

The Right to Social Security in Development: Rights and Realities – *Background Note*

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1. Background

If we turn back the clock a hundred years, we would witness social security systems beginning to spread across countries in the West, both poor and rich. A cocktail of demographic crises, labour and maternalist movements and recessionary shocks in the late 19th and early 20th centuries helped propel in different and paradoxical ways the early development of such systems. For instance, between 1911 and 1919, Norway, together with forty states in the United States, introduced cash benefits to single and widowed mothers. In 1883, Germany introduced social insurance for workers and three weeks maternity leave for working mothers (Larsen, 1996).

The right to social security was included in a significant number of constitutions drafted in the aftermath of World War I and newly established the Western-dominated International Labour Organisations began adopting social security conventions from 1926. This culminated in Social Security (Minimum Standards) Convention 102 (1952), whereby ratifying States must choose, at a minimum, three of the nine pillars of social security for implementation. While the level and coverage of social security benefits varies consid-

erably between Western countries, by the early 1970s, Gauthier (2002/3) calculates that direct and indirect cash benefits for families, one of the pillars of social security, had stabilised at 11 per cent of average earnings in 22 OECD countries and gradually grew to 13 per cent by the mid-1990s.

If we turn to the South, the difference could not be starker. The development of social security systems that would conform with ILO Convention 102 of 1952 has been minimal. Most developing countries have only established or facilitated schemes for those working in the formal public and private sectors, usually a minority of the workforce. According to the ILO, the result is that only one in five persons have access to formal social security systems (Cichon and Hagemeyer, 2006). For child benefits, a 1999 survey of 57 non-OECD countries revealed that only four countries recorded supporting family allowances (Roddis and Tzannatos, 1999).

Therefore, the kitchen cupboard of social security looks pretty bare after sixty years of international development. Townsend (2008) argues that today's developing countries have progressed more slowly in the field of social security than even the United States at comparative points in economic development. By 2005, the World Bank provided only ten per cent of loans for broadly defined social protection of which social security is just one element (Hall, 2007). Amongst bilateral donors, few have provided any sustained support. The most concerted international initiative in the field of social security was the World Bank push for privatisation of pension

schemes in the 1990s until a few years ago. But the results have not been looked on favourably by the World Bank's own evaluators, the UN Committee on Economic, Social and Cultural Rights or the ILO. In the case of the International Monetary Fund, the focus has principally been on preventing debtor governments from maintaining or increasing levels of social spending. In the current economic crisis, the IMF, in a more Keynesian tone, has accepted that social security systems can be important economic stabilisers (IMF, 2009) but its approach in practice has only partly changed (Stiglitz Commission, 2009; Ekeberg, 2009).

The conspicuous absence of social security is most evident in the Millennium Development Goals, which arguably represent a consensus on development priorities, particularly amongst bilateral and multilateral development agencies. Search as one might, there is no target for progress on social security. Moreover, it rarely features in the accompanying guidance literature on reaching Target 1 on income poverty and hunger for example— see UNDP's *Human Development Report 2003* and UN Millennium Project Task Force on Hunger (2005).

2. Renaissance for the South?

Against the backdrop, there has been a sudden upsurge of interest in social security, or 'social protection' in the last five years amongst many stakeholder groups. It has even managed to obtain the epithet of 'fashionable' in 2009 within the international development community.

There are a range of reasons for this interest. The first is the persistence of income poverty in developing countries despite high levels of economic growth. For instance, Son and Kakwani (2006) demonstrated that in 237 spells or periods of economic growth amongst 80 developing countries, only 23 per cent of them led to pro-poor outcomes in income poverty (i.e., the average increase in

income for the poorest deciles was higher than average). This suggests that redistribution, and not just growth of average income, plays a critical role in reducing poverty. This conclusion is largely buttressed by transatlantic econometric studies of North America and Europe. Brady (2005: 1) concludes that "substantial, even dramatic, differences exist across rich Western democracies" due to the respective size of the social welfare state. Other studies indicate that initial high levels of income equality are important for ensuring that future growth is pro-poor (World Bank, 2006).

Second, a number of Southern countries have managed to develop social security and cash transfer schemes or programmes despite assumptions that they lack the financial capacity and administrative competence. This includes the *unconditional* schemes such as South Africa's child, disability and old age grants and India's and Brazil's old age pension system. It also includes *conditional* cash transfer programmes. Mexico's *Progresa* and Brazil's *Bolsa Familia* programmes, which condition grants to children on mothers meeting various conditions, such as school attendance and health check-ups for children, are the most well known. India's Rural Employment Guarantee Act also provides the right to 100 days of income is provided each year if basic employment cannot be provided by the State. Evaluations of these programmes have demonstrated that they have had a direct impact in reducing poverty with some multiplier and knock-on effects in other areas (Aguero, Carter and Woolard, 2007; Fizbein and Schady, 2009; Medeiros, Britto and Soares, 2008); Villanger, 2008 and Ravillion, 2007).

Third, human rights advocates and international agencies have been highlighting that social security is a human right and deserves priority in policy setting and budgetary allocation. Along with the right to equal treatment, the right to social security is actually

the only right to be mentioned twice in the Universal Declaration on Human Rights (see articles 22 and 25). A series of subsequent internationalⁱ and regionalⁱⁱ human rights conventions provide further recognition with Article 9 of the International Convention on Economic, Social and Cultural Rights 1966 (ICESCR), ratified by 160 states, providing that “The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance”. This has been complemented by a number of ILO treaties from the 1960s to 1990s covering discrimination in social security, such as C118 Equality of Treatment (Social Security Convention, 1962) and specific conventions on migrant workers and workers with family responsibilities.ⁱⁱⁱ

More substantive interest in the content and use of the right came much later. The lack of coverage in the South by the 1990s began to prompt the ILO, for instance, to look further afield for legal principles and arguments. The ICESCR has been ratified by many more states than ILO Convention 102 and some ILO staff such as Van Ginnekin (2003) made the claim that “This situation of low coverage reflects a failure by governments by countries and the international community to meet their obligations under Article 9 [of the ICESCR]”. In the 2001 tripartite General Conference of the International Labour Organization, the final resolution begins by referring to the original vision of the ILO Constitution, namely the “extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care” and simultaneously affirmed social security as a “basic human right”. In January 2008, the UN Committee on Economic, Social and Cultural Rights adopted General Comment No. 19 on the right to social security which sought to provide an authoritative and more comprehensive definition of the right to social security. In 2008, the UN Human Rights Council also appointed a new Independent Expert on Human Rights and Extreme Poverty

who has placed a focus on cash transfers. Many national constitutions contain the right to social security but the extent to which right to social security has been foregrounded in say civil society or parliamentary campaigns has been limited. There are, however, some key exceptions such as India and South Africa amongst others.

The fourth and latest drive has been the global financial crisis which has exposed the social security lacuna. Beginning with the massive rise in food prices, 2008 ended with a meltdown in financial markets and contraction of the real economic activity in most but not all countries. Beyond increasing poverty and the need for social security the crisis impacted the right to social security in other ways. The cost of basic goods rose, social security funds obtained lower returns on investments, while rising unemployment placed greater demand on social security programmes at a time when government revenues were declining. However, most of all the crisis has helped usher in a greater acceptability of macro-expansionist policies in cyclical downturns, with social benefits obviously being one of the most effective weapons in this regard. In April 2009, the G20 agreed to provide 5 per cent of the 1 trillion G20 global stimulus to support social protection, boost trade and safeguard development in low income countries. Earlier in the year the World Bank announced increased loans to the area while the ILO received additional grants from donors for social protection.

3. Right to Social Security

This conference takes its point of departure in the human right to social security and asks how it impacts various questions and debates on extending the coverage and designing social security systems in the South. Before describing briefly the background to the key questions for the conference, is useful to first ask what we mean by the right and how it might relate to other fields such as economics and politics.

Let us look at the definitions provided in General Comment No. 19 on the Right to Social Security).^{iv} The right to social security is said to include contributory and non-contributory schemes under the umbrella of social security and it contains a strong focus on ensuring an adequate level of protection against social risks and contingencies.^v The Committee partly adopts the ILO approach in defining the 'supply side' of social security as set out in ILO Convention 102 – a system must be established and supervised by the State and the nine classical benefits should be available. However, the Committee avoids a quantitative approach to accessibility but instead relies on its standard jurisprudential principles in this area. Benefits should thus be 'adequate' – loosely linked to an adequate standard of living – coverage should be 'universal'.

These absolute demands are tempered by the imperfect duties which States have under the ICESCR to only take steps towards this end within maximum available resources. This graduated obligation is reflected in the Committee's regular periodic reviews of state's performance. For example, in its concluding observations, the Committee has taken notice of the resources a country in making recommendations to states on the right to social security. To a wealthy state like Canada, the UN CESCR (2006) urged the establishment of social assistance at levels which ensure the realization of an adequate standard of living for all and interrogated the State very closely on its existing social security schemes. For countries in transition, such as Russia, the Committee required 'the raising of minimum pension levels' (UN CESCR, 2003: par. 50) and criticised Georgia for failing to meet the minimum (UN CESCR, 2002). In Senegal, the UN CESCR (2001) only urged the country 'to allocate more funds for its 20/20 Initiative, designed as a basic social safety net for the disadvantaged and marginalized groups of society', though it is arguable that it could have required much more of

Senegal given ILO research (Gassmann and Behrendt, 2006).

In General Comment No. 19, provided *some* guidance on what it considered to be a minimum core obligation. States are required:

To ensure access to a social security scheme that provides a minimum essential level of benefits to 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. If a State party cannot provide this minimum level for all risks and contingencies within its maximum available resources, the Committee recommends that the State party, after a wide process of consultation, select a core group of social risks and contingencies.

The Committee also spends much time emphasising the importance of eliminating discrimination in social security and establishing effective mechanisms for monitoring and accountability.

What is the possible relevance of this in practice and to other disciplines outside the law? For economics, Seymour and Pincus (2008), mount the argument that human rights and economics are not in timeless conflict but are instead complementary fields with different epistemological foundations. Their approach posits that human rights provides the normative standards while economics provides the tools for choice-making and trade-offs within it. Thus economic tools are still highly relevant but Pareto equilibrium is bounded by some restraints on distributional outcomes and policy design.

For politics, a right to social security as contained in international or national law or political demands from constituencies potentially represents some sort of break from pure majoritarian politics, which is of particular importance when the right may only be of relevance to lower income and/or marginalised groups. It may also represent an important mobilisation tool for such constituencies.

In some countries, the right to social security has been successfully upheld by courts in particular cases, forcing governments to take some heed of the right (Langford, 2008).

4. Some Key Questions

While it is clear that social protection is climbing up the priorities of the development ladder, there are many outstanding questions.

1. How could national conditions be fostered to support development of social security schemes? How does one address economic and political obstacles? Would human rights approaches help in this regard?
2. Is the international architecture for social security effective in terms of standards, finance, campaigns and accountability?
3. Is an emerging preference for conditionalities and tightly targeted schemes consistent with human rights or simply an acknowledgement of realities on the ground?

There are also obviously other key issues around implementation and these may affect conclusions on each matter.

5. Fostering National Conditions

The biggest conceptual barrier to the introduction of social security systems in the South has been the widespread assumption that States cannot afford them. In the human rights context, this assumption requires proof. The general test is that a State must use its “maximum available resources” for economic, social and cultural rights, and is contained in international human rights treaties such as ICESCR and CRC and a number of constitutions in Southern countries.^{vi}

Moreover, there is ever-growing empirical research demonstrating that almost all countries can afford a basic social security system (see Gassmann and Behrendt, 2006; and Mizunoya Behrendt, Pal, and Léger, 2006). The

ILO is now recommending that the core content of the right to social security consist of access to basic health care, a system of family benefits that combats child labour and helps children go to school, a system of targeted basic can transfer programmes and a system of universal pensions for old age, invalidity and survivorship (ILO, 2006: 34).

However, this research suggests that for some countries, eg. Nepal, Tanzania and Bangladesh, that the proposed basic benefits at the modeled level may not be currently affordable within *domestic recourses*. For Nepal, the total cost of the proposed overall basic social security package was actually 17 per cent of GDP due to the high health care costs and the ILO authors considered this unaffordable. However, when a senior Bangladesh official was questioned on this ILO study at an OHCHR-UNICEF workshop in 2008, he replied that the grants were affordable and that it was only a matter of political will.

However, one is immediately struck by the inconsistencies of this ILO study with the International Poverty Centre (IPC) study by Kakwani, Soares and Son (2005). In one simulation, they test the cost to GDP of a universal child benefit calculated respectively at 20, 30 and 40 per cent of the national poverty line – see Table 3. This allows some comparison with the ILO study since the proposed benefits were not dissimilar for overlapping countries. What is immediately noticeable from the IPC study is that for 20 per cent of the national poverty line all the figures are considerably above the ILO results. One possible explanation is that the ILO studies use the 2006 level of GDP while Kakwani, Soares and Son (2005) appear to use much earlier GDP figures. But this suggests that more work is needed on costing schemes in different countries.

These studies also suggest that remarkable reductions of poverty would occur through provision of social security (Gassmann and

Behrendt, 2006) and would provide stimulation of economic growth in remote rural areas and the informal economy as has occurred in South Africa and Brazil. Zapada (2007). One study seeking to comparatively evaluate the direct income poverty impact of child grants in comparison with an alternative, a job creation programme, in Kenya finds similar impacts for both on poverty headcounts, severity and depth but that the job creation programme had a higher impact on depth and severity on urban poverty. Of course, this model rests on a number of assumptions Zapada acknowledges that a job creation programme is more administratively demanding.

Beyond economic conditions, there are outstanding debates on what sort of politics fosters the necessary conditions for movement on social security. The Chronic Poverty Centre notes the contradictory evidence in this regard:

However, effective social protection policies not only require good technical analysis, they require a supportive domestic political environment for their initiation, expansion and financing. In many countries social protection has been introduced by dominant political parties, with a key role played by 'executive champions', rather than being the result of civil society lobbying. Programmes have often been seen as a component of nation-building, rather than part of donors' concern with poverty reduction. Providing sound technical advice to political parties and 'executive champions' is thus a key activity – and it needs to be linked to domestic debates about ideology and national goals. Often, it is claimed that economic elites and the middle class will oppose social protection because they fear it will lead to dependency and tax increases. However, most of the interventions examined in this report met no significant resistance during their initiation. Over time, they often prompted the evolution of political constituencies broadly supportive of social protection.

This conclusion would conform with the South African experience, for example, where

a government-driven programme has been expanded to migrants, older children and HIV victims after pressure and litigation by civil society. But should efforts to support the development of a politics of social security follow such historical observations and what sort of formations and arguments should be advanced in different countries?

6. International Architecture

The ILO has launched a campaign on extending social security and the organisation seems to be slowly moving forward on bringing some other international actors and agencies on board. However, there seems to be some key questions that should be considered:

First, do we need a new international legal standard (treaty, recommendation or declaration) on a minimum level of social security for all? ILO Convention 102 mentions the provision of social assistance but it is oft-forgotten and an under-prioritised part of the treaty with little normative guidance. While there are dangers in possibly over-promoting a minimum core and thus under-selling the duty of progressive realisation), the stark reality of social security coverage suggests a need for some legal guidance in this area, in particular when less than a quarter of the countries in the world have ratified Convention 102. General Comment No. 19 provides some guidance but the interpretive and jurisprudential nature of its approach means it does not provide hard and clear guidelines which could be provided by a State-driven standard.

Second, linked to this question is the concern of accountability. Could a new standard provide new mechanisms of accountability for states who are not complying with human rights obligations? An alternative or complementary approach is the MDG framework. Thus, should a new MDG target be added on social security in 2015 or even 2010? There are of course mixed views on the design and success of the Millennium Development

Goals (OHCHR, 2008) but the framework has arguably proven effective in giving greater visibility for issues which have been otherwise under-recognised in international development, e.g., maternal mortality and sanitation, and the MDGs have also helped spur increased funding to the health and education sectors. Thus adding a social security target to one of the goals in 2010 could provide a ripple effect at the international and national level. But there are questions over what sort of target and what sort of process to get there?

A third question is whether greater incentives are needed at the international level, and whether this could be done in the form of trust funds or other global mechanisms that could match funding for example and provide technical and smoothing support. And lastly, the role of the international community, particularly the international financial institutions, in Poverty Reduction Strategies should be considered. Recent reviews of these documents suggest that they don't even comply with the MDG framework in terms of prioritisation, let alone prioritize a human rights framework.

7. System Design Debates

The emerging proposals and programmes on social security are not uniform in design. They can be crudely distinguished by different policy constellations amongst development economists and institutions, increasingly backed by development aid. One school of thought is largely represented by the International Labour Organisation and HelpAge International (Cichon and Hagemeyer, 2006; Kulke, 2007; Stefanoni, 2008) although World Bank economists such as Ravillion (2007) are sympathetic to some arguments. The two organisations have called for a Global Social Security Floor on the basis of *both* human rights and economics. They not only prefer a fiscal space approach to affordability but often reveal a preference for universal and unconditional schemes.

The other school of thought is perhaps best represented by current World Bank policy and a range of economists associated with the Latin American schemes which has now developed to embrace *conditional cash transfer programmes*. Fizbein and Schady (2009) for the World Bank found that "there is solid evidence of their positive impacts in reducing short-term poverty and increasing the use of education of health services".

How should these questions of targeting and conditionality be tackled from both human rights and instrumental perspectives? We find both conflicting views and evidence. There are well-known but often under-mentioned theoretical economic arguments *against* targeting – administration costs are usually higher, there are high levels of under-inclusion of the poor and work disincentives and false reporting can flourish if current beneficiaries seek to avoid going over the qualifying income threshold. These elements emerge in evaluations of some schemes. World Bank economist Ravillion (2007) found in a review of social protection programmes in 35 Chinese cities that the coverage of and impact on the poor was not related to the degree of targeting. Kakwani, Soares and Son's (2005) found that the impact on poverty from the use of 0.5 per cent of GDP for child grants in sub-Saharan Africa had roughly the same impact on poverty regardless of whether a universal or targeted child grants scheme was used. In South Africa in January 2009, the Social Development Minister actually urged indigent parents to apply for child support grants due to the high numbers of potential beneficiaries not included on the potential indigent register, a common problem with targeting.

If we turn to human rights scholarship and jurisprudence, we can actually find support for targeting if resources are not available for broad-based schemes or it is a way to promote substantive equality (UN CESCR, 1991, and 2009). Or to political science, both uni-

versal and targeted schemes are promoted as being palatable to electorates and sustainable over the long-run. Universal scheme advocates assert that the 'non-poor' will support them as co-beneficiaries, while those in favour of targeted schemes point to the palatability of lower consumption of fiscal resources and perceived efficiency of directly addressing a social problem.

These intra-disciplinary conflicts means that if we are concerned with child grants in particularly poor countries, one needs some clear and possibly open approach universal vs. targeted schemes. Moreover, it is in such countries that the arguments can move to their extremes. For instance, resources are highly limited but the conditions for targeting are the most challenging - administration is difficult and close-knit communities may be reluctant to divide themselves on income grounds. There are also policy variants in between strict universal and targeting approaches such as geographical targeting, broad targeting or 'loosely enforced' targeting which can be considered. Each country is obviously characterised differently in terms of the number of poor, available resources and bureaucratic efficiency. It is thus important to examine the affordability of both universal and targeted schemes.

In the case of conditionalities, we might find that the human rights arguments are possibly stronger than economic considerations. Emerging economic evidence indicate that unconditional schemes tend to have a similar impact on poverty, nutrition, school attendance (Aguero, Carter and Woolard, 2007). However, it is a contested field and evaluations are ongoing. One possible case to be considered for conditionalities is where school attendance for girls is unlikely to rise with an unconditional grant in *some* countries such as Pakistan (Chaudhury and Parajuli 2006). However, other research from Pakistan has indicated there was not a significant change and that other factors such as school

availability and quality are more important ((Mukhtar 2007; Lyod 2007).

From the human rights side, conditionalities are seen as highly problematic since they make a basic right dependent on other behaviour which defeats the purpose of a right - some even label conditionalities a straight out violation of the right to social security. Others note that placing the responsibility on women to carry out the conditionalities can be disempowering even if they receive the benefit on behalf of the child (Bradshaw and Quirós Viquez, 2008).

Therefore, with inconclusive economic arguments and stronger human rights concerns, one may be more likely to come to a conclusion that human rights should prevail and conditionalities should not be used if a scheme is meant to provide a human right. That does not end the story though. The strongest arguments for conditionalities are actually political, they are easier to sell to sceptical middle classes. In these cases, should human rights trump politics?

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ⁱ See also International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), article 5 (e) (iv); Convention on the Elimination of All Forms of Discrimination against Women, articles 11, para. 1 (e) and 14, para. 2 (c);

ⁱⁱ See also American Declaration of the Rights and Duties of Man, article XVI; Additional Protocol to the American Convention on Human Rights in the Area of Economic Social and Cultural Rights (Protocol of San Salvador), article 9; European Social Charter (and 1996 revised version), articles 12, 13 and 14.

ⁱⁱⁱ See for example,; C143 Migrant Workers (Supplementary Provisions) Convention, 1975; C156 Workers with Family Responsibilities Convention, 1981

^{iv} Thirty-ninth session, 5-23 November 2000, 7UN doc. E/C.12/GC/19, 4 February 2008

^v Broader issues of social protection and social services beyond the identified risk and contingencies are dealt with under other rights: see para. 12.

^{vi} Interestingly, regional human rights bodies have affirmed the principle in the European Social Charter and African Charter on Human and Peoples' Rights even though both instruments do not allow States to explicitly rely on such a defence. See *SERAC v. Nigeria*, African Commission on Human Rights, Case No. 155/96, Decision made at 30th Ordinary Session, Banjul, The Gambia, from 13th to 27th October 2001; Complaint No. 13/2002, *Autism-Europe v. France*, Decision on the Merits (European Committee on Social Rights).