

CHECK AGAINST DELIVERY

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**and extreme poverty**

Firstly, I would like to thank you for the opportunity to speak to the Commission. I am sorry I am not able to attend in person, but I hope that I can nevertheless usefully contribute to your discussion.

Let me begin by stressing that I am extremely pleased that the Commission has chosen poverty eradication as its priority theme for this 49<sup>th</sup> session. The Commission should be commended for approaching poverty as a multi-dimensional phenomenon, and for recognising that poverty encompasses not only inadequate income but social exclusion, discrimination and structural inequality. This approach has always been at the heart of my work as the UN Independent Expert on human rights and extreme poverty.

For those who are not familiar with the Human Rights mechanisms of the UN, I would like to briefly explain the role of the UN mandate on human rights and extreme poverty. This mandate is one of the so-called “UN special procedures” which are human rights monitoring mechanisms endorsed to individuals (“Special Rapporteurs”, “Special Representatives” and “Independent Experts”).

I have been appointed by the Human Rights Council to look at the links between poverty and human rights. As mandate holders within special procedures, we report on our activities and findings to the Human Rights Council and the General Assembly. We also carry out country visits to investigate the situation of human rights in specific domestic contexts and report our findings to the Human Rights Council. We are independent, we serve in our personal capacity, and we do not receive salaries or any other financial compensation for our work.

Since my appointment in 2008 I decided to look into the issue of social protection from a human rights perspective. During this time I have submitted several thematic and country reports addressing the issue of social protection from a human rights perspective. For example, to the Human Rights Council I have submitted reports focused on a human rights approach to cash transfer schemes and non contributory pensions and human rights.

To the Third Committee of the General Assembly, I have submitted reports on the importance of social protection in the context of the global financial crisis and on the importance that a human rights and, in particular, a gender approach to social protection plays in facilitating compliance with the MDG agenda. My upcoming report to the June session of the Human Rights Council will focus on a human rights approach to the recovery measures taken by States in the aftermath of the global economic crisis.

I have also visited Ecuador (2008), Zambia (2009), Bangladesh (2009) Vietnam (2010) and Ireland (2011) where I comprehensively assessed existing social protection programmes from a human rights perspective. After each country visit I must submit reports to the Human Rights Council, including concrete recommendations for States and other actors. In the June session of the Human Rights Council, I will submit reports on recent missions to Vietnam and Ireland.

Given that one of the emerging issues for the Commission is social protection, I intend to focus today on how human rights standards should guide the design, implementation, monitoring and evaluation of social protection systems.

### **Links between social protection and human rights**

Social protection programmes are tools 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 as 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.

These legally binding obligations refer to the final outcome as well as to the process that is used. In this regard, social protection programmes should increase the enjoyment of key human rights by their beneficiaries, and in their implementation they should avoid any violation of human rights.

When designing, implementing, monitoring and evaluating social protection programmes States must ensure compliance of general human rights principles such as (a) equality and non discrimination; (b) participation, (c) transparency and access to information and (d) accountability.

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.

I will provide some concrete examples of “a rights based approach” to social protection and indicate some of the specific recommendations that such an approach would entail.

## **1. The mandatory nature of human rights**

From a human rights standpoint it is possible to argue that States are under the obligation to provide social protection. Several legally binding human rights obligations (in international human rights and ILO treaties, as well as in domestic constitutions) require States to put in place social protection systems.<sup>1</sup> Therefore, from a human rights perspective, ensuring access to social protection is 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 at the domestic level, and encourage international support to assist low income countries to put in place social protection mechanisms.

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

The replication and expansion of social protection systems has promoted the simultaneous development of a wide range of different institutional and legal frameworks for these programs. In some cases social protection is institutionalised and incorporated into domestic laws as a national social protection strategy. Moreover, in some successful experiences, such as in Brazil, social protection has been guaranteed at the constitutional level.

In most cases, however, social protection systems are based only on presidential decrees, policy statements or simply on operational manuals and guidelines.

A rights-based approach requires states to have an adequate legal and 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 to 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

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<sup>1</sup> The right to social security is firmly grounded in international human rights law and several treaties contain specific references to old age protection through social security schemes. Further to articles 22 and 25 of the UDHR, it appears in articles 9, 10 and 11 of the ICESCR, article 5 (iv) of the International Convention on the Elimination of Racial Discrimination, article 11 of the CEDAW, article 26 of the Convention on the Rights of the Child, article 27 of the International Convention for the Protection of Migrant Workers and Their Families. The Convention on the Rights of Persons with Disabilities mentions the right to social protection (article 28).

State. Similarly, States and development partners become “duty-bearers” responsible for allocating resources to social protection in a manner that reflects human rights principles.

Clear legal and institutional frameworks also clarify the various roles and responsibilities of all stakeholders and reduce the risk of political manipulation.

### **3. Adopting comprehensive, coherent and coordinated policies**

The interdependence and mutually reinforcing nature of human rights demands that States approach social protection holistically.

It is generally agreed that social protection alone is not a policy panacea and must be considered as one element within a broad development strategy aimed at overcoming poverty. In this regard, improving human rights compliance in a country will improve the country’s development outcomes.

For example, in most countries women’s vulnerability to poverty would not change with social protection alone. Measures such as ensuring women's access to land and productive resources, access to credit, fair inheritance rights, full legal capacity, access to justice and the removal of restrictions on women’s mobility are critical to effective development strategies. Moreover, the prevention, protection and punishment of acts of violence against women and girls are essential for improving their standard of living. In this regard, international human rights standards, in particular the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), place concrete obligations on States to address all these issues. If these human rights obligations were to be complied with, the impact of social protection programmes would be strengthened further.

### **4. Respecting the principles of equality and non-discrimination**

From a human rights perspective, States have a duty to protect persons against risks and vulnerabilities in an equal and non-discriminatory manner giving priority to the most vulnerable and disadvantaged groups in society.

What does it mean to respect these principles in social protection systems? The operationalisation of the principles of equality and non-discrimination in social protection policies would mean, for example:

#### **a. Ensuring gender is taken into account in the design of social protection programmes**

1. This means, for example, that before designing and implementing social protection programmes, States must conduct a **comprehensive and disaggregated gender analysis that assesses the**

**vulnerabilities of both genders as potential beneficiaries.** The collection of disaggregated data, both in terms of sex and age, is essential not only for designing effective social protection systems, but also for unmasking the gender dynamics that often undermine achievement of positive outcomes.

2. Social protection programmes should be designed **to address gender imbalances in vulnerabilities and risks.** This requires adopting policies addressing the specific obstacles that prevent women from participating in social protection programmes on equal terms than men. In practical terms, this means, for example, policies must consider the dual reproductive and productive role of women (for example, the incorporation of child care into public work schemes) and the vulnerability of women to sexual abuse (for example, the vulnerability of women to potential abuses by teachers when the conditions of a programme include the achievement of certain grades; or the lack of toilets at a school when a programme requires school attendance).
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 gender issues.**
4. Programmes should also **empower women to claim their rights.**

#### **b) Ensuring that nobody is unfairly excluded**

Targeting methods must comply with the principle of non-discrimination and the prohibition of stigmatization. While targeting mechanisms may be seen as way of reaching the poorest (particularly when resources are limited), from a human rights perspective, caution is required. In principle, human rights standards are not compromised by the use of targeted schemes as a form of prioritization of the most vulnerable and disadvantaged groups within a longer-term strategy of progressively ensuring universal protection.

The main advantage of targeted programmes is their overall cost to the State when compared with universal programmes. In practice, however, the affordability of universal pensions is a political question. Again, I believe that a rights-based approach has the potential to contribute to gaining the political support to establish universal programmes. Universal programmes are more in line with human rights obligations as they reduce opportunities for corruption and manipulation as well as possible stigmatization. In addition, universal provision is the simplest structure with the lowest administrative costs. Moreover, the more complicated the method of calculation (such as proxy means testing), the more opaque the eligibility criteria become and the harder it is for the intended beneficiaries to scrutinize the process.

In practical terms, when pursuing targeted programmes, in order to comply with the principles of equality and non-discrimination, policy-makers must:

1. Carefully **screen policy choices to avoid the unfair exclusion** of disadvantaged and disempowered groups, particularly persons with disabilities, older persons, indigenous peoples, minorities or persons with HIV/AIDS, and actively seek out ways to ensure that they are reached.
2. Take all efforts to **minimize exclusion errors**. From a human rights perspective inclusion errors (providing the benefit to someone who is not in the target group) and exclusion errors (failure to provide the transfer to those targeted) do not have the same significance. Exclusion errors are much more serious. The exclusion of rightful beneficiaries constitutes a violation of their right to social security. Moreover, those excluded are often the most vulnerable and as a result, will find it most difficult to claim for their inclusion.
3. Ensure that **the implementation of co-responsibilities (conditionalities) with respect to CTPs does not exclude and further expose those who fail to comply with the established requirements to human rights violations**. Prior to attaching conditionalities to cash transfers, States and policy makers must undertake an in-depth analysis of the programs' capacity to properly monitor compliance and simultaneously provide social services that correspond to the needs of the population living in extreme poverty.

The exclusion of an individual or a household from a CTP because of failure to satisfy the imposed conditions raises strong human rights concerns. The non-compliance with conditionalities can assist program officials in identifying and acting upon associated problems. For example, in some countries girls are not going to school (a condition of the CTPs) because they are sexually harassed. Pregnant women are not going to health clinics because the quality of service is very low or they are too far away. In such cases, the CTP should have a mechanism in place, to help families to overcome the reasons behind why they are not complying with the conditionalities, but there must be no punitive element. This is particularly the case when female heads of households are in charge of ensuring that the conditions are met. In these cases conditionalities may create an unnecessary additional burden on women while perpetuating traditional notions of gender roles within the family.

### **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 in particular the most vulnerable and disadvantaged groups of society.

Accessibility requires, for example, that States must remove administrative barriers that prevent people from accessing social protection, such as requiring identification documents for registration when such documents are costly or may not exist in countries where many people are not registered at birth.

States must also ensure that benefits are distributed within safe physical reach and at a reasonably convenient geographic location. This is also part of the obligation to ensure accessibility. Limited physical strength and mobility can be a major obstacle for some groups, such as older persons, persons with disabilities, and women. Particular attention should be paid to the opportunity cost in terms of transport, loss of labour or caretaker time.

**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 illiteracy and linguistic barriers that may impair the access of some people from minorities, indigenous or migrant communities (e.g. by making information available in languages used by minorities and indigenous peoples).

#### **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) the eligibility criteria, (b) the specific benefits they will receive, and (c) the existence and nature of complaints and redress mechanisms.

Non-transparent implementation of social protection programmes risk perpetuating unequal power relations and increase the likelihood of mismanagement. Increasing transparency in the overall functioning of social protection programmes would also increase public support for investments in these policies.

#### **ii. Ensuring access to complaint mechanisms and to effective remedies**

Without accountability and redress, poverty reduction strategies are more likely to be viewed as an instrument of charity that can be manipulated by political actors rather than part of someone's entitlement. Ensuring that everyone has a channel to complain can be a critical element to ensure that power imbalances - often prevalent at local levels - are not perpetuated.



Without accountability and redress mechanisms social protection programmes are less likely to be understood in terms of entitlements or rights and are more likely to be viewed as instruments of clientelism which can be manipulated by political actors.

### **iii. Ensuring meaningful and effective participation**

From a human rights perspective, participation of the beneficiaries 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.

Without fair and effective mechanisms for participation, social protection programmes are vulnerable to political manipulation. Participation also contributes to ensuring social cohesion and building political support for social protection.

Often when participatory strategies are put in place, they pro-forma or are reduced to mere consultation, which does not actually enable the beneficiaries to have any real impact on decisions. Frequently, participation processes are incorporated without giving serious consideration to the causes that restrict the participation of vulnerable 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 women or marginalized groups. A genuinely inclusive process should pay particular attention to the 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.

### **Concluding Observations**

Let me conclude by saying that the crisis and now the recovery measures offer an opportunity to place people at the centre of social policies and to give a renewed support to social protection systems.

I commend the Commission for Social Development for choosing the theme of poverty eradication and giving a central role to social protection in the agenda.

Today, my intention was to briefly present 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 of the programmes.

1. 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.
2. 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).
3. Last, but not least, a human rights approach assists in empowering those living in poverty and making them visible.

Finally, I would like to stress that I would be honored to work closely with this Commission to continue moving forward the issue of poverty eradication and social protection from a human rights perspective. I expect this meeting will mark the beginning of a closer collaboration between the UN Human Rights Council's mandate on poverty and human rights and this honorable Commission.

Thank you very much for your attention.