

Contribution of the United Nations Independent Expert on the Question of Human Rights and Extreme Poverty: Magdalena Sepúlveda Carmona

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For the purpose of this presentation, I should stress that I will use interchangeably the concept of social security and social protection. In this regard, by social protection I will refer to policies and programmes that aim to enable people to respond to various contingencies and manage levels of risk or deprivation that are deemed unacceptable by society. These schemes aim to offset deprivation and secure “protection” from, *inter alia*, the absence or substantial reduction of income from work, insufficient support to families with children or adult dependents, lack of access to health care, general poverty and social exclusion.

Social insurance and social assistance are the two main segments of social protection. Social insurance refers to contributory insurance schemes providing pre-specified support for affiliated members. Social assistance encompasses initiatives providing both cash and in-kind assistance to those living in poverty.

Relevant social protection measures addressing include cash transfer schemes, public work programmes, school stipends, social pensions, food vouchers and food transfers, and user fee exemptions for health care, education or subsidised services.

The duty to implement social protection policies to advance the protection available to persons living in extreme poverty flows directly from a number of human rights, in particular the right to social security and the right to an adequate standard of living enshrined in the Universal Declaration of Human Rights, several international and regional human rights treaties, ILO conventions, and national constitutions. Ensuring access to social protection is thus not a policy option, but a State obligation under international human rights law.

Understood this way, human rights can greatly contribute to building the political support necessary to establish and expand social protection systems.

These obligations not only require States to put social protection systems in place, but they also constrain the manner in which they do so (obligations on the process) and their intended results (obligations on the outcome).

Links between social protection and human rights

Social protection and, in particular, cash transfer programmes – that have been the major focus of my work – are a tool that can assist States in fulfilling their obligations under international human rights law. In particular, they have the potential to help with the realization of several legally binding human rights, such as the right to an adequate standard of living including food, clothing and housing and the right to social security. They may also facilitate the realization of many other rights, such the right to education and the right to the highest attainable standard of health, as well as the right to take part in the conduct of public affairs.

Thus, States must ensure that human rights principles and standards are taken into account when designing, implementing, monitoring and evaluating social protection programmes. The design and implementation of the programmes should comply with core human rights obligations and general human rights principles such as (a) the principles of equality and non discrimination; (b) participation, (c) transparency and access to information and (d) accountability. It is only in doing so that States can ensure that those groups most in need of assistance, particularly minorities, will receive the support and assistance they require.

As I will briefly explain today, while human rights standards certainly do not provide answers to all the challenges faced by policy makers when designing these programs, they

impose legally binding obligations that narrow the discretion of States. Moreover, when human rights norms and principles are taken into account in the design, implementation, monitoring and evaluation of these programmes, there are positive outcomes in regard to the enjoyment of human rights as well as in regard to the effectiveness and sustainability of the programmes.

Therefore, a rights approach to social protection programmes, and specifically Cash Transfer Programmes (CTPs), enables States to better comply with human rights obligations, while also increasing the effectiveness and sustainability of the programmes.

Let me explain briefly what I mean by “a human rights approach” to social protection and indicate some of the specific recommendations that such an approach would entail:

2. Ensuring an adequate legal and institutional framework for social protection

The replication and expansion of CTPs has promoted the simultaneous development of a wide range of different institutional and legal frameworks for these programs. In some cases CTPs are institutionalised and incorporated into a national social protection strategy and domestic laws. In most cases, however, CTPs are based only on presidential decrees, policy statements or simply on operational manuals and guidelines.

A right-based approach requires states to have an adequate institutional framework. In this regard, a main recommendation from a human rights point of view is to incorporate the right to social security (social protection) in the Constitution and in domestic laws.

There are many advantages in this approach. First, it places social protection into a framework of legally binding and enforceable rights and obligations. When States' constitutions provide for the right to social security, beneficiaries of social protection become “rights-holders” who can make claims against the State. Similarly, States and development partners become “duty-bearers” responsible for allocating resources to social protection in a manner that reflects human rights principles.

Legal and institutional frameworks also clarify the various roles and responsibilities of all stakeholders (governments, development agencies and civil society organizations, as well as beneficiaries).

Appropriate legal and institutional frameworks are essential requirements for accountability. A legal framework also guarantees the involvement of State authorities throughout the development of social protection programmes.

Clear and effective legal and institutional frameworks also significantly reduce the risk of political changes jeopardizing existing social protection programmes, which in turn protects beneficiaries from potential violations of their right to social security.

3. Respecting the principles of equality and non-discrimination

States have a duty to protect persons against risks and vulnerabilities in an equal and non-discriminatory manner. In this regard, human rights norms impose upon States several obligations that, if they were complied with, would improve services and outcomes of several social policies, including CTPs.

For example, human rights norms require states to eliminate discrimination in law, policy and practice and require States to take special measures to protect minorities as well as other vulnerable segments of society as a matter of priority, while taking measures to progressively ensure universal protection.

The operationalisation of the principles of equality and non-discrimination in social protection policies would mean, for example:

a. Ensuring minorities are taken into account

The elimination of all forms of discrimination including discrimination is an overarching human rights principle that must guide States' conduct.

Considering that often economic exclusion is a consequence of discrimination against persons belonging to minorities and a factor that perpetuates poverty, effective development strategies must take into account State obligations regarding equality and the protection of persons belong to minorities and ensuring their full enjoyment of rights. Thus, under human rights law, States have an obligation to design social policies in a way that avoids discrimination and promotes social inclusion

To ensure that minorities are taken into account , a number of core recommendations can be identified.

1. Before designing and implementing social protection programmes, States must conduct a **comprehensive and disaggregated analysis that assesses persons belonging to minorities and their specific vulnerabilities**. The collection of disaggregated data on minorities is essential not only for designing effective social protection systems, but also for unmasking the inequalities that often undermine achievement of positive outcomes.

2. Social protection programmes should be designed **to address imbalances in vulnerabilities and risks**. This requires adopting and supporting policies addressing the specific minority-based obstacles preventing persons belonging to minorities participating in social protection programmes on equal terms than the majority of the population. In practical terms, this means, for example, policies must consider their language, their diversity

3. Policy makers should invest in **capacity-building to ensure that those implementing social programmes at both the national and local level are aware of minority issues**. Programmes should also encourage capacity-building that empowers persons belong to minorities to claim their rights. It is also critical that social protection programmes have built-in participation and accountability channels accessible to minorities. Social protection programmes **strongly depend on the access (both economically and physically) to culturally and access to good quality social**

services sensitive to cultural issues. This requires policy makers to understand and incorporate the different challenges minorities face in accessing social services.

c) Complying with the standards of accessibility and availability

The principle of equality and non discrimination also requires States to ensure that social protection benefits are physically and culturally accessible to all including persons belonging to minorities

Accessibility requires, for example, that States must remove administrative barriers that prevent persons belonging to minorities from accessing social protections, such as requiring identification documents for registration when such documents are costly or may not exist in countries where many minorities are not registered at birth. Administrative requirements often affect women disproportionately as they are less likely to have identity cards and have been registered at birth.

Cultural accessibility requires that outreach and information on social protection programmes must be specifically designed to reach excluded segments of society (e.g. radio announcements, talk shows, community plays, etc.). Outreach must also overcome linguistic barriers that may impair the access of some people from minorities, as well as indigenous or migrant communities (e.g. by making information available in languages used by minorities and indigenous peoples).

Social protection programmes should not be restricted only to monetary support they must be complemented by various social services in particular access to education and health care specifically designed to reach minorities and overcome the specific challenges that they may face..

i. Ensuring transparency and access to information

To comply with human rights obligations States must guarantee transparency and access to information on social protection. Transparency and access to information are essential elements of accountability.

States must implement programmes in a manner that allows individuals to easily recognize and understand (a) eligibility criteria, (b) the specific benefits they will receive, and (c) the existence and nature of complaints and redress mechanisms.

Limited access to information by minorities impedes their access to programmes and their ability to claim their rights. Non-transparent implementation of cash transfers programmes risk perpetuating unequal power relations and increasing the likelihood of mismanagement.

Information on the results of monitoring and evaluating mechanisms must also be made available. Information must be accessible, culturally appropriate and provided in a manner which is also accessible to the illiterate.

ii. Ensuring meaningful and effective participation

From a human rights perspective, participation of persons belonging to minority groups in the program is not simply something desirable from the point of view of ownership and sustainability, but it refers to their right to participate.

It has profound consequences for the design and implementation of social protection programs. Due to the asymmetry of power between minorities and the authorities that administer these programs, minorities are often unable to protect their rights. Without fair and effective mechanisms that enable them to actively participate, a CTP, for example, is vulnerable to political manipulation. Participation also contributes to ensuring social cohesion and building political support for the programmes.

Often when participatory strategies are put in place, they are not meaningful. Participation is all too often pro-forma or reduced to mere consultation, which does not actually enable minorities to have any real impact on decisions. Frequently, participation processes are incorporated without giving serious consideration to the causes that restrict the participation of minority groups. This may produce the opposite results to those desired, as it may perpetuate rather than eliminate abuses of power.

When participation processes do not take into account the existing power structures of a given society, they run the risk of being hijacked by local elites and excluding not only minorities but others such as women or marginalized groups.

It is of course not easy to identify these groups as they are generally politically invisible or silent. They are often difficult to access because of their distant location, language, or their suspicion of authority. Such groups are inherently less well-equipped to defend their rights and interests, thus multiplying the effects of discrimination. A genuinely inclusive process should therefore pay particular attention to the identification and involvement of disadvantaged groups. It is crucial that Governments and practitioners take pro-active steps to enable these groups to participate. For example, authorities must take positive steps to assist them to overcome economic, linguistic, cultural, educational or geographical obstacles that would prevent or inhibit their full participation.

Finally, participants must know why they are asked to participate and how their opinions will be used, and should clearly understand their influence (if any) on the final outcome. Participation should not be restricted to merely gathering or exchanging information, in order to assess opinion, identify interests and possibly take advantage of local expertise. Meaningful participatory processes should allow participants to have an influence and control the outcomes or decisions in question.

Meaningful participation requires policy-makers to take active concrete measures to enable participation and influence on the decision.

Concluding Observations

It is widely recognized that social protection interventions do not work in isolation; they must be developed within a broader policy framework, integrating different protective initiatives and ensuring access to essential social services and a favourable economic environment. Social protection programmes are not a panacea to address and ameliorate the variety of difficulties faced by minorities. The reality that social protection programmes benefit minorities should not be approached as a positive collateral effect, for it is merely a reflection of the overrepresentation of minorities among those living in poverty. Rather, social protection programmes should be specifically aimed at benefiting minorities from the earliest stage, by incorporating human rights principles in to the design, implementation and monitoring of the programmes.

This presentation provides concrete recommendations on the core elements of a rights-based social protection system. The adoption of a human rights approach to social protection not only responds to international obligations and commitments but also improves the effectiveness of these strategies and aligns them with the holistic perspective required to tackle the various dimensions of poverty.

Human rights standards do not only add legitimacy to social protection programmes - as they refer to a universally accepted set of norms and values - but they also provide several other advantages to the implementation the programmes.

While a rights-based approach to social protection may sometime increase the cost of programs, they also provide advantages in regard to the effectiveness and sustainability of the programmes.

Human rights standards may also assist in building social consensus and mobilizing durable political commitments at the national, regional and international levels. It may also assist in pressuring governments to mobilize domestic and international resources for the social protection programs.

A human rights approach focuses on holding governments, and other actors, accountable for their actions and by doing so promotes a more efficient use of resources (by promoting access to information and fighting corruption).

Last, but not least, a human rights approach assists in empowering those living in poverty, particularly minorities, and making them visible.