

## Chapter 2

# International Instruments

**Abstract** This chapter introduces several international human rights instruments that support social protection. Reviews of the Universal Declaration of Human Rights, International Labour Organization's Conventions on Social Security, Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities, and the Universal Declaration on the Rights of Indigenous Peoples illustrate how these key initiatives support social protection. The appendices provide useful excerpts from these human rights instruments.

**Keywords** Human rights • Social security • Children's rights • Disability • Indigenous people • United Nations

### Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) was proclaimed by the United Nations General Assembly on 10 December 1948. The UDHR contains a preamble and 30 articles, and the full document can be found in the appendices of this book. The preamble states the reasons for the declaration, and the articles list the universal rights applicable to everyone.

Following the Second World War, the creation of the United Nations (UN) signaled the international community's commitment to prevent atrocities in the future. The UDHR is agreed to be the foundation of international human rights law and an inspiration in addressing injustices and working towards achieving universal enjoyment of human rights. There is universal recognition that basic rights and freedoms are inherent to all human beings, inalienable and equally applicable to everyone, and that every one of us is born free, with dignity and rights.

There are three specific articles in the UDHR that apply to social security and social protection.

### Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social, and cultural rights indispensable for his dignity and the free development of his personality.

### Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work, and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

### Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

The Commission on Human Rights is the UN body that is charged with monitoring human rights and evaluating various complaints.

## **International Covenant on Economic, Social, and Cultural Rights**

Building upon the UDHR, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) was adopted in 1966 (United Nations General Assembly 1966). A copy of the document can be found in the appendices of this book. It is this Covenant that covers the right to social security and various human rights on economic, social, and cultural conditions.<sup>1</sup> Specifically, Article 9 states the following:

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<sup>1</sup> The International Covenant on Economic, Social and Cultural Rights entered into force on 3 January 1976.

## Article 9

States recognize the right of everyone to social security, including social insurance.

Article 9 provides a broad approach to social security. Social insurance is a contributory or insurance-based scheme that involves compulsory contributions from beneficiaries, employers, and sometimes the State, along with the payment of benefits and administrative expenses from a common fund. The literature is divided as to whether social assistance is covered by Article 9; some maintain it was deliberately left open to be comprehensive in order to include social assistance (Riedel 2007).

A human rights approach allows individual and/or groups to claim access to basic services and income and obligates government and the world community to work towards the realization of these rights. Over time, international human rights treaties have become more focused and specialized on specific issues and social groups in need of protection. The enforcement of human rights generally depends on the goodwill or interest of individual countries (Reichert 2011).

## ILO Conventions on Social Security

The International Labour Organization (ILO) is the UN agency in charge of implementing the right to social security. It was Article III(f) of the International Labour conference, 26th session, 1944, which recognized the solemn obligation of the ILO to further programs of social security among the nations of the world. The Declaration of Philadelphia of 1944 called for “the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care.”<sup>2</sup>

The ILO’s Conventions on social security adopted before the Second World War have been revised and superseded by new and more comprehensive Conventions, providing a distinction between the ‘social insurance era’ and the ‘social security era’ during and after it (Otting 1993).

The ILO conventions on social security are the main reference for the content and components of this right to social security. The ILO Convention No. 102, Social Security (Minimum Standards) Convention of 1952, has played an important role in the extension of social security. Convention No. 102 covers nine branches of social security: (1) medical care, (2) sickness benefit, (3) unemployment benefit, (4) old-age benefit, (5) employment injury benefit, (6) family benefit, (7) maternity benefit, (8) invalidity benefit, and (9) survivors’ benefit. Because of

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<sup>2</sup> Declaration concerning the aims and purposes of the International Labour Organization, annex to the Constitution of the ILO, Section III (f) (United Nations Economic and Social Council 2007).

its importance for human dignity, the realization of the right to social security should be given priority in law and policy, even if it has significant financial implications for States.

In 2001 the International Labour Conference, composed of representatives of States, employers, and workers, affirmed that social security is a basic human right and a fundamental means for creating social cohesion.

## Convention on the Rights of the Child

On November 29, 1989, the UN General Assembly adopted the Convention on the Rights of the Child, which specifies the basic rights that every child should enjoy. The convention specifically references social welfare of the child. “Children are entitled to adequate health care (art. 24); treatment for mental health (art. 25); social security (art. 26); an adequate standard of living, including nutrition, clothing, and housing (art. 27); and primary education (art. 28)” (Reichert 2011).

The Convention on the Rights of the Child contains many human rights with the intent of protecting children and promoting their well-being (Reichert 2011). Two articles that speak to social protection; Article 26 and Article 27 (United Nations General Assembly 1989).

### Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

### Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral, and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child’s development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In

particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

The United Nations' Committee on the Rights of the Child (2006) notes with concern that even the most basic standards of living is not assured for millions of young children, despite widespread recognition of the adverse consequences of deprivation, and further argues that implementing children's rights to benefit from social security, including social insurance, is an important element of any strategy.

## **Convention on the Rights of Persons with Disabilities**

The Convention on the Rights of Persons with Disabilities consists of 50 articles addressing civil and political, economic, social, and cultural rights. Article 28 recognizes the right to adequate standard of living and social protection (United Nations General Assembly 2006).

### **Article 28**

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.
2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:
  - a. To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;
  - b. To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;
  - c. To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability related expenses, including adequate training, counselling, financial assistance and respite care;
  - d. To ensure access by persons with disabilities to public housing programmes;
  - e. To ensure equal access by persons with disabilities to retirement benefits and programmes.

It is estimated that at least 85 percent of the approximately 700 million persons with disabilities live in developing countries, often in extreme poverty (World

Bank 2011). Persons with disabilities face discrimination and social exclusion, and for this reason are more likely to experience poverty than their non-disabled peers (World Bank 2011). Article 28 notes the particular need to pay attention to the ability of women and girls with disabilities, and older persons with disabilities, to access benefits and programmes aimed at ensuring an adequate standard of living (World Bank 2011).

## **Universal Declaration on the Rights of Indigenous Peoples**

The United Nations Declaration on the Rights of Indigenous Peoples was adopted on September 13, 2007, after more than two decades of negotiations between governments and Indigenous peoples' representatives. The Declaration establishes a universal framework of minimum standards for the survival, dignity, well-being and rights of the world's Indigenous peoples (Office of the UN High Commissioner of Human Rights 2012).

Article 21 addresses the right to the improvement of Indigenous peoples' economic and social conditions. Article 22 speaks to the right to access all social and health services.

### **Article 21**

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of Indigenous elders, women, youth, children and persons with disabilities.

### **Article 24**

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

The UN Declaration represents a major turning point for the recognition and protection of Indigenous peoples' rights within the United Nations and international legal system. It is the only human rights instrument created with the participation of the rights holders themselves, and specifically recognizes that Indigenous peoples' rights are both collective and individual.

## Discussion and Conclusion

The right to social security has been developed through universally negotiated and accepted instruments that establish social security as a fundamental right to which every human being is entitled (Kulke 2007). The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, and other instruments discussed in this chapter all contain provisions for the right to social security.

By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfill human rights. Through ratification of international human rights treaties, Governments undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties (United Nations n.d.). The domestic legal system provides the principal legal protection of human rights guaranteed under international law. All United Nations member States have ratified at least one of the nine core international human rights treaties, and 80 percent have ratified four or more, giving concrete expression to the universality<sup>3</sup> of the UDHR and international human rights (United Nations n.d.).

The right to social security and social protection is an important component for economic and social development. While social security constitutes a basic right for all, many populations around the world still lack access to adequate levels of social protection. The Committee on Economic, Social and Cultural Rights expressed concern over the low levels of access to social security with a large majority (about 80 per cent) of the global population currently lacking access to formal social security (UN ECOSOC 2007).

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<sup>3</sup> Jack Donnelly explores ‘universal’ human rights by considering functional, international legal, overlapping consensus universality, and space for national, regional, cultural particularity and other forms of diversity and relativity. See Donnelli (2007).

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