1. Introduction

Women’s role in social security and social protection is of increasing interest to international bodies, development agencies and developing and developed states in the current economically fragile, global context. A compassionate neo-liberal economic approach following the reconsideration of previous strategies (structural adjustment/Washington consensus) sees poverty (and extreme poverty in particular) as an unacceptable risk and thus economically unworkable. This is accompanied by a growing recognition that women are the best human investment in all development contexts. While this may seem positive, it should be remembered that some years ago there was similar excitement about women’s greater reliability regarding microcredit but this assumption neglected to fully understand intra-household dynamics and other gender inequalities that made these measures less effective in addressing poverty and inequality. Recent studies of the gender impact of Conditional Cash Transfers, all the rage in the last decade, have sounded similar warning bells about the extent of the real benefits for women and the costs that run alongside these. While the more redistributive intuition behind the latest efforts is...

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positive, what is missing is a human rights approach that shapes and guides these interventions. The focus should not just be on women’s roles in development but also on women’s rights in relation to social provision.

The purpose of this workshop is to provide an interpretation of women’s rights to social security and protection within international human rights law that offers a sophisticated framework for testing social security law and policy. The framework should also look to improving and advancing the rights of women in future social protection measures. This paper provides some history and background to the somewhat neglected right to social security and protection and explores how a gender perspective on the right has evolved in recent years. It also hopes to provide a set of common terms and concepts that will allow all workshop participants to approach the discussion from a similar starting point. It describes three different but related approaches to the ‘gendering’ of the right within which authors might locate their analysis of themes and case studies. It should however be clear that nothing in this paper is definitive and we are hoping that the workshop will produce a range of interesting, critical and challenging ideas and perspectives that will take us forward in our understanding of this important human right.

2. The right to social security: an historical perspective

Article 22 of the Universal Declaration on Human Rights (UDHR) provides that everyone has the right to social security and is entitled to realization of the economic, social and cultural rights indispensable for his dignity and the free development of his personality (authors’ emphasis). Article 25 of the UDHR enriches the definition of the right to social security by providing that 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 (author’s emphasis). By any standard, the UDHR’s comprehensive approach does not disconnect or isolate the human right to social security from other economic and social rights.
The International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966, somewhat confuses the issue of defining the aim of the right to social security by distinguishing between article 9 (the right to social security, including social insurance) and article 11 (the right of everyone to an adequate standard of living and to the continuous improvement of living conditions). Further confusion follows the inclusion in article 10 of the provision for the ‘protection’ and ‘assistance’ of working mothers, parents and children.

The recently adopted General Comment no. 19 (2007) by the UN Committee on Economic, Social and Cultural Rights (CESCR) states that measures to combat poverty and social exclusion and provide supporting social services (article 11) shall not serve as a substitute for the creation of social security schemes. But it does not exclude the possibility that social protection schemes that are not contribution-based contribute to the realisation of the right to social security.

Social insurance has been seen in Western industrial economies (mainly European) as providing the best form of social protection through contributory schemes. In order to unify seemingly separate and hierarchical human rights some authors now describe the above foundational and normative guarantees as goals supported by different possible types of schemes.

Riedel describes social security as an institution that provides to members of a given society social justice for a life in dignity, based on equal access and free development. Baron Von Maydell states that social security is aimed at guaranteeing equality, security and a share of wealth to all. In the African context, Kasente describes social security as an

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4 At para. 28.
urgently needed answer to income insecurity. In other words, the right to social security calls upon the need for the sustainability of social protection schemes beyond a specific normative understanding of the right to social security or of a particular technical scheme.

Almost throughout the 20th century, social security was narrowly understood in terms of the technical norms adopted by the International Labour Organisation (ILO). ILO Social Security (Minimum Standards) Convention no 102 serves as a universal reference for a set of social risks calling for protection as well as for a typology of beneficiaries. In fact, ILO Convention no 102 is anything but universal. The benefits it guarantees, or the classes of industrial and human risks it identifies, are and were always restricted to some groups of workers in some countries.

But some suggest that ILO Convention no 102 does not alter or restrict the goal of the right to social security. Convention no 102, as well as subsequent social security conventions adopted by the ILO, are to be seen in a contemporary context as a normative framework based on the principles expressed both in the UDHR and in the ILO Declaration of Philadelphia of 1944. The Declaration of Philadelphia does not promote a narrow vision of normative social security – it calls for ‘the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care’ (III(f)).

Moving from a ”labor” perspective of the right to social security to a human rights’ one, General Comment no 19 adopted in 2007 by the Committee on Economic, Social and Cultural Rights (CESCR) provides for an encompassing understanding of the right to social security:

4. The wording of article 9 of the Covenant indicates that the measures that are to be used to provide social security benefits cannot be defined narrowly and,
in any event, must guarantee *all peoples a minimum enjoyment of this human right*. These measures can include:

(a) Contributory or insurance-based schemes such as social insurance, which is expressly mentioned in article 9 [...].

(b) Non-contributory schemes such as universal schemes (which provide the relevant benefit in principle to everyone who experiences a particular risk or contingency) or targeted social assistance schemes (where benefits are received by those in a situation of need). [...].

5. Other forms of social security are also acceptable, including (a) privately run schemes, and (b) self-help or other measures, such as community-based or mutual schemes.

This overly brief introduction to the right to social security allows for the following conclusions. The right to social security is not limited to contributory schemes or to the right to social insurance. It includes non-contributory schemes as well as privately run schemes or self-help community run strategies.

This shift in social security coverage understanding is based on dramatic evidence emerging over the last decades. It is estimated that not more than 20% of the global population benefits in any way from contributory social security schemes and that about 70% of workers are located in the informal sector and in the precarious world of unregulated labor.\(^\text{12}\) While the 1944 Declaration of Philadelphia constitutes a strong call for universal human dignity, the ILO performed its role in a particular industrial context where it was assumed that the social security standards were for the benefit of the male wage worker and his family in the formal economy. The ILO approach to social security of the last century did not evolve within a human rights framework and if anything, resulted in more social and economic exclusion than inclusion in global terms.

Since 2000, the ILO has made significant changes to its approach in efforts aimed at identifying the core and essential content of a national social security scheme in the context of the global fight against poverty.\(^\text{13}\) As Reynaud describes it, the ILO was confronted with


the ideas of poverty alleviation and consumption smoothing promoted by the World Bank to the exclusion of other objectives such as redistribution, inclusion, and equality.\textsuperscript{14} Such initiatives were based on the idea that households were better served by market goods than by social goods with regard to the pricing and availability of such goods, and that the household’s participation in the market economy was the key to its economic security. Considering the catastrophic impact of such market-based strategies, the ILO came to the conclusion that there was a need to distinguish between a basic social security package (addressing deficiencies) and the ongoing improvement of the more advanced option based on formal labour standards. Social security standards developed by the ILO needed to be renovated to both extend their reach to the developing world and to improve and update existing ideas of social security in developed country contexts.

Interestingly, but without express acknowledgement, the call for basic social security implicated some of the other economic and social rights: food, housing, education and health.\textsuperscript{15} In addition, the social security ‘renovation’ targeted some of the risks provided for in Convention no. 102 as being urgent and basic: health, survivors’ benefits, sickness benefits, maternity benefits and family allowances. The package seemed to vary according the authors outlining it. For example, Michael Cichon, in a paper published in 2007, described this package as including basic healthcare coverage, family benefits, basic social assistance and basic universal pensions.\textsuperscript{16} Commendably, Cichon reintroduced principles that indirectly linked the package with a human rights-based approach as well as with a gender equality framework – he argued that social protection is not only about providing income security to the poor but is also about equity and redistribution.

\textsuperscript{14} Id., p. 4-5.
The 2001 ILO New Consensus Model tackled the need for social protection as a human rights issue. But it did so in a somewhat unsystematic way. The Model remained tied to a reformulation of Convention no. 102. It was not quite in tune with the human rights treaties interpretations regarding the role of the State as being ultimately responsible for the implementation of rights, in this case the right to social security. Finally, the ILO, if sensing the potential of a human rights based approach to social security, had trouble identifying women as rights’ holders. At best, women were identified as the most vulnerable group in need of social protection.

This decade of promoting social security as a human right culminated in 2012 with the adoption by the ILO of Recommendation no. 202 concerning national floors of social protection. Article 3 of ILO Recommendation no. 202 enumerates 18 principles common to both national social protection floors initiatives (SPFI - Part II) and extension strategies (Part III), including non-discrimination, gender equality and responsiveness to special needs. Article 3 also echoes many of the requirements outlined in General Comment no. 19 adopted in 2007 by the CESCR.

But ILO Recommendation no. 202 does not explicitly address some important gender issues which are central to women’s right to social equality. For example, it is entirely silent on the negative impact of women’s care-giving responsibilities. It also fails to clearly de-link the need for anti-poverty measures from the labor market where women are least likely to be located. In addition, Recommendation no. 202 does not allude to women’s specific needs for good quality and appropriate public services. On the contrary, it neutrally states that SPFI should secure effective access to goods and services. In 2012, the ILO acknowledged that the feminist critique of Convention no. 102 as being gender-biased is well grounded. It seems to consider the adoption of Recommendation no. 202 as a means

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17 For a detailed analysis see Lamarche, Onati paper.
18 International Labour Office, The Strategy of the International Labour Organization - Social Security for all - Building social protection floors and comprehensive social security systems, 2012, para. 30: As also noted in the outcome of the discussion on the General Survey of 2011 on social security by the Committee on the Application of Standards, the language of certain provisions of Convention No. 102 is often interpreted as gender-biased. There is a need for a pragmatic solution that would enable its interpretation in a gender-responsive way without revising the instrument itself or weakening the prescribed levels of protection and population coverage. This may facilitate further ratifications by a number of member States.
of correcting this bias through national social protection floor initiatives. But the SPF Recommendation is not adequately attentive to gender issues to ensure that these changes occur.

Even with its shortcomings, ILO Recommendation no 202 is nevertheless the result of a consideration of women’s rights to social security, which had previously been given more attention (directly and indirectly) by human rights treaty bodies, particularly the CESC&R and CEDAW. We will now analyse this human rights elaboration of social security as a gendered right and consider its influence on the, as yet, unfinished process of engendering the right to social security.

3. Engendering the right to social security

An early challenge to the exclusionary approach of the ILO came from feminist critiques of the welfare state. The issue of engendering social security provoked an encounter between the standardised prohibition of discrimination based on sex and social security. Luckhaus explained how unsatisfying (although not totally in vain) this experiment had been in the context of European law. For Luckhaus, the fight against sex discrimination in the workplace largely hid the centrality of unpaid caring work done by women as being the cause and the source of women’s poverty and exclusion. Greater accessibility to social security benefits without discrimination, such as pensions, may partly remove the consequences of assumed dependency of women on the male bread winner, but it does not address the negative impact of the peripheral connection of women to formal work and to care as well as the poverty trap into which they fall. In other words, there is a fundamental distinction to be made between (substantive) gender equality as a means to secure income and citizenship, and (formal) sex discrimination as a legal norm that imperfectly levels a specific playing field between certain groups of male and female workers.

This legal critique echoed a broader critique of the welfare state by feminist social scientists such as Orloff,\textsuperscript{20} Lewis,\textsuperscript{21} Fraser,\textsuperscript{22} Sainsbury\textsuperscript{23} and Daly.\textsuperscript{24} They highlighted how the conceptualisation of the welfare state denied women’s right to social citizenship largely based on their lack of income as a product of their caring responsibilities.\textsuperscript{25}

This initial European-centric critique of the welfare state joined a more universal one as successive generations of structural adjustments programs and the neo-liberal agenda increasingly put women from the global South at high risk.

Today women from both the North and the South are in urgent need of social protection in a globalised world of increasing poverty where adverse roles are assigned to women by both the market and neo-conservative ideology. Within this context, women’s identity should be understood in an intersectional manner as their commodification relies on many factors: race; work status (precarious, informal, caregivers); geographical division (North-South), migrations, etc.

As Razavi proposes, engendering social protection in a contemporary context requires efforts to prevent, to manage and to overcome all situations that adversely affect people’s well-being and living standards.\textsuperscript{26} Before identifying the fault lines of both social insurance and social assistance programs as they are now unfolding around the world, Razavi recalls how international institutions moved, over the last decade, from a subsidiarity approach\textsuperscript{27}


\textsuperscript{22} Nancy Fraser, ‘After the Family Wage: Gender Equity and the Welfare State’ (1994) 22:4 Political Theory 591-618.


to a social investment perspective.\textsuperscript{28} She believes that engendering social protection means in fact promoting transformative social policies, in the way Mkandawire uses the expression.\textsuperscript{29} Some would say that such an approach addresses the need for a redistributive equality.\textsuperscript{30}

At the global level, there have been efforts to bring in workers of the informal sector and those who are self-employed into contributory pension or health schemes. Costa Rica and South Korea are often cited as examples. But as Razavi so eloquently expresses it, how far can we go in promoting the link between social protection and work as it is now a documented fact that women’s work trajectories are unpredictable, often unfold in the informal sector, and are unstable?

Many ‘universal’ social assistance programs have also recently been created. From basic universal pensions to cash transfer programs that target mothers, to Public Works Programs, the strategy of social investment largely relies on such basic programs, whether means-tested or not. Again, as Razavi asks, can such programs seriously address women’s poverty and well-being in a context where almost no investment is made in public services? Women require good public services to meet their own and their families’ basic needs.

Finally, Razavi raises a query regarding the bundle of so-called ‘community’ or ‘self-help’ systems that are described as answering social protection needs: how much disguised and unpaid work do they require from women?

A reasonable assessment of all these recent initiatives\textsuperscript{31} calls for the promotion of mixed solutions: contributory, universal, etc. But more is needed in order to address women’s right to social protection. A human rights’ perspective that assesses the value of recent initiatives that directly or indirectly target women is required. The human rights perspective

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\textsuperscript{30} Fredman draft Onati paper.

\textsuperscript{31} For an exhaustive presentation of recent national social protection floors initiative, see UNDP, Sharing Innovative Experiences, Successful Social Protection Floor Initiatives, 2011; and International Social Security Association, BRICs Social Security Coverage, 2013.
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allows for a value-based examination that looks beyond the usual ideological, political or economic justifications.

Before we embark on the discussion of the human rights perspective, we need to briefly consider the term ‘social protection’. Clearly, the need for engendered social protection relies on the right to social security, to social insurance and to social assistance, the latter also referred to as non-contributory benefits. But the advantage of using the expression ‘social protection’ is that it entails the need for a social environment that is women-friendly and that protects public services, specifically with regard to health and care. The notion of social protection requires that we assess mixed packages of social security in terms of their benefit to all and in respect of gender equality. Although contemporary attempts to address the right to social security and to social protection move between the principle of work-linked and work de-linked models, one basic fact has to be kept in mind: solutions have to deal with women as they are and where they are since the actual locus of their social exclusion can become the locus of their demarginalization.

4. Engendering the right to social security and social protection as a human rights issue

The right to social security, as a human right, is in some ways a human right re-emerging from the obscurity of the Declaration of Philadelphia and from the UDHR. This resurfacing process and the gendering of the right is built on a *collage* of different initiatives and interpretations taken by different human rights treaty monitoring committees, particularly the CEDAW and the CESCR. Of course, such process largely echoes the realities faced by women as they have been confronted in the last decades with a severe reengineering of their assumed roles (family-community-market) as well as of their needs in the context of consecutive waves of neo-liberalism and of neo-conservatism. Their voices have reached the treaty committees and have filtered into Concluding Observations, General Comments and other committee statements. The development of women’s right to social security and to social protection is a part of an ongoing but unstated treaty body project linking fundamental rights: the right to equality and the economic and social rights of women. Such rights’ guarantees can be found in different treaties, such as CEDAW, the ICESCR
and the ICCPR, that all come with their peculiarities, and benefit from an interdependent understanding of all women’s rights.

Article 3 common to both ICESCR and ICCPR guarantees the equal right of both men and women to the enjoyment of all rights provided for in both Covenants. Article 26 of ICCPR provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Human Rights Committee adopted in 1989 the General Observation no 18 which clarifies the fact that article 26 of ICCPR is a general right that concerns all aspects of women’s lives.33

An engendered reading of women’s right to social security and to social protection has slowly begun to emerge from consideration of these different treaties. We now look briefly at the documents of CEDAW and CESCR as demonstrations of these Committees’ attempts to unpack the content of a gendered social security right.

4.1 CEDAW34

CEDAW is often described as providing a complete gender equality regime although it does not offer an independent equality standard. Article 1 and article 2 of CEDAW define and condemn discrimination against women. By doing so, it proposes a substantive understanding of gender equality. Such substantive equality standard finds an echo in more

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32 Human Rights Committee, General Comment no 28 (2000) The equality of rights between men and women), UN Doc HRI/GEN/1/Rev.9 (Vol.I), 228; Committee on Economic, Social and Cultural Rights, General Comment no 16 (2005) The equal right of men and women to the enjoyment of all economic, social and cultural rights (art.3) UN Doc HRI/GEN/1/Rev.9 (Vol. I), 113.
33 UN Doc HRI/GEN/1/Rev.9 (Vol.I), 229, par. 12.
34 This section is largely drawn from Goldblatt, PhD thesis, forthcoming.
recent human rights treaties such as in the Convention on the Rights of Persons with Disabilities:

6 (1) States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

6 (2) States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention. (Our emphasis)


States parties should clearly distinguish between temporary special measures taken under article 4, paragraph 1, to accelerate the achievement of a concrete goal for women of de facto or substantive equality, and other general social policies adopted to improve the situation of women and the girl child. Not all measures that potentially are, or will be, favourable to women are temporary special measures. The provision of general conditions in order to guarantee the civil, political, economic, social and cultural rights of women and the girl child, designed to ensure for them a life of dignity and non-discrimination, cannot be called temporary special measures. (Our emphasis).

Accordingly, social programs (of all kinds) that are designed to address women’s needs and rights cannot be restrained (in time or by design) because they directly address women’s needs. As the CEDAW Committee says, equality requires more that catching up with men. But, beyond this useful statement, CEDAW General Recommendation no 25 offers little in order to assess the gender impact of contemporary social security and social protection measures.

That being said, CEDAW is anything but short of specific guarantees in relation to women’s right to social security.

36 CEDAW, General recommendation no. 25 (2004) on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures.
Article 11(1)(e) provides ‘The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave’. This right is located within the article dealing with employment-related discrimination. However, the inclusion of references to both ‘retirement’ and ‘old age’ suggests that social security might here apply to the period following the end of a working life as well as a period when a person is not able to work due to their age. This seems to imply that social security must be provided equally to men and women whether as a result of their relationship to particular work or as a consequence of their need for state support due to their inability to work and consequent lack of income from employment. This points to the possibility of a state having to provide support to certain groups both by way of social insurance and (non-contributory) social assistance.

Article 11(2) also relates to work and requires the introduction of paid maternity leave (b); and, the provision of child-care and other social services to support working parents (c). Parental leave and support for parents may form part of a country’s social security system.

Fredman points out that the Convention takes a formal equality approach to the employment rights in Article 11 where equality is simply an add-on to existing work-related entitlements. The Article incorporates an ‘intensely male model of work’ since work is assumed to be paid work outside of the home. But structural reform of paid work and sharing of responsibility for unpaid work in the home by men and women are necessary to alter women’s access to paid work. With regard to the social security rights in Article 11(1)(e) Fredman notes that women ‘will not achieve de facto equality unless eligibility criteria and contribution requirements are changed to reflect women’s interrupted work patterns’. She stresses the difficulties with ensuring this right to women in the informal sector. Farha also raises a concern with the wording of Article 11 which may be interpreted as ‘protecting the labour rights of more privileged women over more marginalised women’.

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37 Article 11(1)(c) also concerns social security since it refers to ‘benefits and conditions of service’.
40 Ibid.
work and the needs of pregnant women and parents are given focus over the needs of other groups such as immigrant and older women.

While acknowledging these concerns, it should be noted that Article 11 does highlight important gender issues that were new to international conventions: Article 11(2)(c) was the first international convention to specifically provide for childcare, even before the ILO addressed this.\(^4\) The wording of the Article is not an injunction to provide childcare but rather an encouragement to states.\(^4\) Thus, although Article 11(1)(e) creates an immediate right to social security, Article 11(2)(c) is a less forceful statement on childcare. This is somewhat at odds with the sentiment expressed in the preamble regarding the sharing of responsibility for families. Nevertheless, it is an innovative and valuable inclusion in CEDAW in raising the issue of state’s responsibilities to address gendered divisions in the home and workplace.

Articles 12 and 13 relate to women’s social and economic rights. Article 12 concerns health and makes reference to ‘access to health care services’ (Article 12(1)). Such services may be provided through health insurance as part of a social security package. Article 13 relates more generally to ‘other areas of economic and social life’ and refers specifically to ‘the right to family benefits’ (Article 13(a)) which would include social security entitlements available to families. This broad framing of social and economic rights and the silence on some of the specific rights such as housing, food and the right to an adequate standard of living requires reference to other international human rights instruments that refer to such rights.\(^4\) As has been discussed above, these include various articulations of the right to social security.

The particular circumstances of rural women are set out in Article 14 where there is specific reference to ‘work in the non-monetized sectors of the economy’ or subsistence work. Social security is mentioned directly in Article 14(2)(c) which refers to the right ‘to benefit directly from social security programmes’. The inclusion of this sub-article followed debate as to whether social security should be provided to ‘those in formal employment or to all citizens including women engaging in subsistence agriculture’.\(^3\) The fact that it was

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\(^3\) Ibid, at 302.


included suggests that CEDAW provides a broad right to social security that encompasses social assistance for all who need it, and particularly for women facing poverty and barriers to accessing income, whether in the informal economy or in unpaid labour. This is an important recognition of the nature of women’s work across the formal, informal and subsistence sectors of the economy. It is unfortunate that this statement was made only in the context of rural women since subsistence work is also undertaken by urban women. In addition, although the Article acknowledges women’s unpaid work in the ‘non-monetized sectors of the economy’, it fails to go further in recognising women’s other unpaid labour in the home and elsewhere (such as in family enterprises).

There are clearly some limitations in the language of the Convention with regard to women’s social security rights although there are also many far reaching statements that cannot be found in any other international conventions. Many of the gaps or problems with the framing of the social security rights in CEDAW have however been addressed through the work of the Committee which has elaborated and expanded the meaning of the social security rights to ensure that they provide a more substantive (and sometimes even transformative) approach to equality between men and women: women in the informal sector; unpaid work of women; household labor; precarious work; agricultural work; temporary and part-time work.

A central gap in CEDAW relates to the lack of a clear statement defining women’s unpaid household and caring labour as work with attendant rights to social security and protection. The reference in the preamble to the sharing of responsibility between men and women and the role of society in relation to this work is important. There could also be greater

48 General Recommendation 16, Supra, note 32. See also CO Turkey CEDAW/C/TUR/CO/6 (CEDAW, 2010) paras 32-3.
50 CO Netherlands CEDAW/C/NLD/CO/5 (CEDAW 2010) para 38.
51 CO Lebanon CEDAW/C/LBN/CO/3 (CEDAW 2008) para 36.
52 CO Liechtenstein CEDAW/C/LIE/CO/4 paras 34-7. The Committee also recommended that men be provided with part-time and flexible employment to allow them to play a greater role in child care.
emphasis of the role of social assistance in addressing women’s poverty, not just for pension age women, but for all women in need of income support. A General Recommendation on women’s rights to social security and protection would be a valuable contribution from the CEDAW Committee or a joint recommendation/comment from the CEDAW and CESCR.

4.2 CESCR

The CESCR had given attention through general comments to other rights in the Covenant such as education, health, housing, food and water but development of the social security right lagged behind. It began work on a general comment in 2004. The CESCR adopted General Comment no. 19 on the right to social security in 2007 with some attention to gender issues. As Langford recalls, the Committee had been touching on the issue of gender and the right to social security long before adopting GC no. 19. For example, para 28 of GC no. 5 on persons with disabilities (1994) provides:

> Social security and income-maintenance schemes are of particular importance for persons with disabilities. As stated in the Standard Rules, "States should ensure the provision of adequate income support to persons with disabilities who, owing to disability or disability-related factors, have temporarily lost or received a reduction in their income or have been denied employment opportunities". [...] Such support should reflect the special needs for assistance and other expenses often associated with disability. In addition, as far as possible, the support provided should also cover individuals (who are overwhelmingly female) who undertake the care of a person with disabilities. (our emphasis).

And para. 26 of GC no. 6 (1995) on the economic and social rights of older person’s states implies a recognition of the disadvantages faced by women:

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54 M. Langford ‘The Right to Social Security and Implications for Law, Policy and Practice’ in in E. Riedel (ed), Social Security as Human Right –Drafting a General Comment on Article 9 ICESCR – Some Challenges, supra, note 6, 29.
States parties should, within the limits of available resources, provide *non-contributory old-age benefits and other assistance for all older persons*, who, when reaching the age prescribed in national legislation, have not completed a qualifying period of contribution and are not entitled to an old-age pension or other social security benefit or assistance and have no other source of income.\(^{56}\)

In 2005, the CESCR adopted General Comment no 16 (2005).\(^{57}\) Paras 18 to 21 of GC no. 16 provide useful guidelines aimed at assessing the equal realization of women’s economic, social and cultural rights. GC no. 16 reminds the State parties that they have a duty to protect, to promote and to fulfil all women’s economic and social rights without discrimination. In addition, both GC no. 16 and no. 20 (2009)\(^{58}\) call for the immediate respect of women’s right to all economic and social rights without discrimination.

In 2007, the CESCR adopted a Statement on the Evaluation of the obligation to take steps to the maximum of available resources under an optional protocol to the Covenant.\(^{59}\) Para. 8 of this Statement reads as follow:

In considering a communication concerning an alleged failure of a State party to take steps to the maximum of available resources, the Committee will examine the measures that the State party has effectively taken, legislative or otherwise. In assessing whether they are “adequate” or “reasonable”, the Committee may take into account, inter alia, the following considerations:

(a) the extent to which the measures taken were deliberate, concrete and targeted towards the fulfilment of economic, social and cultural rights;
(b) whether the State party exercised its discretion in a non-discriminatory and non arbitrary manner;
(c) whether the State party’s decision (not) to allocate available resources is in accordance with international human rights standards;
(d) where several policy options are available, whether the State party adopts the option that least restricts Covenant rights;
(e) the time frame in which the steps were taken;

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\(^{56}\) Committee on Economic, Social and Cultural Rights, General Comment no 6 (1995) The economic, social and cultural rights of older persons. UN Doc HRI/GEN/1/Rev.9 (Vol.I), 27.

\(^{57}\) Committee on Economic, Social and Cultural Rights, General Comment no 16 (2005) The equal right of men and women to the enjoyment of all economic, social and cultural rights (art.3) UN Doc HRI/GEN/1/Rev.9 (Vol. I), 113.

\(^{58}\) Committee on Economic, Social and Cultural Rights, General Comment no 20 (2009) Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), para. 7and General Comment no 16, para.16.

\(^{59}\) Committee on Economic, Social and Cultural Rights, Statement by the Committee: An evaluation of the obligation to take steps to the "Maximum of available resources" under an optional protocol to the Covenant, UN DOC E/C.12/2007/1. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights has since been adopted and entered in force recently.
whether the steps had taken into account the precarious situation of disadvantaged and marginalized individuals or groups and, whether they were non-discriminatory, and whether they prioritized grave situations or situations of risk.

Para. 4 of the 2007 Statement focused more closely on the issue of gender equality and of resources:

The “availability of resources”, although an important qualifier to the obligation to take steps, does not alter the immediacy of the obligation, nor can resource constraints alone justify inaction. Where the available resources are demonstrably inadequate, the obligation remains for a State party to ensure the widest possible enjoyment of economic, social and cultural rights under the prevailing circumstances. The Committee has already emphasized that, even in times of severe resource constraints, States parties must protect the most disadvantaged and marginalized members or groups of society by adopting relatively low-cost targeted programmes. (Our emphasis)

GC no. 19 adopted by the CESCR builds upon previously adopted General Comments, such as GC no. 3 on the nature of States parties' obligations (1990) and GC no. 9 on the domestic application of the Covenant (1998).60 The structure of GC no. 19 reflects this normative interpretation of the Covenant.

To summarize GC no. 19, the right to social security must answer seven characteristics in order to respect the Covenant:

- Adequacy (para. 22): Benefits, whether in cash or in kind, must be adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care, as contained in articles 10, 11 and 12 of the Covenant;
- Benefits must cover risks and contingencies enumerated in paras, 12 to 21 of GC 19;
- Affordability: If a social security scheme requires contributions, those contributions should be stipulated in advance. The direct and indirect costs and charges associated with making contributions must be affordable for all, and must not compromise the realization of other Covenant rights;
- Non discrimination;
- Universality (para. 23): ALL persons should benefit from the right to social security;
• Respect of core content or of minimum essential level of protection (para.59 (a);
• Non Retrogression (para. 64).

Para. 42 of GC no. 19 (General Legal Obligations of States – Right to social security) suggests a useful methodology aimed at the scrutiny of social programs that respect the ICESCR:

42. There is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under the Covenant. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant, in the context of the full use of the maximum available resources of the State party. The Committee will look carefully at whether:
(a) there was reasonable justification for the action;
(b) alternatives were comprehensively examined;
(c) there was genuine participation of affected groups in examining the proposed measures and alternatives;
(d) the measures were directly or indirectly discriminatory;
(e) the measures will have a sustained impact on the realization of the right to social security, an unreasonable impact on acquired social security rights or whether an individual or group is deprived of access to the minimum essential level of social security; and
(f) whether there was an independent review of the measures at the national level.

Para. 32 of GC no. 19 (2007) specifically considers the relationship between the right to social security and gender equality:

In general comment No.16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3), the Committee noted that implementation of article 3 in relation to article 9 requires [...] In social security schemes that link benefits with contributions, States parties should take steps to eliminate the factors that prevent women from making equal contributions to such schemes (for example, intermittent participation in the workforce on account of family responsibilities and unequal wage outcomes) or ensure that schemes take account of such factors in the design of benefit formulas (for example by considering child rearing periods or periods to take care of adult dependents in relation to pension entitlements). Differences in the average life expectancy of men and women can also lead directly or indirectly to discrimination in provision of benefits (particularly in the case of pensions) and thus need to be taken into account in the design of
schemes. Non-contributory schemes must also take account of the fact that women are more likely to live in poverty than men and often have sole responsibility for the care of children.

This paragraph highlights many important issues and is a valuable contribution to the task of gendering the right. Its recognition of the role of care is very significant. It does not however, expressly refer to women’s unpaid subsistence and reproductive labour which is not seen as work. It also fails to mention violence against women and the impact of status based discrimination on women’s access to the right.\footnote{See Goldblatt ‘Principles for a substantively equal, gendered social security right’ (2013), forthcoming, for a more in-depth critique of CESCR GC No. 19.}

Para. 40 of GC no. 19 restates the immediacy of respecting gender equality when implementing the right to social security:

> While the Covenant provides for progressive realization and acknowledges the constraints owing to the limits of available resources, the Covenant also imposes on States parties various obligations which are of immediate effect. States parties have immediate obligations in relation to the right to social security, such as [...] ensuring the equal rights of men and women (article 3), [...] Such steps must be deliberate, concrete and targeted towards the full realization of the right to social security.

GC no. 19 is an important advance by the treaty body to give content to the right to social security based on human rights principles rather than just through the traditional reliance on ILO standards. It is also note-worthy in its efforts to consider women’s needs and build their rights into the social security rights’ framework. Nevertheless, there are still vestiges of the ILO’s historical developed country and formal worker bias and the gender framework is not fully developed. GC no. 19 is a useful reference point for the project to engender the social security right but more is required. We now turn to recent efforts to articulate an approach to this project.

### 5. Gender rights frameworks

There are different ways of undertaking the task of engendering the right. The first is to locate the work within the equality guarantee and ensure that the right to social security is
realised in a gender equal way. The second requires a systematic gendering of the social security right by critiquing and reformulating GC 19 in light of feminist theory to ensure that every part of the Committee’s approach to the right takes account of gendered considerations and results in a right with a deeply gendered content. The third devises a human rights approach to social protection that mainstreams gender and includes a set of guidelines that tests compliance of social protection programmes with human rights obligations informed by a gender perspective.

5.1 The equality approach to the social security right

This approach recognises that human rights will not in themselves ensure that women’s needs and interests are addressed without further efforts to put these at the forefront and find ways of meeting them. It sees equality, which is both an underlying value and an operational human right, as the standard against which other human rights can be tested and reframed to ensure that they are not advantaging some over others. Equality, with a gender focus, requires that social security and protection rights contribute towards far-reaching, positive alterations to gender relations in society. This approach is best articulated by Sandra Fredman who sees substantive equality as a ‘multi-dimensional concept... pursuing four overlapping aims’:

First, it aims to break the cycle of disadvantage associated with status or out-groups. This reflects the redistributive dimension of equality. Secondly, it aims to promote respect for dignity and worth, thereby redressing stigma, stereotyping, humiliation, and violence because of membership of an identity group. This reflects a recognition dimension. Thirdly, it should not exact conformity as a price of equality. Instead, it should accommodate difference and aim to achieve structural change. This captures the transformative dimension. Finally, substantive equality should facilitate full participation in society, both socially and politically. This is the participative dimension.62

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Applying this concept of equality to laws and policies that claim to advance the right to social security and protection means testing them against each dimension in turn, informed by a gendered understanding of inequality and how it is created and maintained.\(^\text{63}\)

5.2 Gendering the social security right

This approach is part of a feminist project that aims to expand and redefine the content of international human rights and social and economic rights in particular.\(^\text{64}\) Diane Otto argues that:

There is also the continuing need to take a dynamic and gender-inclusive approach to interpretation of the substantive articles of the ICESCR. Women should not always have to rely on the discourse of equality and non-discrimination to ensure their inclusion in the mainstream of the human rights paradigm. Rather, human rights must also be interpreted from women’s perspectives... the content of each ICESCR right must be understood so that it addresses women's actual needs when they are interpreted or implemented... gender-inclusive interpretation is itself an important means of achieving substantive equality for women.\(^\text{65}\)

This approach draws on key feminist concepts in engaging in a process of reinterpretation of the right to social security and protection. It assumes that the right will generally be understood using a male standard for the default rights holder. It takes women’s lives as the starting point and requires attention to context. In so doing it requires that women’s agency and voice are central to responses that address their circumstances. It recognises that women are not a homogenous group and that attention must be paid to the intersections between categories of disadvantage along lines of gender, race, culture, age, religion,


disability and others. Efforts to address the needs of women should be careful not to leave certain groups of women behind, thus consideration of marginalisation and vulnerability is crucial. The structuring of the world into public and private domains sees women’s experiences being privatised, diminished and ignored. The division of labour and the structuring role of care shape women’s experiences over the life course and distinguish them from men’s. Thus, work in the home, the usual preserve of women, is not regarded as work that counts; subsistence work and work in family enterprises is also often unpaid for women and children; and women’s work in the informal and formal sector is often located at the bottom of the hierarchy in terms of value and recognition. Subordination of women is deeply embedded in the power structures of society leading to violence and oppression in all spheres of life. The need to understand and respond to the damaging conditions faced by women requires a focus that goes beyond national boundaries and pays attention to global challenges and the interplay between the global, national and local.

A number of efforts to ‘engender’ the social security right are currently underway alongside the earlier efforts to do so.

5.3 Mainstreaming gender into the human rights approach to social protection

The UN Special Rapporteur on Extreme Poverty, Magdalena Sepulveda Carmona, has contributed important thinking on the right to social security as it applies to women. She


67 Lucie Lamarche, 'Le Pacte international relatif aux droits économiques, sociaux et culturels, les femmes et le droit à la sécurité sociale : des considérations et des propositions pour un droit 'universel' à la sécurité sociale' Supra, note 10 ; Linda Luckhaus, 'Equal treatment, social protection and income security for women' Supra, note 19 ; Julia Sohrab, 'Sexing the benefit : women, social security, and financial independence in EC sex equality law (Aldershot, 1996); Vicki Paskalia, Free Movement, Social Security and Gender in the EU (Hart Publishing, 2007).

68 Magdalena Sepúlveda Carmona, ' Report of the Independent Expert on the question of human rights and extreme poverty to the General Assembly on the importance of social protection measures in achieving Millennium Development Goals (MDGs)', UN DOC A/65/259 (2010); 'Final draft of the guiding principles on extreme poverty and human rights, submitted by the Special Rapporteur on extreme poverty and human
brings in many of the lessons of feminist development theory alongside feminist perspectives on social policy in a robust approach to human rights. Her report on social protection measures identifies key issues for consideration in designing policies that promote gender equality and human rights more broadly. These include: 69

- Women’s life-cycle risks and obstacles to accessing work, including their care responsibilities, must be taken into account;
- Gender-sensitive eligibility criteria must be developed that would address issues such as lack of identification documents;
- Community targeted programs must be designed to prevent women from being excluded by men in those communities;
- Household targeting can also reinforce inequalities within households and must be approached with this in mind. Delivery of benefits to women may also lead to violence against them in the household;
- Social protection programs in the form of public works must remove obstacles to women’s participation such as child care and domestic responsibilities;
- Such programs must always provide equal pay for men and women;
- Conditional cash transfer programs that place the responsibility on women for fulfilling conditions ‘may perpetuate gender stereotypes, limit women’s ability to work and further undermine their well-being’. They may also limit their ability to seek work, obtain health care or enjoy leisure time and may expose them to violence in the home and abuse by officials;
- Program design must consider its potential impact on gender divisions of labour in the household (for example where mothers are removed from households to become involved in government programs leaving girl children with household responsibilities that remove them from school);

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- Public participation in proposed or actual social protection programs must facilitate women’s participation to prevent violence, abuse and sexual harassment and to ensure that women’s voices are heard;

- Gender sensitive social services must accompany social protection programs. For example, women may fail to meet conditionalities of social transfer programs such as ensuring their children attend school, where schools are far away and their daughters face rape en route or where there are no separate sanitation facilities for them. ‘Women rely on social services more than men owing to their reproductive and caregiving roles. Thus, if social services remain indifferent to the specific needs and vulnerabilities of women, and if economic barriers such as service fees for health and education remain in place, the potential benefits of social protection will be undermined’.  

Carmona’s report also suggests a number of positive measures that should be taken in the design of gender-aware social protection programs. She says that:  

...social protection systems should actively promote gender equality and empower women. Policymakers must design, implement, monitor and evaluate social protection initiatives through a gender lens. Programmes should address asymmetries of power and structural inequalities, and enhance the realization of women’s rights. They must take into account the multiple forms of discrimination that women experience, and ensure that women’s specific needs are addressed throughout their lives: during adolescence, adulthood and old age.

Carmona argues that there cannot be a single policy approach given the variety of social, economic, political and cultural contexts but certain key measures should be followed.  

Carmona and Nyst’s recent book makes seven specific gendered recommendations for the compliance of social protection systems with international human rights obligations.
• ‘States must acknowledge that the impacts of social protection programmes are not gender neutral, and accordingly should design and implement social protection strategies which recognise the multiple forms of discrimination that women experience, and ensure that programmes address women’s specific needs throughout the different phases of their life cycle (childhood, adolescence, adulthood and old age)’.

• ‘Social protection programmes must respect and acknowledge the role of women as providers of care without reinforcing patterns of discrimination and negative stereotyping. Measures must be taken to promote the value of care, and combine society and State responsibility for care work, encouraging men to participate more actively in the support and care of family members’.

• ‘Policy makers should invest in capacity-building to ensure that those designing and implementing social programmes at both the national and local levels are aware of gender issues, and should adopt measures to ensure greater participation of women in the administration of social protection programmes’.

• ‘Social protection mechanisms must be accompanied by culturally and gender-sensitive, good quality, social services which take into account the obstacles faced by women in accessing such services’.

• ‘States should ensure that all social protection programmes are subject to gender-sensitive eligibility criteria which take into account intra-household dynamics to ensure that women are reached by and able to benefit from social protection’.

• ‘Participatory and accountability mechanisms must be designed and implemented in social protection programmes, taking into account gendered power relations, in order to facilitate the meaningful participation of women in all stages of the programme’.

• ‘States must develop and collect disaggregated data in regard to gender, age, ethnicity and disability to monitor and evaluate social protection programmes’.

These are an extremely valuable set of guidelines for policy design that are framed within a human rights approach. They illustrate the close relationship between human rights, social policy and development and inform the interpretation of the international right to
social security and protection with the corresponding aim of addressing gender discrimination and promoting gender equality.

6. Conclusion

These three approaches are not mutually exclusive – on the contrary, they are closely interrelated and lead towards the same goal of a gendered social security right that is socially, economically and politically transformative. There is a recognised principle of international human rights law that human rights are universal, indivisible, interrelated and interdependent. Thus, non-discrimination/equality is closely linked to social security in a rights framework. The interdependence of rights also means that other rights may have a strong bearing on the right to social security. Thus, the right to dignity or the right to life may be important as they relate to state responsibility to address the indignities and loss of life caused by poverty. These rights should also be understood from a gender perspective. Other social and economic rights such as the right to livelihood and the right to work have a close association with the right to social security. Rights including housing, food, health care and education are also intimately related to social security. An elderly woman who has no pension may struggle to afford transport to access a hospital; similarly, a girl who is malnourished and has no education may struggle to access social assistance. This interdependence should be borne in mind in expanding the meaning of the right to social security.

This paper has provided a brief history of the evolution of the right to social security and efforts to engender it as a background to our current project that aims to interpret and advance the right for women. It has also tried to clarify some of the concepts and language that shape this field. And lastly, it has set out three of the ways in which this project might

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76 See the discussion in Barbara Y. Phillips, 'Dignity and Human Rights: A missing dialogue?' (PWESCR, 2011).
occur without precluding other approaches to engendering the right. We hope it is of assistance in informing the papers for the Onati workshop, participation in the workshop and the chapters that follow the workshop. We would welcome your comments, criticisms and suggestions on this background paper.