

Social protection floors and economic and social rights



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Summary

The present report, A/HRC/28/35, is submitted in accordance with resolution 25/11 of the Human Rights Council, which called for a report with a special focus on the importance of social protection floors for the realization of economic, social and cultural rights. The report outlines the main characteristics of social protection floors and how they can contribute to ensuring the enjoyment of minimum essential levels of economic, social and cultural rights, reducing poverty and inequality.

I. Introduction

1. In its resolution 25/11, the Human Rights Council requested the Secretary-General to submit an annual report with a special focus on the importance of social protection floors for the realization of economic, social and cultural rights (para. 16).

2. The report outlines the main features of social protection floors and how their adoption, by States, can contribute to the enjoyment of minimum essential levels of economic, social and cultural rights, reducing poverty and inequality. In that context, the Social Protection Floor Initiative, led by the International Labour Organization (ILO) and supported by all United Nations agencies, is pivotal in promoting basic income security and access to health care, and in facilitating the enjoyment of several economic and social rights by the most marginalized groups of the population.

II. Social protection floors

3. Events such as the surge in the late 1990s in innovative national programmes for social protection in the global South¹ and the 2008 financial and economic crisis² have gradually increased political support for the idea of Government-funded minimum social protection floors. According to the Social Protection Floors Recommendation (ILO Recommendation No. 202, adopted on 14 June 2012), social protection floors are nationally defined sets of basic social security guarantees that should provide access to essential health care and to basic income security for all those in need over the life cycle.

¹ *Bolsa Familia and Brasil Sem Miséria in Brazil; Oportunidades in Mexico; Asignación Universal por Hijo para Protección Social in Argentina; a social transfer scheme in Zambia; the National Rural Employment Guarantee Scheme in India; the Productive Safety Nets programme in Ethiopia; a universal pension scheme in Namibia; and the provision of universal health services in Thailand. See Special Rapporteur on extreme poverty and human rights, Philip Alston, report to the General Assembly, A/69/297, para. 16.*

² *See Bob Deacon, Global Social Policy in the Making: The Foundation of the Social Protection Floor (Bristol, United Kingdom, Policy Press, 2013) and Julie L. Drolet, Social Protection and Social Development: International Initiatives (Springer, 2014).*

4. The ILO-led Social Protection Floor Initiative is a policy response to the limited social security coverage worldwide. According to the ILO *World Social Protection Report 2014/2015*,³ 73 per cent of the global population are either not covered, or only partially covered, by comprehensive social security systems. The ILO report notes that 75 countries have no child and family benefit programmes mandated by legislation, and the global average spending on such programmes is only 0.4 per cent of gross domestic product (GDP). Worldwide, employment injury, disability and maternity benefits and old-age pension are also only available on a very limited basis.

5. In 2009, the United Nations System Chief Executives Board for Coordination adopted the One United Nations Social Protection Floor Initiative as one of the nine United Nations joint initiatives to cope with the global economic and financial crises.⁴ Within the framework of the Social Protection Floor Initiative, the Social Protection Floor Advisory Group was created to enhance global advocacy activities and to develop the conceptual policy aspects of the approach.

6. In 2011, the Social Protection Floor Advisory Group issued a report entitled *Social Protection Floor for a Fair and Inclusive Globalization*,⁵ which consolidated global advocacy activities around social protection. In 2012, at the 101st session of the International Labour Conference, Governments, employers and workers from 185 countries unanimously adopted ILO Recommendation No. 202. In that landmark recommendation, social security as a human right for all persons is reaffirmed and guidance provided for building comprehensive social security systems. Also in 2012, in the outcome document of United Nations Conference on Sustainable Development (Rio+20),

entitled "The Future We Want", adopted by the General Assembly in its resolution 66/288, States stressed "the need to provide social protection to all members of society", encouraged "initiatives aimed at providing social protection floors for all citizens" and reaffirmed that sustainable development and poverty eradication policies should promote "respect for all human rights" (annex, paras. 156, 107 and 58, respectively).

7. ILO Recommendation No. 202 provides guidance to member States on how to extend and adapt social protection floors to national circumstances. It states that national social protection floors should include at least four essential guarantees:

- (a) Access to at least essential health care, including maternity care;
- (b) Basic income security for children, providing access to nutrition, education, care and any other necessary goods and services;
- (c) Basic income security for persons of working age who are unable to earn sufficient income, in particular in cases of sickness, unemployment, maternity and disability;
- (d) Basic income security for older persons.

8. While the final objective is to put in place comprehensive social protection systems, implementation can be gradual in line with States' resources. Countries adopting a social protection floor should develop nationally defined strategies, in a participatory manner, respecting the principles of non-discrimination, gender equality and social inclusion. Building on existing social protection mechanisms, those strategies may include a mix of measures: contributory and non-contributory, targeted and universal, and public and private — depending on the country's social, economic and political context.

9. The results of ILO research and the experience of several developing countries show that virtually all countries can afford social protection floors and that they would constitute effective tools in the fight against poverty.⁶

3 *World Social Protection Report 2014/2015: Building economic recovery, inclusive development and social justice* (2014). Available from www.ilo.org/wcmsp5/groups/public/-dgreports/-dcomm/documents/publication/wcms_245201.pdf.

4 *The Initiative is co-led by ILO and the World Health Organization and involves 17 collaborating agencies, including United Nations agencies, non-governmental organizations and international financial institutions, inter alia the World Bank.*

5 ILO, Geneva, 2011. Available from www.ilo.org/global/publications/books/WCMS_165750/lang-en/index.htm.

6 ILO, "Can Low Income Countries Afford Basic Social Security?", *Social Security Policy Briefing Paper 3*, 2008. Available from www.ilo.org/public/english/protection/secsoc/downloads/policy/policy3e.pdf.



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10. Social protection floors differ from a “safety net” or “social safety nets” approaches, which are non-contributory transfers designed to provide regular, predictable and targeted support to poor and vulnerable people. In contrast, the aim of social protection floors is to approach social policy comprehensively through the promotion of integrated strategies for essential social services and income security for all.

11. “Safety net approaches” do not offer wider social protection systems, but rather tend to consist of isolated programmes, often fragmented and insufficiently coordinated. That fragmentation makes it more difficult for individual rights-holders to identify who is accountable for a programme’s implementation and may lead to gaps in coverage, exclusion errors, or create risks of activities in one sector creating negative unforeseen effects in another.⁷

12. The concept of the Social Protection Floor Initiative is based on shared principles of social justice and refers to the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights for the realization of the rights to social security, adequate standard of living, health, education, food and housing.⁸ The Social Protection Floor Initiative and human rights standards are complementary, as the first provides the policy space while the latter provides the normative framework in which States should develop social protection floors. While social protection floors represent States’ policy commitments, human rights norms translate into concrete rights for specific rights-holders, and therefore into concrete legal obligations for States.

⁷ Joint report of the Independent Expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, and the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque, A/HRC/15/55, paras. 109–112.

⁸ ILO, “The right to social protection”. Available from www.social-protection.org/gimi/gess/ShowTheme.action;jsessionid=fe733a52c755391a07bac a70ac9a28494407ab58cddcee3c990e4d62c2bedd28.e3aTbhLbNmSe34MchaRah8Tchr0?th.themeld=2566.



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III. Human rights norms and principles and social protection floors

13. ILO Recommendation 202 lays down the guiding principles that should be observed in creating national social protection floors. In its preamble, it reaffirms that the right to social security is a human right and an important tool not only to “prevent and reduce poverty, inequality, social exclusion and social insecurity” but also “to promote equal opportunity and gender and racial equality”.

14. The preamble of ILO Recommendation 202 also explicitly mentions the Universal Declaration of Human Rights (arts. 22 and 25) and the International Covenant on Economic, Social and Cultural Rights (arts. 9, 11 and 12). The recommendation refers to a number of human rights norms and principles, such as the universality of protection; entitlements prescribed by law; non-discrimination, gender equality, responsiveness to special needs; respect for the rights and dignity of people covered by the social security guarantees; progressive realization; transparency and accountability; remedies; and respect for the rights of collective bargain and freedom of association for all workers.

15. Those principles are drawn from States’ human rights obligations. The Committee on Economic, Social and Cultural Rights, the authoritative interpretative body of rights and obligations of the Covenant, in paragraph 2 of its general comment No. 19 (2007) on the right to social security (art. 9) (hereinafter, general comment No. 19), clarified that the right to social security encompasses the right to access benefits without discrimination in order to secure protection from, inter alia, a lack of a work-related income due to sickness, disability, maternity, employment injury, unemployment, old age or death of a family member, unaffordable access to health care or insufficient family support. The Committee further stresses that States must provide social protection to all individuals, guaranteeing universal coverage, reasonable, proportionate and transparent eligibility criteria; affordability and physical accessibility by beneficiaries; and participation in and information about the provision of benefits (*ibid.*, paras. 23– 26). The right to social security should be enjoyed equally by men and women as outlined

in article 2, paragraph 2 (on non-discrimination), and article 3 (on the equal enjoyment of economic, social and cultural rights) of the International Covenant on Economic, Social and Cultural Rights.

A. THE OBLIGATION OF PROGRESSIVE REALIZATION

16. International human rights treaties provide for the progressive realization of economic, social and cultural rights (art. 2, para. 1, of the International Covenant on Economic, Social and Cultural Rights). The obligation of progressive realization requires States parties not only to continuously improve conditions, but also prohibits any deliberate retrogressive measure. There is a strong presumption that retrogressive measures are prohibited under the Covenant,⁹ unless concerned States are able to prove that the measures have been introduced after most careful consideration of all alternatives, and that they are justified by reference to the totality of the rights stipulated in the Covenant.¹⁰ Everyone should be covered by social security, in particular individuals belonging to the most disadvantaged and marginalized groups.¹¹ Each State party has to devise its own measures, in accordance with its specific circumstances, including its financial resources, population, geographic distribution of the population and natural resources.

17. Social protection floors demonstrate the need for progressive realization. While ensuring that basic income security allows a life in dignity, each country should determine the range of social security guarantees that will be encompassed in its national definition.¹² National social protection floors should move progressively towards universal and basic social protection for all, with a view to ensuring that no one falls below a certain income level and that everyone has access to essential

public services, such as water and sanitation, health and education.¹³

18. Progressive realization in the implementation of national social protection floors should not be interpreted as allowing States to delay implementing national social protection floors. The implementation of higher standards of protection should be envisaged immediately and, as much as possible, within the limits of a country's fiscal and administrative capacities. The objective of the social protection floor is to safeguard a dignified existence for all.

B. MINIMUM ESSENTIAL LEVELS OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

19. According to the Covenant, State parties have a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of all economic, social and cultural rights, including the right to social security, as a matter of priority. General comment No. 19 promotes the understanding that all States have a minimum core obligation to provide some form of basic social security. This is an immediate obligation. Thus, the fulfilment of minimum essential levels of economic, social and cultural rights is not to be left to progressive realization.¹⁴

20. For a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources

9 General comment No. 19, para. 42. See also report of the United Nations High Commissioner for Human Rights on austerity measures and economic, social and cultural rights, E/2013/82, para. 15.

10 Report of the Independent Expert on the question of human rights and extreme poverty, A/64/279.

11 General comment No. 19, para. 23.

12 ILO, "Social protection floor" (see note 6 above) and ILO Recommendation 202.

13 *Ibid.*

14 Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties' obligations, para. 10. "The Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant".



that are at its disposal to fulfil, as a matter of priority, those minimum obligations.¹⁵

21. Social protection floors could be seen as instrumental to satisfying that “minimum”. Conversely, they should never be considered a ceiling for social protection. According to ILO, the social protection floor is part of a two-dimensional strategy for the extension of social security, comprising of a basic set of social guarantees for all (horizontal dimension), and the gradual implementation of higher standards (vertical dimension).¹⁶

22. The minimum core content of the right to social security has been elaborated further. In

general comment No. 19, the Committee on Economic, Social and Cultural Rights notes that the realization of the right to social security implies that States must ensure that benefits are adequate in amount and duration, and provided in a manner that complies with human rights principles such as respect of human dignity and non-discrimination.¹⁷ That requires that social protection programmes do not stigmatize beneficiaries, and avoid any demeaning treatment during all phases of a programme.¹⁸ Those are also critical principles in the implementation of national social protection floors. In giving effect to ILO Recommendation 202, States should ensure the adequacy of benefits (para. 3 (c)). The benefit levels should be established by law and regularly reviewed (para. 3 (c) and para. 8 (c)). Additionally, the recommendation explicitly notes that in establishing social protection floors States should demonstrate “respect for the rights and dignity of people covered by the social security guarantees” (para. 3 (f)).

¹⁵ See Committee on Economic, Social and Cultural Rights, general comments No. 3, para. 12; No. 12 (1999) on the right to adequate food (art. 11), para. 28; and No. 14 (2000) on the right to the highest attainable state of health (art. 12), para. 18.

¹⁶ See ILO, *Social Security for All: Building social protection floors and comprehensive social security systems. The strategy of the International Labour Organization* (Geneva, 2012), pp. 3–7 (available from www.ilo.org/wcmsp5/groups/public/-ed_protect/-soc_sec/documents/publication/wcms_sec_soc_34188.pdf) and Social Protection Floor Advisory Group, *Social Protection Floor*, p. xxiii.

¹⁷ General comment No. 19, para. 22.

¹⁸ See Magdalena Sepúlveda Carmona, “From Undeserving Poor to Rights Holder: A Human Rights Perspective on Social Protection Systems”, *Development Pathways, Working Paper No. 1* (Banbury, United Kingdom, 2014).

23. The minimum core content of rights, as contained in the Covenant and as further clarified by human rights bodies, can also assist in defining the level of national social protection floors.¹⁹ The social protection floor could be instrumental in achieving the minimum core content of the rights to social security and health, and — through guaranteeing basic security income — to other economic and social rights such as the rights to food, housing and water.



19 According to general comment No. 14 of the Committee on Economic, Social and Cultural Rights, for example, the right to the highest standard of physical and mental health (art. 12 of the International Covenant on Economic, Social and Cultural Rights) imposes on States a set of core obligation including "(a) to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups; (b) to ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone; (c) to ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water; (d) to provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs; (e) to ensure equitable distribution of all health facilities, goods and services; (f) to adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population; the strategy and plan of action shall be devised, and periodically reviewed, on the basis of a participatory and transparent process; they shall include methods, such as right to health indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all vulnerable or marginalized groups."

C. PRINCIPLES OF TRANSPARENCY, PARTICIPATION AND ACCOUNTABILITY

24. In its general comment No. 19, the Committee on Economic, Social and Cultural Rights has recommended that transparency be integral to national social security programmes and plans of action, and that the beneficiaries participate in the administration of social protection programmes.²⁰ Similarly, the Special Rapporteur on extreme poverty and human rights noted that transparency must be a fundamental element of all aspects of social protection programmes, including selection methods, eligibility criteria, benefits level, and complaints and redress mechanisms.²¹ Further, the Special Rapporteur has noted that civil society should participate in the design, implementation and monitoring of social protection programmes.²²

25. Under international human rights law, access to information is a right in itself and a prerequisite to ensuring participation in public affairs and accountability.²³ Consequently, human rights bodies have noted that social security systems must ensure respect for the right of individuals and organizations to seek, receive and impart information on all social security entitlements in a clear and transparent manner.²⁴

26. ILO Recommendation 202 explicitly refers to transparent, accountable and sound financial management and administration (para. 3 (j)) and denotes a number of important elements in that regard. For example, when formulating and implementing national social security strategies,

20 See general comment No. 19, paras. 70 and 26.

21 The Special Rapporteur on extreme poverty and human rights has assessed the practical implications of those principles in several reports, which clarify the technical requirements with which social protection systems should comply. See, e.g., A/65/259, paras. 88–93.

22 See, e.g., reports of the Special Rapporteur on the question of human rights and extreme poverty, A/HRC/11/9, pp. 7–9; A/64/279, pp. 14–18; A/HRC/14/31, pp. 11–19; and A/HRC/17/34, pp. 6–12.

23 See, for example, International Covenant on Civil and Political Rights, art. 19; African Charter on Human and Peoples' Rights, art. 9; American Convention on Human Rights, art. 13; and European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 10.

24 General comment No. 19, para. 26. See also A/HRC/11/9, pp. 8–17; and A/HRC/14/31 pp. 11–19.

States should raise awareness about the strategies and put in place information programmes (para. 14 (f)). ILO Recommendation 202 also specifies that national social security strategies should be formulated and implemented on the basis of national consultations through effective social dialogue and participation (para. 13). Other ILO instruments also stress the importance of participation.²⁵

27. That is consistent with the recommendations of the Committee on Economic, Social and Cultural Rights that participation should be an integral part of any policy or programme concerning social security.²⁶ Participation not only contributes to the effective implementation and sustainability of national social protection floors, but also ensures that the rights of beneficiaries are respected. For example, the successful implementation of the Universal Health Coverage Scheme in Thailand has been attributed to, among other reasons, the critical role played by civil society and social movements in its formulation and design.²⁷

28. According to ILO Recommendation 202, national social protection floors should also put in place “impartial, transparent, effective, simple, rapid accessible and inexpensive complaint and appeal procedures”. The recommendation underlines that such procedures should be free of charge for the applicant (para. 7). This is in line with general comment No. 19 in which the Committee on Economic, Social and Cultural Rights recommends that all victims of violations of the right to social security be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition. National ombudspersons, human rights commissions and similar national human rights institutions should have a role in addressing violations of the right (paras. 77–81).

D. EQUALITY BETWEEN MEN AND WOMEN

29. The Committee on Economic, Social and Cultural Rights has noted in its general comment No. 19 that States parties should ensure that social protection guarantees do not reinforce traditional gender stereotypes, but rather encourage behaviour that advances equality between men and women (para. 32).²⁸ Social security programmes should address imbalances of power and the multiple forms of discrimination that women experience, and address women’s specific needs throughout their lives: during adolescence, adulthood and old age.²⁹

30. In its preamble, ILO Recommendation 202 recognizes that social security is an important tool to promote gender equality. It emphasizes that, in implementing the recommendation, States should apply the principle of gender equality and be responsive to women’s special needs (para. 3 (d)). It also specifies the critical role of gender-disaggregated data for the effective monitoring of the floors (paras. 19 and 21). Moreover, several of the basic guarantees that national social protection floors should establish, such as maternal health, child care and maternity benefits (para. 5 (a), (b) and (c)), aim in particular at ensuring gender equality and women’s enjoyment of rights.

31. Many social protection schemes specifically target women within households or female-headed households,³⁰ as it is widely understood that targeting women as recipients of social protection benefits significantly improves the education, health and nutritional levels of children.³¹ However, channelling social protection through women alone does not eradicate the causes of gender

25 Articles 71 and 72 of ILO Convention No. 102 (1952) on Minimum Standards of Social Security set out similar requirements.

26 General comment No. 19, para. 69.

27 ILO, “Fiscal Space and the Extension of Social Protection”, *Extension of Social Security Working Paper 33* (Geneva, 2012), p. 154.

28 *Ibid.*, para. 32.

29 See, e.g., A/HRC/11/9, p. 17, and A/65/259, pp. 14–18. See also Sepúlveda, M. and Nyst, C., *The Human Rights Approach to Social Protection* (Ministry of Foreign Affairs of Finland, Erweko Oy, 2012), pp. 32–33.

30 For the Brazilian Bolsa Família, for instance, 94 per cent of the recipients are women: Rebecca Holmes, Nicola Jones, Rosana Vargas and Fabio Veras Soares, “Cash Transfers and Gendered Risks and Vulnerabilities: Lessons from Latin America,” *International Policy Centre for Inclusive Growth Research Brief No. 16* (2010), p. 2.

31 See Nicola Jones, Rebecca Holmes and Jessica Espey, *Gender and the MDGs, Briefing Paper No. 42* (London, Overseas Development Institute, 2008).



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inequality.³² From discriminatory legal frameworks to persistent discriminatory social norms, there are many underlying causes that prevent women from benefiting from social protection interventions or accessing social services in an equal manner to men. If the differences between men and women are not taken into account throughout the

design, implementation and evaluation of a social protection intervention, there is a serious risk that the intervention will have the unintended effect of exacerbating inequalities.

32. Demands of unpaid care work often force women into informal jobs with precarious employment status, no access to social insurance benefits such as paid maternity leave, unemployment insurance or pensions, and often unsafe and unhealthy working conditions.³³ Even

32 See Sarojini Ganju Thakur, Catherine Arnold and Tina Johnson, *Gender and Social Protection*, Paper No. 167 (Paris, Organisation for Economic Co-operation and Development, 2009). Available from www.oecd.org/dataoecd/26/34/43280899.pdf (accessed in December 2014). See also M. Davies, *DFID Social transfers Evaluation Summary Report*, Research Report No. 60 (Sussex, Institute for Development Studies, 2009).

33 See ILO, *Women, Gender and the Informal Economy: An Assessment of ILO Research and Suggested Ways Forward* (2008).

when women manage to combine unpaid care work with formal-sector employment, they are likely to have lower social insurance contributions than men, owing to lower wages and “interrupted” work histories as a result of child-rearing or other unpaid care work.

33. The unequal distribution, intensity and lack of recognition and support of unpaid care work undermines the dignity and autonomy of women caregivers and obstructs their enjoyment of several human rights — including civil, economic, political, social and cultural rights — on an equal basis with men.³⁴ For example, unpaid care work has an impact on women’s and girls’ rights to education, work, social security and participation, as well as to rest and leisure. Systematically unequal distribution of care work and household tasks between women and men also raises concerns in terms of the right to equality and non-discrimination and the obligations of States in that regard.

34. Human rights treaties require States parties to take measures to ensure unpaid care work does not hamper women’s equal enjoyment of the right to social security.³⁵ Thus, social insurance and social assistance programmes must take into account women’s unequal burden of unpaid care work.³⁶ For example, States must put in place social insurance schemes that take into account factors, including child-rearing periods, which prevent women from making equal contributions.

35. Under human rights law, States parties must ensure that women and men have an equal right to family benefits.³⁷ All women, including those working in the informal sector, should be granted paid maternity leave and benefits for an adequate period, and States must take steps, to the maximum of their available resources, to ensure that social security systems cover persons working in the informal economy.³⁸ According to ILO, only 28 per cent of women in employment worldwide are covered by maternity benefits.³⁹ ILO Recommendation 202 explicitly includes maternal benefits, which are vital, not only to promote equality in employment and occupation, but also in ensuring income security for pregnant women and mothers of newborn children and their families, and effective access to quality maternal health care. Without maternity protection, women’s right to health and the health of the newborn are compromised, as women are forced to work until the last days of their pregnancy and resume working soon after childbirth.

34 See report of the former Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, on unpaid care work and enjoyment of rights, A/68/293.

35 See article 3 of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women on the principle of equality between men and women, article 11 of the International Covenant on Economic, Social and Cultural Rights on the right to an adequate standard of living, article 11 of the Convention on the Elimination of All Forms of Discrimination against Women on women’s right to work and equal opportunities, article 10 of that Convention on women’s right to education, article 12 of that Convention on women’s right to health, article 13 of that Convention on women’s right to participate in recreational activities, sports and all aspects of cultural life.

36 See, e.g., A/68/293, paras. 48–53.

37 See e.g., Convention on the Elimination of All Forms of Discrimination against Women, art. 13 (a).

38 See, e.g., general comment No. 19, paras. 18, 19 and 34, and A/68/293, para. 53.

39 ILO, World Social Protection Report, p. 60.





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IV. Social protection floors and marginalized groups

36. While all persons should progressively be covered by social security systems, human rights law prescribes that priority should be accorded to the most disadvantaged and marginalized groups.⁴⁰ Human rights bodies have repeatedly called for the extension of social security guarantees to vulnerable and disadvantaged groups such as orphans and children with street connections,⁴¹ victims of trafficking,⁴² minorities⁴³ and internally displaced persons.⁴⁴ Accordingly, national social protection floors aim at guaranteeing income security and access to basic services throughout the life cycle, with particular attention to the most vulnerable and disadvantaged.⁴⁵

A. CHILDREN

37. Under the Convention on the Rights of the Child, States parties must promote and protect all children's rights including their economic, social and cultural rights including the right to social security (art. 26) and the right to an adequate standard of living (art. 27). A national social protection floor should fulfil basic income security for children in order to provide access to nutrition, education, care and any other necessary goods and services.⁴⁶

40 General comment No. 19, para. 23, and Guiding Principles on Extreme Poverty and Human Rights, adopted in Human Rights Council resolution 21/11.

41 See, e.g., Committee on the Rights of the Child, concluding observations on Andorra, CRC/C/AND/CO/2.

42 See, e.g., Committee on Economic, Social and Cultural Rights, concluding observations on Bosnia and Herzegovina, E/C.12/BIH/CO/2.

43 See, e.g., report of the independent expert on minority issues, Gay McDougall, mission to Rwanda, A/HRC/19/56/Add.1.

44 See, e.g., report of the representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, mission to Bosnia and Herzegovina, E/CN.4/2006/71/Add.4.

45 ILO Recommendation 202, para. 4.

46 *Ibid.*, para. 5 (b).

38. To maximize the impact on the enjoyment of rights, social protection policies should be child sensitive: addressing the unique social disadvantages, risks and vulnerabilities that children may be born into or acquire later in childhood owing to external circumstances.⁴⁷ Child-sensitive social protection also means reaching out to especially vulnerable groups of children, including orphaned children, children affected by HIV/AIDS, children with disabilities, migrant children, children from marginalized ethnic minorities and indigenous groups and other economically and socially excluded groups.⁴⁸

39. Cash transfers directed at families with small children have often contributed to the realization of children's right to health by increasing immunization, regular medical check-ups and reducing the risk of child mortality. According to evaluations of the Juntos scheme of Peru, that cash transfer programme conditional on prenatal and postnatal visits led to an increase of approximately 65 per cent in such visits to health clinics, and a reduction in home births in areas where there were high levels of maternal mortality.⁴⁹ Similarly, food transfers can be a valuable component of a broader approach to ensuring the right to food.⁵⁰ Old-age pensions also appear to have positive impacts on the lives of children.⁵¹ Some positive impacts in the enjoyment of the right to education have also been shown. For example, data compiled by the World Bank indicates that conditional cash transfers had positive effects on school enrolment and attendance, and that they occasionally helped to reduce the

gender gap in school enrolment.⁵² Social protection guarantees can also prevent and reduce child labour.⁵³ Evidence from Latin America suggests that greater access to unemployment and disability benefits directly reduces the prevalence of child labour.⁵⁴

B. OLDER PERSONS

40. Income security in old age was recognized as a fundamental human right by the Universal Declaration of Human Rights in 1948 (arts. 22 and 25). In its general comment No. 19, the Committee on Economic, Social and Cultural Rights explicitly notes that States cannot rely solely on contributory systems for old-age pensions, as many individuals work in the informal sector, as unpaid carers in the household, or are unable to meet the level of contributions required to obtain social security benefits. States must therefore consider the establishment of a non-contributory pension system (para. 15). States parties to the International Covenant on Economic, Social and Cultural Rights should, within the limits of available resources, provide non-contributory old-age benefits to assist, at the very least, all older persons who, when reaching the retirement age, are not entitled to an old-age insurance-based pension.

41. According to ILO Recommendation 202, national social protection floors should, among its minimum components, at least guarantee basic income security in old age (para. 5 (d)). By doing so, national social protection floors have the potential to help reduce older persons' vulnerabilities, enabling them to enjoy their rights.

42. Without income security, older persons, particularly older women, are at increased risk of seeing their rights violated. As the proportion of older women outnumbers that of older men, universal pension systems might be the most gender-

47 See Department for International Development, United Kingdom, HelpAge International, Hope and Homes for Children, Institute of Development Studies, ILO, Overseas Development Institute, Save the Children UK, United Nations Children's Fund (UNICEF), United Nations Development Programme (UNDP) and the World Bank, *Advancing Child-Sensitive Social Protection* (2009).

48 See, e.g., CRC/C/AND/CO/2 and A/HRC/11/9, paras. 73–83.

49 Armando Barrientos and Miguel Niño-Zarazúa, *The effects of non-contributory social transfers in developing countries: A Compendium* (ILO, Geneva, 2010), p. 9.

50 See Armando Barrientos, Rebecca Holmes and James Scott, *Social Assistance in Developing Countries Database* (Manchester, Brooks World Poverty Institute, The University of Manchester, and the Overseas Development Institute, 2006).

51 Mark Gorman, *Age and Security: How social pensions can deliver effective aid to poor older people and their families* (London, HelpAge International, 2004), p. 32.

52 Ariel Fiszbein and Norber Schady, "Conditional Cash Transfers: reducing present and future poverty", *World Bank Policy Research Report No. 47603* (2009), chap. V.

53 See ILO, *World Report on Child Labour: Economic vulnerability, social protection and the fight against child labour* (Geneva, 2013).

54 F.C. Rosati, A. Cigno and Z. Tzannatos, "Child Labor Handbook", *Social Protection Discussion Paper No. 0206* (Washington, D.C., World Bank, 2002).



sensitive response. Gender discrimination might limit the ability of women to influence decision-making processes and, as a result, exclude them from being beneficiaries of targeted pensions. In universal schemes, men and women receive the same level of benefits irrespective of their years in the formal labour market, thus recognizing the contributions women make in unpaid work such as caregiving. In developing countries, universal pensions may be the only means by which most women can guarantee income in old age.

43. Ensuring basic income security in old age is closely linked to programmes on the right to the highest attainable standard of health by older persons.⁵⁵ Expenses for health care and medicines

may account for as much as three quarters of the income of the poorest groups.⁵⁶ Under those circumstances, the positive impact of social protection guarantees on older persons' standards of living can be nullified by the burden of health-care-related costs.⁵⁷ For that reason, there should be coordination between programmes aiming to ensure basic income security and programmes aiming to ensure the right to health.

⁵⁵ See, e.g., thematic study on right to health of older persons of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, A/HRC/18/37.

⁵⁶ See J. Randel et al. (eds.), *The Ageing and Development Report: Poverty, independence and the world's older people* (HelpAge International, 1999).

⁵⁷ A/HRC/14/31, paras. 90–94.

C. PERSONS WITH DISABILITIES

44. The principle of non-discrimination in international human rights law obliges States to ensure that persons with disabilities enjoy all their rights on an equal basis with others, including their rights to social security and an adequate standard of living. The Convention on the Rights of Persons with Disabilities requires States parties to ensure access of persons with disabilities to social protection and poverty reduction programmes, and the right of those living in poverty and their families to have access to assistance from the State with disability-related expenses (art. 28).⁵⁸

45. The Committee on Economic, Social and Cultural Rights has specified the content of the right to social security regarding persons with disabilities. It has noted that States should ensure adequate income support to persons with disabilities who, owing to disability or disability-related factors, have lost or seen their income reduced or have been denied employment opportunities.⁵⁹ It noted that such income support should reflect the special needs for assistance associated with disability and should also cover individuals, often women, who undertake the care of persons with disabilities.⁶⁰



⁵⁸ Regional treaties, such as the African Charter on Human and Peoples' Rights (art. 18, para. 4) and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (art. 18) have specific clauses regarding the rights of persons with disabilities.

⁵⁹ Committee on Economic, Social and Cultural Rights, general comment No. 5 (1994) on persons with disabilities, para. 28.

⁶⁰ *Ibid.*, para. 28.



46. The Committee on the Elimination of Discrimination against Women has noted that States parties must take special measures to ensure that women with disabilities have equal access to health services and social security.⁶¹ Human rights bodies have further called on States to undertake studies and research in order to identify the situation and specific requirements in particular of women with disabilities, with a view to elaborating and adopting social protection strategies to promote their autonomy and full participation in society, and to combat violence against women.⁶²

47. National social protection floors aiming at the inclusion and participation of persons with disabilities could play a critical role in enabling States to comply with their obligations regarding the rights of persons with disabilities. In 87 countries, non-contributory benefits for persons with disabilities enable them to have a minimum level of income security.⁶³

61 *Committee on the Elimination of Discrimination against Women, general recommendation No. 18 (1991) on disabled women.*

62 *See, for example, Committee on the Rights of Persons with Disabilities, concluding observations on Tunisia, CRPD/C/TUN/CO/1, and Spain, CRPD/C/ESP/CO/1.*

63 *ILO, World Social Protection Report, p. xxiii.*

D. INFORMAL WORKERS

48. People working in the informal sector of the economy often lack social protection and, as noted above, that affects women in particular. Traditionally, States have privileged the establishment of contributory systems with the objective of achieving universal coverage of the formal sector.

49. Human rights treaty bodies have called upon States parties to take effective measures to ensure that informal workers are able to exercise their labour rights and their right to social security without discrimination.⁶⁴ Obligations to extend social security to informal workers are in line with the objective of ILO Recommendation 202. Social security systems and their components should be universal, based on social solidarity, aiming at social inclusion, including persons in the informal economy.⁶⁵

E. NON-NATIONALS

50. Under international human rights law, States should progressively ensure all economic, social and cultural rights including the right to social security, for all individuals within their territories, providing specific protection for disadvantaged and vulnerable individuals and groups.⁶⁶ The International Convention on the Protection and Rights of All Migrant Workers and Members of Their Families regulates the rights of migrant workers and members of their families including the rights to social security (art. 27), health (art. 28) and education (art. 30). Migrant workers also enjoy all the rights contained under other human

64 See, e.g., Committee on the Economic, Social and Cultural Rights, concluding observations on Paraguay, E/C.12/PRY/CO/3; Committee on the Elimination of Discrimination against Women, concluding observations on Bosnia and Herzegovina, CEDAW/C/BIH/CO/4-5, and on Djibouti, CEDAW/C/DJI/CO/1-3. The Guiding Principles on Extreme Poverty and Human Rights explicitly call on States to “take specific measures to ensure that persons living in poverty, in particular women and those working in the informal economy, have access to social security benefits, including social pensions, which are sufficient to ensure an adequate standard of living and access to health care for them and their families” (principle 86 (c)).

65 See ILO, *Social Security for All*, p. 4.

66 General comment No. 19, para. 31.



rights instruments. Those obligations extend to documented and undocumented migrants, refugees and asylum seekers.⁶⁷

51. Refugees and asylum seekers require protective measures.⁶⁸ Additionally, States parties to the Convention relating to the Status of Refugees, with few exceptions, must accord refugees the same treatment as nationals with regard to social security guarantees (art. 24). The Committee on Economic, Social and Cultural Rights, in its general comment No. 14 (2000) on the right to health, has noted that States should ensure equal access for all persons, including asylum seekers and undocumented migrants, to preventive, curative and palliative health services (para. 34).

52. At the domestic level, there have been landmark decisions extending social security guarantees to non-nationals. For example, the Constitutional Court of South Africa and the Federal Constitutional Court of Germany have emphasized that the principle of non-discrimination applies to the enjoyment of the right to social security by migrants and asylum seekers.⁶⁹ In interpreting the European Social Charter, the European Committee of Social Rights has consistently found national practices that exclude non-nationals — particularly through residency and qualifying period requirements — to violate the rights to social security and social assistance.⁷⁰

53. ILO Recommendation 202 affirms that, subject to their existing international obligations, States should provide the basic social security guarantees to at least all residents and children (para. 6). The reference to “existing international obligations” is critical as States parties to human rights treaties such as the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child or the Convention on the Rights of Persons with Disabilities are obliged to extend the social protection floor without distinction of any kind to everyone within the territory or under their jurisdiction. Any differentiation in treatment between legally recognized residents and others must comply with the principle of non-discrimination (e.g. art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights). Hence, if a State seeks to distinguish between legal residents and others in the enjoyment of the right to social security, the differentiation must be reasonable, proportional, objective and with a legitimate aim.⁷¹

67 See, e.g., report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, on migrant workers’ right to health A/HRC/23/41.

68 See, for example, Committee on Economic, Social and Cultural Rights, concluding observations on Germany, E/1999/22, paras. 316 and 327; on Sweden, E/1996/22, para. 137; and on Denmark, E/2000/22, paras. 99 and 105.

69 See *Khosa and Others v. Minister of Social Development and Mahlaule and another v. Minister of Social Development*, 2004 (6) BCLR 569 (CC), and German Federal Constitutional Court, Press Office, “Provisions governing cash benefits provided for in the Asylum Seekers Benefits Act held unconstitutional”, press release No. 56/2012 of 18 July 2012.

70 Conclusions on the application by Luxembourg of the European Social Charter, in particular article 13, paragraph 4.

71 See Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights).



V. Conclusions

54. Social protection floors have great potential in facilitating the enjoyment of several economic and social, including the rights to social security, health, food, housing, education and water, in accordance with the obligations of States under international human rights law. As described above, when used as a floor and not a ceiling for protection, social protection floors can contribute significantly to gender equality and the realization of minimum essential levels of the rights to social security, food, health and education, especially for marginalized groups.

55. Human rights norms and social protection floors complement each other. The success of national social protection floors in achieving gender equality, respect for the minimum core of economic, social and cultural rights and protecting marginalized groups, such as children, older persons, persons with disabilities, informal workers and non-nationals, will depend on whether they are

established and implemented according to human rights standards and principles.

56. The Social Protection Floor Initiative offers relevant policy guidance to put in practice several human rights obligations, including the realization of comprehensive social security systems. The Secretary-General therefore encourages States to consider putting in place comprehensive social protection systems and social protection floors that will contribute to the enjoyment and realization of human rights at national level.

