

UN Independent Expert: “Social pensions are critical to human rights”

A summary of the second report of the United Nations Independent Expert on the question of human rights and extreme poverty.¹

In brief

The UN’s Independent Expert on human rights and extreme poverty, Magdalena Sepúlveda, has made social pensions the focus of her second report to the Human Rights Council. In it, she concludes that rapid population ageing, particularly in developing countries, requires an urgent assessment of existing policies to protect older people.

Informal family support for older people is declining under the pressure of increased longevity, widespread poverty, and the impact of HIV and AIDS and migration. States have traditionally focused on establishing contributory pension systems to protect people in old age. But this approach has left up to 80 per cent of working-age and older people around the world unprotected by any form of pension.

The Independent Expert’s report recommends that States should recognise the following:

- Social (non-contributory) pensions are critical to reducing extreme poverty and achieving the right to social security for older people.
- The benefits of social pensions reach beyond the individual recipient into the family, helping children and grandchildren.
- Social pensions should form part of comprehensive social protection strategies to tackle extreme poverty throughout the life cycle.
- Universal pension schemes are more in line with human rights obligations as they comply with principles of universality and non-discrimination. They also reduce opportunities for corruption and manipulation in the selection of beneficiaries, which typically exclude the poorest.

Poverty and old age

Assessing poverty among older people is complex, and statistics are often underestimated due to a lack of disaggregated data. This can lead to policy choices that ignore and exclude older people living in poverty.

Poverty in old age is not uniform; risk factors vary, but include lack of access to regular income and work, lack of access to healthcare, declining physical and mental capacities, and dependency within the household. Poverty among older people is particularly high in countries affected by migration and HIV and AIDS. One or both grandparents often take on the role of head of household and primary carer for grandchildren, or their adult children who may be ill.

Older-headed households with children, and particularly households headed by older women, tend to be more vulnerable to poverty. Older women accumulate disadvantage throughout the life cycle – while at the same time continuing to assume responsibilities as carers. Older women tend to be excluded from formal contributory pension schemes as these are linked to formal paid employment, which women tend to have less access to during their lives.

Social protection and old age

States have a duty to implement social protection systems. This duty stems from their responsibility to ensure their citizens' rights to an adequate standard of living, to social security, and related economic and social rights enshrined in several legally binding human rights treaties.

Social protection systems have three important objectives for poverty reduction:

- to help people recover from a crisis that has made people poorer
- to support the chronically poor to escape from poverty
- to support the less active poor (eg, older people and children).

States have traditionally focused on establishing contributory pension schemes to achieve universal coverage. But this approach has left up to 80 per cent of working-age and older people worldwide unprotected by any form of pension. It is time to adopt a new approach.

Governments must challenge the myth that social pensions are a burden to the economy – indeed, social protection systems may act as economic stabilisers in periods of crisis, and have positive repercussions on local economies. Governments also have a duty to challenge the stereotyping of older people as a burden to development, and should emphasise instead the contributions older people make to their families and communities.

Social pensions should be seen as one component of a broader social protection system designed to tackle the multidimensional aspects of poverty that includes measures to ensure access to basic services and the elimination of sex discrimination.

The human rights framework

Several human rights instruments refer specifically to old age, including: the Universal Declaration of Human Rights (UDHR); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW).

The right to social security in human rights law and labour standards

The right to social security is firmly grounded in international human rights law and several treaties specifically refer to old age protection through social security.² At regional level, there are several provisions that recognise the specific vulnerability of older people, emphasise the right to social security, and call on States to implement specific measures to protect older people.³

Obligations under the International Covenant on Economic, Social and Cultural rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) sets out specific commitments on the right to social security:

- States are obliged to progressively ensure the right to social security to all individuals within their territories, providing specific protection for disadvantaged and marginalised individuals and groups.
- States must develop a national strategy for the full implementation of the right to social security in old age, and allocate adequate fiscal and other resources at the national level.
- States cannot rely only on contributory systems for old age pensions, as all individuals do not have sufficient means to maintain an adequate standard of living. Therefore:
- States should, within the limits of available resources, provide non-contributory old age benefits to assist, at the very least, all older people who, when reaching the retirement age, are not entitled to an old age insurance-based pension.

Expanding social security in old age in line with the human rights framework

Establishing or expanding social security systems is more than a policy option. It is, first and foremost, every state's duty, a duty that stems from human rights norms and standards – particularly the right to an adequate standard of living and the right to social security.

These are the key human rights components for a social pension scheme that complies with human rights law:

- **Recognise the right to social security, including the right to non-contributory pensions**

Intentional experience shows that the most effective non-contributory pension schemes are those grounded in legal instruments that ensure the permanence of these initiatives and give rights-holders the possibility to claim for protection of their rights. In order for legal and institutional frameworks to comply with core human rights principles, they should: spell out eligibility requirements; provide for mechanisms to ensure transparency and access to information about programmes; define the various roles and responsibilities of those implementing programmes; and establish accessible complaints mechanisms.

- **Ensure equitable access to social security, paying special attention to vulnerable and disadvantaged groups**

The principles of equality and non-discrimination require States to progressively ensure universal protection. These principles also require taking special measures to protect the most vulnerable groups of society as a matter of priority.

Social pensions can either be universal schemes, whereby everyone above a given age is entitled to receive a pension, or targeted schemes, whereby beneficiaries are selected on the basis of their income or poverty level as well as their age.

Universal pension schemes are more in line with human rights obligations in a number of key aspects. They respond to the claim of universality of human rights norms; they comply with the principles of equality and non-discrimination; they reduce opportunities for corruption and manipulation in the selection of beneficiaries, which typically exclude the poorest; and they reduce possible stigmatisation, as all who comply with the age requirement receive the benefit.

Many developing countries provide universal social pensions, including Bolivia, Botswana, Brunei, Namibia, Nepal and Samoa. While targeting social pensions by income or poverty level may be seen as an effective way of reaching the poorest, from a human rights perspective, caution is required. Income- or poverty-targeted systems often introduce exclusion errors (ie, excluding the poorest) because the selection of beneficiaries is a complex and controversial process. The main advantage of targeted social pensions is that their overall cost to the State, when compared with universal pensions, is low. In practice, however, evidence shows that where there is political will, even low-income countries can afford to provide a universal pension.

States must also ensure:

- **Accessibility** – by removing administrative barriers that prevent access, and distributing benefits within safe physical reach of older people.
- **Transparency and access to information** – information on social pensions must be widely available and accessible, and the legal and institutional framework regulating pension schemes must guarantee accessible mechanisms for accountability.
- **Accountability** – every person must have the right to an effective remedy where his or her rights have been violated. Policy makers must be held accountable when their decisions have a negative impact on older people's right to social security.
- **Respect for the principle of participation** – promoting wide and informed public participation in the development and implementation of social policies.
- **Adequacy of the benefit** – the pension level must be adequate to enable older people to enjoy a decent standard of living.
- **Access to healthcare** – the positive impact of social pensions can be nullified by the burden of healthcare-related costs. States must guarantee timely and appropriate access to healthcare and the determinants of health.
- **Gender equality** – special measures are needed to overcome barriers to older women accessing a pension such as lack of documentation and identity papers.

The role of international assistance and cooperation

International assistance can support developing countries to progressively realise the right to social security – particularly in countries with considerable resource, institutional and technical constraints. Donor states must adopt a long-term perspective in order to support the sustainable development of social security systems with broad coverage. They should provide predictable and coordinated assistance. Their role could include technical and/or material assistance for the set-up and design of social pension systems. They should also build in measures to strengthen the recipient State's capabilities to implement the programme unassisted in the longer term.

Conclusions and recommendations

The UN Independent Expert on extreme poverty and human rights has concluded that non-contributory or 'social' pensions are key to human rights.

The Independent Expert's report recommends that States should recognise the following:

- Social (non-contributory) pensions are critical to reducing extreme poverty and achieving the right to social security for older people.
- The benefits of social pensions reach beyond the individual recipient into the family, helping children and grandchildren.
- Social pensions should form part of comprehensive social protection strategies to tackle extreme poverty throughout the life cycle.
- Universal pension schemes are more in line with human rights obligations as they comply with principles of universality and non-discrimination. They also reduce opportunities for corruption and manipulation in the selection of beneficiaries, which typically exclude the poorest.

In addition, when establishing or extending social pensions, States should adhere to the following human rights principles:

- Recognise social security as a human right, and establish appropriate legal frameworks.
- Ensure universal access to social security.
- Integrate human rights principles and standards in the design, implementation and evaluation of social pension schemes.

1. This document was produced by HelpAge International and is a summary of the text of the second report by the UN Independent Expert on the question of human rights and extreme poverty, Magdalena Sepúlveda. The mandate of the UN Independent Expert on the question of human rights and extreme poverty was established by the Human Rights Council to evaluate the relationship between the promotion and protection of human rights and the elimination of extreme poverty. Magdalena Sepúlveda was appointed by the Human Rights Council as the Independent Expert in March 2008 and assumed her functions on 1 May 2008. She reports on her activities and findings to the UN General Assembly and to the Human Rights Council. She also undertakes country visits. Her thematic reports are translated into all UN languages, including Chinese and Arabic. They are available at: www2.ohchr.org/english/issues/poverty/expert/index.htm

2. Further to articles 22 and 25 of the UDHR, the right to protection in old age appears in articles 9, 10 and 11 of the ICESCR, article 5 (iv) of the International Convention on the Elimination of All Forms 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 on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Convention on the Rights of Persons with Disabilities mentions the right to social protection (article 28).

3. The African Charter on Human and Peoples' Rights; the Revised European Social Charter; the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights; and several International Labour Organization (ILO) conventions and declarations, including Convention C102 concerning Minimum Standards of Social Security (1952) and Convention C128 concerning Invalidity, Old-Age and Survivors' Benefits. Convention 102 establishes globally agreed minimum standards for all nine branches of social security: medical care, sickness benefit, unemployment benefit, old-age benefit, employment and injury benefit, family benefit, maternity benefit, invalidity benefit, and survivors benefit.

HelpAge International helps older people claim their rights, challenge discrimination and overcome poverty, so that they can lead dignified, secure, active and healthy lives.

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