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EXCELLENCE IN SOCIAL SECURITY

International Legal Framework on the Right to Social Security

Jung Rin Kim, Human Rights Officer

Office of the UN High Commissioner for Human Rights (OHCHR)

Geneva, Switzerland

**IEN Technical Seminar: Social security and human rights –
Ensuring access and combatting the non-take-up of social benefits**

8–9 June 2023, Belval, Luxembourg



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International HR Framework on the Right to Social Security

Universal Declaration of Human Rights (UDHR, 1948)

International Covenant on Economic, Social and Cultural Rights (§9,10)

ILO Social Security (Minimum Standards) Convention No. 102

- **The International Convention on the Elimination of Racial Discrimination (§5(e)(iv))**
- **The Convention on the Elimination of All forms of Discrimination against Women (§11)**
- **The Convention on the Rights of the Child (§26)**
- **The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (§27)**
- **The Convention on the Rights of Persons with Disabilities (§28)**

Universal Declaration of Human Rights (UDHR, 1948)

- **Everyone**, as a member of society, has **the right to social security** and is entitled to realization, **through national effort and international cooperation** and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality. (art. 22)
- **Everyone has the right to a standard of living adequate** for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and **the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.** (art. 25(1))
- **Motherhood and childhood are entitled to special care and assistance.** All children, whether born in or out of wedlock, shall enjoy the same social protection. (art. 25(2))

International Covenant on Economic, Social and Cultural Rights (ICESCR)

- Art.9: The States Parties to the present Covenant (SPs) recognize **the right of everyone to social security, including social insurance.**

CESCR general comment (2008) No. 19 on the right to social security

- Art. 10(2): Special protection should be accorded to mothers **during a reasonable period before and after childbirth.** During such period working mothers should be accorded paid leave or leave with **adequate social security benefits.**

- Art. 2(1):
 - to take steps, **individually and through international assistance and cooperation,** to the **maximum of its available resources** (+§22-24)
 - to achieving **progressively the full realization** of the Covenant rights by all appropriate means
- Art. 2(2): **Non-discrimination**
- Art. 11: The Right to an **Adequate Standard of Living**
- Art. 12: The Right to the Highest Attainable Standard of **physical and mental health**

Elements of the right to social security

- **Availability** – social security system
- **Accessibility**
 - Coverage / Eligibility
 - Economic accessibility (affordability)
 - Physical accessibility
 - Information accessibility
 - Accessibility to the decision-making relating to, and administration of, social security system
- **Adequacy**
- **Acceptability**
- **Quality**

- **Social risks and contingencies:**
 - Health care;
 - Sickness;
 - Old age;
 - Unemployment;
 - Employment injury;
 - Family and child support;
 - Maternity;
 - Disability;
 - Survivors and orphans

States' obligations - General

- To guarantee that the right to social security is exercised without discrimination and stigma
- To take deliberate, concrete and targeted steps towards the full realization of the right
- To give the right appropriate priority in law and policy; develop a national strategy for the full implementation of the right; and allocate adequate fiscal and other resources
- To refrain from taking retrogressive measures

States' obligations - Legal

- **To respect:** States should refrain from interfering directly or indirectly with the enjoyment of the right to social security.
- **To protect:** States should prevent third parties from interfering with the enjoyment of the right.
- **To fulfil:** States should adopt all necessary measures towards the full realization of the right.
 - ✳ **Facilitation:** to take positive measures, including by recognizing the right in the national legal system and adopting a national policy and corresponding plan of action.
 - ✳ **Promotion:** to raise public awareness and ensure adequate information on the system
 - ✳ **Provision:** to provide social security to those who cannot realize the right themselves, including in times of emergency

States' obligations - Core

- To ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families – essential health care, basic shelter and housing, water and sanitation, foodstuffs and the most basic forms of education
- To ensure non-discrimination in accessing to social security systems or schemes
- To respect existing social security schemes and protect them from unreasonable interference
- To adopt and implement a national social security strategy and plan of action
- To take targeted steps to protect disadvantaged and marginalized individuals and groups
- To monitor the extent of the realization of the right

States' obligations - International

- To respect by refraining from actions that interfere, directly or indirectly, with the enjoyment of the right to social security (RtoSS) in other countries.
- To protect the RtoSS by preventing their own citizens and national entities from violating the RtoSS
- To facilitate the realization of the RtoSS in other countries through provision of economic and technical assistance in a sustainable and culturally appropriate manner

Challenges in realizing the right to social security in reality

- Absence of legal recognition of the right to social security
- Insufficient allocation of public funding into social security and the sustainability of funding
- Insufficient availability and accessibility of SSS – leaving out individuals and groups most in need
- Fragmented social security systems/schemes (SSS)
 - Complex administrative procedures/ processes
 - Inefficiency and ineffectiveness of SSS
- Inadequate level of SS benefits – often below the subsistence level or poverty line
- Privatization of social security services and lack of State's regulation
- Stigma and discrimination faced by recipients
- Digitalization
- Adverse impact of austerity measures on SSS
- Absence of complaint and accountability mechanisms and procedures

A social security system based on HR norms is:

A **comprehensive universal social security system** that is

- Provided for in **solid legislative and policy frameworks**;
- Supported with **adequate public funding**;
- Developed and implemented based on **people's need and participation**;
- Providing healthcare and income **security against principal life-cycle risks or contingencies**;
- Providing recipients with **sufficient level of benefits** for an adequate standard of living;
- Covering **all persons** who need social security, **without discrimination and stigma**;
- Providing **complaint and accountability mechanisms / procedures**.



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