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**What does human rights law have to do with social protection systems?
Operationalizing the human rights principles of equality and transparency**

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* The views expressed in this paper are those of the authors and do not necessarily represent those of the United Nations.

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1. Introduction

There is a strong and symbiotic relationship between human rights and social protection. Human rights create legal obligations to implement social protection systems and establish standards for the design, implementation and evaluation of such systems.¹ In turn, social protection systems have the potential to contribute to the realization of a number of economic, social and cultural rights, such as the right to an adequate standard of living – including the right to adequate food, clothing, and housing² – as well as the rights to education³ and health.⁴

The success or failure of social protection systems in realizing human rights rests heavily on whether such systems are established and operated according to the standards that human rights require and the obligations they impose. However, often decisions regarding the design and implementation of social protection programs are based on technical assessments or choices made by social protection authorities, within financial and administrative constraints and political or ideological parameters (Devereux et al., 2013). Such decisions sometime do not include comprehensive assessments of the compatibility of the program design with human rights norms and standards compulsory in the country concerned.

International and domestic legal frameworks that establish the protection of human rights include a great variety of norms that are relevant for the design of social protection programs including for example, norms that enshrined gender equality, the prohibition of discrimination and stigma, privacy and data protection, and the best interests of the child. In addition, human rights law refers to critical principles that must be respected in all public policies, such as participation, transparency, access to information and accountability as well as priority to the most vulnerable and disadvantaged groups.

¹ Under human rights law, States are legally obligated to progressively ensure the right to social security to all individuals within their territories, providing specific protection for disadvantaged and marginalized individuals and groups as established in Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The *right to social security* is articulated most prominently in General Comment No. 19 on the right to social security, of the Committee on Economic, Social and Cultural Rights (CESCR) –the supervisory body of the Covenant- which spells out the key features of this right and the content of States’ obligations.

² ICESCR, Art. 11; Universal Declaration of Human Rights (UDHR), Art. 25.

³ ICESCR, arts. 13 and 14; UDHR, Art. 26.

⁴ ICESCR, Art. 12; UDHR, Art. 25.

The lack of attention to human rights law is a significant gap. Such norms and standards are not only compulsory, but their compliance assist to ensure that social protection systems are more inclusive, gender sensitive and respectful of the rights of beneficiaries. Moreover, they provide the tools to challenge the design and implementation of social protection programs when these rights and principles are violated.

To guide how human rights law should guide the design and implementation of social protection programs, this paper focuses on the operationalizing of two key human rights principles and norms in non-contributory social protection programs: (a) the principle of equality and non-discrimination and (b) the principle of transparency and access to information. These principles and standards are enshrined in most constitutions, bills of rights and domestic laws, as well as in international human rights treaties.

2. Principle of equality and non-discrimination

Most countries protect the right to equality and non-discrimination in national constitutions and domestic laws. In addition, the great majority of countries have assumed obligations to promote equality and prohibit unfair discrimination under binding treaties and customary international law in the field of human rights. For example, under the auspices of the United Nations, the right to equality and non-discrimination is protected, under several treaties, including the International Covenant on Civil and Political Rights (ICCPR, Articles 2, 3 and 26); International Covenant on Economic, Social and Cultural Rights (ICESCR, Articles 2(2) and 3); and Convention on the Rights of the Child (CRC, Articles 2 and 28). In addition, there are specialized treaties that are explicitly established to prohibit discrimination on the grounds of race, sex and disability: The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Convention on the Rights of Persons with Disabilities (CRPD). The right to equality and non-discrimination is also guaranteed by all major regional human rights instruments, such as the American Convention on Human Rights, the African Charter on Human and People's Rights (Articles 2, 3, 18 and 28) and the Arab Charter on Human Rights (Articles 2, 9, and 35).

According to international human rights law, all persons must enjoy all their rights, including the right to social security (protection)⁵, without discrimination of any kind. Consequently, decision-makers must guarantee that social protection systems in general, and social assistance programs, respect this principle. Complying with this principle is not just another policy alternative, one that countries can choose to adopt or ignore, but rather a legal obligation assumed through their own constitutions, international treaties, and national laws.

As noted by the Committee on Economic, Social and Cultural Rights (CESCR) -the supervisory body of the ICESCR- social protection authorities should take all necessary measures to eliminate any discrimination, "whether in law or in fact, whether direct or indirect, on the grounds of race, color, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status, sexual orientation or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to social security".⁶

⁵ Under international human rights law, the right to social security and the right to social protection are synonymous and can be used interchangeably. For example, the UN Committee on Economic, Social and Cultural Rights (CESCR) has noted that the right to social security includes *social insurance* and social assistance. CESCR, General Comment No. 19, para. 4.

⁶ CESCR's General Comment No. 19, para 29.

While the right to social security can be implemented progressively -in line with the State's level of resources⁷-, there are several obligations which are of immediate character such as the obligation to take deliberate, concrete and targeted steps towards the full realization of the right to social security.⁸ Moreover, the obligation to guarantee that the right is exercised without discrimination of any kind is also an immediate obligation not subject to the availability of resources.

Compliance with this principle does not mean that social protection systems cannot make differences. For example, some distinctions on the exercise of the right to social security can be legitimate (e.g. based on age). Yet, the critical point is that any distinction on prohibited grounds must be reasonable (proportional) and concretely justified with the exact circumstances of each case.

Providing social assistance in a non-discriminatory manner also means that governments must take affirmative actions to actively support disadvantaged and excluded groups to enjoy their rights on an equal basis with the rest of the population. In fact, priority should be given to remove the obstacles faced by disadvantaged groups in accessing social protection.⁹

According to the CESCR "a failure to remove differential treatment on the basis of a lack of available resources is not an objective and reasonable justification unless every effort has been made to use all resources that are at the State party's disposition in an effort to address and eliminate the discrimination, as a matter of priority."¹⁰

To ensure that a social protection system or a program do not discriminate against certain groups, attention should be paid to the outcome of an action, rule or requirement. A discriminatory treatment is determined by the effect of the measure and not by its intention. Thus, a "neutral" practice, rule or requirement would be discriminatory if it has a disproportionate impact on a particular group. For example, requiring a birth certificate to everyone registering into a social protection program may discriminate against women, and ethnic minorities who tend to not possess such documents, or might have been denied such certificates. Similarly, requiring school attendance as a co-responsibility (conditionality) to all beneficiaries -girls and boys- may have a discriminatory effect on adolescent girls over boys when there are no separate sanitation facilities at schools, as the lack of sanitation facilities may deter girls from going to school. Even some purely formalistic requirements, such as an expectation that the prospective applicants will have some form of literacy or will speak a mainstream language may disproportionately impact some disadvantaged groups. If they are de facto prevented from accessing the program, the requirement would be discriminatory.

In sum, designing social protection systems that mainstream the inclusion of vulnerable and disadvantaged groups requires that policy makers and practitioners identify the underlying causes of exclusions and take specific measures to address them. This includes, proactively taking measures (affirmative actions) aiming at correcting the conditions which cause or help to perpetuate disadvantage by certain groups.¹¹ The aim of these measures is to obtain substantive equality.

2.1. Gender equality principle

In addition to a general guarantee for equality, major human rights treaties include specific provisions prohibiting discrimination on the grounds of gender and to ensure equality between men and women (e.g. the ICCPR (Article 3) and ICESCR (Article 3)). Moreover, the Convention on the Elimination of All Forms

⁷ See, e.g. Art. 2(2) ICESCR and CESCR's General Comment 19, para 30.

⁸ See, e.g. CESCR's General Comments No. 3 and 19.

⁹ See, e.g. CESCR's General Comments No. 19 para. 31.

¹¹ See, e.g., Human Rights Committee's General Comment No. 18, UN Doc HRI/GEN/1/Rev.9 (Vol.I) 195 para. 10.

of Discrimination against Women (CEDAW) has been established to specifically address gender discrimination.¹² As a result, a variety of human rights treaty monitoring bodies, that are tasked with elaborating on the meaning of human rights in international law, have given further attention to issues of gender equality, including in social protection systems.

From this body of work, it is evident that ensuring gender equality in social protection systems requires a comprehensive set of measures from reforming discriminatory laws and regulations to changing social norms and prejudices that prevent women from benefiting from social protection in an equal manner than men.

To better understand the obligations regarding gender equality and non-discrimination in social protection systems, special attention should be paid to the concept of substantive equality advances by CEDAW. This concept recognizes that due to a legacy of historical inequalities, structural disadvantages, biological differences and biases in how laws and policies are implemented in practice, formal equality is not enough to ensure that women are able to enjoy the same rights as men.¹³

The achievement of substantive equality is understood as having four dimensions: (a) redressing disadvantage; (b) countering stigma, prejudice, humiliation and violence; (c) transforming social and institutional structures; and (d) facilitating political participation and social inclusion (Fredman and Beth, 2015). Compliance with these four dimensions should guide the way in which social protection policies in general and social assistance programs in particular are designed, implemented and evaluated by States parties to CEDAW.¹⁴

Considering that the notion of substantive equality shapes all the obligations under CEDAW, the obligation of States parties to take all appropriate measures to eliminate discrimination against women in their enjoyment of the right to social security (Article 11(e)) requires moving beyond a formal notion of equality. This means, that dismantling any formal legal impediments that exclude women from enjoying their right to social protection on an equal footing than men would not be enough. Treating men and women alike could be discriminatory if it led to unequal results (indirect discrimination).¹⁵ For example, a pension system based only on worker's contributions may penalize women who have taken childcare career breaks and part-time employment. Under certain circumstances, non-identical treatment of women and men will be required in order to address how structural disadvantages impact women.¹⁶

Several obligations under CEDAW are particularly relevant for the design and implementation of social protection systems, such as the obligation to ensure the full development and advancement of women (Article 3); take special measures to accelerate de facto equality between women and men (Article 4); prevent and eliminate discrimination that is perpetrated by private individuals or organizations (Article 2); eliminate discrimination against women in marriage and family life (Article 16); and to take measures to eliminate cultural and traditional practices based on the idea of the inferiority or superiority of one of the sexes, or on stereotyped roles for men and women (Article 5).

¹² According to Article 1 CEDAW, 'discrimination against women' shall mean 'any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.'

¹³ UN Women, Progress of the World's Women 2015-2016. Transforming Economies, Realizing Rights, New York, pp. 35-36.

¹⁴ Up to September 2018, there are 189 States parties to CEDAW.

¹⁵ CEDAW's Committee General Recommendation No. 25 on temporary special measures.

¹⁶ CEDAW's Committee General Recommendation No. 25 on temporary special measures.

Complying with these obligations in the design, implementation and evaluation of social protection programs entails, that the design of social assistance programs must address the imbalances, the risks and the barriers that women face, especially when it comes to access to productive resources, education, health and employment, as well as women's reproductive and productive functions.

This means, for example, that social protection programs should respect and appreciate the role that women play as caregivers, without reinforcing patterns of discrimination or negative stereotypes such as those which consider women as primarily responsible for childcare and unpaid work in the home. Considering that the unequal distribution in unpaid caregiving, which for the most part is performed by women, constitutes an enormous obstacle for women's enjoyment of rights,¹⁷ social protection programs should also aim at better redistributing unpaid care work, while encouraging men to take a more active role in caring for family members.

In the same vein, social protection programs should seek to mitigate the gender-based asymmetries of power in the decision-making process, both within the household and in the community, by ensuring the effective and meaningful participation of women in the administration of the program. One way this can be done is by establishing sex quotas in the governance structures of the program.

In sum, States parties to CEDAW are obliged to design and implement social protection systems which recognize the multiple forms of discrimination that women experience, and address women's specific needs throughout their life cycle (childhood, adolescence, adulthood and old age). Social protection systems should seek to mitigate the gender-based asymmetries of power in the decision-making process, both within the household and in the community. They should strive to transform society's existing gender dynamics and to disavow any patriarchal biases that negatively impact women's enjoyment of their right to social protection. However, this is often not done. As noted by an independent evaluation carried out by the World Bank, most social protection programs (i.e. social safety nets) supported by the Bank do not take into account the impact of gender differences into their design. Moreover, gender is also often missing from monitoring and evaluating frameworks, except for tracking female beneficiaries (World Bank and Independent Evaluation Group, 2014).

2.2. Operationalizing equality and non-discrimination

At each stage of the implementation of a social protection programme (e.g. registration, enrolment, eligibility determination, payment delivery, grievance and redress), discrimination can materialize posing a challenge to the well-functioning of the programme. If a program's authorities were to better understand the obstacles that people can face as well as the possible discriminatory outcomes of the programme they would be in a better position to take measures to ensure inclusion.

Using examples of non-contributory social protection programs, principally cash transfer programs, this section examines how processes of discrimination and exclusion play out in practice in different stages of their implementation. It also identifies some promising practices: programs where active measures have been taken to ensure inclusion of the most disadvantaged groups and provides concrete recommendations on how to ensure compliance with the principle of equality and non-discrimination.

It is important to keep in mind that while some barriers to inclusion are the result of the ways in which the programs are designed, even the best designed programs will be confronted with discriminatory results that authorities will have to address. Thus, it is essential to ensure operational flexibility, to be able

¹⁷ See the report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, on unpaid care work and enjoyment of rights, A/68/293 (2013).

to adjust the design and delivery of a programme, in order to address exclusionary practices or processes encountered during implementation and evaluation.

While some of the requirements to ensure equality and non-discrimination examined here might seem to be minor details, evidence shows that they can mean the difference between exclusion and inclusion in a programme for some vulnerable or disadvantaged groups. As such, they can entail the difference between compliance and non-compliance with legal obligations related to equality and non-discrimination.

Table 1

Checklist of compliance with equality and non-discrimination

Standards Stages	Accessibility	Affordability	Adaptability	Gender sensitivity
Outreach, intake, registration	✓	✓	✓	✓
Enrolment decision	✓	✓	✓	✓
Program delivery	✓	✓	✓	✓
Grievance and redress	✓	✓	✓	✓

2.2.1 Accessibility

Obstacles to accessibility relates to lack of information as well as physical and administrative barriers that prevent the most excluded/disadvantaged from registering in the programme or enjoying its benefits on an equal basis with the rest of the covered population.

Information barriers

Lack of information about a programme may prevent people from registering, enjoying the benefits of a programme or submitting grievances on an equal footing with the rest of the population. Moreover, when comprehensive information about a programme is not available, neither the beneficiaries nor the general public are in a position to understand how the program works, increasing the incentives for corruption and fraudulent behavior, as well as the potential of errors in implementation (Van Stolk, et al., 2010). Lack of understanding about the functioning of social protection programs can also undermine trust in the government or social protection providers and create negative perceptions (e.g. that a programme is not reaching its rightful beneficiaries or that it is politically motivated).

Prospective beneficiaries (i.e. those entitled to the programme) may be prevented from registering in the programme due to lack of or insufficient information about (a) the existence of the programme and its benefits, (b) who can register and how to do it (e.g. documents needed to apply and where) or (c) the importance of registering. Research shows that the poorer, less educated, and more marginalized the household is, the less likely it is that its members will have complete information about social protection programs (Jones et al., 2011).

When Colombia's *Familias en Acción* cash transfer programme was introduced in Bogota, initial enrolment levels were significantly lower than expected. About two-thirds of eligible households did not apply. A

study revealed that 35.8 per cent of the prospective beneficiaries did not apply because they were not aware of the program's benefits and 29.2 per cent did not know that they could register. Moreover, among those who attempted to enroll, about half did not manage to do so because of insufficient knowledge of eligibility criteria (World Bank, 2015). In South Africa, a study showed that 25.68 per cent of eligible children for the *Child Support Grant (CSG)* were not registered due to misunderstanding about the means-test criteria and income thresholds (the incorrect belief that the caregiver does not qualify because he or she earns more than the prescribed income threshold). This was the leading cause of exclusion among eligible applicants and beneficiaries to the CSG (SASSA and UNICEF, 2013).

Up-to-date information about the functioning of the programme and how to access complaint and grievances mechanisms is also essential particularly for vulnerable/disadvantaged groups. To be able to register a complaint, beneficiaries first need to have enough information about how the programme is supposed to work (e.g. eligibility requirements and the level of benefits) and know about the procedures to follow to register a complaint or grievance.

Social protection programs should have adequate mechanisms and procedures for the dissemination of information and for the rapid answering of requests. Moreover, the information provided by programme authorities should comply with certain quality standards. It should be complete; up-to-date; reliable; relevant (excluding unnecessary, trivial or secondary data); and easy to understand (avoiding jargon and specialist language).

Proper mechanisms for the dissemination of the information depend on several factors, such as the country context, programme objectives and characteristics of the population. Yet, programme authorities must ensure that all (prospective) beneficiaries have access to the information on an equal basis. This requires, for example, taking special measures to overcome illiteracy and linguistic barriers and to reach isolated and remote areas as a matter of priority. As noted below, information should also be made available in the languages used in the various communities by minorities, indigenous peoples and immigrant populations (see *adaptability* below).

Physical barriers

Lack of physical access to the programme offices/sites may prevent registration with a programme or accessing the program's benefits. These barriers may be due to (a) the long distance to the registration office or to the pay/service delivery point (e.g. the beneficiary lives in a remote area with no access to affordable transportation); (b) the way in which the office works (e.g. limited opening hours; failure to accommodate the safety and physical needs of older persons or persons with disabilities) or its conditions (e.g. unsafe and unhygienic facilities, congestion or long queues); (c) specific geographical factors (e.g. the absence of roads or the lack of accessibility during rainy seasons); (d) security concerns (e.g. perceptions of insecurity or real threats due to high number of personal attacks or thefts on the payment day).

These barriers have a disproportionately adverse impact on the most vulnerable and disadvantaged individuals, including those who live in remote areas and those who have more difficulties in traveling owing to specific circumstances. The potential differentiated impact of these barriers depends on personal characteristic of the (prospective) beneficiary, such as gender, age, disability and health status.

Physical barriers are common in developing countries. A beneficiary survey of Kenya's Hunger Safety Net Programme showed that 8.3 per cent of households walked more than four hours to collect their benefit. The average walking time to and from the benefit collection location was 92 minutes, during which time almost half of all participants did not feel safe (Barca et al., 2010).

Some programs have implemented creative and flexible mechanisms to ensure physical accessibility to registration, such as combining fixed registration offices with mobile stations. For example, the South African Social Security Agency (SASSA) has implemented the Integrated Community Registration Outreach Programme (ICROP). ICROP seeks to facilitate access in isolated rural areas using mobile office trucks, which are fully staffed and equipped with all necessary administration and information technology (IT) for processing social grants (SASSA, 2013 and ILO 2015). Moreover, it promotes an integrated one-stop service offering a multi-dimensional intervention aimed at addressing several barriers (including *affordability*, see below) that serve to exclude eligible beneficiaries from the grants.

Some programs foresee and address potential physical obstacles in accessing payment/delivery of benefits. For example, in Mexico, the cash transfer programme *Prospera* recognizes that, in some circumstances, beneficiaries may confront difficulties in accessing the points of delivery for cash benefits. When this occurs, it allows the collection of the benefits every four months or quarterly instead of every two months (Operational Manual *Prospera*, Ministerial decision of 30 December 2014, section 4.3.1). Similarly, Kenya's cash transfer programme for Orphans and Vulnerable Children (CT-OVC) in anticipating problems of congestion and queues in the delivery of payments, allows beneficiaries to collect the payment at any programme location over a two-week payment window (Barca et al., 2010). In the same vein, South African social grant beneficiaries are allowed to collect their payments any day from the first day of the month, via various convenient payment channels anywhere in the country.

Depending on the national context, programme authorities could improve physical accessibility solely by giving flexibility to the beneficiaries in the registration and collection of benefits (e.g. providing several mechanisms to register or collect the benefits, thus not forcing beneficiaries to do so at a precise place and time). They could also improve security perceptions by shortening travel to and waiting times at delivery points, not publicly announcing the payment/delivery day, or allowing partial withdrawals of the benefit. Nonetheless, the effectiveness of these measures is contextually specific. To better identify and understand potential physical obstacles and how to address them, it is essential to undertake broad consultation with (prospective) beneficiaries in order to find the most appropriate way for them to register or receive benefits.

Procedural barriers

A procedural barrier is when (prospective) beneficiaries are not able to register or collect benefits due to barriers related to the administrative requirements or processes set up under the programme. For example, complex administrative processes or long application forms which use intricate and formalistic language or which request many documents disproportionately impact those who are illiterate or have lower education levels. Other requirements, such as using a majority language, can also exclude the most vulnerable people, such as ethnic minorities, from a social protection programme.

Some programs establish specific mechanisms to assist vulnerable and disadvantaged groups with the registration process. The South African Old Age Grant and Child Support Grant, for example, have actively addressed procedural barriers through the use of local community committees that help prospective beneficiaries – such as elderly widows – with the application process (World Bank, *The State of Social Safety Nets* 2015). The *Chile Solidario* program (renamed the “*Seguridades y Oportunidades*” program) pioneered the establishment of direct personalized support to (prospective) beneficiaries through social workers who accompany (prospective) beneficiaries, assisting them to navigate the social protection system, and establishing a relationship of trust and support (Law 2.595, of 17 May 2012).

Another common procedural barrier arises when prospective beneficiaries need to spend many hours registering (or collecting all the necessary documents). Even in South Africa, which has a well-established and resourced administrative institution in charge of social assistance programs, the average queuing time

in applying for a Child Support Grant was twenty hours. This may involve visits to various offices (SASSA and UNICEF, 2013). Long registration time has a disproportionately negative impact on certain groups of beneficiaries such as women with care responsibilities, new mothers with infants, pregnant women and older persons. Lack of time is also problematic for those applicants who are working, in particular when opening hours clash with their daily working hours (by going to register they might risk their employment or their daily payment).

One of the biggest procedural barriers is that associated with the requirement to possess a national ID for registration or for establishing proof of identity at the delivery/service point. Such a requirement disproportionately impacts on some sectors of the population, such as women and minorities, who tend to have less access to IDs than the rest of the population. It also negatively affects the poorest individuals as ID documents are often costly and can only be obtained in urban centres that may be distant from where they reside.

In countries where there is a robust and effective national identity card (ID) system it is not uncommon for social protection programs use this ID as the basis for the identification of potential beneficiaries and for delivering the benefits. There are several advantages in using national IDs in social protection programs, as they avoid the duplication of information-gathering efforts and facilitate data cross-checking and information accuracy. Nonetheless, when a national ID is required for registration, access to the programme becomes dependent first on ownership of an ID. Problematically, the most vulnerable and disadvantaged individuals are often those without a national ID. This may be due to additional obstacles in acquiring IDs, such as transaction costs, transportation and opportunity costs as well as a lack of information on procedures and the benefits of the possession of an ID. Moreover, there are particular groups of individuals for which obtaining an ID (or any other official document) is particularly difficult, such as refugees, migrants, orphans and street children. Thus, an ID requirement might imply the exclusion of the very groups for which social protection programs are designed to protect.

When a national ID is required by a social protection programme, a comprehensive strategy to improve national registration and identification systems particularly for the most disadvantaged and vulnerable populations is needed. Such a strategy requires high level political commitment and close collaboration between national registry institutions and social protection authorities. Also required is the allocation of necessary resources to reduce the barriers (political, administrative, legislative, economic and geographic) that prevent the most vulnerable from gaining access to identity cards.

In some countries where a significant part of the population lack access to official documentation, members of the community (e.g. Village Councils) might be asked to verify the identity of individual applicants based on reference to local or national historical events or peers. For example, the Ugandan Senior Citizen Grant accepts a personal testimony approved by a panel of respected local elders and government officials as evidence of having reached the age of eligibility (Uganda Ministry of Gender, Labour and Social Development, undated).

To avoid obstacles related to lack of IDs, some countries have implemented flexible approaches allowing beneficiaries to submit one of various documents for registration or authentication,¹⁸ such as birth certificates, electoral IDs, or driver's licenses (e.g. *Prospera* in Mexico). In South Africa, applicants to the Child Support Grant were originally required to submit several official documents (e.g. ID of the applicant and ID or valid birth certificate of the child). However, since 2008 applicants can use alternative documents (e.g. clinic cards, affidavits from respected community members, and recent school report cards). If the application succeeds, the grant is made available for a period of three months to allow the applicant time to obtain the correct prescribed documents (SASSA and UNICEF, 2013). Some programs

¹⁸ Authentication refers to the verification of identity at the collection of payment/benefit.

actively engage with the civil registration offices to facilitate access to national IDs to programme beneficiaries (e.g. Chile's *Seguridades y Oportunidades* programme and the Child Support Grant in South Africa).

Some programs have put in place innovative technical solutions to minimize administrative obstacles related to identification/authentication. For example, in Kenya, the Hunger Safety Net Programme (HSNP) issues beneficiaries with a smart card containing biometric information (i.e. fingerprints) for “primary” and “secondary” recipients. While the person whose photograph is on the card (the “primary recipient”) must have a national ID card, the secondary recipient only requires biometric information to access the money. This enables people without national ID card to receive the payments (Barca et al., 2010).

Administrative barriers in accessing grievance or complaint mechanisms might entail that some groups that suffer from historical or structural disadvantage are prevented from having recourse to them. In Ecuador for example, in 2008, the toll-free hotline of the program *Bono de Desarrollo Humano* had only Spanish-speaking operators. This was a major access barrier for a considerable percentage of the beneficiaries of the program who were indigenous peoples whose primary language is Quechua. The inability to submit a complaint in their own language placed them in a more difficult position to use the service than other beneficiaries whose mother tongue was Spanish (Sepúlveda, 2009).

To ensure access to grievance and complaint mechanisms by the most marginalized and disadvantaged groups, experience in several countries shows that a variety of measures are necessary, including: (a) providing for multiple channels for presenting complaints (e.g. by phone, Internet, written letter or in person); (b) enabling the submission of anonymous complaints (or the option to submit the complaint other than by personal, face to face submission); (c) ensuring the confidentiality of the complainant; and (d) adapting the procedures to ensure that those with low levels of literacy or who speak a minority language can also register a complaint (Gruenberg and Pereyra, 2009).

2.2.2 Affordability

There is a financial barrier when the monetary costs of registering into a programme or collecting the benefit are higher in comparison to the value of the benefit. These extra costs are discriminatory when they have a disproportionately negative impact on some beneficiaries (e.g. the poorest). They might entail that (prospective) beneficiaries are not able to register or collect a program's benefits due to the inability to pay for the direct or indirect costs associated with it.

A major cost relates to transportation costs to registration offices/sites or delivery points. As noted above, this might be particularly onerous for those who live in geographically isolated locations or in countries where registration points have limited coverage in rural or isolated areas. Other major barriers include costs associated with obtaining required documents for registration such as birth certificates or national IDs. In Chile, Peru and Pakistan, for example, where beneficiaries of social assistance programs must have a national ID, the costs of IDs are approximately USD 6 (3,600 Chilean pesos), USD 14 (40 Peruvian nuevos soles) and USD 2 (200 Pakistani rupees), respectively.¹⁹ In South Africa, the social assistance payment card is provided free of charge, but a fee of 20 South African rand (USD 1.80) is charged for a replacement card

¹⁹. Information retrieved from the official website of Chile's Civil Registry: www.registrocivil.cl; Peru's RENIAC: www.reniec.gob.pe/portal/intro.htm (cost for electronic DNI) and Pakistan's National Database and Registration Authority (NADRA): www.nadra.gov.pk/index.php/products/cards/cni (Computerized National Identity Card). According to some official information, there are some exceptions for fees for vulnerable populations; however, on the official websites of the three countries there is no information available on how to apply or how the system works in practice.

(in case of damaged or stolen cards).²⁰ While relatively inexpensive, such costs may be major barriers to accessing social assistance programs.

In addition, there are often opportunity costs that might be impossible to cover for some (prospective) beneficiaries, in particular for those who might need to take a day off of work for applying to a program or collecting its benefits. Sometimes, due to the lack of adequate information or poor service by program staff (prospective) beneficiaries are required to undertake several trips to the program offices/stations (e.g. to bring various documents) considerably increasing the costs.

In Kenya, many households benefiting from the CT-OVC reported encountering financial costs related to transportation and accommodation, when collecting the payment (Barca et al., 2010). A study found major differences between the districts examined. While 57 per cent of beneficiaries walked to the payment site (spending on average 2.3 hours on a return trip), in one relatively remote district (Garissa) only 2 per cent of the beneficiaries were living within walking distance. The great majority of the beneficiaries from this district needed to pay for motorized transport and spend at least one night away from their homes in order to obtain the payment. To compensate for the additional costs spent in collecting the payment by those from this remote district, the programme gave them 50 per cent more of the transfer amount (Ward et al., 2010). Other costs may relate to the use of electronic methods of payments. For example, when fees are charge for using a program's smart card to withdraw benefits from an ATM or for using it to purchase from shops.

There are several ways to lower the financial costs faced by (prospective) beneficiaries, from using "one-stop service" offices (which deliver multiple services in one site, minimize travelling time and the cost of visiting multiple service points) to providing multiple options for registering or receiving benefits. For example, instead of obliging beneficiaries to register or collect benefits on a set date in a given location, some programs allow greater choice in timing and location. Such flexibility addresses several barriers related to accessibility as well as affordability and might be critical for levelling the playing field for groups with limited mobility. Some programs have gone even further. For example, in the Philippines, a "door-to-door delivery scheme" has been implemented on a national scale as an additional way to distribute the pension to older persons who have difficulty in travelling as well as allowing them to save on transportation expenses when going to pay-out venues (Government of the Philippines, 2016).

2.2.3. Adaptability

Social protection programs must be adapted to the varying needs of the population they are seeking to reach and take into account local contexts and deprivations. Particular attention should be paid to cultural values (e.g. of minorities and indigenous peoples) and technological challenges (e.g. when social protection programs use electronic methods of payments or biometric systems).

Cultural barriers

There are cultural barriers when programme staff or processes are indifferent to various cultural values or behavioral sensitivities, which can lead to mistrust and stigma that prevent registration or equal enjoyment of the programme. Cultural values and behavioral sensitivities should be factored into the programme design and staff should be sensitive to the multiple forms of discrimination that might arise at the intersection of age, race, gender, class, disabilities or other factors.

Some cultural barriers are linked to the language used by the programme. For example, in South Africa the dominant language of the administrative authorities of social assistance programs is English or

²⁰. Information retrieved from SASSA's website <www.sassa.gov.za>.

Afrikaans. However, this requirement had a negative impact on internal migrants, the majority of whom speak Xhosa. This language limitation prevented them from accessing and participating in social protection programs on an equal basis with the rest of entitled beneficiaries (Deumert et al., 2005). Even when eligible beneficiaries speak the predominant language in a country, cultural differences (alongside the imbalance of power) can impede communication between programme officials and those seeking registration. For example, in Peru, the problems of cross-cultural communication between indigenous peoples and civil registry officials have been one of the causes for the lack of registration certificates for this group (Government of Peru, 2012). Some cultural barriers might relate to entrenched traditions and beliefs within the (prospective) beneficiaries. For example, in the North West of South Africa, owing to strong cultural beliefs, some mothers of new-born infants do not leave their homes until their babies are older than three months. This prevents them from registering for the Child Support Grant during this period (SASSA and UNICEF, 2013).

In some societies, there is stigma attached to holding a particular form of identification. Thus, if this factor is not considered, some prospective beneficiaries might be discouraged from seeking registration. This is particularly important, for example, when biometric IDs are used within a programme. For example, the cultural norms of indigenous peoples and ethnic minorities might prevent them from allowing to be photographed or others may object to the collection of some types of biometric data (e.g. fingerprints or eye scans) (Gellman, 2013). Providing biometric data, without fully understanding the objective of so doing, may be perceived by potential beneficiaries as increasing their vulnerability to abuse.

Strengthening inclusion also requires taking into account cultural aspects in the delivery process of a social protection programme, in particular when dealing with groups that have suffered from historical or structural discrimination in the country concerned. Evidence from Ecuador shows that some indigenous women did not collect their cash from the *Bono de Desarrollo Humano* programme because they were mistreated by the private security guards of the financial institution in charge of the payment, while queuing, sometimes for hours, to receive the benefits (Sepúlveda, 2009). In Bangladesh, an evaluation of the conditional cash transfer programme *Shombhob* showed that the programme failed to deliver the payments to some of the poorest families, because they moved their place of residence between slums. For these families, it was hard to meet requirements for payments, be tracked to qualify for payments or even to receive payments (Ferre and Sharif, 2015).

To ensure that programs are culturally adapted, they must be evidence based, (Devereux et al. 2013), designed with participation of communities and tailoring implementation to local contexts. It is also important that social protection authorities consider the political and cultural surrounding as well as the country's history of social cohesion, conceptualization of rights and equality, and attitude to rights and responsibilities. Moreover, social protection staff should be sensitized about the various cultural values and trained to treat (prospective) beneficiaries with dignity, build trust and avoid any form of discrimination or stigmatization against them.

Technological barriers

Increasingly, countries are using new technologies to achieve several programme objectives, such as to increase outreach, ensure better identification and registration and to deliver payments. Often, the use of new technologies translates into greater benefits for beneficiaries. For example, technology may enable programme administrators and eventually civil society to better monitor and oversee programs or greater speed and flexibility as to where and when payments can be made. While the use of technology in social protection programs can bring positive outcomes, they may also negatively impact some vulnerable and disadvantaged groups.

There are technical barriers when (a) prospective beneficiaries are not able to register due to technical problems (e.g. non-reliable biometric information) or due to the lack of adequate competency and training of staff; (b) the use of new technology negatively impacts some beneficiaries who do not have access to the technology or are unable to use it; or (c) when technological requirements obstruct the delivery of benefits/services to some groups.

Information technologies (IT) are sometimes critical tools to disseminate information about a programme and to communicate with its beneficiaries. This is the case, for example, of the *Bolsa Família*, one of the largest cash transfer programs in developing countries which must provide information to more than 50 million people. The use of new technologies is a critical component of its communication strategy (Government of Brazil, undated).

Despite the enormous potential for using new technologies in social protection programs, the challenge remains to ensure equitable access and inclusion. The more complex the technology used in social protection programs (e.g. biometric technology), the higher the risk of exclusion. For example, the use of some biometric identifiers such as fingerprints and iris scans may fail to collect usable data for vulnerable people such as children, older persons and manual workers (whose fingerprints are roughened by a lifetime of manual work). Fingerprint patterns do not stabilize until around age 14; iris patterns stabilize at around eight months but may be difficult to record in very young children (Gelb and Decker, 2011). In India, it has been reported that capturing the fingerprints of manual labourers for the *Aadhaar* biometric ID system poses a challenge for later authentication (Ramanathan, 2014). In Kenya, it has been reported that the smart card payment system in the HSNP programme has experienced difficulties with reading around 5 per cent of all fingerprints, due to technical difficulties that are sometimes related to having very old or worn-down finger pads (Harvey et al., 2010). In Namibia, it has been observed that the fingerprints of older people were often unreadable and led to procurators having to receive their cash on their behalf with the consequent risks that this entails (ILO and Oxford Policy Management, 2014).

A growing number of social protection programs, such as cash transfers, are using electronic methods of payment (e.g. debit cards, smart cards and cell phones) and the distribution of money through Point of Sale (POS) devices situated in local agents in small communities. Technologies such as these have the potential not only to improve programme cost efficiency but also to facilitate the lives of beneficiaries. When appropriately implemented, such technologies are able to remove barriers hindering access to the most disadvantaged and vulnerable groups and to diminish or eliminate transportation and opportunity costs. However, policy-makers should ensure that the employment of these technologies is adapted to the needs of the community targeted by the programme. The adoption of new technologies should never exclude beneficiaries who (a) do not have access or (b) might experience greater difficulty adapting to the use of such technologies, such as older persons, persons with disabilities and persons with lower levels of literacy.

Delivering cash benefits through mobile phones without discrimination may require that all beneficiaries own a phone hand-set (or have a SIM card and access to a community phone), know how to use it and have power and network coverage. A gender gap in ownership and usage of technology is particularly concerning. On average, women are 14% less likely to own a mobile phone than men, and the gap is wider in certain regions such as in South Asia where women are 38% less likely to own a phone than men. Globally, women report using mobile phones less frequently than men and having greater barriers to access them due to costs as well as security and harassment concerns (GSMA, 2015).

A study on the use of e-payment schemes in four low-income countries (Haiti, Kenya, the Philippines and Uganda) showed that beneficiaries were often unclear about how the programmes functioned, including how to use their PINs, understanding how much money they should receive each payment period, and knowing what to do in the event of a technical problem. These were major obstacles in the efficient use

of such technologies that disproportionately impacted the most vulnerable and disadvantaged groups (Zimmerman et al., 2014).

While good communication channels between beneficiaries and programme staff is always critical for the effective delivery of social protection programs, this is equally essential to ensure equality when new technologies are used. Programs should have permanent channels where beneficiaries can raise concerns regarding the use of new technologies, for instance in the event of the loss or damage of smartcards or the malfunctioning of biometric authentication devices or mobile phones. Programme staff should have the skills and resources to help beneficiaries with these concerns and ensure effective payment delivery. This would avoid tensions and mistrust in the use of new technologies facilitating the inclusion of beneficiaries.

2.2.4. Gender sensitivity

Socio-cultural norms influence how men and women behave or interact in public spaces or how resources are distributed, therefore they may hinder women's enjoyment of social protection programs on an equal footing with men. Programs that are neutral to existing socio-cultural norms would not only fail to ensure compliance with the principles of equality and non-discrimination, but they could also perpetuate gender disadvantages, reduce the participation of women, or increase their marginalization. For example, due to social norms and gender stereotypes, women undertake the lion's share of unpaid care and domestic work, so they have less time than men to spend in the registration process. Time pressures are even more aggravated for some women, such as those caring for infants or persons with disabilities. If their time burden is not considered, they may be prevented from registering. To address women's time constraints, some programs have implemented promising practices that have proven to be inclusive for women, such as using short pre-screening interviews to shorten the time needed to register and offering after-hours services. Evidence shows that women may also be prevented from registering into a programme if there are no toilets or breastfeeding facilities in registration offices or if they feel mistreated by staff (SASSA and UNICEF, 2013).

In Pakistan, designers of the cash transfer from the Benazir Bhutto Income Support Programme (BISP) had to confront the problem that many Pakistani women are subjected to restricted mobility, as they are heavily engaged in household labor and in some remote areas they have limited accessibility to programme offices/sites. Consequently, programme delivery mechanisms needed to reach out to these women in innovative ways. To this end, by design, the programme does not require female recipients to collect the transfer money from a central disbursement point (e.g. a bank or BISP office), but rather the programme delivers the money to female recipients on their doorsteps through the Pakistan Post Office (Holmes and Jones, 2010).

Social protection programs should also take into account the gender distribution of resources in their societies. For example, in most countries, evidence shows that women have less access to mobile phones and other information technologies. Therefore, when programs involve the use of new technologies to deliver benefits, affirmative action should be taken to ensure women can enjoy the programme on an equal footing as men.

Grievance mechanisms should also be competent, and staff trained to deal with gender-based violence and sexual harassment, as women might be deterred from accessing programmes or claim rights and entitlements if they fear violence or abuse from male community members or sexual harassment by a male programme implementer (Holmes and Jones, 2010).

Policy-makers should be aware of the specific needs and interests of women, and the diversities among groups of women. From the design of the programme to its evaluation due attention must be given to the various gender obstacles that (prospective) beneficiaries might face.

3. Principle of transparency and access to information

The right to access information held by public bodies is considered a fundamental human right implicitly included in the right to freedom of expression, which is enshrined in major international human rights treaties²¹. The wording of the right to freedom of expression includes not only the freedom to express oneself – freedom to speak – but also the *right to seek, receive and impart information*. As such, the right protects not only the speaker but also the recipient of information. This notion of free flow of information is now understood as the right to information (Mendel, 2008).

Overall, human rights bodies have developed key attributes to the right to information under international law.²² These attributes include: (a) the obligation to disclose information held by public bodies except when there are legitimate restrictions authorized by law such as the protection of national security or of public order (see e.g. Art. 19(3) ICCPR) and Art. 10 ECHR); (b) the prohibition to refuse information on the grounds that the requesting party has no demonstrable interest in knowing the information in question. The requester does not need to give a reason for wanting the information; (c) the obligation of public authorities to reply to every request within a specified and reasonable period of time, whether it provides the information requested or (in limited cases) refuses to do so; (d) the obligation to take positive steps to ensure that the right to information can be enjoyed in practice, including the obligations to establish mechanisms for filing requests and to train public officials in how to process requests and respect the right.²³

Several Constitutions around the world, include the right to information,²⁴ while in others, leading courts have interpreted the right to freedom of expression as encompassing this right (Mendel, 2008). Moreover, a large number of countries, reportedly 115 countries in 2017, have adopted Access to Information Laws (AIL).²⁵ These laws provide access to information held by public authorities, mainly in two ways: (a) by

²¹ See, for example, Universal Declaration of Human Rights, Art. 19 and International Covenant on Civil and Political Rights, Art. 19.

²² See e.g., General Comment No. 34 of the UN Human Rights Committee (CCPR/C/GC/34 of 12 September 2011), to the Joint Declaration by the United Nations Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression of December 2004 and to the Joint Declaration by the United Nations Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression of December 2006.

²³ See e.g. ARTICLE 19: The Public's Right to Know Principles on Freedom of Information Legislation, International Standards Series, London, 1999.

²⁴ See, e.g., the constitutions of Bulgaria (1991 Constitution, Article 41), Estonia (1992 Constitution, Article 44), Hungary (1949 Constitution, Article 61(1)), Lithuania (1992 Constitution, Article 25(5)), Malawi (1994 Constitution, Article 37), Mexico (1917 Constitution, Article 6), the Philippines (1987 Constitution, Article III (7)), Poland (1997 Constitution, Article 61), Romania (Constitution of 1991, Article 31), South Africa (1996 Constitution, Section 32) and Thailand (2007 Constitution, Section 56).

²⁵ These laws are also called “freedom of information” (FOI), nonetheless, nowadays the favored terminology is right of access to information. For up-to-date information regarding the number of countries with access to information law, see <http://www.freedominfo.org/regions/global/foi-regimes/>. Examples of countries with access to

imposing an obligation on them to publish certain information about their activities; and (b) by entitling members of the public to request information from public authorities. Thus, in several cases, these laws go beyond the right to “request and receive information from public bodies” imposing an obligation, even in the absence of a request, to publish information on a proactive or routine basis (e.g. the 2005 Right to Information Act in India, the 2002 Law on Transparency and Access to Public Information in Mexico and the 2000 Freedom of Information Act in the UK). While the scope of such obligations is varied, it often extends to key information about how public institutions operate, their policies, and the existing opportunities for public participation in their work and how to make a request for information (Mendel, 2008).

Some countries include obligations of transparency and access to information throughout their legal hierarchy, from the constitution to the social protection legal framework. India, for example, is one of the countries which has incorporated detailed provisions aimed at ensuring transparency and access to information in the regulations of specific social assistance programs, despite the general applicability of the Right to Information Act. The regulations of the public works program National Rural Employment Guarantee Act (NREGA) require the pro-active disclosure of all information related to the program (inputs, processes, outputs and outcomes) in a manner accessible to beneficiaries at local levels, such as the display on boards and paintings on the walls of the Panchayat offices. It has also tightened the obligations of social protection authorities to make this information available. While under the Right to Information Act, information requests should be responded in 30 days, under the NREGA guidelines all information requests related to the program should be made available to the applicant within 7 days (Aiyar and Samji, 2009). In Brazil, the law regulating social assistance programs, the Organic Law on Social Assistance (*Lei Orgânica da Assistência Social*, Law No. 8.742 of 7 December 1993), includes several provisions that are relevant for ensuring transparency, participation and access to information in social assistance programs. According to this law, social assistance programs should ensure participation of the population through representative organizations in the formulation of policies, the control of actions at all levels (Art. 5) and should include among its main objectives the guarantee of rights (Art. 6).

Complying with legal frameworks related to transparency and access to information is not only compulsory for social protection practitioners, but by doing so might enhanced program effectiveness, diminished opportunities for discretion, corruption and abuses within the program; facilitate programs’ monitoring and evaluation and Increased public support of the program. Moreover, transparency and access to information enhanced gender equality and women’s enjoyment of rights.

Lack of information about social protection programs is particularly problematic for women who due to structural discrimination have consistently lower literacy and education levels than men in the same socioeconomic group (World Bank, 2011). Moreover, due to social norms that confine women’s responsibilities to domestic duties, their level of information might be lowered due to limited interaction with public officials (Holmes and Jones, 2013 and Kabeer, 2012).

An evaluation of the cash transfer program *Juntos* in Peru showed a correlation between lack of information about the program and its potential impact on women’s economic empowerment. Researchers found that the lack of clarity about the program’s objectives and the roles and responsibilities of the families, lead to organizations and individuals related to the program –such as health center representatives, community mayors and program managers– to demand that beneficiaries participate in

information laws include United Kingdom (2000); Chile, (2008); Brazil (2011); Peru (2002), Mexico (2002), Kenya (2016), Rwanda (2013); Guyana (2011); Sierra Leona (2013); South Africa (2000), and India (2005).

activities that were not part of the conditionalities under the program, further limiting women's decisions and their empowerment (Alcázar et al., 2016).

3.1. Operationalizing transparency and access to information

As in the case with the principle of equality and non-discrimination, social protection authorities should ensure compliance with norms and standards related to transparency and access to information at every stage of the delivery chain of a social protection programs (e.g. registration, enrolment, payment delivery, grievance and redress). This section describes the key information that should be provided (actively and upon request) at each stage of the delivery chain.

3.1.1 Outreach, intake and registration of beneficiaries

In order to register in a social assistance program, prospective beneficiaries (i.e. those entitled to the program) should have sufficient information about the existence of the program and the value of benefits in relation to the cost of participation. To this end, program's implementers should not only provide information on how the program works but also on more general issues such as whether the program is temporary or permanent, from where funds are derived (e.g. the national government, foreign support) and how many household members could receive the benefits.

The information about the functioning of the program that must be given from the beginning of the implementation of a social protection program includes the following:

- ❖ **Who can register?** (e.g. eligibility requirements)
- ❖ **Where to register?** (e.g. places for registration)
- ❖ **How to register?** (e.g. documents needed to apply, dates and locations)
- ❖ **Type and value of benefits** (e.g. cash, in kind, fee waiver).
- ❖ **What is the targeting mechanism, who participates in the process, who is responsible?** (e.g. geographical targeting, proxy means test, community-based targeting)
- ❖ **What are the conditionalities and how do they work (if applicable)?**
- ❖ **General information about the overall operation of the program** (e.g. rights and responsibilities of both beneficiaries and social protection staff; payment methods, and operational rules).

If quality information on these issues reach the most vulnerable and disadvantaged members of society, their chances to take up the program increase and the opportunities for abuses or political manipulation by program officials in the selection of beneficiaries diminish considerably (Chêne, 2010). An evaluation of the former *Progresa* program in Mexico found that lack of information about the program and misinformation (rumors) about the consequences of registering, resulted in people not responding to the census ("censo")²⁶ impacting the accuracy of the targeting (Adato et al., 2000). Uncertainty about a program causes frustration and insecurity in people. Better communications with beneficiaries might improve compliance with conditionalities and improve the attitude of the people towards the program (Adato et al., 2000).

To ensure that information reach the most vulnerable and disadvantaged groups, specific measures (affirmative actions) must be taken to address, as a matter of priority, the obstacles that they face (e.g. illiteracy, geographical isolation). Research shows that the poorer, less educated, and more marginalized

²⁶ It refers to the "census" of households in the former Progresa program, through the Socioeconomic Characteristics Survey of the Households (*Encuesta de Características Socioeconómicas de los Hogares, ENCASEH*).

the household is, the less likely it is that its members will know about the availability of social assistance programs (Jones et al., 2011); thus, not reaching them will negatively impact the programs' coverage.

The dissemination process should be tailored to the given context (e.g. rural or urban communities). For example, Colombia's *Familias en Acción* cash transfer program was introduced first in rural areas. When it was expanded in Bogota, initial enrollment levels were significantly lower than expected. About two-thirds of surveyed households did not apply. A study showed that more than half of the prospective beneficiaries did not apply because they lacked sufficient information about the program: 35.8 percent of the prospective beneficiaries did not apply because they were not aware about the programs benefits and 29,2 percent did not know that they could register. Moreover, among those who tried to enroll, about half did not manage to do so because of insufficient knowledge of eligibility criteria (World Bank, 2015).

When information directly reaches the most vulnerable and disadvantaged members of society their dependency on other (e.g., community leaders, relatives, and other applicants) is reduced, diminishing the opportunities for abuses. On the contrary, when programs' information campaigns do not reach them or when the information provided is not comprehensive or accessible, their uncertainties about the program might impact its effectiveness. In South Africa, a study showed that 25.68 percent of eligible children for the *Child Support Grant* were not registered due to the incorrect belief that the caregiver does not qualify because he or she earns more than the prescribed income threshold (SASSA and UNICEF, 2013).

Disinformation about a program might also severely constrain any potential empowering impact that the program might have. In Nicaragua and Yemen, for example, lack of understanding about the programs led some beneficiaries to believe that the money came from God (See Adato et al., 2004 and Bagash et al., 2012). If prospective beneficiaries do not know the source of the benefits (e.g. an entitlement implemented with public funds) and wrongly believe that the social assistance program is the results of charity or even a divine intervention, they might not enroll or might not be willing to complain in case of abuses.

When there are several social protection programs in place (e.g. from the government, international organizations or NGOs), it is essential to ensure that community members have sufficient information about who is doing what. In other words, beneficiaries and the public at large should have answers to the following questions: what is the role of each program? Who is entitled to receive benefits and what are the various registration procedures? Otherwise, people will not understand why some get food and other cash, or why some get more benefits than others and at various times (Bagash et al., 2012). While the provision of this information would need coordination among the various implementers, improving information will increase accountability of all the programs *vis á vis* their beneficiaries. Inadequate coordination among programs will create confusion and might create tensions within communities (e.g. jealousy between neighbors) weakening social cohesion (Kidd et al., 2017).

People should have comprehensive information about the existence of conditionalities (co-responsibilities) in a program and how they work. This includes precise information about who is responsible for monitoring compliance; how to comply with rules; how authorities verify or follow-up compliance; and what the potential sanctions are in case of non-compliance. Beneficiaries have a right to be accurately informed about conditionalities. They must never be deliberately misinformed about them. Manipulate beneficiaries through inaccurate or incomplete information about conditionalities (e.g. leading beneficiaries to believe that the program is conditioned on being affiliated to a political party or suggesting that conditionalities are verified when they are not) would directly violate the right to access information.

3.1.2 Enrolment decision

The selection process in a social assistance program must be fully transparent so prospective beneficiaries as well as the general public can scrutinize it, claim their entitlements, and hold programs' administrators accountable for mistakes or errors. To this end, authorities should provide precise information regarding:

- ❖ **The targeting process, selection criteria and the decision-making process**
- ❖ **Rights and duties related to enrollment** (e.g. the right to report any act of discrimination during registration or to have correct details registered)
- ❖ **Results of the targeting exercise**
- ❖ **Grievances and complaints procedures for those registered but not selected into a program**

In targeted programs in particular, full transparency is critical for the effectiveness of the programs. Lack of clarity about targeting mechanisms can trigger not only a lack of trust and suspicion about the program but can also lead to tensions within the community (Bagash et al., 2012). If registered applicants do not understand how the mechanism works (e.g. what is the role of social workers or household surveys), they could think that they were unfairly excluded and become suspicious about other community members who were selected. Studies have also shown that when there is transparency regarding the targeting system and eligibility criteria, beneficiaries tend to appreciate it (Bukuluki and Watson, 2012). Unfortunately, some targeting methods, such as proxy means test are often complex and opaque, making it very difficult for the authorities to explain the eligibility criteria and for the public to understand the decision (Kidd and Wylde, 2011). In Gaza, eligibility criteria were not transparent for the cash transfer program the *Social Hardship Case* (SHC), so community members were suspicious of favoritism and nepotism in the selection of beneficiaries, which negatively impacting its implementation (Abu Hamad and Pavanello, 2012). An evaluation of the *Child Support Grant* (CSG) in South Africa shows that while most recipients and non-recipients understand that the government applies a means test, its complexities coupled with confusion about the income threshold for inclusion were causing significant exclusion errors. Not knowing that the income threshold had changed, accepting those with higher incomes than before, many caregivers who were employed did not apply, despite being eligible to receive the grant (South African Social Security Agency and UNICEF, 2012). The 2008 National Income Dynamics Survey confirmed these findings that show that one out of 10 poor eligible caregivers who did not apply for the CSG reported believing their income was too high – even when their incomes were below the means test threshold. These findings suggest that more effective dissemination of detailed information about CSG eligibility criteria will likely reduce the program's targeting errors of exclusion (South African Social Security Agency and UNICEF, 2012).

Once the targeting exercise is completed those registered should receive complete information about the results of the process and they should also be able to request further explanations from program staff. Non-selected applicants should be able to complain (e.g. against wrongful targeting or any procedure that lead to wrongful exclusion). To this end, information should also be provided regarding any available grievances and complaints procedure so those registered but not selected into a program can challenge the eligibility decision. The authority in charge of reviewing such cases should not only justify decisions but should guarantee compliance with due process principles during the review. Yet, lack of information and transparency may lead to a general reluctance to complain. This is partly because people do not feel that they have a right to the program but rather, that they are receiving a handout, for which they should not complain Selvester et al., 2012).

Ensuring access to information and transparency at this stage can also act as an additional safeguard for ensuring accuracy of the data collected by the system. If an applicant appealing against her exclusion from

the program can see the information held on her, she could identify factual errors in the processing of the information.

3.1.3 Program delivery

Social assistance authorities should provide complete, timely, accurate and accessible information regarding the delivery of programs, including the entitlements and responsibilities of both programs' beneficiaries and staff.

Lack of information related to the delivery of a program might undermine the effectiveness of social assistance systems, diminish expectations and confidence of the beneficiaries in the program, and negatively impact their livelihood. (e.g. If due to misinformation they do not receive the benefits as predicted).

For effective delivery of social assistance programs, authorities should ensure transparency and access to information on:

❖ Program benefits

Precise understanding about the benefits of existing programs ensures efficiency of the social assistance system. Beneficiaries – and the public in general- should know: the ration amounts or composition of benefits (e.g. in-kind programs), the services offered (e.g. in school feeding and fee waivers programs) and the amount of cash (in conditional and unconditional cash transfers). Without this information, beneficiaries or other members of society would not be able to challenge abuses in the delivery process (e.g. programs implementers charging undue fees diminishing the amount of money received or modifying ration amounts or composition).

Comprehensive and accessible information about benefits would also ensure that beneficiaries take full advantage of programs. In Yemen, some beneficiaries of the Social Welfare Fund (SWF) program can also benefit from exemption from school and health fees, and free medication in government hospitals. However, these complementary benefits are under-utilized due to problems in the way in which the information is provided. Information about these complementary benefits is provided mainly in the SWF card that each beneficiary receives but they are rarely aware of this because many are illiterate and cannot read it (Bagash et al., 2012).

❖ Where, when and how to collect or receive the benefits of the program

This is the most basic information beneficiaries should know about a program. It includes information on dates and places to go for receiving benefits (e.g. to collect in-kind transfers, receive cash payments or for receiving fee waivers in primary health) as well as the list of documents that they should bring.

Lack of precise information on these issues would impede receiving benefits in a timely and effective manner, negatively impacting beneficiaries' livelihood. For example, misinformation about the date for delivery/payment of benefits might increase the direct and indirect costs for beneficiaries, who would go to collect the benefits when they are not available. Any additional cost diminishes the value of the benefit. Similarly, if beneficiaries wrongly think that they will receive a payment or in-kind benefit monthly, when in fact it is every two or three months, that would not allow them to plan in advance impacting the reliability of the program.

Other relevant information that beneficiaries should know about particularly regarding in cash and in-kind transfers refers to whether they need to go personally or if someone else can collect the benefit on their behalf. It is also important to know whether the benefits not collected in one period accumulate or if they are lost.

❖ Alternative methods of collection/payment

If beneficiaries can choose between various collection/payment channels (e.g. receiving cash transfers through a post office or through a bank or collecting in kind food from various places) beneficiaries should be made aware of all the possibilities as well as any relevant information regarding each of them (e.g. pros and cons of using each option). When electronic methods of payments are used (e.g. debit cards, smart cards and cell phones), program authorities must ensure that beneficiaries have enough information on how to use them as well as the cost associated with their use (e.g. fees when using a program's smart card to withdraw from an ATM or to purchase from shops). The lack of information on these issues is a major obstacle in the efficient use of such technologies, disproportionately affecting the most vulnerable and disadvantaged groups (Zimmerman et al., 2014). Thus, in providing information, priority should be giving to those who may experience greater difficulty adapting to the use of such technologies, such as older persons, persons with disabilities and persons with lower levels of literacy. To avoid tensions and mistrust in the use of new technologies, beneficiaries should also have information about where they can raise concerns related to their functioning (e.g. in case of lost or damaged smartcards, malfunctioning of biometric authentication devices or mobile phones).

❖ **Conditionalities/ co-responsibilities**

In conditional programs (e.g. CCTs or school feeding programs that require certain levels of attendance), beneficiaries should have full understanding regarding the behavioral requirements and the consequences of not complying with program guidelines. These include information on what conditionalities are and the reasons behind them; who is responsible for their compliance; when they are met (e.g. level of school attendance); how compliance is verified and how often; and what the potential sanctions are in case of non-compliance.

The information on conditionalities must be up-to-date. If during the implementation of a program, the conditions are dropped, or the enforcement mechanism is no longer in place, such information must be provided promptly to all beneficiaries.

All those involved in the monitoring of conditionalities (e.g. schools and health agents) should also have a comprehensive understanding about the functioning of the program and should be able to disseminate information about it. To this end, social protection authorities should consider providing specific training to them.

In Mexico, for example, in the implementation of the former CCT *Oportunidades* (today known as *Prospera*) the authorities undertook broad public campaigns with beneficiaries to inform them about their rights and co-responsibilities as well as the causes for suspension from the program. In addition, training was provided to doctors and teachers regarding their involvement in validating compliance with co-responsibilities (Hevia de la Jara, 2006).

❖ **Private sector involvement**

When programs outsource services such as the payment system or the delivery of services within a program, social protection authorities remain responsible for regulating the activities of the private providers. Moreover, outsourcing services do not relieve them from their obligations to ensure transparency and access to information to the public.

The contractual relationship between governments and private actors should be publicly available. Any contractual or collaborative relationship with external partners (e.g. banks, post offices or NGOs) should be based on principles of openness, collaboration and transparency.

3.1.4 Grievance and compliant mechanisms

Social protection authorities should ensure transparency and extensive dissemination of any grievance procedure. ILO Recommendation No. 202 calls for impartial, transparent, effective, simple, rapid, accessible and inexpensive complaint and appeal procedures to be specified, in which access to complaint and appeal procedures should be free of charge to the applicant (Paragraph 7). These principles should be followed in all complaint procedures.

Precise information should be provided about the existence of such mechanisms and how to use them. If there is a problem, people should also know how program mechanisms work in practice (e.g. how complaints are handled) and what the functioning due process guarantees are, including the possibility of appealing decisions before judicial authorities or independent bodies.

- ❖ **How to access the program's grievance and compliant mechanism.**
- ❖ **How the mechanism work and what the due process guarantees are.**
- ❖ **Information about any independent redress channel (e.g. ombudsmen, or complaints to third parties such as NGOs).**
- ❖ **Information about collective monitoring mechanisms involved in processing grievances, such as community committees (e.g. who are they and how to contact them).**

Even when programs have mechanisms for redress in place, there are several factors that might prevent beneficiaries from using them, such as marginalization, feeling of embarrassment before authorities, fear of reprisals, and lack of trust in the outcomes. Among the array of barriers, a critical one is the lack of information about the program. If beneficiaries or non-beneficiaries do not have a clear understanding about the key features of the program (e.g. benefits, rules of procedures) they would not only be reluctant to complain but even if they did so their complaint might not be successfully addressed (e.g. due to lack of understanding about the process or their rights and responsibilities). Thus, having information about a program is an enabling element for submitting complaints. Some programs are implementing promising practices such as informing participants about existing complaint mechanisms (e.g. hotlines, letters, websites), or providing a charter of rights that lays out service delivery norms (e.g. *Bolsa de Familia* in Brazil and the *HSNP* in Kenya).

Social protection authorities should not only guarantee transparency and information about redress mechanisms, but they should also empower beneficiaries to use them. Today, several programs provide for collective control mechanisms (jointly composed by beneficiaries and government entities) such as community promotion committees. These mechanisms have proven effective in ensuring that even the poorest communities can be able to participate in redress mechanisms. Examples of such structures can be found in the CCT *Bolsa de familia* in Brazil. Within this program there are around 5,500 *social controls committees* at the local levels, which are enabled to consider a range of issues related to the program, from inclusion and exclusion errors to the existence of adequate health and education services for the fulfillment of conditionalities. In Peru, the CCT *Juntos*, has a *National Supervision and Transparency Committee*, which is composed by representatives from the church, the private sector, local governments and NGOs. This Committee is in charge of ensuring transparency and access to information in the program's actions and procedures and in the use of resources. It is also in charge of ensuring effective implementation of the targeting criteria, registration of targeted houses, verification of co-responsibilities, payment of benefits as well as availability of social services (Cecchini and Madariaga, 2011) Collective control or participatory mechanisms such as the ones describes above, can play a critical role in socializing information about programs.

4. Human rights litigation for social protection systems

The increased litigation regarding social protection programs has gone hand in hand with an increased understanding of a rights-based approach to social protection²⁷ as well as greater interests of human rights monitoring bodies to social policies. Moreover, in some countries, particularly in Latin America there has been a formal adoption of a rights-based approach to the design and implementation of social protection (Cecchini et al., 2014). In this region, it is not uncommon to find explicit commitments to a rights-based approach in social protection laws as well as in programs' operational manuals. While litigation is not a silver bullet, the examples included below show that it could be a powerful tool for those who want to influence public policies; therefore, it should never be neglected.

Equality in the selection of eligibility criteria

As mentioned above (section 2), any differentiation in the enjoyment of social protection programs must be reasonable, objective, with a legitimate aim (a purpose legitimate under international human rights law) and with a reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects.²⁸ If the distinction in treatment does not comply with these criteria, it would violate the principle of equality and non-discrimination.

South Africa's Social Assistance Act 13 of 2004 (Section 10) and its regulation set the age for accessing an old age grant at sixty for women and sixty-five for men. Four male applicants (above the age of sixty but below sixty-five) challenged the constitutionality of the provision at the High Court in the case: *Christian Roberts vs. Minister of Social Development*.²⁹

The applicants contested the age differentiation on the basis that violated the equality clause (section 9(3)) and the right of access to social assistance (section 27(1)(c)), both of which are explicitly guaranteed by South Africa's Constitution. The case was brought by an NGO (Port Elisabeth Justice Center) on behalf of four men, who were joined by the National Human Rights Commission, the Centre for Applied Legal Studies and the Community Law Center.

Defending the age differentiation between women and men, the South African government pointed to the race, class and social discrimination faced by African women during apartheid, arguing that the aim of the differentiation was to address the inequities faced by women generally and by African women in particular.

After the initial hearing, the government amended the legislation so that the age differentiation of the pension was phased out over a three-year period. This allowed men to access social old age grants from the age of 63 by April 2008; from age sixty-one by April 2009; and finally achieve equality (at sixty) by April

²⁷ A good example is the Social Protection and Human Rights Electronic Platform. This platform began in 2013 as a collaboration between the United Nations Research Institute for Social Development (UNRISD) and the former United Nations Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda to enhance awareness of, and develop the capacity to, implement a human rights-based approach to social protection. Today, the Platform is a collective effort of UNRISD with the International Labour Organization (ILO), The Economic Commission for Latin America and the Caribbean (ECLAC), The Economic and Social Commission for Asia and the Pacific's (ESCAP), The United Nations Economic and Social Commission for Western Asia (ESCWA), The Food and Agriculture Organization of the United Nations (FAO), The United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), the United Nations Children's Fund (UNICEF), The Joint United Nations Programme on HIV/AIDS (UNAIDS), The Economic Commission for Africa (ECA) and The Office of the United Nations High Commissioner for Human Rights (OHCHR). The Platform is available at: <http://socialprotection-humanrights.org/>

²⁸ See CESCR, General Comment No. 20 on Non-discrimination in economic, social and cultural rights.

²⁹ High Court of South Africa, Case 32838/05, Judgment of 1 August 2007.

2010. Ultimately, South Africa's High Court sided with the South African government. The Court found that the Act and the Regulation did not discriminate unfairly on the grounds of age and sex.

Equal rights for men and women

The European Court of Justice found in the case of Taylor vs. United Kingdom³⁰ that a difference in the age of eligibility between men and women to receive social assistance was discriminatory. In the UK the age of eligibility to receive a winter allowance was sixty years old for women and sixty-five years old for men. Mr. Taylor cited the violation of the principle of equal treatment for men and women in matters of social security. The Court ruled that discrimination in age could be made only in those cases where it was necessary to ensure consistency between the pension on retirement and other benefit schemes. In this case, the Court found that it would not be consistent to choose an age different from the age of retirement to receive the benefit to winter fuel.

The UK government followed the verdict by announcing the provision of winter fuel payments to men aged sixty and above. Retrospective payments from 1998, when the new regulations came to force, were also announced.

Equal treatment for nationals and non-nationals

Generally, under human rights instruments, rights are granted to 'everyone' and not only to nationals of States parties. Thus, States that are parties to relevant human rights treaties are obliged to progressively ensure all economic, social and cultural rights, including the rights to social security, to all individuals within their territories, without discrimination of any kind and that provide specific protection for disadvantaged and vulnerable individuals and groups.³¹

Thus, non-nationals including migrants (documented and undocumented), refugees and asylum seekers,³² should enjoy all rights on the same footing as citizens of the State concerned. This is not to say that under international human rights law States cannot establish any difference in treatment between citizens (including legal residents) and non-national (including undocumented foreigners) but, rather any distinction, exclusion, restriction or preference should be compatible with the principle of equality.

In South Africa, in *Khosa and Others vs. Minister of Social Development*³³, the applicants were Mozambican citizens who have acquired permanent residence status in South Africa. They constitutionally challenged the Social Assistance Act which reserved social grants for South African citizens. While the applicants qualified for social assistance under the Act, they were denied the benefits because they were not South African citizens as required by the Act. In responding to the application, the Government argued that the State has an obligation toward its own citizens first, and that preserving welfare grants for citizens only creates an incentive for permanent residents to naturalize. Yet, the South African Constitutional Court found that the exclusion of permanent residents from the social assistance grants was discriminatory.

In Brazil, foreign nationals have gone to courts several times to demand that they be given the same protection as nationals in the enjoyment of social protection. In a landmark case, a non-national requested to receive the cash transfer called Continued Benefit of Social Assistance (Benefício de Prestação

³⁰ European Court of Justice, Taylor vs. United Kingdom, Case No. 382/98, Judgement of 16 December 1999.

³¹ CESCR, General Comment No. 19, para 31.

³² States parties to the Convention Relating to the Status of Refugees, with few exceptions, must accord to refugees the same treatment as is accorded to nationals in regard to social security guarantees (Art. 24). General Assembly resolution 429 (V) of 14 December 1950.

³³ *Khosa and Others v. Minister of Social Development and Others, Mahlaule and Another v. Minister of Social Development* (CCT 13/03, CCT 12/03) [2004] ZACC 11; 2004 (6) SA 505 (CC); 2004 (6) BCLR 569 (CC) (4 March 2004), judgement f 14 March 2004.

Continuada da Assistência Social, BPC), which had been denied precisely because he was not a Brazilian national.³⁴

According to the Brazilian Constitution (Article 203, clause V), this benefit must be granted to any person who has a disability, or to an older person who proves that they do not have the means to support themselves and do not receive support from their family. In order to determine whether or not the foreign petitioner had a right to PCB, which is a non-contributory benefit, the Court had to examine whether Brazilian nationality was a necessary requirement to receive welfare benefits. The Court determined that the constitutional provision should be interpreted in light of the principles of human dignity, social solidarity, eradication of poverty and assistance to the destitute. In this sense, the Court concluded that, according to the Constitution, social assistance should be provided to any person who needs it, without distinction of nationality. The ruling expressly rejects the argument that giving the benefit to foreigners would deprive nationals of access to it. It also emphasizes that the principle of equality enshrined in Art. 5 of the Constitution does not allow such a distinction. Therefore, it is considered that the PCB should be given to foreigners and nationals without any distinction.

Ensuring transparency and access to information in cash transfers programs

In 2014, a judgment of the Supreme Court of Argentina³⁵ established that there is direct public interest in having access to the names of the beneficiaries of social assistance programs. The case was submitted by an NGO that was denied access to information concerning the beneficiaries of subsidies and social assistance in 2006 and 2007. According to the Supreme Court, ensuring access to information from such programs ensures transparency and enables social accountability on how public officials allocate these subsidies. The Court noted that a request of this nature does not infringe the right to privacy, as it does not seek to arbitrarily gather information on the beneficiaries. It also noted that ensuring access to this type of information is critical to ensuring social accountability regarding decisions made by the State, and compliance with the principles of rationality, effectiveness and efficiency. According to the Argentinian Supreme Court, by providing access to such information, far from stigmatizing beneficiaries, the Government is actually helping to ensure equity.

In 2006, the authorities of the former *Oportunidades* program in Mexico received a request for information about the names of the beneficiaries in Sinaloa. Program's authorities denied access to this information. The refusal was appealed to the Federal Institute for Access to Public Information and Data Protection (IFAI), which decided that social protection authorities were obliged to make public the complete list of beneficiaries. The decision requested the authorities to publish not only the names of the beneficiaries, but also their place of residence, and the amount and duration of benefits. The IFAI argued that when public resources are used, detailed data should be available to the general public without restrictions.

In Chile, in 2014 the Ministry of Social Development received a request for information related to all the social benefits and the respective amounts that a particular citizen had received in the past 7 years. The Ministry denied the request arguing the need to protect the citizen's right to privacy. The requester appealed the decision to the national Transparency Council (*Consejo para la Transparencia*). The Transparency Council - an independent body, established by law, to supervise compliance with the Chilean Access to Information Law- ordered the Ministry of Social Development to provide the information requested by the petitioner. The Council argued that by receiving a benefit from the State, the scope of

³⁴ Extraordinary Resource 587,970.

³⁵ Supreme Court of Argentina, case No. 1172/03, judgement of 26 March 2014.

the right to privacy of beneficiaries is reduced, to enable adequate social control of who is being granted such benefits.³⁶

5. Concluding Observation

A rights-based normative approach should be adopted to complement technocratic, knowledge-based policy decisions in order that the provision of social protection programs be more inclusive of the most vulnerable and disadvantaged sectors of society, ensure gender equality and protect rights of beneficiaries.

Compliance with human rights norms and principles is not a policy option, that social protection practitioners may choose to comply with. To the contrary, they are compulsory. Otherwise the design and implementation of the programs could contravene national and international law.

³⁶ Transparency Council, Waldo Florit Otero vs. Ministerio de Desarrollo Social, Case No. C1008-14, decision of 23 September 2014.

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