

Right to Social Security in Development
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Working Group 3: Policy Design and Human Rights
Can we resolve the debate over conditionalities and narrow targeting?

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This input will limit itself to social transfers which have as their objective to guarantee a minimum income.¹

The rights to social security and the right to an adequate standard of living are human rights. Under ICESCR art.2.1 states take steps to the maximum of available resources to achieve progressively the full realisation of these rights.

Full realisation of these rights requires a full set of programmes being in place, which meet certain criteria.

Progressive implementation (progressivity) to the maximum of available resources describes a “corridor of sequential steps and programmes” leading as soon as possible to full realisation.

Human rights so far have not sufficiently been taking into consideration by governments in designing such programmes. This is to some extent also the result of lack of attention by the human rights community to these issues. Magdalena Sepúlveda, the UN independent expert on extreme poverty, has been doing pioneering work on this issue with her first report.

In discussing the matter, the criteria for full realisation and the criteria for the corridor of progressivity should be carefully distinguished. This could help avoid confusion and unnecessary debate. The input will first deal with full realisation (the aim) and then with progressive realisation (the corridor leading to full realisation)

1. Criteria for full realisation

The following three criteria have to be met for the set of programmes fully realizing the right to a minimum income transfer:

- (i) Completeness
(the set guarantees a minimum income for everybody)
- (ii) Sufficiency
(the minimum income is sufficient for minimum consumption)
- (iii) Justiciability
(exclusion from programmes or their malfunctioning can be successfully addressed in court).

There are two immediate conclusions from these principles.

- a) The minimum income programme under full realisation must be unconditional

This is so because conditionalities ultimately create exclusion, in breach of (i). It should be noted that the right to an adequate standard of living in ICESCR 11 is unconditional.

¹ Cf. Künnemann, Leonhard / A human rights view of social cash transfers for achieving the millennium development goals, eed, Brot für die Welt, Bonn, Stuttgart, 2008, and Künnemann / Basic Food Income, FIAN International, Heidelberg 2005

b) The core content of the adequate standard of living has to be provided by a transfer without selection. This implies that a universal basic income sufficient to guarantee such core content is obligatory.

This is so, because a person which suffers violations in the context of a selective minimum income programme (exclusion, or deficiencies in service) has a right to remedy. This right cannot be exercised unless a core content of the right to an adequate standard of living is guaranteed (“survival kit”) through transfers which minimize possibilities of error by excluding selection errors. Excluding selection errors requires excluding selection. For this matter the programme has to be universal. The level of the survival kit may be lower than the level of minimum income. In this situation a basic “survival” income would have to be supplemented by a selective minimum income programme.

It should be noted in this context that programmes which use selection prior to transfer payment are often called “targeted programmes”. Targeting, however, by definition means making sure that a person in the target group gets (much) more of the transfers than a person outside the target group. Targeting cannot only be achieved through selection, but also through a proper design of the taxes which finance the transfer. The real issue, of course, is the “net transfer” to the person, i.e. the transfer minus the taxes paid by this person to finance the programme. If a person pays more taxes for the programme than the amount of transfer received, the person receives a negative net transfer, i.e. the person contributes to financing other persons’ positive transfers. Universal basic income systems rely on this very elegant method which avoids selection but still achieves targeting. These systems claw back the money from people outside the target group through taxes after payment.²

It is necessary in universal basic income programmes to distinguish between cost and expenditure. Besides the administrative cost for running the programme, one might count the transfer volume (i.e. the sum of positive net transfers) as cost. This should be distinguished from expenditures, which is the money leaving the government coffers under the programme. While expenditures in basic income programmes can be much higher than in comparable selective programmes, costs are not: The clawback through taxes has to be subtracted from expenditure to arrive at the transfer volume, and if clawback is properly designed transfer volume can even be lower than in selective programmes with the same target group, while still guaranteeing the same minimum income. This distinction of cost and expenditure is of great political importance when discussing the feasibility of universal programmes.

2. Progressive implementation and possible criteria

Why is the full realisation not introduced immediately? The constraints for doing so can be lack of resources in the “material economy” and in the “political economy”: While resources in the material economy refer to the financial capacity of the country, the “political economy” refers to a situation where the acceptance in the population for universal programmes might still be low, so that more promotional work is necessary to build a human rights culture so that the objectives of full realisation are shared.

This observation does not relieve a government from its obligations to introduce full realisation as quickly as possible. It can, however, be used to discuss criteria for progressive implementation. Putting the priority on the most vulnerable groups would be one of them.

² Cf. Künnemann 2005, op.cit

Brazil in 2004 passed a law on the progressive implementation of basic income, starting with the most vulnerable groups. This would be in line with human rights, if bolsa familia was seen as a first step in this direction. Unfortunately bolsa familia (as other conditional programmes) is seen as a multipurpose programme: It is not only thought of as a minimum income programme, but it is also meant to provide an incentive to create demand for certain government services (and even to help identifying supply side constraints of these services). Such programmes are meant to “kill to birds with the same stone”. Doing such a trick is difficult – as we all know. If the enforcement of conditionalities is very low, a conditionality may approximate a minimum income programme, but as long as conditionalities lead to exclusion such a programme cannot qualify as a minimum income programme suitable for full realisation of human rights. Financial incentives could be given in addition to minimum income programmes, but must not create a condition to access them.

Whereas it is probably true that conditionalities provide “incentives” to take up state services (although empirical evidence is low), the argument that conditionalities help to identify areas with lacking schools or health posts is not convincing: It would mean that such constraints are identified, because people cannot use them to satisfy conditionalities, and that administration would be looking for such constraints, because people claim they cannot satisfy the conditionalities. Local administration should be assumed to know beforehand where the schools and health posts in its area are, and where access to these services creates a problem.

Sometimes it is said that the element of reciprocity introduced by conditionalities into a transfer programme increases the acceptance of this programme and that minimum income programmes are better introduced by stealth rather than by big bang. This argument carries some water, but it reinforces attitudes in the population which contradict human rights culture. Reciprocity is fine, but not in human rights contexts, or at least not when it comes to the core content of a human right, such as the fundamental human right to freedom from hunger. Human rights are birth rights of human beings, and are not acquired through reciprocity.

Further work is necessary on defining criteria for progressive implementation. Here are some requirements to be considered: For low income countries which have no minimum income programmes, such transfer programmes should be introduced immediately, for example of the Otjivero/Namibia type. The level can be low, but everybody has to be reached. The finances necessary to cover the cost is obligatory for the states (with some support from the international community). Not providing sufficient funds must be seen as a violation of human rights. Even in the period while budgets are restructured to provide sufficient funds and funds are still insufficient for the required basic income programme at active survival level, the insufficient funds already budgeted should be used to introduce a programme with community based selection of the ultra-poor, rather than categorically universal programmes missing out on many of the ultra-poor. The structures for selection should be light so that they can be dismantled easily (or redirected to other programmes), once the basic income programme is introduced.

For middle income countries which run minimum income programmes the following steps are required:

- (i) They should remove conditionalities, should these exist.
- (ii) They should make these programmes justiciable.
- (iii) They should introduce a universal basic income programme at the active survival level covering the core content of the rights to social security and to an adequate standard of living.