

The Human Rights-Based Approach to Social Protection

This Issue Brief introduces readers to the human rights-based approach to social protection. It highlights the fundamental principles of this approach, which are explored in detail at socialprotection-humanrights.org, and directs readers to the key human rights instruments and other tools that are available to help policy makers and practitioners advocate for and operationalize a rights-based approach to social protection.

The idea of social protection has gained momentum since 2000, coinciding with the implementation of the Millennium Development Goals agenda—and although the MDGs themselves gave insufficient attention to social protection, the idea has now taken root. Indeed, as a way of transforming our world towards greater equity, social justice and sustainability, social protection figures prominently in the 2030 Agenda for Sustainable Development, which was agreed by governments in September 2015. It receives explicit attention in three of the 17 Sustainable Development Goals (SDGs): Goal 1 (End poverty in all its forms everywhere), Goal 5 (Achieve gender equality and empower all women and girls) and Goal 10 (Reduce inequality within and among countries).

In combination with their inclusion in the SDGs, social protection systems will be most likely to deliver on their transformative potential if they have solid foundations in human rights. And indeed, under international human rights

law, states are legally obligated to establish social protection systems.

Despite this backdrop of growing commitment to social protection, and of human rights mainstreaming in general, the norms and principles of a human rights-based approach to social protection remain poorly understood.

What is the Human Rights-Based Approach?

The human rights-based approach (HRBA) is a conceptual framework which is applicable in all development fields, and that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It is used to analyse obligations, inequalities and vulnerabilities, and to tackle discriminatory practices and unjust distributions of power that impede and undercut human rights.

Under a human rights-based approach, plans, policies and programmes are anchored in a system of rights and corresponding obligations established by international law. This helps to promote sustainability, empowering people themselves (rights holders)—especially the most marginalized—to participate in policy formulation and hold accountable those who have a duty to act (duty bearers).

A human rights-based approach consists of a number of essential attributes:

- As policies and programmes are formulated, the main objective should be to fulfil human rights.
- A human rights-based approach identifies rights holders and their entitlements and corresponding duty bearers and their obligations, and works towards strengthening the capacities of rights holders to make their claims and of duty bearers to meet their obligations.



socialprotection-humanrights.org

This Issue Brief has been produced by UNRISD for Social Protection and Human Rights, a web-based platform designed to provide expert legal and development resources on how to better align social protection and human rights. The platform is made for policy makers, development practitioners and human rights advocates with the intention of strengthening a growing social protection community that cuts across disciplines.

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Social Protection
 **Human Rights**



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The right to social security

The right to social security includes two main categories of measures: social insurance schemes, where beneficiaries are requested to contribute financially; and social assistance schemes, which are non-contributory and typically funded by taxes. The latter are designed to redistribute resources to groups deemed eligible due to vulnerability or deprivation.

The right to social security encompasses the right to access and maintain benefits. Benefits can be delivered in cash or in kind, and must be provided without discrimination to protect rights-holders from, for example:

- lack of work-related income caused by ill-health, disability, maternity, employment injury, unemployment, old age, or death of a family member;
- unaffordable health care;
- insufficient family support, particularly for children and adult dependents.

CESCR General Comment 19

- Principles and standards derived from international human rights treaties should guide all policies and programming in all sectors, and in all phases of policy-making and programming processes.

The Framework

The platform socialprotection-humanrights.org presents a Framework to assist policy makers and practitioners in designing, implementing and evaluating social protection systems with a human rights-based approach. The Framework suggests building social protection programmes around the following principles, which are based on international human rights instruments:

- Universality of protection
- Dignity and autonomy
- Equality and non-discrimination
- Inclusion of vulnerable groups
- Gender perspective
- Transparency and access to information
- Meaningful and effective participation
- Access to accountability mechanisms and effective remedies
- Respect of privacy
- Comprehensive, coherent and coordinated policies
- Adequate legal and institutional framework for long-term social protection strategies
- Standards of accessibility, adaptability and acceptability
- Adequacy of benefits

For more information on how to apply this framework in the design, implementation and

evaluation of social protection systems, visit socialprotection-humanrights.org/framework.

Legal Instruments

Several human rights and social security instruments encompass the basic principles and norms which should be the foundation of social protection systems. They provide policy makers, development practitioners and researchers with guidance on how to fulfil obligations to rights-holders.

International instruments

At the international level, these instruments include the Universal Declaration of Human Rights (Articles 22 and 25) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 9 of the latter states that “the States parties to the present Covenant recognize the right of everyone to social security, including social insurance”.

In its General Comment 19, the Committee on Economic, Social and Cultural Rights (CESCR), the supervisory body of the ICESCR, explains in detail the components of the right to social security, with explicit attention to its transformative power. When implemented from a rights-based approach, social protection, “through its redistributive character, plays an important role in poverty reduction and alleviation, preventing social exclusion and promoting social inclusion”.

Three other relevant international human rights instruments are the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which provides for the implementation of specific measures by governments, such as adopting appropriate measures to introduce social benefits during maternity leave (Article 11) and ensuring that women in rural areas are also beneficiaries of social protection programmes (Article 14); the Convention on the Rights of the Child (CRC), which recognizes the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development (Article 27); and the Convention on the Rights of Persons with Disabilities (CRPD), which requires that States parties recognize the right of persons with disabilities to social protection without discrimination on the basis of ability (Article 28).

The ILO Social Protection Floors Recommendation, 2012 (No. 202)—“R202”—is

the most recent international social security standard. It provides guidance to countries in building comprehensive social security systems and extending social security coverage through the establishment of national floors of social protection that are accessible to all in need. It is a human rights-based approach to social protection which, while not a legal instrument in and of itself, provides states with a strong international normative basis for domestic legal instruments and social protection systems using a HRBA.

R202 in focus

R202 provides guidance to countries to:

- establish and maintain, as applicable, social protection floors as a fundamental element of their national social security systems;
- implement social protection floors within strategies for the extension of social security that progressively ensure higher levels of social security to as many people as possible, guided by ILO social security standards.

According to R202, national social protection floors should include at least four essential guarantees:

- access to at least essential health care, including maternity care;
- basic income security for children, providing access to nutrition, education, care and any other necessary goods and services;
- basic income security for persons in working age who are unable to earn sufficient income; especially in cases of ill-health, unemployment, maternity and disability;
- basic income security for older persons.

National social protection floors

R202 calls for nationally defined sets of basic social security guarantees that ensure that, over the life cycle, all those in need have access to essential health care and to basic income security which, together, secure effective access to the goods and services defined as necessary at the national level. In other words, the aim of social protection floors is to ensure that all members of society enjoy at least a minimum essential level of social protection throughout their lives.

When establishing social protection floors, countries are required to comply with their human rights obligations under international conventions and declarations, including the principles of universality, non-discrimination, transparency and accountability.

National social protection floors can and do vary in terms of their coverage, objectives, design and level of institutionalization. However, by following a human rights-based approach, they can significantly contribute to ensuring the enjoyment of the right to social security, including other economic, social and cultural rights such as the right to adequate food, the right to health, and the right to education

National Instruments

At the national level, a strong legal and institutional framework and a complementary long-term strategy should be used to ensure the enjoyment of human rights by the beneficiaries of social protection programmes. In their absence, social protection guarantees are vulnerable to political manipulation. Adequate legal and institutional frameworks also help social protection to be seen as an inherent social entitlement or right, rather than as “charity” for programme beneficiaries.

Most national constitutions include social protection guarantees. These norms are often the basis for national legislation and institutional mechanisms for the implementation of rights. In other words, the incorporation of a human rights-based approach in designing, implementing and evaluating social protection systems is the outcome of the legal and institutional requirements in their constitutions.

The HRBA in Brazil

Brazil's 1998 Constitution recognizes a range of social rights, such as the right to education, health, employment, social security and protection of maternity, as well as the right to social assistance (Chapter II). It also sets comprehensive social protection standards for children and seniors (Chapter VII) and for indigenous peoples (Chapter VIII).

The constitution also includes a number of other important provisions for developing a rights-based approach to social protection, such as the right to public participation in policy formulation and citizen oversight of actions at all levels (Art 204), equality before the law and access to information (Chapter I).

In compliance with these constitutional principles and human rights, Brazil has gradually developed a legal and institutional

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Regional instruments

Several regional human rights instruments also guarantee the right to social protection. The African Charter on Human and People's Rights, the American Declaration on the Rights and Duties of Persons, the Arab Charter on Human Rights, the ASEAN Human Rights Declaration and the European Social Charter are among the instruments that provide a legal basis for implementing social security standards.

framework for comprehensive social protection that includes the Organic Law on Social Assistance (Lei Orgânica da Assistência Social/LOAS, 1993) as well as a range of institutions to support and coordinate social programmes, including the Ministry of Social Development and Fight Against Hunger (Ministério do Desenvolvimento Social e Combate a Fome) in 2004.

The HRBA in Austria

Austria has a comprehensive system of social security and welfare schemes which include both contributory and non-contributory social protection programmes. The system is in line with many of the principles outlined in

international and regional human rights instruments and recommendations. Austria considers social policy “a key instrument in efforts to improve chances in life, alleviate risks and manage crises”. A significant portion of GDP—between 28 and 31 percent—is used on social protection.¹

Austria's system has two levels. Social insurance covers all who are gainfully employed (and their dependents) with health, work accident, unemployment and pension insurance, and parental leave benefits. The public welfare system provides for rights-holders who are not part of the social insurance system. These programmes are administered by federal, provincial and municipal authorities.

Additionally, the state provides universal social protection programmes. These include child tax credits, childcare allowances and social compensation systems for victims of war and crime, as well as military service veterans. Other services provided under Austria's social protection system include homes for the elderly, nursing homes, and employment schemes for special needs populations. Non-citizens are also eligible for benefits.

¹ Federal Ministry of Labour, Social Affairs and Consumer Protection. Social Protection in Austria, 2014. www.sozialministerium.at

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Through our work, we aim to ensure that social equity, inclusion and justice are central to development thinking, policy and practice.

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