

## **Episode 8: The Right to Social Security**

The right of everyone to social security, including social insurance, is set out in Article 9 of the International Covenant on Economic, Social and Cultural Rights.

The right to social security encompasses 'the right to access and maintain benefits in order to secure protection' against a number of different risks or contingencies – in other words, threats or possible situations that people may face in their lives. These fall into three main areas. First, a lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; second, unaffordable access to health care; and, third, insufficient family support, particularly for children and adult dependents.

There's a wide range of ways in which states can give effect to this right. One way is through what are called contributory or insurance-based schemes such as social insurance. These schemes cover those forms of social security that are commonly connected with an individual's position or status, and to which the individual makes a partial contribution. Examples of these would be worker pension plans or contributory medical aid schemes. Governments can also give effect to the right to social security through non-contributory schemes. These can be universal, providing the relevant benefit in principle to everyone who experiences a particular risk or contingency. An example of this would be universal child allowance. Or they might be targeted social assistance schemes, where benefits are received by those in a situation of need. Examples of these would be clothing grants for low-income families or fuel coupons for the elderly poor.

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The government can also choose to promote privately run schemes, and self-help or other approaches.

However the government designs its social security system, the UN Committee on Economic, Social and Cultural Rights has made clear that there are certain conditions that have to be conformed with by that system in order to comply with Article 9.

First, all countries' must ensure that a social security system is available and in place to ensure that benefits are provided for the risks that the right to social security seeks to ensure protection from. Systems should be established under national law, and public authorities must take responsibility for the effective administration or supervision of the system. Second, benefits – whether in cash or in kind – must be adequate in amount and duration. This means they must be sufficient to ensure that everyone is able to satisfy their Covenant rights to family protection and assistance, an adequate standard of living and adequate access to health care. When a person makes contributions to a social security scheme that provides benefits to cover lack of income – for instance a pension scheme – there must be a reasonable relationship between earnings, paid contributions, and the amount of benefit.

Social security must be accessible. This means that social security systems must be affordable – that is, economically accessible – for the individual; where you have a contributory scheme, the direct and indirect costs and charges of making contributions must be affordable for all, and must not compromise the realisation of other Covenant rights. In other words, payments into a health insurance scheme should not leave contributors

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without enough money to meet their food, housing, and other economic and social rights-related needs.

Accessibility isn't just about affordability. For a social security system to be accessible, everyone must be covered by it and qualifying conditions for benefits must be reasonable, proportionate and transparent. When it comes to withdrawal, reduction or suspension of benefits, this must be based on grounds that are reasonable, subject to due process, and provided for in national law. For instance, sanctions for disabled people shouldn't be based on conditions that claimants cannot comply with due to their impairment. And there must be meaningful opportunities to appeal sanctions in all cases.

Social security is complex – a fact that often prevents people from enjoying the range of services they are entitled to. So it follows that states must also guarantee that everyone has the right to seek, receive and impart information on all social security entitlements in a clear and transparent way.

Non-discrimination is a major issue when it comes to social security. The right to social security includes the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage – for instance exclusion from employer-run pension schemes on the basis of religion. It also includes the right to equal enjoyment of adequate protection from social risks. And guaranteeing this requires governments to take into account the position and needs of different social groups. For instance, in social security schemes that link benefits with contributions, governments should ensure that account is

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taken of factors that prevent women from making equal contributions, for example due to periods of maternity leave. In ensuring the full implementation of the right to social security the state must give special attention to groups that have traditionally faced difficulties in exercising that right. For instance, part-time workers, migrant workers and workers in the informal economy.

While states' primary obligation with regard to the right to social security is one of progressive realisation subject to the maximum of states' available resources, governments must prioritise the achievement of a minimum essential level of benefits. That minimum level must enable all individuals and families to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education. This is a crucial part of the social protection safety net envisaged by the right to social security.

Like all economic and social rights, governments are required to respect, protect and fulfil the right to social security. The duty of states to respect the right – that is to refrain from interfering with existing enjoyment of that right – includes avoiding any activity that denies or limits equal access to adequate social security. The government's duty to protect means that it must take steps to ensure that there is no discrimination by third parties – for instance in the private insurance industry on the grounds of, for example, gender, HIV/AIDS status, or race. Where social security schemes are operated or controlled by third parties, it is the government that ultimately retains the responsibility of administering the national

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social security system – and for ensuring that private actors do not compromise equal, adequate, affordable, and accessible social security.

Finally, the duty to fulfil requires governments to adopt the necessary measures directed towards the full realisation of the right to social security. This includes taking positive measures to assist people to enjoy that right, For instance, through the adoption of a national social security strategy, and ensuring education and public awareness concerning access to social security schemes. It also requires providing the right to social security for people unable to realise that right themselves within the existing social security system with the means at their disposal. Therefore, governments must establish non-contributory schemes or other social assistance measures to provide support to those people who are unable to make sufficient contributions for their own protection.