbated in times of crisis. Temporary special protection measures may

[83] Such as the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance.

[84] In paragraph 29 of its general comment No. 19, the Committee on Economic, Social and Cultural Rights recalls that the Covenant "prohibits any discrimination, whether in law or in fact, whether direct or indirect, on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation, and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to social security".

also be necessary.[85] States should seek to identify limitations in existing legal frameworks to ensure that specific categories of persons are not excluded from access to social protection, whether by design or in practice (for example, due to a lack of information or fear of repression).

Addressing discrimination in particular requires recognition of the centrality of gender equality, as enshrined in international human rights law, and the adoption of active measures for its promotion. Enjoyment of the right to social security by women as individual rights holders, as opposed to being considered as dependants, can make an enormous contribution to their socio-economic empowerment.

B. Obligations of States to respect, protect and fulfil the right to social security

In the field of social security, like other human rights, States are under three types of obligations: to respect, to protect and to fulfil the right to social security. International human rights law, as well as international social security standards, recognize the primary and overall responsibility of the State to take concrete steps for the realization of the right to social security through the design and implementation of social security systems in accordance with a number of other core principles also set out in these instruments, which include ensuring non-discrimination and entitlements in law.

The obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of the right to social security. This obligation includes: refraining from engaging in any practice or activity that, for example, denies or limits equal access to adequate social security; or arbitrarily or unreasonably interfering with self-help or customary or traditional arrangements for social security, or with institutions that

[85] See Committee on the Elimination of Discrimination against Women, general recommendation No. 27 on older women and protection of their human rights, para. 42: "States parties have an obligation to ensure that retirement age in both the public and private sectors do not discriminate against women. Consequently, States parties have an obligation to ensure that pension policies are not discriminatory in any manner, even when women opt to retire early, and that all older women who have been active have access to adequate pensions. States parties should adopt all appropriate measures, including, where necessary, temporary special measures, to guarantee such pensions." Similarly, many States introduced temporary social protection measures in response to the COVID-19 pandemic in order to facilitate access to health care, protect jobs and mitigate income loss: ILO, "Social protection responses to the COVID-19 pandemic in developing countries: Strengthening resilience by building universal social protection", ILO brief, Social Protection Spotlight, 2020.

have been established by individuals or corporate bodies to provide social security.[86]

The obligation to protect requires the State to prevent third parties, which may include individuals, groups, corporations or other entities, as well as agents acting under their authority, from interfering in any way with the enjoyment of the right to social security. The obligation includes the adoption of the legislative and regulatory measures necessary to restrain third parties from denying equal access to social security schemes operated by them or by others, and from imposing unreasonable eligibility conditions; and to safeguard the obligation to pay contributions, including on behalf of employees or other beneficiaries, to the social security system.[87]

Where social security schemes are operated or controlled by third parties, States retain overall responsibility for overseeing the national social security system, which should observe internationally established social protection principles.[88] To prevent abuse, an effective regulatory system is required which includes national laws and implementing regulations, independent monitoring, genuine public participation and the imposition of penalties for non-compliance.[89]

In order to comply with their obligation to fulfil rights, States have to adopt all the necessary measures for the full realization of the right to social security. This obligation can be further subdivided into the obligations to facilitate, to promote and to provide.

The obligation to facilitate requires States to take positive measures to assist individuals and communities to enjoy the right to social security, by recognizing the right in the national legal system and adopting a national policy and corresponding plan of action.

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86 Committee on Economic, Social and Cultural Rights, general comment No. 19, para. 44.

87 Ibid., para. 45.

88 These principles include being placed under the general responsibility of the State to guarantee the proper administration of social protection systems and the due provision of benefits; being financed collectively through contributions, taxes or a combination thereof; being established by law and providing predictable and adequate benefits, the level of which is periodically reviewed; being sustainably financed; the existence of complaint and appeal mechanisms; and the involvement of representatives of the social partners and beneficiaries (or rights-holders) in the administration of social protection schemes. See Recommendation No. 202, para. 3.

89 Committee on Economic, Social and Cultural Rights, general comment No. 19, para. 46.

The obligation to promote requires States to take steps to promote public awareness and ensure adequate information on the system, including on access and entitlement to benefits, particularly in rural and deprived urban areas, and for linguistic and other minorities.

States are also required to ensure the right to social security in cases where individuals or a group are unable, on grounds reasonably considered to be beyond their control, to realize that right themselves. Special attention should be paid to ensure that the social security system can respond in times of emergency, such as natural disasters, pandemics, economic crises, armed conflict[90] or crop failures.

C. Core obligations and progressive realization

The core obligations of States include ensuring the satisfaction of, at the very least, minimum essential levels of each right.[91] A State may only attribute its failure to meet its core obligations to a lack of available resources when it demonstrates that every effort has been made to use the maximum available resources to satisfy these obligations, as a matter of priority.

In relation to social security, the core obligation of States is to ensure that minimum essential levels of benefits are provided and are sufficient to enable individuals and their families to acquire at least essential health care and a set of basic goods and services, and particularly basic shelter and housing, water and sanitation, food and the most basic forms of education.[92] Recommendation No. 202 describes the overall and primary responsibility of the State to establish, as quickly as possible, social protection floors that can ensure, as a minimum, that all in need have access to essential health care and basic income security.[93] In particular, social protection floors should include: access to essential health care, including maternity care; basic income security for children, with access to nutrition, education, care and other necessary goods and services; basic income security for persons

[90] Timor-Leste is a good example. Since the restoration of independence, in conformity with the Constitution, the social protection system has been set up progressively based on three essential constitutional pillars: social security and social assistance (arts. 56 (1) and (2)); public social services, including health and education (arts. 57 and 59); and support to social services and programmes by social solidarity institutions (art. 56 (3)), with a significant effort in funding from 2002 onwards.

[91] See Committee on Economic, Social and Cultural Rights, general comment No. 3 on the nature of States parties' obligations, para. 10.

[92] Committee on Economic, Social and Cultural Rights, general comment No. 19, para. 59 (a).

[93] Recommendation No. 202, paras. 3–4.

of working age who are unable to earn sufficient income, in particular in cases of sickness, unemployment, maternity and disability; and basic income security for older persons.[94] Although Recommendation No. 202 envisages that levels of provision are to be nationally defined, it provides clear guidance on what may be considered appropriate: the minimum level of income security should allow for a life in dignity and should be sufficient to provide effective access to a set of necessary goods and services, such as those established by national poverty lines and other comparable thresholds.[95]

The ILO Committee of Experts on the Application of Conventions and Recommendations has noted the mutually reinforcing nature of the Committee on Economic, Social and Cultural Rights general comment No. 19 (2008) on the right to social security and Recommendation No. 202.[96] It has emphasized that the basic level of social security that should be guaranteed under social protection floors, in accordance with Recommendation No. 202, is considered to represent the minimum core content of the right to social security under the International Covenant on Economic, Social and Cultural Rights.[97]

If a State cannot immediately provide this minimum level for all risks or contingencies to all persons in need within the obligation of maximum available resources, it should, after a process of broad consultation, identify a core group of social risks or contingencies and start the process of completing its national social protection floor by adopting a national social protection policy or strategy that includes a time-bound agenda for the progressive realization of universal social protection. It is also important, in times of severe resource constraints, to identify disadvantaged groups and marginalized members of society with a view to ensuring that national social protection policies and strategies extend the minimum levels of protection to them as a matter of priority. In this regard, States

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94 Recommendation No. 202, para. 5.

95 Recommendation No. 202, para. 8 (b).

96 ILO, *Universal social protection for human dignity, social justice and sustainable development*, General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202), International Labour Conference, 108th Session, Report III (Part B), para. 46.

97 Committee on Economic, Social and Cultural Rights, "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 (E/C.12/2015/1); see also the report on the implementation of the right to social protection through the adoption by all States of social protection floors of the Special Rapporteur on extreme poverty and human rights (A/69/297).

may consider temporarily adopting targeted programmes, while at the same time exploring ways of expanding their fiscal space.[98] Such extension strategies should also be applied with the aim of supporting the transition from the informal to the formal economy, and should be consistent with and conducive to the implementation of national social, economic and environmental development plans.[99]

The obligation to progressively realize rights beyond their minimum core content, using the maximum available resources, is explicitly recognized in human rights treaties.[100] It requires overall policy priorities to ensure that resource allocation is in conformity with the human rights obligations that States have voluntarily undertaken through the ratification of treaties. The progressive realization of rights requires coherent medium- and long-term public policies. States should therefore take deliberate, specific and targeted steps for the extension of the personal and material coverage of social security systems to achieve higher levels of protection within a reasonable period of time. In addition, the availability of resources, although an important qualifier of the obligation to adopt measures, including for the achievement of higher levels of protection than the minimum core content, does not alter the immediacy of the obligation,[101] and inaction cannot be justified by resource constraints alone.[102]

The principle of progressive realization is mirrored in Recommendation No. 202. The Recommendation explicitly calls on States to establish a national social protection floor, while also ensuring that as many people as possible have access to higher levels of protection as soon as possible, in reflection of the national economic situation and guided by the range and levels of benefits set out in Convention No. 102 and the more advanced international social security standards.[103] The Committee on Economic,

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[98] Committee on Economic, Social and Cultural Rights, "An evaluation of the obligation to take steps to the 'maximum of available resources' under an optional protocol to the Covenant", statement (E/C. 12/2007/1).

[99] Recommendation No. 202, Part III, National Strategies for the Extension of Social Security; the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).

[100] International Covenant on Economic, Social and Cultural Rights, art. 2 (1); Convention on the Rights of the Child, art. 4; Convention on the Rights of Persons with Disabilities, art. 4 (2).

[101] OHCHR, Frequently Asked Questions on Economic, Social and Cultural Rights, Fact Sheet No. 33, para. 15.

[102] Committee on Economic, Social and Cultural Rights, Evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the Covenant, para. 4.

[103] Recommendation No. 202, para. 17.

Social and Cultural Rights has since consistently recommended in its concluding observations to States parties to ensure "the establishment of a social protection floor that guarantees legal entitlements to individuals as an initial element to be progressively developed into a universal and comprehensive social security system",[104] in line with Recommendation No. 202.[105]

D. Obligations with international dimensions

States normally recognize the essential role of international cooperation and technical assistance and the need for joint and separate action to achieve the full realization of the rights enshrined in the International Covenant on Economic, Social and Cultural Rights, including the right to social security.[106] It is particularly necessary for States, and other actors that are in a position to do so, to provide assistance to enable developing countries with resource constraints to fulfil their obligations.[107]

States should refrain from action that interferes, directly or indirectly, with the enjoyment of the right to social security in other countries and should prevent their own citizens and national entities from interfering with this right in other countries. For example, when country A makes a bilateral loan agreement with country B, country A should ensure that the conditionalities set out in the agreement do not restrict the capacity of country B to support the people who are most in need of social security. Where States can take steps to influence third parties (non-State actors) within their jurisdiction to respect this right through legal or political means, such steps should be taken in accordance with the Charter of the

[104] Committee on Economic, Social and Cultural Rights, "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 (E/C.12/2015/1), para. 2.

[105] Recommendation No. 202, para 1.

[106] See for example Committee on Economic, Social and Cultural Rights, concluding observations on the sixth periodic report of Colombia (E/C.12/COL/CO/6), para. 42; concluding observations on the sixth periodic report of the Russian Federation, (E/C.12/RUS/CO/6), para. 37; concluding observations on the initial report of Pakistan (E/C.12/PAK/CO/1), paras. 51–52; concluding observations on the initial report of Bangladesh (E/C.12/BGD/CO/1), paras. 44–46; concluding observations on the fourth periodic report of New Zealand (E/C.12/NZL/CO/4), paras. 35–36; concluding observations on the fifth periodic report of Sri Lanka (E/C.12/LKA/CO/5), para. 36; and concluding observations on the fifth periodic report of Uruguay (E/C.12/URY/CO/5), paras. 30–31.

[107] International Covenant on Economic, Social and Cultural Rights, arts. 2 (1), 11 (1) and 23; Committee on Economic, Social and Cultural Rights, general comment No. 19, para. 55; Sustainable Development Goal 17 (targets 17.2 to 17.5). See the Human Rights Guide to the Sustainable Development Goals, available at https://sdg.humanrights.dk/.

United Nations and applicable international law.[108] The same applies to multilateral agreements and agreements made with or through international organizations, including international financial institutions.[109]

States should proactively take action for the conclusion of reciprocal bilateral and multilateral social security agreements to better protect the right to social security for migrants and detached workers.

E. Obligations of non-State actors

The right to social security, which is a cornerstone of decent work, requires the active participation of various stakeholders. While only States are parties to human rights treaties,[110] enterprises, trade unions, employers' associations and associations representing social security beneficiaries have responsibilities in relation to the realization of the right to social security as an essential and integral component of the right to work. The obligations of non-State actors should be considered in conjunction with the obligations of States to protect.[111]

Enterprises, irrespective of their size, sector, ownership and structure,[112] have to comply with laws that are consistent with the human rights treaties, especially labour, social security and tax legislation. They have a responsibility to respect the right to social security[113] by avoiding any infringements and addressing any abuse of the right as a result of their action. In situations in which an enterprise has caused or contributed to adverse impacts, it should remedy the damage or cooperate in its remediation through legitimate processes that meet recognized standards

[108] Committee on Economic, Social and Cultural Rights, general comment No. 19 (2007), paras. 53–54.

[109] Ibid., paras. 57–58.

[110] An exception is the Convention on the Rights of Persons with Disabilities, which can be ratified by regional organizations.

[111] The obligation to protect requires the State to prevent third parties, which may include individuals, groups, corporations or other entities, as well as agents acting under their authority, from interfering in any way with the enjoyment of the right to social security. The obligation includes adopting the necessary legislative and regulatory measures to ensure that social protection systems are rights based; for example, to restrain third parties from denying equal access to social security schemes operated by them or by others, and from imposing unreasonable eligibility conditions; or to safeguard the obligation to pay contributions, including on behalf of their employees or other beneficiaries, into the social security system.

[112] See United Nations, 2012, Guiding Principles on Business and Human Rights: Implementing the United Nations" Protect, Respect and Remedy" Framework, Principle 14.

[113] Ibid., Principles 11, 12 and 23.

of due process.[114] This includes paying social security contributions and taxes, which is critical to ensuring adequate social protection coverage for workers and the broader population.[115]

Trade unions have traditionally been at the forefront of advocacy for strong social security systems that provide adequate benefits to protect workers from income insecurity, including in the event of unemployment, illness and old age. As participants in the financing of social security through contributions or taxes, workers and their representatives have a crucial role to play in keeping social security systems under scrutiny and holding the State accountable for its general responsibility for their proper administration. They represent key stakeholders, with the mission of ensuring that the voices of workers are heard and advocating for improvements to guarantee that social security programmes effectively meet the needs of workers and their families. Through collaboration and open and genuine social dialogue, all groups can work together to realize the right to social security as a key component of social justice and the social contract.

United Nations specialized agencies and other international organizations, such as ILO, the World Health Organization (WHO), the Food and Agriculture Organization of the United Nations (FAO), the United Nations Children's Fund (UNICEF), the United Nations Human Settlements Programme (UN- Habitat), the United Nations Development Programme (UNDP) and the International Social Security Association, as well as the World Trade Organization (WTO) and international financial institutions, should work within the normative framework provided by human rights instruments and international social security standards as a common guiding framework for their support for social security within their respective mandates and fields of expertise.

International financial institutions, particularly the International Monetary Fund (IMF), the World Bank and regional development banks, and their member States, should take into account the right to social security in their lending policies, credit agreements, structural adjustment programmes and similar projects, so that the enjoyment of the right to social security, particularly by disadvantaged and marginalized individuals and groups, is

[114] Ibid., Principle 22.

[115] See for example Recommendation No. 202, para. 11.

promoted and not compromised.[116] Like any other area of international law, international financial institutions and other international organizations are "bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties".[117]

[116] Committee on Economic, Social and Cultural Rights, general comment No. 19, para. 58.

[117] See United Nations, 2016. "Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights, statement by the Committee on Economic, Social and Cultural Rights" (E/C.12/2016/1), para. 7.

III. What does it mean to adopt a rights-based approach to social security?

A human rights-based approach to social security requires States to ensure that the principles and standards derived from international human rights law and international social security standards guide the adoption and implementation of the relevant laws and policies.

A. Developing comprehensive legal and policy frameworks

Public policies with clear objectives, adequate resources and social protection programmes with in-built review mechanisms to measure progress and take corrective measures are key to strengthening social protection systems, mitigating the negative effects of economic shocks and contributing to recovery efforts.

A good illustration is Portugal, where all the economic, social and cultural rights under the International Covenant on Economic, Social and Cultural Rights are enshrined in the Constitution, adopted in 1974. The right to social security and solidarity has three distinctive characteristics: universality (everyone has the right to social security); the expression of the duty of the State (responsible for organizing, coordinating and subsidizing a unified and decentralized social security system, with the participation of trade unions and other organizations representing workers and other beneficiaries); and the increased importance of economic, social and cultural rights for the protection of specific groups (for example, income security for older persons). The inclusion of all economic, social and cultural rights in the Constitution was a fundamental step that led to the initial Social Security Framework Act establishing the legal architecture of the system. The system is currently composed of contributory and non-contributory schemes and social support measures, including social services for children, families, persons with disabilities, older persons and vulnerable persons. It has been an important tool for economic and social development and provided a strong response during the pandemic.

The formulation and implementation of national social protection policies and strategies benefit from effective social dialogue and tripartite participation by the Government and representative organizations of

employers and workers, which is a strong catalyst for building stronger social protection systems.[118] The United Nations framework encourages the meaningful participation of a wider range of stakeholders, including national human rights institutions, civil society organizations, workers' and employers' organizations and social security beneficiaries and their representative organizations. They should be able to participate actively and effectively in the design, budgeting, implementation and evaluation of policies aimed at the realization of the right to social security. They can play an important role in monitoring progress, assisting rights holders to effectively claim their right to social security and holding States accountable when they fail to meet their obligations to realize the right to social security.

A rights-based approach to social security requires the translation of policies into legal frameworks. Clear laws are crucial for ensuring that everyone has access to social security. In the absence of such frameworks, access to a right is contingent on charity and discretion. A sound legal framework is also essential for the effective functioning of the system and to avoid overlaps, duplication and gaps.

Constitutional recognition of the right to social security is a fundamental step. Moreover, comprehensive laws that establish the principles, objectives and personal and material coverage of contributory and non-contributory schemes are indispensable to materialize the universality of the right enshrined in the Constitution.

An adequate legal framework should define social protection benefits and eligibility requirements for entitlement to benefits in a clear and transparent manner. It should also establish the roles and responsibilities of all those involved in implementing social protection schemes. It should provide a framework to ensure transparency; financial sustainability; the adequacy and predictability of benefits; the accountability of the system, including through compliance, inspection, complaints and appeal mechanisms and appropriate sanctions; and an effective participation mechanisms for beneficiaries. Failure to establish an adequate legal framework in itself constitutes a violation of the International Covenant on Economic, Social and Cultural Rights.[119]

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[118] Recommendation No. 202, para. 13; ILO, "Planning for a more socially just future: Findings from an analysis of national social protection policies and strategies, 2011-2020" (forthcoming).

[119] Committee on Economic, Social and Cultural Rights, general comment No. 19, paras. 62–65.

B. Strengthening the State's role as guarantor of the system

Social security systems should be monitored regularly to ensure their sustainability. States are responsible not only for establishing the system, but also for ensuring that all parties comply with their respective obligations and that rights holders can access their entitlements without interference. For this purpose, States should develop and implement an effective legal and regulatory framework, and prevent, investigate, punish and redress abuse through judicial and non-judicial means.

Stakeholders such as national human rights institutions, civil society organizations, workers' and employers' organizations and beneficiaries can play an essential monitoring role in holding States accountable. It is important for States to ensure that national human rights institutions (including Ombud offices and equality bodies) have independent status and the mandate to promote and protect economic, social and cultural rights so that they can engage in close scrutiny of laws and regulations and help victims seek redress in the event of violations. The space and opportunity should be protected for civil society organizations and human rights defenders working on the right to social security and all other human rights to contribute meaningfully through advocacy and participation in the policy-making process and to monitor the realization of human rights. They should also be able to contribute to the work of international human rights mechanisms. Their proximity to rights holders allows them to monitor the realization of rights on the ground.

As economic globalization advances, the human rights of individuals, groups and peoples are increasingly affected by, and dependent on the extraterritorial acts and omissions of States and private enterprises under their jurisdiction. The protection and realization of labour rights and the right to social security involve various extraterritorial dimensions. States must refrain from acts or omissions that interfere, either directly or indirectly, with the realization of these rights in other countries. They should also take measures, including legislative measures, to clarify that their nationals, as well as enterprises domiciled in their territory and/or jurisdiction, can be held accountable for violating human rights in their operations abroad,[120] including the right to social security.

[120] See Committee on Economic, Social and Cultural Rights, general comment No. 23 (2016), paras. 69–73.

C. Allocation of adequate funding

In many countries, social security contributions account for a substantial share of expenditure on benefits, and in some cases, over half of the totality of the resources allocated to social protection (examples include China, Paraguay and Tunisia). Significant progress has been made in extending social protection coverage by adapting social insurance schemes to the needs of population categories not previously covered, particularly in Latin America. This can be done by reallocating revenue from economic activities, including the extraction of natural resources and energy production (Belgium and Nigeria) or by consolidating a social protection fund (Burkina Faso, Malta and Seychelles). In some countries, domestic resources have been mobilized by moving towards more progressive taxation systems, including the implementation of a tax on wealth (Argentina and the Plurinational State of Bolivia).

Source: ILO, *Universal social protection for human dignity, social justice and sustainable development*, International Labour Conference, 108th Session, Report III (Part B), para. 633.

To make social protection a reality for all and to recover from recurring crises, States must make full use of the maximum available resources, including through international assistance and cooperation, and take deliberate steps to progressively extend social security guarantees.[121] States are encouraged to prioritize national sources for the financing of social security systems and to use the available resources first and foremost to provide at least a minimum level of benefits for all individuals and families, and particularly the most disadvantaged and marginalized. Where States face financial constraints for the provision of benefits for all the key social risks and contingencies, they can select certain risks or contingencies as a priority. However, before making such decisions, they should carefully scrutinize all the available domestic resources and conduct a broad consultation on the risks and contingencies that are to be prioritized. They may also seek to mobilize resources through international cooperation and support.[122]

[121] Committee on Economic, Social and Cultural Rights, general comment No. 19 (2007), paras. 4, 40–41; Recommendation No. 202, paras. 3 (g) and 11.

[122] Committee on Economic, Social and Cultural Rights, general comment No. 19 (2007), para. 59 (a); Recommendation No. 202, para. 12.

States should not lose track of their responsibility to progressively achieve the full realization of the right to social security for everyone through the establishment of long-term national strategies and plans of action that set targets and timeframes based on transparent and equitable budgeting and adequately funded long-term institutional frameworks.[123]

Both the Committee on Economic, Social and Cultural Rights and the ILO have advised States, in particular low-income States, on various options to increase the fiscal space for social protection. Such options include increasing taxation, including fees charged to foreign investors for the exploitation of natural resources; ringfencing the budget allocated to the right to social security and other rights; regularly reviewing the concessions or tax exemptions granted to investors; establishing a broader social security contribution base; reducing illicit financial flows; reallocating public expenditure; and improving tax collection. States are also encouraged to seek a more accommodating macroeconomic framework.[124]

In addition to social contributions, countries often make use of specially earmarked taxes, donations and grants to supplement expenditure on social protection systems, as well as official development assistance.

In order to combat financing deficits, States are encouraged to prioritize national sources for the financing of social security systems by defining the most effective and coherent approaches between social security contributions, general taxation, corporate taxation and other public financing policies. They may also seek international cooperation and support when their economic and fiscal capacities are insufficient and/or when facing increased needs due to crises, natural disasters or climate change.[125] In this regard, there is a need for more dialogue between international financial and development institutions to ensure policy coherence and avoid the provision of contradictory advice, for example

[123] Committee on Economic, Social and Cultural Rights, general comment No. 19 (2007), para. 68.

[124] See Durán-Valverde, F., Pacheco-Jiménez, J.F., Muzaffar, T. and H. Elizondo-Barboza, 2020. "Financing gaps in social protection: Global estimates and strategies for developing countries in light of the COVID-19 crisis and beyond", ILO, Geneva, Working paper 14; see also Committee on Economic, Social and Cultural Rights concluding observations (for example, on Panama (2023), Armenia (2023), Brazil (2023), Italy (2022), the Democratic Republic of the Congo (2022), Pakistan (2017) and the Sudan (2015)); Committee on Economic, Social and Cultural Rights, "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 (E/C.12/2015/1), para. 13.

[125] Recommendation No. 202, paras. 11–12.

by ensuring that structural adjustments do not lead to austerity measures and regression of the right to social security. Moreover, international cooperation, for example on tax matters or debt restructuring, is required to create an environment that facilitates domestic resource generation and allocation.[126]

In 2021, the International Labour Conference requested the ILO to explore options for mobilizing, in parallel to domestic financing, international financing for social protection, including increased official development assistance. This request is aimed at initiating and engaging in discussions on specific proposals for a new international financing mechanism, such as a Global Social Protection Fund, which could complement and support domestic resource mobilization efforts with a view to achieving universal social protection.[127]

The United Nations Special Rapporteur on extreme poverty and human rights has also recommended the establishment of a global fund for social protection to fill the financing gap faced by low-income countries in the provision of social protection floors and to support the increased mobilization of domestic resources for social protection.[128]

D. Applying a gender-responsive approach

Social protection systems can play an important role in the promotion of gender equality when they are designed and implemented in a gender-responsive manner.[129] It is important to pay particular attention to the specific barriers experienced by women, who face multiple and intersecting forms of discrimination, such as women with disabilities, women with minority or migration backgrounds, older women and women working in the informal economy.

Women often give up or interrupt their employment due to maternity and childcare. Women also provide a disproportionate share of unpaid

[126] Bierbaum, M. and V. Schmitt, "Investing more in universal social protection: Filling the financing gap through domestic resource mobilization and international support and coordination", ILO, Geneva, Working paper No. 44, 2022.

[127] ILO, Resolution concerning the second recurrent discussion on social protection (social security), 2021, para. 21 (c).

[128] See the report of the Special Rapporteur on extreme poverty and human rights on the global fund for social protection: International solidarity in the service of poverty eradication (A/HRC/47/36).

[129] Razavi, S., Orton, I., Behrendt, C., Tessier, L., and V. Wodsak, "Making social protection work for gender equality: What does it look like? How do we get there?", ILO, 2024.

care and support, the economic and social value of which is often not recognized. This results in women having more limited access to social security schemes, particularly contributory schemes, and lower social security benefits. However, such inequality can be overcome through the design of gender-responsive social security schemes.

For example, maternity cash benefits that are in conformity with international and human rights standards and adequate paid maternity leave protects women from discrimination resulting from maternity. Moreover, paternity leave for men, and parental and other types of care leave for both men and women can contribute to the greater involvement of men in child-raising and care for family members, and a fairer sharing of family responsibilities. The effect is stronger where uptake by men is made mandatory by reserving a non-transferable portion of parental leave for fathers.[130] The provision of affordable and quality childcare and long-term care and support services is important in enhancing the effectiveness of social security schemes.[131] The financing of these benefits though solidarity mechanisms, rather than their organization as employer liability schemes, ensures protection in practice and prevents discrimination against women in the labour market on the basis of maternity.

Due to their greater longevity and gender-discrimination throughout their lives, including in education and work, more women than men live in poverty in old age. While the introduction of social protection floors, including through tax-financed old-age pensions, protects older women in many countries, women who rely exclusively on such schemes often struggle with low benefit levels. Where old-age pensions are means-tested at the household level, many older women may still not benefit from this source of income due to narrow eligibility criteria or stigmatization.[132] As a majority of recipients of old-age pensions are women, the level of pensions and

[130] See Committee on Economic, Social and Cultural Rights, general comment No. 16 (2005) on substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights, in which the Committee links the principle in article 3 of the Covenant with article 9, and provides examples, such as the equalization of compulsory retirement age for both men and women; ensuring that women receive equal benefits in both public and private pension schemes; and guaranteeing adequate maternity leave for women, paternity leave for men, and parental leave for both men and women.

[131] Committee on Economic, Social and Cultural Rights, general comment No. 19 (2007), para. 32; and ILO, Resolution concerning the second recurrent discussion on social protection (social security), 2021.

[132] ILO, 2021, *World Social Protection Report 2020-2022*, p. 54.

eligibility criteria should be responsive to the needs and situations of older women. Contributory pensions can be more gender-responsive if they are based on collective financing and solidarity. For example, care credits can be introduced to recognize and reward periods spent providing unpaid care and support for children or other family members, and minimum pensions can be guaranteed in line with international social security standards.

Women continue to face difficulties in accessing sources of employment and livelihoods due to discrimination and structural inequalities. As a result of persistent gender pay gaps, women earn on average about 20 per cent less than men. In addition, women are more likely than men to be in low-paid work, and are more likely to work part-time and interrupt their careers to care for others. These structural inequalities expose women to more frequent social risks and contingencies and, at the same time, undermine their access to social security schemes, particularly contributory schemes.

To respond effectively to such inequality, social protection systems must be accompanied by other policies, such as employment, wages, tax, care and support policies, and public services, including affordable and quality childcare and long-term care and support services.[133] States should therefore make intensive efforts to increase women's access to the labour market, especially in the formal economy, and to sources of livelihood; eliminate gender wage gaps and the exclusion from social security coverage of workers in certain sectors or occupations in which women are over-represented (such as agriculture and domestic work); repeal eligibility criteria that are gender discriminatory; and equalize the retirement age for women and men.[134]

E. Paying special attention to disadvantaged individuals and groups

While everyone has the right to social security, States should pay special attention to individuals or groups that are not or are inadequately protected and traditionally face difficulties in exercising this right.[135] This requires extending protection to workers in casual, part-time or self-employment, including those working on digital platforms, domestic workers, agricultural

[133] ILO, Resolution concerning the second recurrent discussion on social protection (social security), 2021.

[134] ILO, 2021d, *Extending social security to workers in the informal economy: Lessons from international experience*, Geneva (2nd edition).

[135] Ibid., para. 31.

workers, homeworkers[136] and workers in the informal economy.[137] It also requires action to address the specific challenges faced by women and other groups, such as the unemployed, sick or injured persons, people with disabilities, older persons, children, indigenous peoples, minority groups, refugees, asylum-seekers, stateless persons, internally displaced persons, returnees, non-nationals, prisoners and detainees.

It is essential that States take effective measures to guarantee coverage for all, and especially access to health care, particularly in times of crisis, as demonstrated by the need for vaccination and emergency treatment during the COVID-19 pandemic.

1. Workers in the informal economy

Worldwide, two billion workers aged 15 and over (62 per cent of global employment) are engaged in the informal economy.[138] They suffer from huge decent work deficits,[139] such as an ambiguous or disguised employment status and low skills, unsafe working conditions, as well as high illiteracy and low productivity levels, and a lack of training opportunities. They are mostly excluded from social security schemes.

The groups of workers who are often inadequately protected by social security include part-time, casual, self-employed and domestic workers,[140]

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[136] In accordance with the Home Work Convention, 1996 (No. 177), homeworkers are those who work from home for remuneration for an employer or similar business enterprise or activity.

[137] Committee on Economic, Social and Cultural Rights, general comment No. 19, para. 34.

[138] See ILO, Resolution and conclusions concerning decent work and the informal economy, International Labour Conference, 90th Session, 2002. In the ILO Resolution and the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), the term "informal economy" refers to all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements. See also ILO, Women and Men in the Informal Economy: A Statistical Picture, 2018 (third edition).

[139] The decent work deficit "is expressed in the absence of sufficient employment opportunities, inadequate social protection, the denial of rights at work and shortcomings in social dialogue." These failings provide "a measure of the gap between the world that we work in and the hopes people have for a better life" and fall into four categories: employment gap, rights gap, social protection gap and social dialogue gap. See ILO, *Reducing the decent work deficit: A global challenge*, International Labour Conference, 89th Session, 2001, pp. 6–10.

[140] See the Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011. The Convention calls for measures to be taken to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity (art. 14 (1)), while the Recommendation refers to cooperation at bilateral, regional and global levels for the purpose of enhancing the protection of domestic workers, including in access to social security (para. 26 (1) and (2)). See also ILO, 2022, *Making the right to social security a reality for domestic workers: A global review of policy trends, statistics and extension strategies*, Geneva.

migrants and contributing family workers, who are often women, all of whom are disproportionately represented in the informal economy.

States must continue to take all measures necessary to extend social protection to workers in the informal economy in a manner that is adapted to their situation and is conducive to their transition from the informal to the formal economy, and does not prevent their formalization. In parallel with fiscal, economic and labour law measures, social protection responses should enable workers in all types of work, including self-employed workers, to access social security schemes through the extension of social insurance schemes, supplemented by tax-financed schemes for those without the capacity to pay contributions.[141] Such an approach should be reflected in national law. In particular, in addition to amending national social insurance law to expand its scope and develop adapted mechanisms, the law should also set out and guarantee a nationally defined social protection floor to ensure a basic benefit package covering the most essential risks and benefits. This basic benefit package can be improved progressively, while measures are implemented at the same time to formalize enterprises and employment. States should use the maximum of the available resources to ensure that the social security system progressively covers these workers and should continuously seek means to improve the sustainability and equitable financing of social protection systems.[142] Extension policies could also consider the integration of community-based insurance or micro-insurance schemes developed in the informal economy into the national social security system.[143]

A major step forward in the protection of informal economy workers was the adoption of ILO Recommendation No. 202, which explicitly recognizes the principle of universal protection based on social solidarity and social inclusion, including for persons in the informal economy.[144]

The informalization of formal employment, including as a result of the COVID-19 pandemic, raises major concerns. This phenomenon has even been observed in high-income countries. The casualization of employment and the rise in "flexible" forms of employment, such as short-term and

[141] ILO, 2021d, *Extending social security to workers in the informal economy*.

[142] Ibid.

[143] Committee on Economic, Social and Cultural Rights, general comment No. 19 (2007), para. 34.

[144] Recommendation No. 202, para. 3 (a) and (e).

zero hours contracts,[145] including on digital platforms, is often associated with lower levels of labour and social protection and a higher degree of economic and social insecurity. Some supreme courts have challenged the classification of certain types of platform workers as self-employed and have reclassified them as employees with entitlement to the corresponding labour and social security rights.[146]

In addition to efforts to expand the coverage of social security schemes to workers in the informal economy, States should take steps to help workers to transition from the informal to the formal economy. This will provide the workers concerned with better protection of their right to social security. At the same time, it will also provide the State with more fiscal space, as more workers and economic units pay taxes and contribute to social security schemes. The Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), provides guidance on measures to facilitate the transition of workers and economic units from the informal to the formal economy.

The Rider Act

In September 2020, the Supreme Court in Spain ruled that delivery workers on digital platforms were employees and not self-employed workers and that they are therefore covered by the labour and social security rights applicable to all other workers. Following the ruling, a process of social dialogue led to the approval of Act No. 9/2021, better known as the 'Rider' Act, which presumes an employment contract between the worker and the platform because the worker is in effect subject to decisions stemming from the platform's algorithm.

See also Sacha Garben, "'Old' rules and protections for the 'new' world of work", *The Progressive Post*, 15 April 2021.

[145] Under "zero hours" contracts, workers are not entitled to any minimum number of hours of work. For more information, see ILO, 2004, "On-call work and 'zero hours' contracts", Information Sheet No. WT-15.

[146] To date, there have been over 100 court decisions and 15 administrative decisions in the European Union dealing with the employment status of people working through platforms. In most cases, the courts have ruled to reclassify independent contractors as workers, and platforms as employers. A few have confirmed their self-employed status. Many more court decisions are pending. See European Commission, "Questions and answers: Improving working conditions in platform work", Press corner, 9 December 2021.

2. Children and families

Social protection for children[147] calls for a commitment by States to guarantee their rights in three principal situations: children who receive social security benefits in their own right; families who receive social security benefits that offset some of the costs associated with the maintenance of children; or institutions or other guardian schemes that receive social security benefits to compensate for the absence of a family environment. Children are derived rights holders when they are entitled to family benefits paid to their working parent(s), and direct rights holders when benefits take the form of usually tax-financed access to goods and services. As enshrined in all human rights treaties, access to benefits, goods and services must be non-discriminatory. Particular attention has to be paid to children and young persons from vulnerable groups so as to ensure equality of opportunity.

Under Convention No. 102, family benefits are intended to cover responsibility for the maintenance of children and should consist of either periodical payments or the provision of food, clothing, housing or domestic help, or a combination of both.[148] Family benefits have to be provided at least until the child reaches the age of 15, or for as long as compulsory schooling lasts, although ratifying States can, and usually do specify a higher age.

Benefits intended to compensate child-related costs can be of a fixed amount or income-related. Benefits defined by the level of family income tend to provide a higher amount for low-income families or families with many children. Child and family benefits include benefits for children and young persons in general, benefits for sick children or children with disabilities, and benefits to compensate for education and care-related expenses.

To implement rights-based social protection schemes for children, States should ensure that the design of social protection programmes is inclusive and consider how best to address the risk of child labour by implementing child and family benefits that reach all households with children, especially those in situations of the greatest vulnerability; making it easy for caregivers to receive their social protection benefits by simplifying registration procedures and providing different benefit payment mechanisms; and supplementing social protection programmes with increased investment

[147] Including young persons who are also entitled to social security protection under national legislation.

[148] Convention No. 102, arts. 40 and 42.

in universal quality basic education and other vital social services for children.[149]

In particular, States should seek to make use of inclusive universal social protection programmes which can increase the coverage and take-up of benefits by limiting exclusion errors and reducing stigma, shame and procedural complexity, and therefore lower transaction and opportunity cost barriers. Non-contributory benefits, such as universal child benefits, or a combination of contributory and non-contributory benefits, can also be instrumental in ensuring universal access to education and in preventing or reducing child poverty and child labour.[150] Benefit levels should be adequate, which means taking into account household size and the number of children, adapting transfer amounts according to contexts such as local prices and wages, and adapting the level of transfers in line with inflation. Regular payments offer a predictable income, and therefore permit longer-term decision-making and financial planning, including productive investments, which protect children better from the risk of child poverty and child labour. International standards can support States to prioritize and design child benefits to close the social protection coverage gap for children.[151]

3. Persons with disabilities

Disability-inclusive social protection systems guarantee effective access to health care and income security, including coverage of disability-related costs, for all persons with disabilities. They usually consist of a combination of general and disability-specific schemes, providing benefits in both cash and kind, to enable persons with disabilities to participate actively in education, employment and society.[152] ILO standards set minimum standards for health care and cash benefits in relation to disability, whether or not it is work related, as well as linkages with other policies.

Persons with disabilities often face intersecting forms of discrimination in the enjoyment of their human rights. For example, in comparison with persons without disabilities, they generally experience lower employment

[149] ILO and UNICEF, 2023, "More than a billion reasons: The urgent need to build universal social protection".

[150] Ibid.

[151] Ibid.

[152] ILO, 2021e, *World Social Protection Report 2020-22*, p. 139; ILO and IDA, 2019. "Joint statement: Towards inclusive social protection systems supporting the full and effective participation of persons with disabilities", ILO and International Disability Alliance.

rates, worse conditions at work and less social protection. They are also at a higher risk of losing work and, as a consequence, work-related social security rights. Discrimination on the basis of disability, as defined in article 2 of the Convention on the Rights of Persons with Disabilities, includes all forms of discrimination, including denial of reasonable accommodation.[153]

Universal health coverage, as well as income maintenance benefits, have to be guaranteed for persons with disabilities in a manner that enables them to enjoy fully their right to social security, an adequate standard of living, life in the community, an independent life and full participation in all aspects of life. Some of the measures adopted for this purpose in the various countries include: disability-related increases in benefits for children and young persons; special education allowances;[154] social inclusion benefits to compensate for increased expenses; care-giver benefits; permanent assistance allowances to enable persons with severe disabilities to have constant support from carers; and financial support for assistive and rehabilitation devices. Adequately resourced social services are indispensable for the implementation of the right of persons with disabilities to live independently.

The guidance note "Towards inclusive social protection systems enabling participation and inclusion of persons with disabilities" (UNICEF and ILO, 2023) provides a conceptual framework and hands-on advice on how to design, implement and monitor social protection systems that maximize inclusion. The ILO publication "Disability schemes and programmes around the world: Design and compliance with international social security standards" (Geneva, 2024) explores existing global disability schemes and programmes and analyses the extent to which they are in line with the principles and benchmarks set out in international social security standards, and particularly Convention No. 102.

[153] "'Reasonable accommodation' means necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms". Convention on the Rights of Persons with Disabilities, art. 2.

[154] Despite the advance of inclusive education as a desired outcome for all children, in many countries there are still special education facilities for which families need financial support to bear the costs.

States can promote the access of persons with disabilities to the job market by instituting quota systems and providing support to employers through financial incentives, such as subsidies to reduce employers' and/or employees' social security contributions, or to ensure reasonable accommodations.

4. Older persons

The International Bill of Human Rights (the Universal Declaration of Human Rights and the two Covenants) contains a number of references to protection in old age.[155] International social security standards provide a reference framework for pensions and other social security benefits to ensure income security, as well as access to health care in old age.

Pension systems are a fundamental guarantee of the right to social security and normally account for the highest share of social protection budgets. They are often composed of a mix of contributory schemes and non-contributory tax-funded schemes, which have resulted in the extension of coverage to previously uncovered population groups, especially women, and ensured redistribution to overcome economic and social inequalities. While such basic pensions are essential, efforts are also needed to increase the outreach and levels of contributory pension schemes to guarantee higher levels of protection.

Globally, 79.6 per cent of people above retirement age receive some form of old-age pension.[156] However, major disparities exist between regions, between rural and urban areas, and between women and men. Universal pensions have been developed in a wide variety of countries, including low- and middle-income countries, as part of their national social protection floors.

Public pension schemes, based on social solidarity and collective financing, remain by far the most common pillar of old-age protection globally. In some countries, public pension schemes are supplemented by mandatory or voluntary private savings schemes based on individual savings, with the possibility of increasing pension levels on the basis of market or economic performance. However, in many instances, these schemes are not in line

[155] Article 25 of the Universal Declaration of Human Rights provides for the right to security in the event of old age, while the two Covenants set out the framework for universal protection of human rights, including the protection of older persons. The Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities also include references to the protection of the rights of older men and women.

[156] ILO, 2024. *World Social Protection Report 2024-26*.

with the social protection principles of predictability and defined benefits established by international social security standards.

An important challenge is the need to adjust pension systems to the important demographic changes faced by many societies at both ends of the age pyramid. Globally, the share of persons aged 65 and above was 9 per cent of the population in 2019 (703 million persons), and this proportion is projected to rise to 16 per cent by 2050.[157] People are living longer and need more and better care and support services in old age. As a result, the falling ratio between workers and pensioners has given rise to debates on the financial sustainability of public pension schemes. Proposals for remedial action mainly lead to the implementation of parametric reforms, including increases in the pensionable age and adjustments to the qualifying conditions for full pension or benefit formulas. To address this challenge, it is important for States to ensure broad coverage of pensions, including by extending coverage to those who are not yet adequately covered and supporting the formalization of enterprises and employment, closing gender gaps and ensuring the proper administration of contributory pension schemes and the extension of coverage through non-contributory mechanisms. Effective labour policies aimed at improving productivity and consequently increasing wages and decent job opportunities can also help States to address these challenges.

5. People living in poverty

Poverty has various manifestations, including lack of income or sufficient productive resources to ensure sustainable livelihoods; hunger and malnutrition; ill health; limited or lack of access to education and other basic services; increased morbidity and mortality from illness; homelessness and inadequate housing; unsafe environments; and social discrimination and exclusion. It is also characterized by a lack of participation in decision-making and in civil, social and cultural life. The Guiding Principles on Extreme Poverty and Human Rights, the first global policy guidelines focusing specifically on the human rights of people living in poverty, draw attention to the fact that social security systems are just one component of more comprehensive and coherent national action for the eradication of poverty and that they should be designed, implemented and evaluated with

[157] United Nations, 2020. *World Population Ageing 2019*, Department of Economic and Social Affairs, Population Division (ST/ESA/SER.A/444).

the participation of and taking into account the particular needs of persons living in poverty, especially women.[158]

Rural populations living in poverty face additional obstacles to enjoying their right to social security, as the great majority of them rely on non-contributory benefits and social assistance programmes that are often short term and generally provide inadequate coverage and benefit levels. The implementation of social protection floors provides a framework for making social protection an effective tool to combat urban and rural poverty. In this regard, the FAO and the ILO have established a joint approach to extending social protection to rural populations through a comprehensive set of recommendations based on evidence and good practices to support the realization of the right to social security through the strengthening of national systems, including social protection floors, and the achievement of Sustainable Development Goal targets 1.3 and 3.8.[159]

In its interpretation of article 14 of the Convention on the Elimination of All Forms of Discrimination against Women, which provides in article 14 (2) (c) for the right of rural women to benefit directly from social security programmes, the Committee on the Elimination of Discrimination against Women has recommended that States adopt gender-responsive social protection floors to ensure that all rural women have access to essential health care, childcare facilities and income security; that they ensure that rural women engaged in unpaid work or in the informal economy have access to non-contributory social protection; and that those employed in the formal economy have access to contributory social security benefits in their own right, irrespective of their marital status.[160]

In many remote rural areas, the availability and accessibility of social services is particularly limited. Women living in these areas bear an increased share of unpaid care and support work that further affects their rights to work and social security. There is a need for States to combat regional imbalances in resource allocation and to promote social and

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[158] The Guiding Principles on Extreme Poverty and Human Rights were adopted by consensus in 2012 by the Human Rights Council by resolution 21/1, following a proposal by the United Nations Special Rapporteur on human rights and extreme poverty, Magdalena Sepulveda Carmona, after a long consultation process. See paras. 85–86.

[159] ILO and FAO, *Extending social protection to rural populations: Perspectives for a common FAO and ILO approach*, Geneva, 2021.

[160] Committee on the Elimination of Discrimination against Women, general recommendation No. 34 on the rights of rural women, para. 41 (a) and (b).

economic development for rural communities. In so doing, States should engage women in the design and implementation of local development plans as a tool to move from a needs-based approach to combating poverty to rights-based economic and social inclusion.

6. Migrants, asylum-seekers, refugees and internally displaced persons[161]

Migrants, asylum-seekers, refugees and internally displaced persons face additional legal barriers to the realization of their right to social security, such as issues of nationality and territoriality; lack of access to justice; and the exclusion of persons with an irregular status from social security legislation and bilateral or multilateral agreements. They also face practical obstacles, such as: insufficient coverage of social protection benefits and programmes; language, religious and cultural barriers; and complex administrative procedures to access their rights.

Migrant workers are a heterogeneous group. Their migration status, type of employment contract, duration of stay and other features influence their access to social protection. This diversity of situations of migrant workers should be taken into account in policies and mechanisms for the extension of social protection.[162] Where migrant workers have contributed to a scheme, they should be able to maintain their social security rights if they leave the country. If no such possibility exists due, for example, to the lack of a multilateral or bilateral social security agreement, returning migrants should be eligible to retrieve earlier social security contributions.[163] A migrant worker's entitlement should not be affected by changes of workplace. Many national legal frameworks require employers to declare and affiliate migrant employees to social insurance institutions. Irrespective of their status, if they are employed, even under an oral contract, migrant workers should be protected at least against certain contingencies, such

[161] For definitions of asylum-seeker, migrant worker, internally displaced person, documented migrant, migrant worker, migrant in irregular situation, migrant in regular situation, and refugee, see ILO, 2021c, *Extending social protection to migrant workers, refugees and their families A guide for policymakers and practitioners*, pp. 14–15.

[162] Ibid., p. 22.

[163] See the report of the Secretary-General on international migration and development (A/60/871), para 98. See also the Migrant Workers Recommendation, 1975 (No. 151), para. 34 (1) (c), which calls for the reimbursement of any social security contributions which have not given and will not give rise to rights under national laws or regulations or international arrangement, provided that where social security contributions do not permit entitlement to benefits, every effort should be made with a view to the conclusion of bilateral or multilateral agreements to protect the rights of migrants.

as illness, employment injury, invalidity or old age. Migrant workers contribute to the financing of the system through direct and indirect taxes. The inability of undocumented workers to obtain social security benefits increases their vulnerability and dependence on employers.[164]

In Cyprus, Panama and Switzerland, migrants in an irregular situation may, under certain conditions, enjoy various social security benefits. Argentina not only recognizes migration as a human right, but has also eased regularization procedures, provided for equality of treatment and guaranteed family reunification and the access of migrants to social assistance, health and education, irrespective of their migration status.

See also ILO, 2021c, *Extending social protection to migrant workers, refugees and their families: A guide for policymakers and practitioners*, Geneva, pp. 165–166.

Bilateral and multilateral social security agreements containing provisions on equal treatment and the maintenance of acquired rights and rights in course of acquisition are among the most effective policy options to guarantee the rights of migrant workers to social protection. While some 660 such instruments are already in place, many migrants remain unprotected. Efforts should be increased to broaden the scope of existing agreements and negotiate new agreements to expand coverage.[165]

In line with international human rights and social security standards, refugees and stateless persons should enjoy equal treatment with nationals

[164] Committee on Economic, Social and Cultural Rights, "Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights" (E/C.12/2017/1), para. 15.

[165] The ILO Multilateral Framework on Labour Migration provides guidelines for a rights-based approach to labour migration and calls for the conclusion of social security agreements; ILO, 2006. "ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration". The Global Compact for Safe, Orderly and Regular Migration, in Objective 22, calls for the establishment of mechanisms for the portability of social security entitlements and earned benefits: General Assembly resolution 73/195 on the Global Compact for Safe, Orderly and Regular Migration.

in access to contributory and tax-financed social protection mechanisms.[166] In view of their general lack of access to the labour market, measures should be taken to ensure the access of asylum seekers to social protection, and particularly non-contributory mechanisms. Non-national residents should be able to access non-contributory income support schemes, affordable health care and family support. Any restrictions, including qualifying periods, should be proportionate and reasonable. All persons, irrespective of their nationality, residency or immigration status, are entitled to primary and emergency medical care.[167]

States should take proactive measures to ensure equal access to schemes for internally displaced persons and internal migrants, for example by waiving, where applicable, residence requirements, and providing benefits and other related services at the place of displacement. Internal migrants should be able to access social security from their place of residence. Residence registration systems should not restrict access to social security for individuals who move to another district where they are not registered.[168]

In some countries, social security rights are guaranteed solely for citizens. Austerity measures have further restricted the entitlement of non-citizens. Limits placed on access to benefits, even those funded by the State budget, should not deprive migrants, asylum seekers, stateless persons and other non-nationals of the right to social security, in line with international human rights and social security instruments.

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[166] For instance, the Equality of Treatment (Social Security) Convention, 1962 (No. 118) explicitly provides that "the provisions of this Convention apply to refugees and stateless persons without any condition of reciprocity" (art. 10 (1)). It establishes that the principle of equality of treatment applies in respect of medical care, sickness benefit, employment injury benefit and family benefit without condition of residence, although such a condition may apply to other benefits (art. 4 (2)). Article 9 of the Maintenance of Social Security Rights Convention, 1982 (No. 157) stipulates that "each Member shall guarantee the provision of invalidity, old-age and survivors' cash benefits, pensions in respect of employment injuries and death grants, to which a right is acquired under its legislation, to beneficiaries who are nationals of a Member or refugees or stateless persons, irrespective of their place of residence" [...].

[167] For further information, see ILO, 2021c, *Extending social protection to migrant workers, refugees and their families*, chap. 7.

[168] Committee on Economic, Social and Cultural Rights, general comment No. 19 (2007), para. 39.

F. Implementing universal social protection systems

In accordance with the guiding principles set out in Recommendation No. 202, a human rights-based approach to social protection includes a commitment to universality of protection, guaranteeing benefits as rights, ensuring their adequacy and predictability and respecting the rights and dignity of people.[169] Decisive steps should therefore be taken towards the establishment of universal social security systems based on a life-course approach that ensures protection for children, families, persons of working age, older persons and persons with disabilities, with particular emphasis on those with the greatest need for protection.

Universal schemes[170] can be more effective than means-tested targeted schemes, especially where the latter have narrow eligibility criteria, low benefit levels or are stigmatizing. In particular, research has shown that some means-tested benefits suffer from large exclusion errors, thereby failing to cover persons in vulnerable situation.[171] The COVID-19 pandemic also exposed some of the shortcomings of limited coverage and low benefit levels, with narrow targeting, problematic proxy means tests and behavioural conditions, especially in contexts where large parts of the population are in vulnerable situations and where administrative capacity is constrained.[172] People may not claim social security because they do not want to be seen as a burden on society or be treated as such by social workers or others. People may also not claim entitlements where benefit levels are low and opportunity costs are high. In such cases, it is necessary to pay greater attention to reaching those who do not take up their rights by making social assistance schemes universal, rather than focusing on fraud prevention by targeting people, especially those living in poverty, for fraud

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[169] See ILO, *Universal social protection for human dignity, social justice and sustainable development*, General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202), International Labour Conference, 108th Session, Report III (Part B), para. 162.

[170] While universal social protection refers to social protection systems that ensure the coverage of everyone by comprehensive, adequate and sustainable protection over the life cycle, universal schemes refer to a particular mechanism through which benefits are provided under the single condition of residence.

[171] Kidd, S., Gelders, B., and D. Bailey-Athias, "Exclusion by design: An assessment of the effectiveness of the proxy means test poverty targeting mechanism", Extension of Social Security (ESS) Working Paper No. 56, ILO and Development Pathways; ODI (Overseas Development Institute) and UNICEF, "Universal child benefits: Policy issues and options", London and New York, 2020.

[172] Brown, C., Ravallion, M. and D. van de Walle, "A poor means test? Econometric targeting in Africa", Policy Research Working Paper No. 7915, 2016, World Bank.

surveillance.[173] Consideration should therefore be given to all the various mechanisms available to provide social protection to all, weighing the options in relation to the desired outcomes, while securing the maximum available resources for this purpose.

G. Anchoring poverty reduction interventions in human rights norms and principles

Certain measures, such as social cash transfers and school meals programmes, are generally designed and implemented as a poverty reduction tool through the provision of support to acquire food, clothing and other basic necessities. They may be universal, targeted by population category or place of residence, or means-tested. As such, these transfers and programmes should be institutionalized, regulated by law and incorporated into a broader social protection policy or strategy.

Some social cash transfers have conditionalities attached, such as in the case of so-called conditional cash transfer programmes, which are intended to influence the behaviour of targeted beneficiaries.

> In many countries, means-tested family benefits are targeted at families in need. Some of these benefits are conditional upon compliance with certain predefined requisites. For example, in Ecuador, the *Programa de Bono de Desarrollo Humano* provides cash benefits for families below the poverty line which are conditional on school attendance and the use of medical care. The scale of some of these benefit programmes is significant, for example in Brazil, where there are around 11 million beneficiaries of the *Bolsa Família*.
>
> Source: ILO, 2011. *Social security and the rule of law*, paras. 199–204.

Some cash transfer programmes have had a significant impact on reducing poverty and child labour and encouraging participation in education and health services. However, international bodies have expressed concerns about the unplanned adverse impact of the behavioural conditions attached to cash transfer programmes on the enjoyment of the right to social security, especially for vulnerable groups. They have observed that behavioural conditions do not necessarily lead to the intended positive

[173] See the reports of the Special Rapporteur on extreme poverty and human rights on non-take-up of rights in the context of social protection (A/HRC/50/38) and on digital welfare states and human rights (A/74/493).

impact, for example in terms of school attendance, the re-enrolment of school dropouts, literacy and health. They may also impede recipients from receiving assistance due to their inability to meet the conditions,[174] and may exacerbate inequalities. For example, women often shoulder the burden of ensuring compliance with these conditionalities (school attendance, doctor's appointments, etc.), adding to their unpaid workload. Such schemes may also further entrench gender inequalities, reinforce traditional gender roles and impede women's enjoyment of human rights, particularly their right to participate in political, economic and social life. This may discourage them from claiming benefits.[175] The non-compliance of beneficiaries with conditionalities should not therefore result in the denial of their basic right to social security, and particularly minimum essential levels. In order to enhance their effectiveness and avoid any unintended adverse consequence, conditional cash transfer programmes should be designed in full participation with recipients and take their views and lived experience into consideration. Additional interventions may have to be considered, such as awareness-raising on gender equality or prioritizing high-quality public services that enhance the delivery of social security systems,[176] and particularly improved access to schools and health services in the case of both conditional cash transfer programmes and unconditional transfers.[177]

In addition, conditional cash transfer programmes are often programme-based and not anchored in a legal framework, making it difficult for beneficiaries to complain, appeal or obtain their benefits in a predictable manner. Measures are also necessary to prevent corruption, waste of resources due to burdensome administrative procedures, adverse effects

[174] See ILO, 2019. *Universal social protection for human dignity, social justice and sustainable development*, para. 672.

[175] Simon, C.A. 2019. "The effect of cash-based interventions on gender outcomes in development and humanitarian settings", Discussion paper, UN-Women, p. 16, available at www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2019/Discussion-paper-Effect-of-cash-based-interventions-on-gender-outcomes-en.pdf; ILO, 2021e. *World Social Protection Report 2020-22*, pp. 91 and 111; ILO, 2011. *Social security and the rule of law. General Survey concerning social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization*, International Labour Conference, 100th Session, Report III (Part 1B), paras. 118–120; ILO, *Universal social protection for human dignity, social justice and sustainable development*, 2019, paras. 339 and 673.

[176] Recommendation No. 202, para. 3 (n).

[177] See ILO, 2019. *Universal social protection for human dignity, social justice and sustainable development*, para. 673.

on women, mis-targeting and the creation of dependency, particularly in the case of targeted cash transfers.[178]

H. Coordinating relevant policies

Given the life cycle approach to building social protection systems, coordination with other social and economic policies is essential. Not only does it promote the indivisibility and interdependence of all rights, but also constitutes a tool for shared planning and budgetary allocations by the various ministries and other public bodies. For example, during the pandemic, the coordination of the social security system with health, labour, housing, education and other income-support measures was fundamental to strengthening the protection of the most vulnerable and to allow the pooling of resources. Sound coordination mechanisms can secure coherence, reduce fragmentation, enhance cost effectiveness and efficiency and avoid wasting scarce resources. Recommendation No. 202 highlights the need to design and implement social security policies within the larger context of social, economic and employment policies and, in particular, to support the transition from informal to formal employment.

The principle of policy coherence has two main dimensions: internal and external. Internal coherence implies that the various schemes and programmes of which the social protection system (including the floor) are composed must be coherent and well coordinated under an overarching policy framework, with the aim of ensuring protection throughout the life course, while minimizing duplication, fragmentation and gaps. External coherence implies that social protection policies should be embedded in a wider context and coordinated with other social and economic policies, such as macro-economic, rural development, employment and labour market, health, education and care policies.

The 17 Sustainable Development Goals (SDGs) recognize that action in one area affects outcomes in others, and that development must balance social, economic and environmental sustainability. This cannot be achieved without strong policy coordination and coherence. As such, five of the SDGs explicitly acknowledge the role of social protection in responding to global challenges and in achieving a better and more sustainable future

[178] OHCHR, Comparative analysis in the Latin American region on social protection systems in light of their fiscal systems and mapping of promising practices, Draft, May 2022, p. 15; ILO, 2019. *Universal social protection for human dignity, social justice and sustainable development*, pp. 76–77.

for everyone, leaving no one behind, including by reducing poverty (SDG 1), ensuring healthy lives (SDG 3), achieving gender equality (SDG 5), promoting decent work (SDG 8), reducing inequality (SDG 10) and creating peace, justice and strong institutions (SDG 16).

In their efforts to achieve SDG 1, interlinked with other related goals, national and local governments, NGOs and United Nations country teams are undertaking a number of development projects to strengthen the social protection of vulnerable groups.

I. Monitoring progress

To ensure equality and non-discrimination, States must identify and keep track of discriminatory patterns, as well as disparities in and barriers to access to rights. For this purpose, it is important to disaggregate data by age, gender, religion, race, ethnicity, disability, migratory status, education, income and wealth quintile, geographic location and other distinctions, as locally relevant. Compliance with human rights obligations calls for data disaggregation and comparability over a medium time frame. As part of its work on illustrative indicators for civil, political, economic, social and cultural rights, the Office of the United Nations High Commissioner for Human Rights (OHCHR) has developed a list of structural, process and outcome indicators to monitor the realization of the right to social security.[179] ILO data collection and analysis on social protection systems is also available to measure the progress made towards the implementation of social protection floors within the framework of SDG target 1.3.

Recommendation No. 202, in Part IV, provides guidance on the monitoring of social protection systems, including the participation of stakeholders. In particular, it states that Members should monitor progress in implementing social protection floors and national social security extension strategies through appropriate nationally defined mechanisms, including tripartite participation with representative organizations of employers and workers, as well as consultation with other relevant organizations.

The monitoring role of the treaty bodies, based on the consideration of reports by States parties and individual communications, results in tailored

[179] See OHCHR, *Human Rights Indicators: A guide to measurement and implementation*, New York and Geneva, 2012, para. 96, table 9; and Centre for Economic and Social Rights, 2015, The OPERA Framework (Outcomes, Policy Efforts, Resources and Assessment), as tools for analysing various dimensions of the obligation to fulfil economic and social rights.

recommendations to States parties on the realization of the right to social security, among the other rights covered by the International Covenant on Economic, Social and Cultural Rights. The Human Rights Council also covers the right to social security,[180] which has featured in the thematic reports of the Special Rapporteur on human rights and extreme poverty.[181] The monitoring processes of the human rights mechanisms, including the treaty bodies, the universal periodic review and the special procedures of the Human Rights Council, provide opportunities for national dialogue between States, the social partners, civil society organizations, businesses and rights holders.

J. Establishing complaint and redress mechanisms

The realization of the right to social security should be backed up by effective redress mechanisms that allow individuals to claim redress and remedies in the event of violations of their right to social security. An independent, accessible and impartial judicial review system is essential to ensure that all stakeholders observe the rule of law, and to address cases of failure in this regard.

Access to effective complaint and appeal mechanisms also presupposes the existence of a statutory basis. The legal framework for social security systems should identify rights holders with their entitlements and the corresponding duty bearers, such as national and local public entities, with their obligations. It should also provide for the necessary accountability, through the establishment of monitoring mechanisms to ensure that rights holders enjoy their right to social security in practice and can complain and obtain redress in the event of violations of their rights, and that duty bearers fulfil their obligations.[182] The ILO social security standards recognize the right to efficient and accessible complaint and appeals mechanisms, which should be impartial, transparent, effective, simple, rapid, accessible and inexpensive. Moreover, access to complaint and appeals procedures should be free of charge for the applicant, and systems should be in place that

[180] See the summary of the intersessional full-day panel discussion on the right to social security in the changing world of work (A/HRC/49/33), p. 11.

[181] See the report of the Special Rapporteur on extreme poverty and human rights on the International Monetary Fund and its impact on social protection (A/HRC/38/33) and the paper of the Special Rapporteur entitled "Looking back to look ahead: a rights-based approach to social protection in the post-COVID-19 economic recovery".

[182] Committee on Economic, Social and Cultural Rights, general comment No. 19 (2007), para. 74.

enhance compliance with national legal frameworks.[183] Constitutional and supreme courts and regional human rights mechanisms play a relevant role in providing redress in cases of violations of the right to social security. The right to an effective remedy may also be appropriately promoted through administrative, financial, educational and social measures. When examining complaints, social security institutions and administrative authorities have to comply with the human rights obligations assumed by the State.

In the recent case of *Mahlangu and Another v. Minister of Labour and Others*, in November 2020, the South African Constitutional Court decided that the exclusion of domestic workers employed in private homes from making claims under the Compensation for Occupational Injuries and Diseases Act (COIDA), in cases of illness, injury, disablement or death at work, violates their rights to social security, equality and dignity.

In the decision of 7 October 2009, the Constitutional Court of Ukraine, in Case No. 25-rp/2009, ruled that a 2000 Law (Act No. 1533 on compulsory State social insurance in the event of unemployment) was unconstitutional because it violated the principle of non-retrogression enshrined in article 22 of the Constitution. In particular, the court emphasized that social benefits, compensation and guarantees are an essential component of the constitutional right to a sufficient standard of living and that diminishing the content and scope of this right through the adoption of legislation was contrary to the Constitution.

In various judgments, the Supreme Court of India has recognized the rights to social security and health as indirect rights derived from the right to life established in article 21 of the Constitution.

For more examples of rulings by constitutional and supreme courts on the right to social security, see ILO, 2011, *Social security and the rule of law*, paras. 273–293 and ILO, 2023, *Derecho a la seguridad social en las constituciones del mundo*.

An international quasi-judicial process is also available to victims of potential violations of the right to social security under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.[184] In States that have ratified the Optional Protocol, persons who

[183] Convention No. 102, art. 70 and Recommendation No. 202, para. 7.

[184] The Optional Protocol entered into force in 2013.

have exhausted domestic remedies can bring cases of the violation of economic, social and cultural rights, including the right to social security, to the Committee on Economic, Social and Cultural Rights to seek remedies. The Optional Protocol enables the Committee, which is responsible for its enforcement, not only to provide reparation, compensation or rehabilitation in cases of individual complaints, but also to require States to guarantee non-repetition through general policy measures.

Among the individual complaints considered by the treaty bodies, the Committee on Economic, Social and Cultural Rights found that Ecuador had violated a woman's right to social security by denying her a retirement pension and that the victim had suffered discriminatory treatment on the basis of her gender in relation to the conditions of her affiliation with the voluntary contribution pension system and the inexistence of a non-contributory old-age pension scheme.

Trujillo Calero v. Ecuador: Views adopted by the Committee under the Optional Protocol to the Covenant concerning communication No. 10/2015 (E/C.12/63/D/10/2015).

In States that have ratified the ILO social security Conventions, organizations of employers and workers can draw issues of compliance with these instruments to the attention of the Committee of Experts on the Application of Conventions and Recommendations.[185] They can also submit allegations of violations of a ratified social security standard for examination by a tripartite committee designated by the ILO Governing Body.[186] In addition, inobservance of ratified ILO social security Conventions can give rise to complaints by ILO Member States, a worker, employer or Government delegate attending the International Labour Conference, or the ILO Governing Body of its own motion.[187]

[185] Comments by the ILO supervisory bodies can be found on the NORMLEX database.

[186] ILO Constitution, art. 24.

[187] ILO Constitution, art. 26.

IV. Key issues relating to universal social protection systems

Some essential questions and answers

A. Are universal social protection systems possible only in high-income countries?

No. They are also possible in low- and middle-income countries. Indeed, many developing countries have wealthier economies now than many of the industrialized countries had when they started developing their social protection systems.[188]

There is a general misconception that the implementation of economic, social and cultural rights requires a high level of economic development or greater national revenue to be able to cover everyone. However, sound and effective social protection systems provide a basis which can boost the enjoyment of many economic, social and cultural rights by enabling rights holders to contribute to economic development and participate fully in their communities and societies. While the level of national economic development certainly has an impact on the degree to which the right to social security is realized, States can seek to reallocate or generate increased resources to strengthen social protection systems in order to mitigate inequalities and reduce poverty.

In contrast with common perceptions, guaranteeing at least a basic level of social security for all through a nationally defined social protection floor is within the reach of low- and middle-income countries.[189] Many countries already have the fiscal space necessary to establish and maintain such social protection floors. Others are in a position to lay the foundation and progressively extend coverage and benefits in accordance with their fiscal and economic capacity and, where necessary, with international financial support. With a view to expanding the fiscal space and generating the resources necessary to establish and maintain a universal social protection

[188] Countries such as Botswana, Indonesia and Peru are today richer than the United Kingdom in 1911 or Australia in 1908, when they set up their social security systems, including social assistance. India, Jamaica, Morocco, the Philippines and the Sudan are now wealthier than Denmark was in 1892, when it established universal social protection. See Ortiz, I., Durán-Valverde, F. Pal, K. et al., "Universal social protection floors: Costing estimates and affordability in 57 lower income countries", Extension of Social Security Working Paper No. 58 (2017) ILO, Geneva.

[189] Ibid.

system, including a social protection floor, consideration should be given to re-allocating public expenditure; strengthening tax collection systems; expanding social security coverage and contributory revenues; requesting financial assistance; eliminating illicit financial flows; using fiscal and foreign exchange reserves; managing debt through borrowing or the restructuring of existing debt; and adopting a more conducive macroeconomic framework.[190] In brief, in line with their commitments under the International Covenant on Economic, Social and Cultural Rights, States should take all appropriate measures to use the maximum available resources and, where necessary, mobilize additional resources, including by expanding their fiscal space and avoiding the misallocation of resources, with a view to the progressive implementation of a universal social protection system.

B. Do austerity programmes lead to retrogressive measures?

In practice, austerity measures do often result in a retrogression in the enjoyment of the right to social security.

Following recent financial and economic crises, or as part of structural adjustment policies, a number of countries have adopted fiscal consolidation or austerity measures. The exercise of the right to social security, like other economic, social and cultural rights, has in many cases been negatively affected by such measures. In the aftermath of the 2008 financial and economic crisis, fiscal consolidation policies were often observed to have had a negative impact on the level of public social spending, drawing social security "into the vicious circle of depleting resources, growing public debts, reduction of benefits and social protests".[191] Together with persistent unemployment, lower wages and higher consumption taxes, austerity measures have often resulted in retrogressive measures and reductions in social expenditure, leading to greater precarity and poverty, for example in the form of reduced coverage and benefit levels, increased qualifying conditions, the contraction in healthcare personnel and the closure of

[190] Ortiz, I., Cummins, M. and K. Karunanethy, 2017, "Fiscal Space for Social Protection and the SDGs: Options to Expand Social Investments in 187 Countries", Extension of Social Security (ESS) Working Paper No. 48, ILO, Geneva.

[191] ILO, *Social security and the rule of law*, 2011, para. 439.

public services in remote areas.[192] More recently, existing and new fiscal adjustment programmes, as well as the COVID-19 pandemic and looming economic recession, have also reversed gains and pose a threat to social protection systems. For example, the financing gap for building social protection floors has widened by approximately 30 per cent since the onset of the COVID-19 crisis, due to the increased need for health-care services, income security measures and the reduction of GDP.[193]

Social protection represents a crucial and affordable investment for the achievement of robust and inclusive economies. Governments have a variety of means available to create greater fiscal space and protect social security financing against disproportionate austerity measures likely to constrain public social expenditure, weaken aggregate demand and make crises worse.[194] In order to build resilient social protection floors, such efforts must be further increased and safeguarded against the austerity measures that are already emerging as the crisis recedes. A recent ILO study on the costs and financing gaps for SDG targets 1.3 and 3.8 shows that, in the case of low-income countries, additional annual investment of US$77.9 billion, equivalent to 15.9 per cent of their GDP, would be required to establish a social protection floor in those countries.[195] In countries with insufficient fiscal capacity, domestic resource mobilization efforts would need to be supplemented by international resources, including the honouring of currently unmet official development assistance commitments and the consideration of further global and solidarity-based financing mechanisms.

Under their general responsibility for the proper administration of national social security institutions and the due provision of benefits, States have a duty to "take all measures required for this purpose".[196] Where they are adopted, austerity measures should therefore not only be designed to achieve economic objectives in terms of GDP and economic performance more generally, but there should also be an assessment of the *ex-ante* and

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[192] ILO, *Universal social protection for human dignity, social justice and sustainable development*, 2019.

[193] ILO, 2021e, *World Social Protection Report 2020-22*.

[194] ILO, Resolution and Conclusions concerning the second recurrent discussion on social protection (social security), 2021, para. 21 (b).

[195] See Durán-Valverde, Pacheco-Jiménez, Muzaffar and Elizondo-Barboza, 2020, "Financing gaps in social protection".

[196] Convention No. 102, arts. 71 (3) and 72 (2); Convention No. 121, arts. 24 (2) and 25; Convention No. 128, art. 35; Convention No. 130, art. 30; and Convention No. 168, art. 28.

ex-post impact of the measures taken on the enjoyment of economic, social and cultural rights, including by the most vulnerable.[197] Inequalities that are exacerbated in times of crisis should be mitigated so as to guarantee the minimum core content[198] of rights and protect the social protection floor at all times.[199] Retrogressive measures should not go beyond what is strictly necessary to preserve the financial and fiscal sustainability of the system and should not result in a breach of solidarity with the population segments that are most in need of protection.

States parties to ILO social security Conventions are also required to guarantee that measures are taken to increase contributions to the social protection system by higher wage-earners, banks, companies, industries, civil and religious organizations and other bodies that are able to contribute through taxes or earmarked contributions.[200] Austerity measures should not be maintained for longer than is strictly necessary. When austerity measures are in place, States should periodically review their application and, where required, adopt counter-cyclical measures by generating more resources through tax reform, countering illicit financial flows and other measures with a view to enhancing the minimum essential level of the right to social security and by restoring benefits that have been disproportionately cut to a socially acceptable level.[201]

In this context, the ILO supervisory bodies have considered that Recommendation No. 202 implicitly calls for the establishment of a national social protection expenditure floor. Combined with effective and

[197] See the comments of the Committee of Experts on the Application of Conventions and Recommendations on Convention No. 102, for example in 2013 (ILO, 2013); and the Report of the Committee of Experts on the Application of Conventions and Recommendations, Part II, Individual observations, International Labour Conference, 102nd session, Geneva, pp. 763–766.

[198] See Committee on Economic, Social and Cultural Rights, general comment No. 19 (2007). In paragraph 59, the Committee recalls that States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels (minimum core content) of each of the rights enunciated in the Covenant. With regard to the right to social security, the minimum essential level is to provide social security benefits for all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

[199] See letter dated 16 May 2012 addressed by the Chairperson of the Committee on Economic, Social and Cultural Rights to States parties to the International Covenant on Economic, Social and Cultural Rights (2012); and the statement by the Committee on Economic, Social and Cultural Rights on public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights (E/C.12/2016/1), para. 4.

[200] Ibid.

[201] Ibid.

measurable poverty indicators, which are necessary to calculate adequate levels of benefits, such an expenditure floor would represent the core social protection spending that should be guaranteed by States at all times, and should therefore be protected against fiscal and economic austerity measures.[202] The IMF acknowledges the relevance of Recommendation No. 202 for social spending and has called for priority to be given to social and other expenditure, including social protection, health and education expenditure, through a social expenditure floor.[203]

C. Should States prioritize certain types of social security mechanisms in order to achieve universal social protection?

States can use the combination of benefits and schemes that they find to be most effective and efficient for the achievement of universal social protection insofar as the key principles of international human rights and social security standards are respected.

International social security standards do not set out a one-size-fits-all approach to social protection systems, of which the components and implementation may vary.

Countries should seek to establish and maintain a social protection floor upon which they can progressively build to create a comprehensive social security system, including through the extension of contributory schemes to all persons with contributory capacity.[204]

In this regard, as each country determines the optimal mix of benefits and schemes in light of national circumstances, it should ensure that these benefits and schemes duly implement the principles set out in international human rights and social security standards, notably by placing its social security responsibilities under the general responsibility of the State; ensuring non-discrimination, gender equality and responsiveness to special needs; ensuring collective financing through contributions, taxes or a combination thereof; establishing the system by law and guaranteeing predictable and adequate benefits, the level of which is periodically reviewed;

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[202] ILO, 2019. *Universal social protection for human dignity, social justice and sustainable development*, para. 647.

[203] IMF, 2019.

[204] Recommendation No. 202, para. 14 (c).

requiring the system to be sustainably financed; establishing complaint and appeal mechanisms; and requiring the involvement of representatives of workers, employers and beneficiaries in the administration of social protection schemes.[205]

Schemes managed by private entities have in some cases experienced difficulties in complying with these principles.[206] In many cases, both mandatory and voluntary private insurance schemes are established to supplement the public tiers of social protection systems and raise the level of benefits provided. For example, public pension schemes are increasingly supplemented by privately operated voluntary or mandatory pension schemes based on the capitalization of savings placed in individual accounts (also known as "defined contribution schemes"). Their objective is to raise benefit levels based on market or economic performance without guaranteeing a level of return on investment. The ILO supervisory bodies have generally observed that pension schemes based on the capitalization of individual savings managed by private pension funds are not organized in accordance with the principles of solidarity and collective financing, nor are they generally characterized by the predictable benefits or participatory management that underpin social security systems. States should examine whether the allocation of resources to mandatory supplementary schemes could undermine the sustainability of public tiers of social protection and ultimately work against the objective of ensuring universal, adequate and comprehensive social protection in line with international standards.

D. Does social security cover only those in formal employment?

No. As a human right, everyone should have access to social security.

This can only be achieved by combining schemes that cover not only employed persons, but also children, older persons and those who are unable to earn an adequate income. In other words, a combination of contributory and non-contributory schemes is essential for the achievement of universal social protection.

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[205] Recommendation No. 202, para. 3; Behrendt, Saint-Pierre Guilbault, Stern-Plaza, Umuhire and Wodsak. "Implementing the principles of Social Protection Floors Recommendation, 2012 (No. 202)", 2017.

[206] ILO, *Social security and the rule of law*, 2011; ILO, *Universal social protection for human dignity, social justice and sustainable development*, 2019.

Contributory schemes that cover persons in formal employment, that is those in employment which is, in law and practice, covered by formal arrangements,[207] are an important part of national social protection systems. However, in many countries the social security legislation has been revised to include categories of workers who were not previously covered, such as those working in the informal economy, thereby expanding social security coverage and facilitating their transition from the informal to the formal economy.[208] Such efforts also include the extension of social insurance coverage beyond employees to self-employed persons, often by subsidizing contributions or benefits through public resources for those with insufficient contributory capacity.

Moreover, non-contributory schemes provide benefits that are not linked to economic activity, but are based on the condition of residence, such as universal schemes; based on a means-test, such as social assistance schemes; or schemes that provide benefits to broad categories of the population without a means test or a proxy means test, such as older people above a certain age, all people with disabilities, or children below a certain age.

[207] This definition can be deduced from the definition of the term "informal economy" contained in the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), para. 2.

[208] ILO, 2021d, *Extending social security to workers in the informal economy*.

Annexes

I. Glossary

Austerity measures: Austerity measures are measures to reduce government spending and shrink the budget deficit. Austerity policies include tax increases and cuts in government programmes. Austerity measures may result in a decline in available social services and reduced individual disposable income.

Cash transfer programmes: Non-contributory schemes or programmes providing cash benefits to individuals or households, usually financed out of taxation, other government revenue or external grants or loans. Cash transfer programmes may or may not include a means test. Cash transfer programmes that provide cash to families subject to the condition that they fulfil specific behavioural requirements are referred to as conditional cash transfer programmes. For example, beneficiaries may be required to ensure that their children attend school regularly or to use basic preventive nutrition and health-care services.

Contributory schemes: Schemes in which contributions made by protected persons (actual or potential beneficiaries) directly determine their entitlement to benefits (acquired rights). The most common contributory social security schemes are statutory social insurance schemes, usually covering workers in formal wage employment and, in some countries, the self-employed. Social insurance schemes for those in wage or salaried employment are based on the principles of solidarity and collective financing and, as such, contributions are pooled and generally paid by both employees and employers (although, in general, employment injury schemes are fully financed by employers in line with international standards). Contributory schemes may be wholly financed through contributions, but are often also partly financed from taxation or other sources; this may be done through a subsidy to cover the deficit, through a general subsidy that replaces contributions altogether, or through subsidies directed specifically at certain groups of contributors or beneficiaries (for example, persons not contributing because they are caring for children, studying, in military service or unemployed, or have too low a level of income to make full contributions, or receive benefits below a certain threshold because of low contributions in the past).

The informal economy: The informal economy refers to all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements.

Means-tested schemes: Schemes that provide benefits upon proof of need and target certain categories of individuals or households whose means fall below a certain threshold. These schemes are also often referred to as social assistance schemes (see below). A means test is used to assess whether an individual's or a household's resources (income and/or assets) are below a defined threshold to determine whether the applicants are eligible for benefits and, if so, at what level the benefit will be provided. In some countries, proxy means tests are used; that is eligibility is determined without actually assessing income or assets, on the basis of other household characteristics (proxies such as household composition, housing characteristics, productive assets or the level of education of household members) which are deemed to be more easily observable. Means-tested schemes may also include entitlement conditions and obligations, such as work requirements, participation in health check-ups or the school attendance of children. Some means-tested schemes also include other interventions that are delivered in addition to the income transfer.

Non-contributory schemes: Non-contributory schemes, which include both non-means-tested and means-tested schemes, normally require no direct contribution from beneficiaries or their employers as a condition for entitlement to the relevant benefits. The term covers a broad range of schemes, including universal schemes for all residents (such as national health services), schemes for certain broad groups of the population (such as children below a certain age, or older people above a certain age) and means-tested schemes (such as social assistance schemes). Non-contributory schemes are usually financed through taxes or other State revenues, or in certain cases through external grants or loans.

Social assistance schemes/programmes: Schemes that provide benefits to vulnerable population groups, especially households living in poverty. Most social assistance schemes are means-tested.

Social insurance schemes: Contributory social protection schemes that guarantee protection through an insurance mechanism based on (1) the payment of contributions before the occurrence of the insured contingency; (2) the sharing or "pooling" of the risk; and (3) the notion of a guarantee.

The contributions paid by (or for) insured people are pooled, and the resulting funds are used to cover the expenses incurred exclusively by those individuals affected by the occurrence of the relevant and clearly defined contingency or contingencies. In contrast with commercial insurance, risk pooling in social insurance is based on the principle of solidarity, with contributions typically related to people's capacity to pay (e.g., proportional to earnings), as opposed to premiums that reflect individual risks. Many contributory social security schemes are presented and described as "insurance" schemes (usually "social insurance schemes"), despite in fact being of a mixed nature, with some non-contributory elements in entitlement to benefits. This allows for a more equitable distribution of benefits, particularly for those with low incomes and short or broken work careers. These non-contributory elements take various forms, and are financed either by other contributors (redistribution within the scheme) or the State.

Social protection floors: Recommendation No. 202 indicates that Member States should establish and maintain national social protection floors as a nationally defined set of basic social security guarantees which secure protection aimed at preventing or alleviating poverty, vulnerability and social exclusion. These guarantees should ensure, at a minimum, that over the life cycle all in need have effective access to at least essential health care and basic income security. These together ensure effective access to essential goods and services defined as necessary at the national level. More specifically, national social protection floors should comprise at least the following four social security guarantees, as defined at the national level:

(a) access to essential health care, including maternity care;
(b) basic income security for children;
(c) basic income security for persons of working age who are unable to earn sufficient income, in particular in the event of sickness, unemployment, maternity and disability; and
(d) basic income security for older persons.

Such guarantees should be provided for all residents and all children, as defined in national laws and regulations, and subject to existing international obligations.

Recommendation No. 202 also indicates that basic social security guarantees should be established by law. National laws and regulations should specify the range, qualifying conditions and levels of the benefits

giving effect to these guarantees and provide for effective and accessible complaint and appeal procedures.

Social protection floors correspond in many ways to the notion of "core obligations", namely the obligation to ensure the realization of, at the very least, minimum essential levels of the rights embodied in human rights treaties.

Targeted schemes/programmes: See social assistance schemes.

Universal schemes/categorical schemes: Strictly speaking, universal schemes provide benefits under the single condition of residence. However, the term is also often used to describe categorical schemes, which provide benefits for certain broad categories of the population without a means test or a proxy means test. The most common forms of such schemes are those that transfer income to older people above a certain age, to all people with disabilities, or to children below a certain age. Some of these schemes also target households with specific structures (such as single-parent households) or occupational groups (such as rural workers). Most such schemes are financed by public resources.

Universal social protection refers to social protection systems which ensure that everyone has access to comprehensive, adequate and sustainable protection over the life cycle, in line with ILO standards. Achieving universal social protection entails the adoption of action and measures to realize the right to social security by progressively building and maintaining nationally appropriate social protection.

II. Useful resources and links

United Nations

- Committee on Economic, Social and Cultural Rights, general comment No. 19 (2007) on the right to social security (art. 9) (E/C.12/GC/19)
- Committee on Economic, Social and Cultural Rights, "Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights", statement (E/C.12/2017/1)
- Committee on Economic, Social and Cultural Rights, "An evaluation of the obligation to take steps to the 'Maximum of available resources' under an Optional Protocol to the Covenant", statement (E/C.12.2007/1)
- Committee on Economic, Social and Cultural Rights, "Social protection floors: An essential element of the right to social security and of the sustainable development goals", statement (E/C.12/2015/1)
- OHCHR, Report on austerity measures and economic and social rights
- OHCHR, Guiding Principles on Extreme Poverty and Human Rights
- "Global fund for social protection: international solidarity in the service of poverty eradication", report of the Special Rapporteur on extreme poverty and human rights (A/HRC/47/36)

ILO

- ILO, 2011. *Social security and the rule of law*. General Survey concerning social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization, International Labour Conference, 100th Session, Report III (Part 1B)
- ILO, 2019. *Universal social protection for human dignity, social justice and sustainable development*, General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202), International Labour Conference, 108th Session, Report III (Part B)
- ILO, 2021a. *Building social protection systems: International standards and human rights instruments*, Geneva
- ILO, 2021b. *Building the future of social protection for a human-centred world of work*, International Labour Conference, 109th Session, Report V, Geneva
- ILO, 2021c. *Extending social protection to migrant workers, refugees and their families: A guide for policymakers and practitioners*, Geneva
- ILO, 2021d. *Extending social security to workers in the informal economy: Lessons from international experience*, Geneva (2nd edition)

- ILO, 2021e. *World Social Protection Report 2020-22: Social protection at the crossroads – in pursuit of a better future*, Geneva
- ILO, 2024. *World Social Protection Report 2024-26: Universal social protection for climate action and a just transition*, Geneva

Web pages

- Office of the United Nations High Commissioner for Human Rights (OHCHR)
- OHCHR and the right to social security
- Socialprotection.org
- Toolkit on ILO Social Security Standards: Learn, Ratify and Apply
- Social Protection and Human Rights – A Resource Platform

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No. 23 Harmful Traditional Practices Affecting the Health of Women and Children

* Fact sheets Nos. 1, 5 and 8 are no longer issued. All fact sheets are available online from www.ohchr.org.

No. 24 The International Convention on Migrant Workers and its Committee (Rev.1)

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