

# THE RIGHT TO SOCIAL SECURITY

A fundamental human right affirmed by the United Nations and ILO and recognized in regional treaties and numerous national constitutions

Part of a series of the Human Rights Programme of the Europe - Third World Centre (CETIM)



**CETIM**

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The Right to Social Security

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# **THE RIGHT TO SOCIAL SECURITY**

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**Part of a series of the Human Rights Programme of the  
Europe-Third World Centre (CETIM)**



# INTRODUCTION

Social security (also called social welfare) is a system of social services intended to counter risks and uncertainties that arise within society. A product of the industrial era and linked to employment, it was initially intended to respond to certain pressing needs (workplace accidents and employment-related illness in particular), and to institutionalize solidarity within society lest individuals be obliged to depend on charity. Social security has been expanded progressively to other areas and now deals with a large spectrum of risks and social uncertainties (unemployment, maternity, old age, disability, income loss, aid to families and children and services for dependent survivors and orphans).

The development of the welfare state naturally implied the choice of a certain sort of society. With the creation of the ILO then the United Nations, social security became recognized a basic human right and was codified as such in international treaties. However, although in some countries substantial achievements have been made, some 80% of the world's population, entirely or partially, is excluded from social security. Worse, the implementation of neo-liberal policies throughout the world over the past three decades has meant a dismantling or, at least, a weakening, of social security in the countries (especially in Europe) where it was institutionalized and universalized with success after the Second World War.

As is now well known, neo-liberal ideology is opposed to any state intervention, except in implementing repression and promoting “the free market”, and supposes the individual's ability to take care of him- or herself unassisted. This theory might work if every individual possessed the same capital (intellectual, physical and economic) while making only “rational” choices under the same conditions. This is obviously not the case.

In a world where almost half of humanity is forced to live in poverty, if not in outright destitution, social security, without a doubt, translates in practice into decent minimum living conditions. As the United Nations independent expert on the question of human rights and extreme poverty stated: “Ensuring access to social protection is thus not a policy option, but a State obligation under international human rights law.”<sup>1</sup>

It should be noted that social security in and of itself must not be substituted entirely for economic, social and cultural rights (work, adequate housing, education etc.), but it undeniably constitutes a support to their implementation; depending on the circumstances and the country, it may be the only way to restore and maintain a semblance of dignity for hundreds of millions of persons.

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<sup>1</sup> *Report on the question of human rights and extreme poverty submitted by Magdalena Sepúlveda Carmona, independent expert on the question of human rights and extreme poverty, in accordance with resolution 8/11 of the Human Rights Council, A/65/259, 9 August 2010, § 10.*

This booklet has as its goal:

- to contribute to the improvement of available information on the right to social security as a human right;
- to present states' practices with examples of implementation of the right to social security on the national level;
- to present, with concrete examples, the enforcement mechanisms at the national, regional and international levels that can be used by persons and groups harmed by violations of the right to social security.

The first two parts of the booklet deal, respectively, with the definition and the content of the right to social security. Its third part presents the recognition of the right to social security at the international and regional levels. The fourth part deals with states' obligations and their implementation at the national level, with several examples. The fifth part presents cases and country situations dealt with by the redress mechanisms available at the regional and international levels for the right to social security. The sixth part is devoted to the relation between income and social security.



# I. DEFINITION AND CONTENT OF THE RIGHT TO SOCIAL SECURITY

International labor and human rights standards recognize social security as a fundamental right. Those drafted by the International Labor Organization (ILO) and the United Nations are authoritative in the matter. Within the framework of this chapter, we shall cite several of them that define the right to social security (see also Chapter III).

## A. International Labor Organization

Social security is one of the *raison d'être* of the ILO<sup>2</sup>, for, over the years, it has become one of the main objectives of this institution. The 1944 *International Labor Organization Declaration Concerning Aims and Purposes* advocates “the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care”<sup>3</sup>. At the same time, the ILO adopted two recommendations intended to make “social insurance” binding and to universalize medical care. Since “income security is an essential element in social security”, the ILO's *Income Security Recommendation, 1944 (No. 67)*<sup>4</sup> established guidelines for states, called upon to set up “compulsory social insurance” covering: (a) sickness; (b) maternity; (c) disability; (d) old age; (e) death of breadwinner; (f) unemployment; (g) emergency expenses; and (h) employment injuries (Article 7).

The ILO's *Medical Care Recommendation, 1944 (No. 69)*<sup>5</sup>, in Article 8, advocates universalizing medical care for everybody: “The medical care service should cover all members of the community, whether or not they are gainfully occupied.”

In 1952, the ILO adopted *Convention 102 – Social Security (Minimum Standards)*<sup>6</sup>. As its name indicates, this convention deals with social security, covering the following areas: illness, old age, unemployment, on-the-job accidents and work-related illnesses, disability, maternity and services to families and survivors.

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<sup>2</sup> Several ILO conventions deal with subjects related to social security such as the minimum wage, equal pay for equal work, maternity, insurance in various sectors (industry and agriculture in particular), workers' health and safety:  
<http://www.ilo.org/dyn/normlex/en/?p=1000:12000:0::NO::> See also Chapter III.A.

<sup>3</sup> Adopted at the 26<sup>th</sup> International Labor Conference in Philadelphia (United States) 10 May 1944; Section III, § f. <http://www.ilo.org/ilolex/english/iloconst.htm#annex>

<sup>4</sup> Adopted at the 26<sup>th</sup> International Labor Conference, in Philadelphia 12 May 1944.

<sup>5</sup> Ibid.

<sup>6</sup> Adopted 28 June 1952 and entered into force 27 April 1955; to date ratified by 47 states:  
[http://www.ilo.org/dyn/normlex/en/?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C102](http://www.ilo.org/dyn/normlex/en/?p=1000:12100:0::NO::P12100_ILO_CODE:C102)

In its *Declaration on Social Justice for a Fair Globalization*<sup>7</sup>, the ILO called for the extension social security to provide a basic income for everybody:

*“developing and enhancing measures of social protection – social security and labor protection – which are sustainable and adapted to national circumstances, including: the extension of social security to all, including measures to provide basic income to all in need of such protection, and adapting its scope and coverage to meet the new needs and uncertainties generated by the rapidity of technological, social, demographic and economic changes”* (§ I.A.ii).

More recently, in June 2012, the ILO adopted *Social Protection Floors Recommendation, 2012 (No. 202)*. It follows earlier ILO norms and constitutes a sort of road map for states, which should “implement social protection floors within strategies for the extension of social security that progressively ensure higher levels of social security to as many people as possible, guided by ILO social security standards”(§ I.1.b). The ILO states that these floors should comprise at least the following basic social security guarantees:

*“(a) access to a nationally defined set of goods and services, constituting essential health care, including maternity care, that meets the criteria of availability, accessibility, acceptability and quality; (b) basic income security for children, at least at a nationally defined minimum level, providing access to nutrition, education, care and any other necessary goods and services; (c) basic income security, at least at a nationally defined minimum level, for persons in active age who are unable to earn sufficient income, in particular in cases of sickness, unemployment, maternity and disability; and (d) basic income security, at least at a nationally defined minimum level, for older persons.”*<sup>8</sup>

## B. The United Nations

All the international human rights treaties include at least certain aspects of social security (see also Chapter III.A). Among these, the *Universal Declaration of Human Rights* (1948) and the *International Covenant on Economic, Social and Cultural Rights* (1966) should be mentioned in particular.

The strength of the *Universal Declaration of Human Rights (UDHR)*<sup>9</sup> is that it considers the basic needs of every human being overall, including social security:

*“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or*

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<sup>7</sup> Adopted at the 97<sup>th</sup> International Labor Conference in Geneva 10 June 2008.

<sup>8</sup> Adopted at the 101<sup>st</sup> International Labor Conference in Geneva 14 June 2012, § II.5:

[http://www.ilo.org/dyn/normlex/en/?p=1000:12100:0::NO::P12100\\_INSTRUMENT\\_ID:%203065524](http://www.ilo.org/dyn/normlex/en/?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:%203065524)

<sup>9</sup> Adopted by the General Assembly 10 December 1948.

***other lack of livelihood in circumstances beyond his control.***” (§ 25.1; *emphasis added*)

Article 22 also deals with social security:

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

The states parties to the ***International Covenant on Economic, Social and Cultural Rights (ICESCR)***<sup>10</sup> “recognize the right of everyone to social security, including social insurance” (Article 9). Besides the other economic, social and cultural rights enshrined in the *ICESCR* (such as food, health, education and adequate housing), the states parties also recognize that:

*“the widest possible protection and assistance should be accorded to the family... to mothers during a reasonable period before and after childbirth...” and that “special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation” (Article 10)*

For the ***United Nations Committee on Economic, Social and Cultural Rights***, the right to social security encompasses:

*“the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, inter alia, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; (c) insufficient family support, particularly for children and adult dependents.”*<sup>11</sup>

For the ***United Nations independent expert on the question of human rights and extreme poverty*** “social protection’ refers to policies and programs aimed at enabling people to respond to various circumstances and manage levels of risk or deprivation deemed unacceptable by society. The objectives of these schemes are to offset deprivation and ensure protection from, inter alia, the absence or substantial reduction of income from work; insufficient support for families with children or adult dependents; lack of access to health care; general poverty; and social exclusion”.<sup>12</sup>

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<sup>10</sup> Adopted by the United Nations General Assembly, 16 December 1966; ratified to date by 160 states.

<sup>11</sup> Committee on Economic, Social and Cultural Rights, *General Comment N° 19, The right to social security (art. 9)*, E/C.12/GC/19, 4 February 2008, § 2: <http://www2.ohchr.org/english/bodies/cescr/comments.htm>

<sup>12</sup> *Report on the question of human rights and extreme poverty submitted by Magdalena Sepúlveda Carmona, independent expert on the question of human rights and extreme poverty, in accordance with resolution 8/11 of the Human Rights Council, A/65/259, 9 August 2010, § 8.*



## II. CONSTITUENT ELEMENTS OF THE RIGHT TO SOCIAL SECURITY

The United Nations Committee on Economic, Social and Cultural Rights has identified five constituent elements of the right to social security that it considers “essential” and applicable “in all circumstances”<sup>13</sup>. They are availability; social risks and contingencies; adequacy; accessibility; relationship with other rights. The Committee is of the opinion that, in the interpretation of these elements, government authorities should bear in mind that “*social security should be treated as a social good, and not primarily as a mere instrument of economic or financial policy*”.<sup>14</sup>

### A. Availability of Social Security

It goes without saying that the implementation of the right to social security depends on the existence and proper working of a social security system. The Committee on Economic, Social and Cultural Rights considers that, in any given country, there can be one or several social security schemes to insure against social risks and contingencies. But it also emphasizes states' obligations to “take responsibility for the effective administration or supervision of the system”. For the Committee, “the schemes should also be sustainable, including those concerning provision of pensions, in order to ensure that the right can be realized for present and future generations”.<sup>15</sup>

### B. Risks and Social Contingencies

For the Committee, a social security system should provide for the coverage of the following nine main elements of social security: health care; benefits in case of sickness; old age; unemployment; employment injury; family and child support; maternity; disability; survivors' and orphans' benefits.

These nine elements are self-evident and require no particular explanation, but the following comments regarding sickness, unemployment, and family and child support are worth mentioning.

Regarding *sickness*, the Committee has stated: “Cash benefits should be provided to those incapable of working due to ill-health to cover periods of loss of earnings. Persons suffering from long periods of sickness should qualify for disability benefits.”<sup>16</sup>

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<sup>13</sup> Committee on Economic, Social and Cultural Rights, *General Comment N° 19, The right to social security (art. 9)*, E/C.12/GC/19, 4 February 2008, § 10 (for URL see note 11).

<sup>14</sup> *Ibid.*, § 10; emphasis added.

<sup>15</sup> *Ibid.*, § 11.

<sup>16</sup> *Ibid.*, § 14.

Regarding *unemployment*, the Committee has emphasized, inter alia: “The social security system should also cover other workers, including part-time workers, casual workers, seasonal workers, and the self-employed, and those working in atypical forms of work in the informal economy.”<sup>17</sup>

Regarding *family and child support*, the Committee has stated, inter alia: “Family and child benefits, including cash benefits and social services, should be provided to families, without discrimination on prohibited grounds<sup>18</sup>, and would ordinarily cover food, clothing, housing, water and sanitation, or other rights as appropriate.”<sup>19</sup>

## C. Adequacy

Regarding the adequacy of a social security system, the Committee on Economic, Social and Cultural Rights has specified in particular: “Benefits, whether in cash or in kind, must be adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care.... States parties must also pay full respect to the principle of human dignity contained in the preamble of the Covenant, and the principle of non-discrimination, so as to avoid any adverse effect on the levels of benefits and the form in which they are provided.”<sup>20</sup>

## D. Accessibility

In the opinion of the Committee, accessibility of a social security system must respond to the following criteria: 1. coverage; 2. eligibility; 3. affordability; 4. participation and information; 5. physical access.

### 1. Coverage

As a human right, social security must be universal, including and especially for persons unable to pay into the system, as the Committee rightly emphasizes: “All persons should be covered by the social security system, especially individuals belonging to the most disadvantaged and marginalized groups, without discrimination.... In order to ensure universal coverage, non-contributory schemes will be necessary.”<sup>21</sup>

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<sup>17</sup> Ibid., § 16.

<sup>18</sup> *ICESCR, Article 2, § 2*: “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” See also *The Right to Non-Discrimination* (Geneva: CETIM, June 2011): [http://www.cetim.ch/en/publications\\_non-discrimination.php](http://www.cetim.ch/en/publications_non-discrimination.php)

<sup>19</sup> Committee on Economic, Social and Cultural Rights, *General Comment N° 19, The right to social security (art. 9)*, E/C.12/GC/19, 4 February 2008, § 18 (for URL see note 11).

<sup>20</sup> Ibid., § 22.

<sup>21</sup> Ibid., § 23.

## **2. Eligibility**

Everybody ought to be eligible for unconditional social security coverage, for it is a basic human right. At the same time, as the Committee has stipulated, “the withdrawal, reduction or suspension of benefits should be circumscribed, based on grounds that are reasonable, subject to due process, and provided for in national law”<sup>22</sup>. For the ILO, such measures, in the context of a work-related relationship, may be implemented only under certain circumstances:

*“(a) for as long as the person concerned is absent from the territory of the Member [state of the ILO]; (b) when it has been determined by the competent authority that the person concerned had deliberately contributed to his or her own dismissal; (c) when it has been determined by the competent authority that the person concerned has left employment voluntarily without just cause; (d) during the period of a labor dispute, when the person concerned has stopped work to take part in a labor dispute or when he or she is prevented from working as a direct result of a stoppage of work due to this labor dispute; (e) when the person concerned has attempted to obtain or has obtained benefits fraudulently; (f) when the person concerned has failed without just cause to use the facilities available for placement, vocational guidance, training, retraining or redeployment in suitable work; (g) as long as the person concerned is in receipt of another income maintenance benefit provided for in the legislation of the Member [state of the ILO] concerned, except a family benefit, provided that the part of the benefit which is suspended does not exceed that other benefit.”*<sup>23</sup>

## **3. Affordability**

Whatever the social security scheme (public, private or mixed), the contributions must not be prohibitive. The Committee considers that “the direct and indirect costs and charges associated with making contributions must be affordable for all, and must not compromise the realization of other Covenant rights [such as food, adequate housing, education etc.]”<sup>24</sup>.

## **4. Physical access**

Regarding physical access, the Committee states: “Benefits should be provided in a timely manner, and beneficiaries should have physical access to the social security services in order to access benefits and information, and make contributions where relevant. Particular attention should be paid in this regard to persons with disabilities, migrants, and persons living in remote or disaster-prone areas, as well as areas experiencing armed conflict, so that they, too, can have access to these services.”<sup>25</sup>

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<sup>22</sup> Ibid., § 24.

<sup>23</sup> ILO, *Employment Promotion and Protection against Unemployment Convention, 1988 (Nº. 168)*, Article 20.

<sup>24</sup> Committee on Economic, Social and Cultural Rights, *General Comment Nº 19, The right to social security (art. 9)*, E/C.12/GC/19, 4 February 2008, § 25 (for URL see note 11).

<sup>25</sup> Idem, § 27 (for URL see note 11).

### **5. Participation and Information**

If social security is considered a human right and a social good in a democratic and participative society, it goes without saying that the beneficiaries of social security systems must have ready access to the necessary information regarding their rights and must participate in the administration of the social security system, as the Committee recommends<sup>26</sup> and as the ILO requires.<sup>27</sup>

## **E. Relationship with Other Rights**

Social security is intended to insure against risks and social contingencies in order to preserve human dignity. Thus, one can consider the right to social security a support in the fulfillment of other human rights. However, it is also indispensable to survival for an entire category of persons (children, the elderly, the disabled, the unemployed...). It is surely for this reason that the Committee insists that “the right to social security plays an important role in supporting the realization of many of the rights in the Covenant [such as food, adequate housing, education etc.]<sup>28</sup>. It also considers that specific measures must be taken to protect disadvantaged and marginalized persons and groups “for example crop or natural disaster insurance for small farmers or livelihood protection for self-employed persons in the informal economy.”<sup>29</sup>

Although the five constituents elements of the right to social security are self-evident, in practice, many persons, owing to their status, to the insufficiency of their income (the unemployed, workers in precarious circumstances, the handicapped, migrants, asylum seekers and others) and to the insufficiency of the measures taken by states (and/or the insufficiency of states' means and the restrictions imposed on their effective sovereignty by the IMF, the World Bank and the WTO, for example), are excluded from the social security system. (See also Chapter VI.)

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<sup>26</sup> Ibid., § 26.

<sup>27</sup> ILO, *Social Security (Minimum Standards) Convention, 1952 (N° 102)*, Article 72, § 1.

<sup>28</sup> Ibid., § 28.

<sup>29</sup> Ibid.



### III. PERTINENT NORMS

#### A. At the International Level

Inspired by the *UDHR*, many international human rights conventions have included social security in their provisions and thus include at least one article on this subject.

The *International Convention on the Elimination of All Forms of Racial Discrimination*<sup>30</sup> prohibits all discrimination in, among other areas, “the right to public health, medical care, social security and social services” (§ 5.e.iv).

The states parties to the *Convention on the Elimination of All Forms of Discrimination against Women*<sup>31</sup> have undertaken to “take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular... the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave” (Article 11, § 1.e). The convention also provides for rural women “to benefit directly from social security programs” (Article 14, § 2.c).

Under Article 26 of the *Convention on the Rights of the Child*<sup>32</sup>, states parties “recognize for every child the right to benefit from social security, including social insurance”.

Article 28 of the *Convention on the Rights of Persons with Disabilities*<sup>33</sup> is intended to be comprehensive for it is devoted to an overall adequate standard of living and social protection:

*“1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.*

*2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the*

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<sup>30</sup> Adopted by the United Nations General Assembly 21 December 1965; entered into force 4 January 1969; as of 22 August 2012, ratified by 175 states.

<sup>31</sup> Adopted by the United Nations General Assembly 18 December 1979; entered into force 3 September 1981; as of August 2012, ratified by 187 states.

<sup>32</sup> Adopted by the United Nations General Assembly 20 November 1989; entered into force 2 September 1990; as of August 2012, ratified by 193 states representing almost the entirety of U.N. member states, the exception being South Sudan, the newest United Nations member state.

<sup>33</sup> Adopted by the United Nations General Assembly 13 December 2006; entered into force 3 May 2008; as of August 2012, ratified by 119 states.

basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

(a) to ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs; (b) to ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programs and poverty reduction programs; (c) to ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counseling, financial assistance and respite care; (d) to ensure access by persons with disabilities to public housing programs; (e) to ensure equal access by persons with disabilities to retirement benefits and programs.”

Regarding social security, the ***International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families***<sup>34</sup> requires that states parties guarantee that “migrant workers and members of their families shall enjoy in the state of employment the same treatment granted to nationals in so far as they fulfill the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties” (Article 27). It should be noted that this convention applies to migrant workers, whatever their status, as well as to members of their families.<sup>35</sup>

Article 6 of the ILO ***Migration for Employment Convention (Revised), 1949 (No. 97)***<sup>36</sup> enshrines equality of treatment between migrants whose situation is regular and nationals “without discrimination in respect of nationality, race, religion or sex” in matters of remuneration, housing, ***social security***, trade union rights, taxes and access to la justice.

The ***Domestic Workers Convention, 2011 (No. 189)***<sup>37</sup> provides that “domestic workers enjoy minimum wage coverage, where such coverage exists”, social security, including with respect to maternity, and that they be paid “at least once a month” (Articles 11, 14, §1 and 12, §1).

In the ***Declaration on Social Progress and Development***<sup>38</sup>, United Nations member states committed themselves to:

*“a. The provision of comprehensive social security schemes and social welfare services; the establishment and improvement of social security and insurance schemes for all persons who, because of illness, disability or old*

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<sup>34</sup> Adopted by the United Nations General Assembly 18 December 1990; entered into force 1 July 2003; as of August 2012, ratified by 46 states.

<sup>35</sup> For further information, see *For the Respect of the Rights of All Migrant Workers*, Critical Report N° 9 (Geneva: CETIM, October 2011): [http://www.cetim.ch/en/publications\\_cahiers.php#migrant](http://www.cetim.ch/en/publications_cahiers.php#migrant)

<sup>36</sup> Adopted by the United Nations General Assembly 1 July 1949; entered into force 22 January 1952; as of August 2012, ratified by 49 states.

<sup>37</sup> Adopted at the 100<sup>th</sup> International Labor Conference 16 June 2011; not yet entered into force owing to insufficient ratification (three states: Mauritius, Philippines and Uruguay): [http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0:NO::P11300\\_INSTRUMENT\\_ID:2551460](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0:NO::P11300_INSTRUMENT_ID:2551460)

<sup>38</sup> Adopted by the General Assembly 11 December 1969 as Resolution 2542 (XXIV).

age, are temporarily or permanently unable to earn a living, with a view to ensuring a proper standard of living for such persons and for their families and dependents; b. the protection of the rights of the mother and child; concern for the upbringing and health of children; the provision of measures to safeguard the health and welfare of women and particularly of working mothers during pregnancy and the infancy of their children, as well as of mothers whose earnings are the sole source of livelihood for the family; the granting to women of pregnancy and maternity leave and allowances without loss of employment or wages; c. the protection of the rights and the assuring of the welfare of children, the aged and the disabled; the provision of protection for the physically or mentally disadvantaged” (Article 11).

At the **World Summit for Social Development**, the participating governments also declared, inter alia:

*“Social protection systems should be based on legislation and, as appropriate, strengthened and expanded, as necessary, in order to protect from poverty people who cannot find work; people who cannot work due to sickness, disability, old age or maternity, or to their caring for children and sick or older relatives; families that have lost a breadwinner through death or marital breakup; and people who have lost their livelihoods due to natural disasters or civil violence, wars or forced displacement.”*<sup>39</sup>

## B. At the Regional Level

The **American Declaration of the Rights and Duties of Man**<sup>40</sup> recognizes that: *“every person has the right to social security which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his control that make it physically or mentally impossible for him to earn a living.”* (Article XVI)

The **Protocol of San Salvador (Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights)**<sup>41</sup> recognizes in Article 9 the right to social security in these terms:

*“1. Everyone shall have the right to social security protecting him from the consequences of old age and of disability which prevent him, physically or mentally, from securing the means for a dignified and decent existence. In the event of the death of a beneficiary, social security benefits shall be applied to his dependents. 2. In the case of persons who are employed, the right to social security shall cover at least medical care and an allowance*

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<sup>39</sup> *Copenhagen Declaration and the Program of Action, A/CONF.166/9, 19 April 1995, § 38, adopted in Copenhagen, March 1995:* <http://www.un.org/documents/ga/conf166/aconf166-9.htm>

<sup>40</sup> Adopted at the 9<sup>th</sup> International Conference of American States in Bogotá, Colombia, April 1948.

<sup>41</sup> Adopted at San Salvador (El Salvador) 17 November 1988; as of 22 August 2012, ratified by 16 American states, with the notable exception of Canada and the United States: <http://www.oas.org/juridico/english/treaties/a-52.html>

*or retirement benefit in the case of work accidents or occupational disease and, in the case of women, paid maternity leave before and after childbirth.”*

The *American Convention on Human Rights*<sup>42</sup> does not recognize outright the right to social security but enshrines the protection of the family (Article 17) and the right of the child (Article 19).

The *European Social Charter (revised)*<sup>43</sup> also recognizes the right to social security (Article 12), the right to social and medical assistance (Article 13) and the right to benefit from social welfare services (Article 14).

The *African [Banjul] Charter on Human and Peoples' Rights*<sup>44</sup> does not specifically mention the right to social security. On the other hand, it requires states parties to “take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick” (Article 16, § 2); to protect the family; “to ensure the protection of the rights of the woman and the child” and to take “special measures of protection” regarding the physical and moral needs of the aged and disabled (Article 18).

The *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*,<sup>45</sup> requires states parties to “establish a system of protection and social insurance for women working in the informal sector and sensitize them to adhere to it” (Article 13, § f).

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<sup>42</sup> Adopted in San José, Costa Rica, 22 November 1969; entered into force 18 July 1978; ratified to date by 25 states, with the notable exception of the United States (which has nonetheless signed it) and Canada:

[http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights\\_sign.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm)

<sup>43</sup> Adopted in Strasbourg 3 May 1996; signed by 47 states, of which 43 have ratified it as of 4 April 2012. Yet only 15 Council of Europe member states have recognized the collective complaints procedure:

[http://www.coe.int/t/dghl/monitoring/socialcharter/presentation/overview\\_EN.asp?](http://www.coe.int/t/dghl/monitoring/socialcharter/presentation/overview_EN.asp?)

<sup>44</sup> Adopted June 1981 in Nairobi (Kenya) by the 18<sup>th</sup> Conference of Heads of State and Government; ratified by 53 African states: <http://www.achpr.org/instruments/>

<sup>45</sup> Adopted 11 July 2003 in Maputo (Mozambique) at the 2<sup>d</sup> regular session of the Conference of the African Union; entered into force 25 November 2005; as of 14 August 2012, signed by 47 states but ratified by only 33 of the 53 African Union member states: <http://au.int/en/treaties>

## IV. OBLIGATIONS OF STATES AND IMPLEMENTATION AT THE NATIONAL LEVEL

### A. Obligations of States

The comments in Chapter II and in this chapter, drawn mainly from the 2007 *General Comment N° 19* of the Committee on Economic, Social and Cultural Rights, may seem theoretical when the real ability of states today is considered. In fact, over the past three decades, the imposition by the IMF and the World Bank of structural adjustment programs (SAPs) and neo-liberal policies, on the countries of the South and recently on those of the North, has resulted in the imposition of the market economy throughout the world and the reinforcement of the power of transnational corporations. States emerge from this process substantially weakened, which is the intention of those initiating the SAPs. Vulnerable owing to their external debt in particular but also lest they be isolated at the political and economic level, most states have finished by renouncing their sovereignty over economic and trade matters, thus nullifying their political independence.<sup>46</sup> However, it was possible (and it still is) for governments to oppose SAPs and free-market bilateral and multilateral trade agreements harmful to the basic rights of citizens, by invoking their economic, social and cultural rights obligations, as the Committee on Economic, Social and Cultural Rights has repeatedly emphasized during the review of states' periodic reports and in its *General Comment N° 19* (see below). Also, it is up to social movements and popular mobilizations to oblige their governments to do so.

As discussed in the preceding chapters, the right to social security, as a right enshrined in international and/or regional treaties, is a legal obligation for states. Thus, as in the case of other human rights, states have the obligation to *respect*, to *protect* and to *fulfill* the right to social security.

The obligation to *respect* the right to social security means that states must refrain from any arbitrary measure that might pose an obstacle (direct or indirect) to the enjoyment of this right. This is a negative obligation, restraining the state from exercising its power when this might result in impeding the enjoyment of the right to social security. For example, a government violates this obligation when it refuses or restrains “equal access to adequate social security”.<sup>47</sup>

The obligation to *protect* means that states must take measures to prevent third parties (individuals, groups, private business enterprises or other entities) from posing obstacles to the enjoyment of the right to social security. For example, the

<sup>46</sup> See, inter alia, *The Right of Peoples to Self-Determination* (Geneva: CETIM, 2010): [http://www.cetim.ch/en/publications\\_autodetermination.php](http://www.cetim.ch/en/publications_autodetermination.php)

<sup>47</sup> Committee on Economic, Social and Cultural Rights, *General Comment N° 19, The right to social security (art. 9)*, E/C.12/GC/19, 4 February 2008, § 44 (for URL see note 11) .

Committee on Economic, Social and Cultural Rights takes no position on the nature of social security schemes (public, private or mixed), but it reminds states of their responsibility in the administration and supervision of these schemes:

*“Where social security schemes, whether contributory or non-contributory, are operated or controlled by third parties, States parties retain the responsibility of administering the national social security system and ensuring that private actors do not compromise equal, adequate, affordable, and accessible social security. To prevent such abuses, an effective regulatory system must be established which includes framework legislation, independent monitoring, genuine public participation and imposition of penalties for non-compliance.”*<sup>48</sup>

The obligation to de **fulfill** requires that states take all necessary measures (legislative, administrative, financial, the drafting and implementation of effective policies and programs etc.) and establish a social security system to assure the enjoyment of this right for everybody.

Moreover, in this regard, the Committee on Economic, Social and Cultural Rights considers that “the Covenant also imposes on States parties various obligations which are of immediate effect.... States parties should develop a national strategy for the full implementation of the right to social security, and should allocate adequate fiscal and other resources at the national level”<sup>49</sup>. It also considers that “retrogressive measures taken in relation to the right to social security are prohibited under the Covenant”<sup>50</sup> and that “States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant”<sup>51</sup>. Within this framework, states have the obligation:

*“To ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.”*<sup>52</sup>

This is why those states that have ratified the *ICESCR* (the primary economic, social and cultural rights international treaty) or any other international convention (for example the *Convention on the Rights of Persons with Disabilities*) or a regional convention recognizing the right to social security (most notably the *Protocol of San Salvador* and the *European Social Charter (revised)*) have the **obligation to incorporate it into their national legislation**, unless – this depends on the legal system of the state – international treaties are self-executing at the national level. This makes it possible for citizens of these states to go before national, regional and international jurisdictions in the event of a violation of the right to social security (see Chapter V). The Committee also requires that states take all

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<sup>48</sup> Ibid., § 46.

<sup>49</sup> Ibid., §§ 40, 41.

<sup>50</sup> Ibid., § 42.

<sup>51</sup> Ibid., § 59.

<sup>52</sup> Ibid., § 59.a.

necessary measures so that every person and group has “access to effective judicial or other appropriate remedies at both national and international levels”.<sup>53</sup> It also stipulates: “All victims of violations of the right to social security should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition.”<sup>54</sup>

### ***1. Means and Resources at the National Level***

Generally, the social security schemes in force in many countries (created as insurance covering various elements of social security) draw their funding from contributions from both employers and employees, for they are usually linked to a job. Leaving aside the question of unemployment (affecting more than 200 million persons throughout the world, according to the ILO), in theory, it is not difficult to set up, world-wide, social security systems covering the overwhelming majority of humankind. The problem is that many jobs are paid at below the minimum wage level (whether specifically defined or not by the country) and in many countries do not allow workers to live in dignity much less to contract such insurance. This is the case of the *working poor*, whose numbers are in the hundreds of millions throughout the world, even though these persons more often than not work full time! In the context of neo-liberal globalization, precarious jobs (temporary or short-term, part-time, on-call etc.) have increased exponentially, when jobs have not been simply eliminated (by the millions!) owing to, among other things, relocations and technological innovation. Further, to this can be added those working in the so-called informal sector or formally called “self-employed”, such as peasants, although in fact subject to “laws of the market” that are crushing them. In the end, the number of persons excluded from any social security scheme is shocking.<sup>55</sup>

It is true that, for better or worse, some states try to compensate for this deficit through social assistance, but such aid is under ever greater attack by the SAPs, which impose austerity in this area. Other states, through an ideologically based neo-liberal choice, simply cut social budgets, since, for those adhering to such ideology, each individual is responsible for taking care of her- or himself (if the person needs insurance, she or he need only contract an insurance policy on the free market!).<sup>56</sup> Of course, if each individual owned property and/or capital, the question of social insurance would not be so crucially pressing. This is obviously not the case, given that today, one percent of the world's population controls more than 50% of the world's wealth! As Robert Castel has observed: “This central question has absolutely not been taken into account in the construction of the neo-liberal state.”<sup>57</sup>

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<sup>53</sup> Ibid., § 77.

<sup>54</sup> Ibid.

<sup>55</sup> According to the ILO, only 20% of the world's population benefits from proper social coverage, and more than 50% has none at all. See: <http://www.ilo.org/global/topics/social-security/lang--en/index.htm>

<sup>56</sup> See, inter alia, *The Fight against Poverty Human Rights* (Geneva: CETIM, 2012): [http://www.cetim.ch/en/publications\\_cahiers.php#poverty](http://www.cetim.ch/en/publications_cahiers.php#poverty)

<sup>57</sup> Robert Castel, *L'insécurité sociale: Qu'est-ce qu'être protégé?* (Paris: Seuil, 2003), p. 27.

It is obvious that one must have the necessary means and resources to set up a social security scheme worthy of the name. Some states thus gladly invoke this argument, rightly or wrongly, to justify the non-implementation of economic, social and cultural rights. These states often cite a passage from Article 2, § 1, of the *ICESCR* (omitting the rest), which stipulates that the rights enshrined in the *Covenant* are to be implemented “progressively”. However, this same article states that each state must take steps “to the maximum of its available resources” to honor its economic, social and cultural rights commitments; that the full realization of these rights is a collective obligation of all the states parties to the *ICESCR*, given that each state must act “individually and through international assistance and co-operation”. ***It is thus possible for a state lacking the means and the resources to solicit international solidarity in these areas.***

In the context described above, there arise inevitably the questions of social organization; economic, trade and tax policies; the redistribution/sharing of wealth; and the management of the social security system. For states lacking the means, the question is to know if they are really and sufficiently mobilized in favor of setting up a social security system. Thus, the Committee on Economic, Social and Cultural Rights notes that “it is important to distinguish the inability from the unwillingness of a State party to comply with its obligations.”<sup>58</sup>

## ***2. States' International Obligations***

As emphasized above, states are obliged (individually and collectively) to assure the fulfillment of economic, social and cultural rights, including the right to social security. The obligation is thus not only national but international. In this regard, states “should facilitate the right to social security in other countries, for example through provision of economic and technical assistance”.<sup>59</sup> In line with that logic, states must refrain from any actions that “interfere, directly or indirectly, with the enjoyment of the right to social security in other countries.”<sup>60</sup> They are also obliged to prevent “***their own citizens and national entities from violating this right in other countries.***”<sup>61</sup>

It is nonetheless irrefutable that states' practices run contrary to their international obligations regarding economic, social and cultural rights, including the right to social security, when, for example, they sign trade agreements or accept the imposition of structural adjustment programs on indebted countries. This is why the Committee on Economic, Social and Cultural Rights warns the states parties lest international and regional agreements “***adversely impact upon the right to social security***”, adding that “***agreements concerning trade liberalization***

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<sup>58</sup> See, inter alia, Committee on Economic, Social and Cultural Rights, *General Comment N° 14 (2000): The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/2000/4, 11 August 2000, § 47: <http://www2.ohchr.org/english/bodies/cescr/comments.htm>

<sup>59</sup> Committee on Economic, Social and Cultural Rights, *General Comment N° 19, The right to social security (art. 9)*, E/C.12/GC/19, 4 February 2008, § 55 (for URL see note 11).

<sup>60</sup> *Ibid.*, § 53.

<sup>61</sup> *Ibid.*, § 54; emphasis added.



***should not restrict the capacity of a State Party to ensure the full realization of the right to social security.***<sup>62</sup>

It is equally so for *member states of the international financial institutions* (most notably the IMF, the World Bank and regional development banks), which ***“should take steps to ensure that the right to social security is taken into account in their lending policies, credit agreements and other international measures.”***<sup>63</sup>

The Committee also reminds states parties of their responsibility in the design and implementation of structural adjustment programs and social security schemes by the international financial institutions. It is specific: “States parties should ensure that the policies and practices of international and regional financial institutions, in particular those concerning their role in structural adjustment and in the design and implementation of social security systems, ***promote and do not interfere with the right to social security.***”<sup>64</sup>

In carrying these observations to their logical conclusion, one can add that states should take urgent measures against stock market speculation, in particular in the case of pension funds. With a capitalization estimated at US\$ 26,000 billion, “pension funds constitute the major players of the financial markets”<sup>65</sup> and have been instrumental for two decades with the intention of carrying on lucrative financial operations that benefit above all the intermediaries. Referring to a broader framework and addressing itself to public authorities, the Committee states that ***“social security should be treated as a social good, and not primarily as a mere instrument of economic or financial policy”***<sup>66</sup>. In this regard, in a study dealing with world economic and financial crises, the United Nations independent expert on the question of human rights and extreme poverty requested, among other things, that states “regulate the actions of banking and financial sector entities under their control, in order to prevent them from violating or infringing upon human rights”<sup>67</sup>. She also recommended the creation of a new minimum level of social protection, the promotion of employment and decent work, the reform of the tax system in favor of the general interest and the implementation of economic, social and cultural rights.<sup>68</sup>

### ***3. Failures of States in Fulfilling their Social Security Obligations***

As states are obliged to take all necessary measures to assure “the realization of the right to social security within their maximum available resources, ... a failure to act in good faith to take such steps amounts to a violation of the

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<sup>62</sup> Ibid., § 57; emphasis added.

<sup>63</sup> Ibid., § 58; emphasis added.

<sup>64</sup> Ibid; emphasis added.

<sup>65</sup> Article by Xavier de la Vega, 15 June 2011. See: [http://www.scienceshumaines.com/qui-sont-les-speculateurs\\_fr\\_26412.html](http://www.scienceshumaines.com/qui-sont-les-speculateurs_fr_26412.html) (French only).

<sup>66</sup> Committee on Economic, Social and Cultural Rights, *General Comment N° 19, The right to social security (art. 9)*, E/C.12/GC/19, 4 February 2008, § 10; emphasis added (for URL see note 11).

<sup>67</sup> *Report of the Independent Expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona*, A/HRC/17/34, 17 May 2011, § 83.

<sup>68</sup> Ibid., pp. 6 and 16-20.

Covenant.”<sup>69</sup> The Committee on Economic, Social and Cultural Rights also requires that the realization of this right be compliant “with human rights and democratic principles” and “subject to an adequate framework of monitoring and accountability.”<sup>70</sup>

In the words of the Committee, the failures of states in fulfilling their social security obligations can also include:

*“... acts of commission, i.e. the direct actions of States parties or other entities insufficiently regulated by States. Violations include, for example, the adoption of deliberately retrogressive measures incompatible with the core obligations; ... the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to social security; active support for measures adopted by third parties which are inconsistent with the right to social security; the establishment of different eligibility conditions for social assistance benefits for disadvantaged and marginalized individuals depending on the place of residence; active denial of the rights of women or particular individuals or groups.”*<sup>71</sup>

Regarding violations of the right to social security by omission, the Committee has stated:

*“Violations through acts of omission can occur when the State party fails to take sufficient and appropriate action to realize the right to social security. In the context of social security, examples of such violations include:*

- *the failure to take appropriate steps towards the full realization of everyone's right to social security;*
- *the failure to enforce relevant laws or put into effect policies designed to implement the right to social security;*
- *the failure to ensure the financial sustainability of State pension schemes;*
- *the failure to reform or repeal legislation which is manifestly inconsistent with the right to social security;*
- *the failure to regulate the activities of individuals or groups [including the private commercial sector] so as to prevent them from violating the right to social security;*
- *the failure to remove promptly obstacles which the State party is under a duty to remove in order to permit the immediate fulfillment of a right guaranteed by the Covenant;*
- *the failure to meet the core obligations;*

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<sup>69</sup> Committee on Economic, Social and Cultural Rights, *General Comment N° 19, The right to social security (art. 9)*, E/C.12/GC/19, 4 February 2008, § 62 (for URL see note 11).

<sup>70</sup> *Ibid.*, § 63.

<sup>71</sup> *Ibid.*, § 64.

- *the failure of a State party to take into account its Covenant obligations when entering into bilateral or multilateral agreements with other States, international organizations or multinational corporations.*<sup>72</sup>

## **B. Examples of Implementation at the National Level**

Although the right to social security figures prominently in numerous national constitutions and there are social insurance schemes (with varying practices and effectiveness) in many countries, the reality is quite different. According to the ILO, only 20% of the world's population benefits from proper social coverage, and more than 50% has no coverage at all.<sup>73</sup>

To illustrate the various situations, we have chosen four countries on four continents (Chile, Switzerland, China and Rwanda). It should be noted that, given the complexity of these systems, our presentation aims to give only basic information, very often official, balanced by criticism formulated by international instances, major trade union organizations and NGOs, on the functioning of the social security systems in the countries under review. The construction of a social security system is particularly related to history, compromise among social groups, and the abilities (especially economic and technical) of each country. Thus, no system can be thoroughly discussed in a few pages.

It should also be noted that social security systems – including those under review – very often exclude the most vulnerable (the unemployed, precarious workers, migrant workers, asylum seekers et alii) and that states may fail to fulfill their management and supervision responsibility for social insurance schemes entrusted to private entities (pension funds, in particular).

Further, whatever the percentage of employer-employee sharing in the contributions of social insurance (cited here by way of information and, needless to say, included in the wage), a recent study showed that there has been a transfer of 10% of the world's wealth toward capital over the past 25 years in the 15 richest OECD countries.<sup>74</sup>

### **1. Chile**

With its US\$ 14,000 in per capita income,<sup>75</sup> Chile ranks 44<sup>th</sup> in the UNDP Human Development Index,<sup>76</sup> nonetheless, it is a member of the club of rich countries.<sup>77</sup> These figures, however, cannot mask the poverty and inequality that persist in this country, subjected to a military dictatorship in its recent history and used as a neo-liberal policy laboratory. The 1973 coup d'état made possible a ferocious

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<sup>72</sup> Ibid., § 65.

<sup>73</sup> See: <http://www.ilo.org/global/topics/social-security/lang--en/index.htm>

<sup>74</sup> Pierre Larroutourou, *C'est plus grave que ce qu'on vous dit... mais on peut s'en sortir*, Nova, 2012, quoted in *L'événement syndical*, N° 46, 14 November 2012.

<sup>75</sup> Figures from 2011. See: <http://www.oecd.org/statistics/>

<sup>76</sup> See <http://hdrstats.undp.org/en/countries/profiles/CHL.html>

<sup>77</sup> Chile is one of two Latin American countries belonging to the OECD. The other is Mexico.

repression of social movements<sup>78</sup> and the take over of economic policy by the "Chicago boys",<sup>79</sup> who immediately applied the invariable neo-liberal recipe based on privatization of public services. The opposite of the social policies of Salvador Allende, this recipe triggered a colossal increase in poverty and inequality throughout the country: the poverty rate, 17% in 1970, three years before the 1973 coup d'état, rose to 57% in 1976. Thereafter, it dropped to 39% in 1990, to less than 14% in 2006, a drop of 25 points following the "restoration of democracy".<sup>80</sup> It began to increase again in 2009 (15.1%), and there were 2,5 million poor in 2010<sup>81</sup> (out of a population of 17 million) of whom some 700,000 were below the threshold of extreme poverty (US\$ 52 per capita income in urban areas; US\$ 40 in rural areas).<sup>82</sup>

### Commitments of the Chilean State

Chile has ratified most of the United Nations human rights treaties, including the *ICESCR*, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and many ILO conventions (61 in all),<sup>83</sup> but not Convention 102 – Social Security (Minimum Standards). Although it signed the Protocol of San Salvador (Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights), Chile has still not ratified it. As for the Chilean constitution, it "guarantees the right to social security of all inhabitants, without discrimination" and provides that "the state shall guarantee access to uniform basic services, be they supplied by the agency of public or private institutions and be they or not financed by contributions" and that it shall assure "the effective enjoyment of the right to social security" (Article 19, § 18).

### The Chilean Social Security System

In 1924, the Chilean government laid the foundation of a social insurance scheme covering workers. Later, this public social security scheme was broadened to other groups within the population.<sup>84</sup> In the 1980s, the military regime of Augusto Pinochet (1973-1990) undertook a significant reform of this system in order to "standardize and rationalize it" (its deficit had risen to 25% of the GDP in the 1970s).<sup>85</sup> To do this, social insurance and retirement plans were almost entirely privatized. However, this reform, which took effect in 1981, was carried out

<sup>78</sup> See, inter alia, *Impunité au Chile* (Geneva: CETIM, 1993).

<sup>79</sup> Chilean economists trained at the University of Chicago under the influence of Milton Friedman, a fervent advocate of the free market economy.

<sup>80</sup> Carmelo Mesa-Lago, "La protection sociale au Chili: des réformes pour plus de justice", *Revue internationale du Travail*, Vol. 147, N° 4, 2008, pp. 412 and 432.

<sup>81</sup> See <http://www.rfi.fr/emission/20100723-pauvrete-Chile> French only.

<sup>82</sup> See <http://www.contactchile.cl/fr/Chile-Chileens-03.php> French only.

<sup>83</sup> See [http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO::P11200\\_COUNTRY\\_ID:102588](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO::P11200_COUNTRY_ID:102588)

<sup>84</sup> Superintendency of Pension Fund Administrators, *The Chilean Pension System*, 4<sup>th</sup> edition, Santiago (Chile), 2003, pp. 13 and 27.

<sup>85</sup> Barbara E. Kritzer, "Privatizing Social Security: The Chilean Experience", *Social Security Bulletin*, Vol. 59, N° 3, 1996, p. 46.

without any consultation of the persons affected by it and to the detriment “of the principles of solidarity and social justice”,<sup>86</sup> which contributed to an increase not only in poverty but also in inequality within the population, in particular with regard to wages, education, health and work safety. At the end of the dictatorship in 1990,<sup>87</sup> Chile was distinguished “by a very flourishing economic situation and the most unregulated market in the region.”<sup>88</sup> Yet, as mentioned above, this impressive performance was achieved through “sacrifices”: “at the expense of workers and the lowest wage earners, an increase in poverty and inequality and a clear regression of political and civil rights”,<sup>89</sup> for all attempts to obtain social justice were subject to severe repression.

Social coverage for the working population was “73% in 1973 (the year of the coup d’état), 64% in 1980 (before the reform) and 29% in 1982.”<sup>90</sup>

Given this situation, successive governments since the end of the dictatorship in 1990<sup>91</sup> have maintained the general framework of the social security system, “while carrying out some changes designed to fight poverty and reinforce social services.”<sup>92</sup> One major change was retirement reform in 2008. This provided notably for universal coverage for the poorest classes of the population and the protection of those insured “who did not fulfill the conditions required to obtain a minimal pension or a pension through social assistance to the poor and those of low income.”<sup>93</sup>

In Chile, there are three different types of schemes, covering the *aged, persons with disabilities*, and *survivors*. The first involves a compulsory individual account and concerns employees who entered the workforce starting 1 January 1983. Starting in 2012 and through 2015, compulsory coverage is being progressively extended to some self-employed (it is currently voluntary for most of the self-employed). For workers covered by social insurance before 1 January 1983, this program is optional. The second scheme is social insurance and concerns workers as well as the self-employed whose income is one third of the legal minimum (182,000 pesos<sup>94</sup> per month). There are special schemes however for certain groups of wage earners, such as railroad employees, sailors, port workers, and military and police personnel. The last scheme is social assistance, valid for all residents of Chile. Payment of old-age pensions starts at age 60 for women and 65

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<sup>86</sup> Carmelo Mesa-Lago, “La protection sociale au Chili: des réformes pour plus de justice”, *Revue internationale du Travail*, Vol. 147, N° 4, 2008, p. 411.

<sup>87</sup> In practice, the influence of the military regime lasted until the change of the constitution in 2004.

<sup>88</sup> Carmelo Mesa-Lago, “La protection sociale au Chili: des réformes pour plus de justice”, *Revue internationale du Travail*, Vol. 147, N° 4, 2008, p. 411.

<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid.*, p. 423.

<sup>91</sup> See note 87.

<sup>92</sup> Carmelo Mesa-Lago, “La protection sociale au Chili: des réformes pour plus de justice”, *Revue internationale du Travail*, Vol. 147, N° 4, 2008, pp. 412 and 432.

<sup>93</sup> *Ibid.*, p. 434.

<sup>94</sup> 182,000 Chilean pesos is worth US\$ 378 (rate of exchange of 2 November 2012).

for men. Early retirement may also confer the right to such a pension, subject to specific criteria depending on the age of retirement.<sup>95</sup>

The risks of *sickness* and *maternity* are covered by public and private insurance covering all workers in the public and private sector, self-employed short-term contract workers, retirees, persons receiving benefits because of work-related accidents, unemployment and social assistance as well as those persons with a right to family allowance benefits and pregnant women. Those without income, beneficiaries of social assistance and mothers (up to six months after giving birth) are also covered by the public scheme.

*Employment injury* and *sickness insurance* covers all public and private sector workers as well as domestic workers, temporary and fixed-term contract workers, students, apprentices and trade union representatives. Financing for this insurance comes entirely from employers whereas the self-employed pay 0.95% of their declared income. This rate can go as high as 3.4% depending on the profession. Employers pay between 0.95% and 3.4% of their total payroll (the rate depends on the type of industry and the level of risk). Like the wage earners, the state contributes nothing to this scheme, except when it is the employer.<sup>96</sup> “In the case of public employees, these sickness benefits cover 100% of cash income. For private sector employees, on the other hand, the benefit is calculated on the basis of the average monthly cash income for the three months preceding the start of the sickness.<sup>97</sup> The allowance is paid from the day of the event until the worker has recovered or has been declared disabled. In any event, its maximum duration is 52 weeks, renewable for a similar period.”<sup>98</sup>

Chilean labor law “makes it compulsory for any enterprise employing 20 or more female workers of any age or civil status to provide nursery facilities where the employees can feed their children under two years of age and leave them while they are working”<sup>99</sup>. This obligation was broadened in 2005 to cover “shopping centers or complexes, administered under the same company name or belonging to the same legal entity, where at least 20 or more female workers are employed”<sup>100</sup>

*Unemployment* insurance is compulsory for those hired since 2 October 2002 and voluntary for those hired before. Persons under 18, domestic workers, apprentices, retirees, the self-employed, state employees and the military are excluded. Its financing comes from the insured (0.6% of gross earnings plus administrative fees of about 0.05%.) and the employers (2.4% of their total payroll for 11 years maximum). For fixed-term-contract employees, the employers contribute 3%, the employees nothing.<sup>101</sup>

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<sup>95</sup> International Social Security Association, profile of Chile: <http://www.issa.int/Observatoire/Profils-des-pays/Regions/Ameriques/Chili/Description-des-regimes>

<sup>96</sup> Carmelo Mesa-Lago, “La protection sociale au Chili: des réformes pour plus de justice”, *Revue internationale du Travail*, Vol. 147, N° 4, 2008, p. 423.

<sup>97</sup> Committee on Economic, Social and Cultural Rights, 3<sup>d</sup> *Periodic Report of Chile*, C, E/1994/104/Add.26, 14 July 2003, § 287.

<sup>98</sup> *Ibid.*, § 335.

<sup>99</sup> *Ibid.*, § 424.

<sup>100</sup> *Ibid.*, § 424.

It should be emphasized that, to collect unemployment insurance, one must have “at least 52 weeks of contributions within the two years preceding the date of redundancy, either continuous or not, and under any provident scheme.”<sup>102</sup> Regarding the period covered: “The benefit is payable from the date the application is made, for every day the worker remains redundant, for partial periods equivalent to 90 days per year, up to a maximum of four consecutive periods.”<sup>103</sup> The average amount is US\$ +/- 22 per month.<sup>104</sup>

### Discrimination toward Indigenous Peoples

Indigenous Peoples (the Mapuche in particular) are subjected to considerable discrimination and repression, as the United Nations Committee for the Elimination of Racial Discrimination has emphasized.<sup>105</sup> Moreover, members of these communities who militate for their rights are often criminalized and prosecuted under the anti-terrorist law. This situation has a considerable effect on the living conditions of these peoples and the means they have to contract social insurance. The conflict between indigenous peoples and the Chilean authorities centers especially on mining on indigenous lands without prior consultation, access to land, and pollution of the living space of these peoples.<sup>106</sup> Chile is a party to the ILO's *CI69 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)* and the United Nations *Declaration on the Rights of Indigenous Peoples*. These two international instruments recognize the rights extended to indigenous peoples (in particular self-determination regarding their territories and natural resources).<sup>107</sup> It is true that self-determination of indigenous peoples regarding their territories can be a source of conflict over national state sovereignty. That said, the state exercises its sovereignty in the name of all citizens and should not do so to the detriment of some of them, even if they be minorities.

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<sup>101</sup> Carmelo Mesa-Lago, “La protection sociale au Chili: des réformes pour plus de justice”, *Revue internationale du Travail*, Vol. 147, N° 4, 2008, p. 423.

<sup>102</sup> Committee on Economic, Social and Cultural Rights, *3<sup>d</sup> Periodic Report of Chile*, E/1994/104/Add.26, 14 July 2003, § 340.b.

<sup>103</sup> *Ibid.*, § 341.

<sup>104</sup> *Ibid.*, § 342.

<sup>105</sup> Committee on the Elimination of Racial Discrimination, *Concluding Observations regarding the 15<sup>th</sup> and 18<sup>th</sup> periodic reports of Chile*, CERD/C/CHL/CO/15-18, 7 September 2009.

<sup>106</sup> During the 20<sup>th</sup> session of the Human Rights Council (June-July 2012), three NGOs brought up the situation of Caimanes community in Chile. Without consulting the community, the government had authorized the installation nearby of an open air mining waste reservoir (Los Pelambres mine), the biggest in Latin America. Seepage from the reservoir had contaminated the water tables with heavy metals, thus depriving the inhabitants of potable water. Further, the area is exposed to substantial seismic risks. The Santiago appeals court found in favor of the community and ordered the removal of the reservoir. Following an appeal by the government and the mining company, the Supreme Court called for conciliation between the parties, which had not effect on the environmental situation. Currently, a new team of lawyers and one of the community leaders are accused of “illicit association” by the mining company. Their court case is underway. See *Industrie minière et menace sur le droit fondamental à l'eau: Le cas symbolique de la communauté de Caimanes au Chili*. Written Statement to the 20th session of the Human Rights Council, A/HRC/20/NGO/62, 13 June 2012 (French and Spanish only).

<sup>107</sup> See, inter alia, *The Right of Peoples to Self-Determination* (Geneva: CETIM, 2011): [http://www.cetim.ch/en/publications\\_autodetermination.php](http://www.cetim.ch/en/publications_autodetermination.php)

### Criticism by Social Movements and NGOs

Chilean trade unions as well as the International Trade Union Confederation (ITUC) have denounced numerous anti-union practices by private business enterprises. For example, they fraudulently use precarious contracts “as a means of preventing unionisation and avoiding the cost of labor rights and benefits”. Consequently, “a million workers were employed on precarious contracts in 2010, depriving them of rights and social protection, and only 8.3% of the workforce enjoyed collective bargaining rights.”<sup>108</sup>

The number of abuses is highest in the mining sector, where work conditions are very difficult and dangerous, both for the health of the miners and for their security. As an illustration, the Canadian company Barrick Gold, active in gold mining, “has been accused of showing total disregard for workers’ rights, failing to comply with the security standards for mining operations, deploying anti-union practices and causing irreparable damage to the environment.”<sup>109</sup> The public sector is not exempt from reproaches either. As the ITUC has emphasized, its workers do not have the right to strike, and Chilean legislation does not permit collective bargaining.<sup>110</sup>

Regarding the obligation on the part of the employer (with 20 or more employees) to provide day care centers, this is not always honored in practice. Major companies often use the legal possibility offered by the *multi-RUT*<sup>111</sup> system to create separate business units, each one with its own RUT and employing less than 20 workers. The result is not only a weakening of the trade unions and their power in collective bargaining<sup>112</sup> but avoidance of payment of bonuses provided for by law.<sup>113</sup>

Many problems persist also at the level of hospital infrastructure in the public hospitals, used primarily by the poorest, and access to medical care: lack of beds, equipment (including ambulances), lack of medical personnel (including doctors) and medicines. Unmarried women are subject to discrimination in insurance policy costs and forced to recur to illegal abortions since abortion is prohibited in Chile.<sup>114</sup> Further, “the Chilean health care system suffers from chronic problems: inequality in financing and lack of solidarity.”<sup>115</sup>

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<sup>108</sup> International Trade Union Confederation, *Annual Survey of Violations of Trade Union Rights: Trade union rights violations around the world in 2011*:

<http://survey.ituc-csi.org/Chile.html?edition=248#tabs-4>

<sup>109</sup> *Ibid.*, <http://survey.ituc-csi.org/Chile.html?edition=248#tabs-5>

<sup>110</sup> *Ibid.*, <http://survey.ituc-csi.org/Chile.html?edition=248#tabs-3>

<sup>111</sup> *Rol Unico Tributario*, the national identification number compulsory for all legal persons.

<sup>112</sup> During the past 10 years, there has been a mere 0.76% increase in wages obtained through collective bargaining in comparison with a 40% increase in corporate profits.

<sup>113</sup> See <http://www.theclinic.cl/2010/07/03/%C2%BFpor-que-el-gobierno-arrugo-con-cambia>

<sup>114</sup> See A/HRC/WG.6/5/CHL/3 19 February 2009, § 18, presented to the working group on the Universal Periodic Review of Chile, and the letter of 25 September 2012 from Área de Desarrollo Indígenas to the Chilean health minister Jaime Mañalich Muxi.

<sup>115</sup> Carmelo Mesa-Lago, “La protection sociale au Chili: des réformes pour plus de justice”, *Revue internationale du Travail*, Vol. 147, N° 4, 2008, p. 416.



Also, Carmelo Mesa-Lago points out that the rate of social coverage of the working population is 61%, according to a household survey conducted in 2006.<sup>116</sup>

#### Criticism by and Recommendations of United Nations Treaty Bodies

The *Committee on Economic, Social and Cultural Rights (CESCR)* declared itself “deeply concerned that the private pension system, based on individual contributions, does not guarantee adequate social security for a large segment of the population that does not work in the formal economy or is unable to contribute sufficiently to the system, such as the large group of seasonal and temporary workers. The Committee notes that women are particularly affected in this regard: 'housewives' and about 40 per cent of working women do not contribute to the social security scheme and are consequently not entitled to old-age benefits. Moreover, the Committee is concerned at the fact that working women are left with a much lower average pension than men as their retirement age is five years earlier than that of men.” The Committee was also concerned that “the minimum wage is still not sufficient to ensure a decent living for workers and their families”.<sup>117</sup>

The *Human Rights Committee* has declared that it is concerned by the accusation of terrorism leveled at the members of the Mapuche community “in connection with protests or demands for protection of their land rights... the slow progress made in demarcating indigenous lands” and “is dismayed to learn that 'ancestral lands' are still threatened by forestry expansion and mega-projects in infrastructure and energy”. It called upon the Chilean government to “to ensure that its negotiations with indigenous communities lead to a solution that respects the land rights of these communities” and to “consult indigenous communities before granting licenses for the economic exploitation of disputed lands, and guarantee that in no case will exploitation violate the rights recognized in the Covenant.”<sup>118</sup>

The United Nations *Committee on the Rights of the Child* considered that “the resources available for children with disabilities are inadequate, in particular in order to guarantee their right to education”. It further considered that “further efforts need to be undertaken in order to ensure access to health services in practice among indigenous peoples, low-income and rural population”. The Committee recommended, inter alia, that the Chilean government “enhance the access to medical services in rural areas, among low-income families and indigenous peoples”. The Committee further recommended that it “prioritize and allocate sufficient funds in order to counteract the increasing inequality and effectively reduce the discrepancies in the standard of living, inter alia, between urban and rural areas”. Finally, the Committee also requested that the Chilean government “strengthen the capacity of departmental and municipal authorities to provide basic services; in particular, increased access to clean drinking water and sewage disposal should be a priority in rural areas”.<sup>119</sup>

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<sup>116</sup> Ibid., p. 423.

<sup>117</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations: Chile*, E/C.12/1/Add.105, 1 December 2004, §§ 18, 20.

<sup>118</sup> Human Rights Committee, *Concluding Observations: Chile*, CCPR/C/CHL/CO/5, 18 May 2007, §§ 7, 19.

The *Committee on Migrant Workers* was concerned that in Chile “the existence of discriminatory attitudes and social stigmatization of migrant workers and members of their families”. It was also concerned by arbitrary practices and obstacles faced by migrants emanating from administration civil servants, security agents and judicial authorities. Moreover, the Committee deplored that “according to the Labor Code, at least 85 per cent of the employees working in companies with more than 25 employees must be Chilean nationals”. In its opinion, this restriction could be applied only: “a. to migrant workers whose work permit is valid for less than five years; or b. to limited categories of employment, functions, services or activities where this is necessary in the interest of the State party, in accordance with article 52 of the Convention.”<sup>120</sup>

### Complaint to the ILO

To date, several complaints have been lodged with the ILO for the non-respect of several conventions by the Chilean government. There follows an example dealing specifically with social security.

In a letter of 25 October 2004, the College of Teachers of Chile A.G. complained to the ILO alleging the non-observance by Chile of Convention (N° 35) on old-age insurance (industry etc.), 1933, and Convention (N° 37) on disability insurance (industry etc.), 1933. The complaint focused on a debt to social security arising from non-payment by municipal sector employers to teachers of the allowance for further training to which they were entitled. This allocation constituted 40% of the basic national minimum earnings, provided for in the Statutes of Educational Professionals.<sup>121</sup>

In its ruling handed down on 7 November 2006, the Tripartite Committee exhorted the Chilean government “to continue its efforts to ensure the application of Conventions N°s 35 and 37, specifically: by taking all the necessary measures to solve the problem of the social security arrears arising from non-payment of the further training allowance; by continuing and strengthening the supervision of the effective payment of the further training allowance by the employers in arrears; where necessary, by ensuring the effective application of deterrent sanctions in the event of non-payment of the further training allowance and, in that case, the adoption of measures to compensate the damages. The Committee also declared that it would continue to monitor the matter and requested the Chilean government “to present a report under article 22 of the ILO Constitution on the application of Conventions N°s 35 and 37, containing detailed information on all the measures taken or envisaged to secure effective payment of subsidies, including the further

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<sup>119</sup> Committee on the Rights of the Child, *Concluding Observations: Chile*, CRC/C/CHL/CO/3,23 April 2007, §§ 51, 53, 54 and 60.

<sup>120</sup> Committee on Migrant Workers, *Concluding Observations: Chile*, CMW/C/CHL/CO/1, 19 October 2011, §§ 18, 44, 45 and § 20 to 42: <http://www2.ohchr.org/english/bodies/cmwc/cmws15.htm>

<sup>121</sup> “In Chile, there is neither a national curriculum nor a central education budget. Each local council runs its schools and they define their own educational line, including a ‘standard for admission’ of students.” (See: [http://www.ei-ie.org/en/news/news\\_details/2148](http://www.ei-ie.org/en/news/news_details/2148))

training allowance, to all the municipalities and on the manner in which the situation has evolved as a result of these measures”.<sup>122</sup>

## **2. Switzerland**

With its US\$ 46,480 per capita GDP,<sup>123</sup> Switzerland is among those countries with the highest UNDP Human Development Index (ranked 11<sup>th</sup> in the world)<sup>124</sup> and is also a member of the rich countries club (OECD). Switzerland is a federal state whose constituent jurisdictions (26 cantons) enjoy a considerable margin of maneuver in many areas (education, work, health, security etc.). Although Switzerland is one of the richest countries in the world, precariousness and inequality have grown over the past 20 years. “The richest 1% of the population owns 59% of the overall wealth.”<sup>125</sup> In a statement published on 16 October 2012, the NGO Caritas Suisse, for its part, estimates that there are about one million poor persons<sup>126</sup> in the country out of a population of some 8 million inhabitants. However, a significant fraction of the poor (hundreds of thousands of persons) have full-time work but do not earn enough to cover their needs and, thus, recur to social assistance.

### Commitments of the Swiss State

Switzerland has ratified most of the United Nations human rights treaties, including the *ICESCR* and many of the ILO conventions (48 in all),<sup>127</sup> including Convention 102 – Social Security (Minimum Standards. On the other hand, Switzerland has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (one fifth of its population). Although it has signed the European Social Charter (1961), Switzerland has not yet ratified the revised version (1996), nor has it recognized the jurisdiction of the European Committee of Social Rights for the filing of collective complaints.

The federal constitution (revised in 1999) deals with various areas of social security and sets the principles that regulate social insurance (Articles 111 to 117).

### The Swiss Social Security System

Switzerland's economy being based on free-market neo-liberalism has influenced the concept and organization of its social security, referred to as “social insurances”. These are both highly developed and complex and can be state, private or mixed. The Swiss social security system has been described as being a social

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<sup>122</sup> *Report of the Committee set up to examine the representation alleging non-observance by Chile of the Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35), and the Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37), made under article 24 of the ILO Constitution by the College of Teachers of Chile AG*, Geneva, 7 November 2006, §§ 54.a and b.

<sup>123</sup> See [http://www.oecd-ilibrary.org/economics/country-statistical-profile-switzerland\\_20752288-table-che](http://www.oecd-ilibrary.org/economics/country-statistical-profile-switzerland_20752288-table-che)

<sup>124</sup> UNDP, Profile of Switzerland: <http://hdrstats.undp.org/en/countries/profiles/CHE.html>

<sup>125</sup> Cf. Interview with Hans Kissling, former Zurich cantonal statistician, *News* N° 3, October 2012.

<sup>126</sup> See <http://www.caritas.ch/fr/actualites/actuel/un-signe-de-lengagement-contre-la-pauvrete-en-suisse/> (French only).

<sup>127</sup> See: [http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO::P11200\\_COUNTRY\\_ID:102861](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO::P11200_COUNTRY_ID:102861)

insurance network protecting all those who live or work in the country and their families against risks “the financial consequences of which they could not deal with”.<sup>128</sup> This system comprises five distinct areas, to wit: old age, survivors and disability pensions; coverage in case of sickness and accidents; payments for loss of earnings in case of service (military or civil protection) and maternity; unemployment compensation; family allocations.

The *Occupational Old Age, Survivors' and Disability Benefit Plan* is particularly complex. It is set up in the form of *three pillars*. The first pillar, the biggest, is a state-run scheme and corresponds to general compulsory insurance covering everybody's needs. This scheme includes old-age, and survivor insurance (AVS), created in 1948, and disability insurance (AI), created in 1959.

AVS “is intended to compensate – in part – the decrease or loss of income from work or owing to old age or death.”<sup>129</sup> <sup>130</sup> Thus, every person living or working in Switzerland is subject to a contributions and benefits scheme,<sup>131</sup> be the person employed (contribution in function of income)<sup>132</sup> or not (in function of the person's social situation).<sup>133</sup> The compulsory contributions to AVS begin in the year of the person's majority, to wit “1 January following the date of the seventeenth birthday”<sup>134</sup> and finish “... at the prescribed retirement age”.<sup>135</sup> <sup>136</sup> The benefits are in the form of pensions (old age, child support, widow or widower etc.), payments for invalidity or income supplements. Regarding financing of the system, benefits are mainly financed through the contributions paid by those insured and their employers. The federal government covers 19.55% of the scheme's expenses, derived from direct federal and value-added taxes as well as the taxes on tobacco products, alcohol and gambling casinos.<sup>137</sup>

The purpose of the AI is “to prevent, reduce or eliminate disability through rehabilitation measures and to guarantee the means of subsistence to insured persons

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<sup>128</sup> Federal Social Insurance Office and State Secretariat for the Economy, AVS/AI Information Center, *Social Security in Switzerland, 2012*.

<sup>129</sup> There are three different types of survivor pensions: widows, widowers and pension. Their purpose is “to prevent the death of the husband or the wife, the father and/or the mother from leading the surviving spouse and children to financial difficulty”:

<http://www.zas.admin.ch/org/00723/00726/index.html?lang=en>

<sup>130</sup> Federal Social Insurance Office and State Secretariat for the Economy, AVS/AI Information Center, *Social Security in Switzerland, 2012*.

<sup>131</sup> Note that, since AVS is a universal insurance, even millionnaires are insured. On the other hand, the maximum pensions may not surpass twice the amount of the minimum pension (Federal Constitution, Article 112.2.c).

<sup>132</sup> For wage earners, the amount of the contribution (4.2% of gross earnings) is paid by the employer (Federal Constitution, Article 112.3.a).

<sup>133</sup> The annual contribution varies between CHF 387 and 19,350.

<sup>134</sup> Federal Social Insurance Office and State Secretariat for the Economy, AVS/AI Information Center, *Social Security in Switzerland, 2012*.

<sup>135</sup> The legal retirement age is 64 for women and 65 for men.

<sup>136</sup> Federal Social Insurance Office and State Secretariat for the Economy, AVS/AI Information Center, *Social Security in Switzerland, 2012*.

<sup>137</sup> See: <http://www.bsv.admin.ch/themen/ahv/00011/01300/index.html?lang=en>

who have become invalids, through benefits in kind.”<sup>138</sup> The contribution is shared equally by the employee and the employer (1.4% of gross earnings). For the self-employed, the basic tax rate is the same, but it is regressive, based on earnings. The annual contribution by individuals without remunerated work varies, depending on their social situation, between CHF 65 and CHF 3,250. The benefits take the form of pensions or rehabilitation and social-professional reinsertion, in order to improve “or increase in a durable and significant way the earning capacity: persons with disabilities should be able to continue to carry out a remunerated activity or their usual tasks...”<sup>139</sup> A disability pension is paid “only in the end, when, in spite of possible measures of rehabilitation, a durable disability exists regarding earning power or usual work.”<sup>140</sup> The right to such a pension is valid, once the required conditions have been fulfilled, until the ordinary retirement age at the latest,<sup>141</sup> but it can be interrupted or reduced following a later review of the situation of the person in question.

The **second pillar** is profession related (LPP), created in 1985 on the principle of capitalization. It functions as a supplement to the first pillar (AVS et AI), its purpose being “to reach – by adding the LPP to the AVS/AI pension – 60% of the final earnings.”<sup>142</sup> This second pillar is compulsory for workers already covered by AVS earning more than CHF 20,880 per year (figure for 2012). The LPP is financed by capitalization. It is composed of “contributions from the employers and from the employee (generally equal, with the employer’s contribution at least matching that of the employee) and with an interest rate of 1.5%, as of 1<sup>st</sup> January 2012.”<sup>143</sup>

The **third pillar** is an optional individual plan whose benefits “are added to those of the AVS/AI and the LPP to maintain after retirement the retiree’s standard of living previous to retirement.”<sup>144</sup> The optional character of this third pillar allows those who wish and can to maintain their standard of living at the end of their regular earning period. To do this, these persons can “take all necessary measures through a banking institution or an insurance company”<sup>145</sup> to contract in insurance plan. The form (pension or capital) and the amount of the benefits provided “depend on the contract signed with the banking institution or insurance company”<sup>146</sup> and these benefits are added to those of the AVS/AI and the LPP. Complementary benefits are intended to cover vital needs, in an appropriate way, of AVS and AI pensioners who do not have a second or third pillar of personal

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<sup>138</sup> Federal Social Insurance Office and State Secretariat for the Economy, AVS/AI Information Center, *Social Security in Switzerland, 2012*.

<sup>139</sup> *Ibid.*, p. 33.

<sup>140</sup> *Ibid.*,

<sup>141</sup> *Ibid.*, pp. 21-44.

<sup>142</sup> *Ibid.*, p. 49.

<sup>143</sup> Federal Social Insurance Office:

<http://www.bsv.admin.ch/themen/vorsorge/00039/00336/index.html?lang=en>

<sup>144</sup> Federal Social Insurance Office and State Secretariat for the Economy, AVS/AI Information Center, *Social Security in Switzerland, 2012*.

<sup>145</sup> *Ibid.*, p. 61.

<sup>146</sup> *Ibid.*

assets (federal constitution, Article 112). Some cantons and communes also pay complementary benefits in addition to these.

Basic **medical care insurance**<sup>147</sup> is compulsory for all persons residing in Switzerland or subject to the Swiss social security system. The insured have the “free choice” of choosing their insurer, necessarily private, and they must undertake by themselves the arrangements for the insurance.<sup>148</sup> In practice, the intended competition among the insurers is non-existent, for they all must furnish the same catalog of services required by the federal medical insurance law (LAMal).<sup>149</sup>

**Accident insurance** (compulsory for all those working in Switzerland, except housewives and househusbands, children, students and retirees), is “an insurance whose purpose is to cover the economic consequences of work-related and non-work-related accidents as well as work-related sickness.”<sup>150</sup> For the employee, the insurance also covers loss of earnings. Employees do not contribute for they are entirely covered by their employers.

Created in 1951,<sup>151</sup> **loss of income insurance** is intended to compensate for loss of earnings during public service (military and civil defense). Students receive an allocation less than workers and the unemployed, and part-time workers are compensated in function of their earnings from their most recent job.<sup>152</sup> Since 2005, it has also covered maternity. The contribution is shared equally by the employer and the employee (0.5 % of earnings).

**Unemployment insurance** is compulsory for all those working in Switzerland. The contribution is also shared equally by employer and employee (2.4 % of earnings). However, some “categories of persons are dispensed from making contributions”<sup>153</sup> including the self-employed.<sup>154</sup> Benefits depend on the length of time over which contributions have been paid during a fixed period (two years), the age of the beneficiary and the number of dependents. But one must have worked and contributed for 12 months minimum to benefit from 200 to 260 days of payments, corresponding to 70% to 80% of the most recent earnings. For workers who contributed for 22 months, the payment period can extend to 520 days maximum.<sup>155</sup>

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<sup>147</sup> Basic medical care insurance does not include certain services (dental and optical in particular) which require a complementary private insurance policy.

<sup>148</sup> Federal Social Insurance Office and State Secretariat for the Economy, AVS/AI Information Center, *Social Security in Switzerland*, 2012.

<sup>149</sup> Federal law N° 832.10 :

<http://www.bag.admin.ch/themen/krankenversicherung/02874/02875/index.html?lang=fr>  
(no English).

<sup>150</sup> Federal Social Insurance Office and State Secretariat for the Economy, AVS/AI Information Center, *Social Security in Switzerland*, 2012.

<sup>151</sup> Federal law APG N° 834.1.

<sup>152</sup> <http://www.bsv.admin.ch/themen/eo/00049/01099/index.html?lang=en>

<sup>153</sup> The unemployed, retirees and members of farming families (Federal law N° 837 on Unemployment Insurance, Article 2.2).

<sup>154</sup> Federal Social Insurance Office and State Secretariat for the Economy, AVS/AI Information Center, *Social Security in Switzerland*, 2012.

<sup>155</sup> Federal law N° 837 on Unemployment Insurance. See also:

[http://www.ge.ch/emploi-recherche/indemnites\\_chomage.asp](http://www.ge.ch/emploi-recherche/indemnites_chomage.asp) (French only).

**Family allowances** are intended for parents: working or working as self-employed farmers or not working and with only modest income or self-employed outside of the agricultural area (but only in certain cantons and under certain conditions) and “until their children reach the age of 16 or (depending on their schooling) 25 years of age.”<sup>156</sup> At the federal level, these allowances are set at CHF 200 per month per child (up to 16 years of age) and CHF 250 (from 16 to 25).<sup>157</sup> There are 26 different cantonal systems in Switzerland, which “are largely concordant on the basic principles but diverge in the details, such applicability, the amount and how the system works.”<sup>158</sup> The self-employed will also be legible for family allowances as of 1 January 2013.<sup>159</sup>

### Criticism by Social Movements, NGOs and Institutions

Complex and complicated, the Swiss social security system is a historical construction resulting from many confrontations between political forces and subject to many popular initiatives and referenda. It continues to be the object of heated political debate, and reforms are under discussion. It should be emphasized that this system is lacking in intelligibility for ordinary citizens. As the Mouvement populaire des familles (MPF – Peoples' Family Movement) has stressed, the various current social insurances, each of which depends on specific legislation and to which must be added a general law, make the system not only complex but also vague. For the MPF, this system “presents gaps, inconsistencies, inequalities and dysfunctions.”<sup>160</sup> Some of the MPF's major criticism is as follows:

- a lack of loss of income insurance in case of sickness;
- medical care costs from sickness less well covered than in case of accident;
- medical insurance premiums that vary depending on to the canton, even depending on the region within a single canton, with no solidarity between rich and poor;
- pensions paid by accident insurance that are higher than those paid by the AI;
- first pillar benefits (AVS/AI) plus those of the second pillar (LPP) do not fulfill their purpose as stated in the constitution;<sup>161</sup>
- restrictions imposed on unemployment insurance or AI remove people from the “social insurance” system, placing them in the

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<sup>156</sup> Federal Social Insurance Office and State Secretariat for the Economy, AVS/AI Information Center, *Social Security in Switzerland, 2012*.

<sup>157</sup> Federal law N° 836.2, entered into force 1 January 2009.

<sup>158</sup> Republic and Canton of Geneva website:

[http://www.ge.ch/statistique/domaines/13/13\\_02\\_1/methodologie.asp#3](http://www.ge.ch/statistique/domaines/13/13_02_1/methodologie.asp#3) (no English)

<sup>159</sup> <http://www.bsv.admin.ch/themen/zulagen/00059/02296/index.html?lang=fr> (no English)

<sup>160</sup> Mouvement Populaire des Familles, *Une réforme des assurances sociales en Suisse*, Yverdon, 2011, pp. 2-3.

<sup>161</sup> For AVS/AI, “the pensions must cover the vital minimum of the insured in an appropriate way” and for the LPP, the pensions must allow “the insured to maintain the same standard of living as previously”. See Federal Constitution, Articles 112.2.b and 113.2.a:

<http://www.admin.ch/ch/e/rs/c101.html>

“social assistance” category with the financial and mental harm that that entails;

- lack of coordination;
- profession based plan, designed during a period of full employment, disadvantages those working part time or whose work has been interrupted for a more or less long time and recreates, indeed, aggravates the social inequality inherent in the prevailing pay scales;
- the abysmal deficits of the AI and the unemployment insurance are due to lack of planning, indeed, outright negligence, on the part of the authorities.

The federal MP (national councilor) Silvia Schenker is even more incisive in her criticism. For her, the Swiss social insurances are “too complex rigid and too much the source of inequality.”<sup>162</sup>

The *Travail.Suisse* trade union castigates the functioning of the second pillar, accusing the employers of making money off the insured. In fact, from 2005 to 2011, the insurers made a profit of some CHF 3,000 million while “money is lacking to pay the pensions”. For the union, this is unacceptable for social insurance, and it is calling upon the federal authorities to take measures to reduce the profit margins of the insurers.<sup>163</sup> This example illustrates the limits of private management of social insurance, oriented above all to high profits.

Regarding Swiss NGOs, “the creation of a fairer medical insurance coverage system” is demanded.<sup>164</sup> The current system has indisputably perverse effects, such as: a total absence of transparency; insufficient oversight by the public authorities; an insurers' lobby with substantial influence over the federal parliament; a concentration of power within the insurers, who dictate their law both to the service suppliers (doctors and medical institutions) and to the insured. Further, the medical insurance coverage premiums have become an intolerable burden for many persons and families,<sup>165</sup> for they are not calculated on the basis of income. Thus, many families must recur to state subsidies and social assistance.

Given the effect of trade union rights on collective bargaining, including social security, it is appropriate to mention some of the criticism of the ITUC regarding Switzerland. In its opinion, trade unionists are not well enough protected legally. In practice, “collective bargaining is sometimes impeded by bad faith interference. The limitations on the right to strike have persisted over several years to such an extent that strikes are legally prohibited by certain cantons and communes. The government fails to promote the [ILO] conventions.”<sup>166</sup>

<sup>162</sup> <http://www.bsv.admin.ch/themen/eo/aktuell/01344/index.html?lang=fr&msg-id=45940>  
(No English)

<sup>163</sup> Press release, *Travail.Suisse*, 18 October 2012: <http://www.travailsuisse.ch/fr/node/3270> (French only)

<sup>164</sup> Statements by interested parties (NGOs and institutions) concerning the Universal Periodic Review of Switzerland (2<sup>d</sup> series), A/HRC/WG.6/14/CHE/3, 30 July 2012, § 40.

<sup>165</sup> CHF 5,000 to 6,000 per year for an adult.

<sup>166</sup> International Trade Union Confederation (ITUC), *Les normes fondamentales du travail reconnues à l'échelon international en Suisse et au Liechtenstein, Rapport en prévision de l'examen par le Conseil général de l'OMC des politiques commerciales de la Suisse et du Liechtenstein* (Geneva, 15-17 December 2008), p. 5.



### Criticism by and Recommendations of United Nations Treaty Bodies

After reviewing Switzerland's periodic report in 2010, the *Committee on Economic, Social and Cultural Rights (CESCR)* issued, inter alia, the following criticism: discrimination against women (earnings, poorly paid jobs, very low rate of access to responsible positions); high level of unemployment among certain groups of the population (migrants, women and youth of foreign origin in particular); interpretation of the principle of the "reasonable character" of the right to strike; firing of trade unionists because of their union activities; exclusion from social assistance of persons whose situation is considered irregular; persistence of the phenomenon of the "working poor", who work in precarious conditions and whose earnings do not enable them to live decently.<sup>167</sup>

The CESCR also asked the Swiss government to supply information about, inter alia: living conditions of asylum seekers (in particular families and children, accompanied or un-); the fourth revision of the unemployment compensation law, in order to verify that it will not have negative effects on the standard of living of its beneficiaries; working conditions of prisoners and their pay; the situation of undocumented persons, including those in a situation considered irregular; the extent to which the Concordat on Special Education complies with international human rights standards concerning persons with disabilities.<sup>168</sup> The Committee, during the previous periodic report review, had already requested the Swiss government "to review its systems of health care to prevent the high costs of these from having a negative effect on the standard of living of families."<sup>169</sup>

The *Committee for the Elimination of Discrimination against Women (CEDAW)* was concerned by the persistence inequality between the sexes in education, the labor market, access to decision-making positions and participation in public and political life. It was also concerned by "the persistence of horizontal and vertical segregation in the labor market, with women concentrated in the lower paid service sectors, a higher unemployment rate for women, the persistence of the gender pay gap and the continued predominance of women in temporary and part-time work due to their traditional role as caregivers for children and the continued lack of available and affordable childcare services". The Committee further deplored, inter alia, the exclusion of rural women from unemployment benefits and from inheriting farms in the event their husband's death. The Committee recommended that the Swiss government take "legal, policy and awareness-raising measures, taken in a coordinated fashion and directed at women and men generally, as well as different forms of media and targeted programs in

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<sup>167</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations: Switzerland*, E/C.12/CHE/CO/2-3, 26 November 2010, §§ 8-15, § 17.

<sup>168</sup> *Ibid.*, §§ 18, 26, 27, 29, 30.

<sup>169</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations: Switzerland*, E/C.12/1/Add.30, 7 December 1998, § 36:

[http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/b4ecccfc529902c3802566d400587184?](http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/b4ecccfc529902c3802566d400587184?Opendocument)

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the educational system, to encourage further diversification of the educational choices of boys and girls and enhanced sharing of family responsibilities.”<sup>170</sup>

### 3. China

With 1.35 billion inhabitants (on fifth of the world's population), China is the world's most populous country. It is also a country of contrasts that, owing to impressive economic and social development over the past three decades, has become a major player on the international scene. With US\$ 8,442 per capita income,<sup>171</sup> China is ranked 101<sup>st</sup> in the UNDP Human Development Index.<sup>172</sup> However, this country is now the world's second greatest economic power, and it sets an example for the United Nations agencies, which do not hesitate to praise it for having achieved its U.N. Millennium Development Goals. According to official Chinese government figures, the number of persons living in extreme poverty in rural areas has gone from 250 million to 15 million in the period from 1986 to 2007. Further, according to the government, “living standards have achieved two historic leaps: from poverty to subsistence and from subsistence to relative prosperity.”<sup>173</sup> China's performances in education (all children go to school), in access to medical care (see below), in access to water (85% of the population), and in a relatively high life expectancy (73 years),<sup>174</sup> no longer need demonstration. It is worth noting, however, that there exists a disparity among regions, between urban and rural areas, and between internal migrants and city dwellers. It is difficult to characterize the Chinese regime: although the country has been governed since 1949 by the Communist party, since the death of Mao Zedong in 1976, Chinese leaders have oriented the economic system to a market economy, a choice which was sealed with the membership of China in the World Trade Organization in September 2001. China calls this system a “socialist market economy”.

#### Commitments by the Chinese State

China has ratified most of the United Nations human rights treaties, including the *ICESCR* and several ILO conventions (25 in all),<sup>175</sup> but not *Convention 102 – Social Security (Minimum Standards)* nor the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. Article 14 of the Chinese constitution states: “The state builds and improves a social security system that corresponds with the level of economic development.” China has also set up a universal vital minimum system for urban dwellers.<sup>176</sup>

<sup>170</sup> Committee on the Elimination of Racial Discrimination Against Women, *Concluding Observations: Switzerland*, CEDAW/C/CHE/CO/3, 7 August 2009, §§ 25, 26, 37 and 39.

<sup>171</sup> See: <http://www.socialsecurityextension.org/gimi/gess/ShowCountryProfile.do?cid=45&aid=2>

<sup>172</sup> <http://hdrstats.undp.org/en/countries/profiles/CHN.html>

<sup>173</sup> *National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1*, A/HRC/WG.6/4/CHN/1, 10 November 2008, §§ 19 y 20.

<sup>174</sup> <http://data.worldbank.org/country/china>

<sup>175</sup> [http://www.ilo.org/dyn/normlex/en/P?p=1000:11110:0::NO::P11110\\_COUNTRY\\_ID:103404](http://www.ilo.org/dyn/normlex/en/P?p=1000:11110:0::NO::P11110_COUNTRY_ID:103404)

<sup>176</sup> Committee on Economic, Social and Cultural Rights, *Initial reports submitted by States parties under articles 16 and 17 of the Covenant Addendum People's Republic of China [27 June 2003]*, E/1990/5/Add.59, 4 March 2004, § 83.

### The Chinese Social Security System

The Chinese social security system, set up in 1951 based on the Soviet Union model, developed in three phases. During the first phase (1951 to 1978), the regulations on workers' insurance (amended in 1953, 1958 and 1978) covered social insurance benefits except for unemployment compensation. However, the extent of social coverage, until the middle of the 1980s, was limited to urban workers, with a particular emphasis on those working in state-owned enterprises. The second phase (1978 to 2002) was marked by major reforms of the system. The government then launched social insurance programs based on employment and financed by contributions, primarily in the urban centers. Major decisions were made in 1998 – 1999 concerning the implementation throughout the country of medical insurance coverage and a basic pension plan for urban workers. The third phase has been a period of rapid expansion of social security. It has been characterized since 2003 by uniform planning for both urban and rural areas and by an increased effort to extend social coverage to the entire population.<sup>177</sup>

With the adoption of the *Social Insurance Law* (which took effect 1 July 2011), China uniformized its social security system. Applicable to both Chinese business enterprises and those of foreign investors, this law “provides for basic coverage including old-age insurance, unemployment compensation, medical insurance, employment accident insurance and maternity insurance.”<sup>178</sup>

**Old age, disability and survivors insurance** covers workers in urban business enterprises<sup>179</sup> and urban institutions managed as business enterprises as well as self-employed urban workers. In certain provinces, however, coverage of self-employed urban workers remains voluntary. Special provisions are made in certain provinces for former agricultural workers who emigrate to work in urban areas. Moreover, retirement pilot projects in rural areas are progressively being set up in the form of social assistance and individual accounts. It should be noted that employees of government and communist party organizations and employees of cultural, educational, and scientific institutions (except for institutions financed off-budget) are covered under special government-funded, employer-administered systems.<sup>180</sup> Retirement age is “age 60 (men); age 60 (professional women), age 55 (nonprofessional salaried women), or age 50 (other categories of women). The insured must have at least 15 years of coverage. Age: 55 (men) or age 45 (women) with at least 15 years of coverage, if employed in arduous or unhealthy work.”<sup>181</sup> Regarding contributions: “basic old-age insurance comports on the one hand a shared system and, on the other hand, a system of individual accounts based on

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<sup>177</sup> International Social Security Association (ISSA), *People's Republic of China, Crisis Country Case Study*, Geneva, 2010, p. 1.

<sup>178</sup> Centre des liaisons européennes et internationales de sécurité sociale, “Le régime chinois de sécurité sociale”: [http://www.cleiss.fr/docs/regimes/regime\\_China.html](http://www.cleiss.fr/docs/regimes/regime_China.html) (French only).

<sup>179</sup> “Urban business enterprises” include all state enterprises regardless of their location.

<sup>180</sup> International Social Security Association, China Profile: <http://www.issa.int/Observatoire/Profils-des-pays/Regions/Asie-et-Pacifique/Chine-Republique-populaire-de/Description-des-regimes>

<sup>181</sup> *Ibid.*

capitalization, with an individual contribution rate of 8% of taxable earnings.”<sup>182</sup> To receive benefits, one must contribute for a minimum of 15 years.<sup>183</sup> As already emphasized, urban workers are better off and have other advantages. “Chinese old-age insurance for urban workers is built on a three-pillar structure: the first pillar (basic old-age insurance, compulsory) is a shared scheme, comprising public funds with defined benefits as well as individual worker accounts; the second pillar (complementary retirement pension) is a scheme of defined contributions, set up voluntarily by the company; the third pillar is a voluntary scheme of supplementary personal savings contributions or defined benefits in function of formulas proposed by the insurance company.”<sup>184</sup>

Regarding **medical insurance**, an urban scheme (*The Urban Medical Insurance Program*) covers all urban workers in government bodies, companies, social groups and not-for-profit organizations. Another scheme (*A Rural Cooperative Medicare Program*) offers basic coverage for all agricultural workers. A third scheme, *The Non-Salaried Urban Resident Medical Insurance Program* covers all other employees in urban areas.<sup>185</sup>

Medical insurance coverage is financed by a common fund and personal accounts. Earnings-based contributions go directly into the individual account as well as about one third of employer contributions. Hospitalization and out-patient costs for certain illnesses are borne up to a specified ceiling by the common fund, financed primarily by employer contributions.<sup>186</sup>

In April 2009, China announced a plan of action to set up universal medical insurance coverage by 2020 with an investment of 850 billion Chinese yuans.<sup>187</sup> Three years later (September 2012), the country had almost reached its goal, assuring access to basic medical care to more than 95 % of the population.<sup>188</sup>

**Maternity insurance** covers all workers in urban business enterprises. An unemployed woman whose husband is a wage earner is entitled to benefits in kind within the framework of the maternity insurance scheme.<sup>189</sup> Maternity leave is 90 days and can be extended by 15 in the event of dystocia.<sup>190</sup>

**Employment related accident and illness insurance** covers all company employees as well as the self-employed and their employees. As in the case of old-age, disability and survivors insurance, employees of government and communist party organizations and employees of cultural, educational, and scientific institutions (except for institutions financed off-budget) are covered under special government-

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<sup>182</sup> Ibid.

<sup>183</sup> Ibid.

<sup>184</sup> Centre des liaisons européennes et internationales de sécurité sociale, “Le régime chinois de sécurité sociale”: [http://www.cleiss.fr/docs/regimes/regime\\_China.html](http://www.cleiss.fr/docs/regimes/regime_China.html) (French only).

<sup>185</sup> International Social Security Association, China Profile [URL note 181].

<sup>186</sup> Ibid.

<sup>187</sup> A United States dollar is worth 6.25 Chinese yuans (18 October 2012 exchange rate).

<sup>188</sup> [http://www.ilo.org/global/about-the-ilo/newsroom/features/WCMS\\_188582/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/features/WCMS_188582/lang--en/index.htm)

<sup>189</sup> Centre des liaisons européennes et internationales de sécurité sociale, “Le régime chinois de sécurité sociale”: [http://www.cleiss.fr/docs/regimes/regime\\_China.html](http://www.cleiss.fr/docs/regimes/regime_China.html) (French only).

<sup>190</sup> Ibid.

funded, employer-administered systems. Employers contribute to this scheme 1% of payroll.<sup>191</sup>

**Unemployment compensation** covers all urban public and private business enterprise and institution employees. The self-employed are not covered. In this regard, the insured pay 1% of their gross income and the employers 2% of payroll.<sup>192</sup> An affiliation of between one and five years gives the right to benefits (80% of previous income) for 12 months. For an affiliation of between five and ten years, benefits are paid for a maximum of 18 months, and after ten years, they may be paid for up to a maximum of 24.<sup>193</sup>

**Family allowances**, financed by taxes, are available to both urban and rural families whose per capita income is below a minimum level, and this in all regions of the country.<sup>194</sup>

### Criticism by Trade Unions and by NGOs

Given the role played by trade unions in obtaining the right to social security, it is appropriate to mention trade union criticism. For the ITUC “there is no real freedom of association” in China. However, many strikes (spontaneous or organized, without official recognition of the union) are carried out, especially in private business enterprises: “Privatization and the ensuing redundancy it engenders is a major cause of labor unrest for state-owned enterprise workers while low pay, unpaid wages and poor working conditions are among the largest causes of strikes in the private sector.” In 2011, 300,000 cases of labor disputes were noted in the manufacturing province of Guangdong. The ITUC has also deplored “the institutionalized discrimination” against domestic migrant workers from rural areas with low pay (half of what urban workers earn) and whose time on the job largely exceeds the norm.<sup>195</sup>

The All China Federation of Trade Unions deplores “problems like working overtime and defaulting on wage payments in some privately-operated enterprises and foreign-invested labor-intensive enterprises, and safety problems and acts of tort”. It also deplores trade-union non-affiliation of a majority of the 140 million domestic migrant workers from rural areas, the profound changes in labor relations (owing to “the development of the socialist market economy”) and the increase in the number of labor disputes.<sup>196</sup>

The *China Labor Bulletin* notes “negative consequences for millions of laid-off workers as a result of the State-Owned Enterprises (SOE) restructuring program, such as widespread non-payment of wages, pensions and social security

<sup>191</sup> International Social Security Association, China Profile [URL note 181].

<sup>192</sup> Ibid.

<sup>193</sup> Centre des liaisons européennes et internationales de sécurité sociale, “Le régime chinois de sécurité sociale”: [http://www.cleiss.fr/docs/regimes/regime\\_China.html](http://www.cleiss.fr/docs/regimes/regime_China.html) (French only).

<sup>194</sup> Internationale Social Security Association, China profile [URL note 181].

<sup>195</sup> ITUC Survey 2012: Trade union rights violations around the world in 2011: <http://survey.ituc-csi.org/China.html?edition=336>

<sup>196</sup> Summary Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15 © of the Annex to the Human Rights Council Resolution 5/1, A/HRC/WG.6/4/CHN/3, 5 January 2009, § 33.

benefits; lack of access to appropriate legal remedies, and politicization of SOE labor-related cases.”<sup>197</sup> The Tibet Women’s Association deplores the high rate of maternal and infant mortality in Tibet, owing to “poor nutrition, lack of trained health-care personnel, and limited access to emergency health-care.”<sup>198</sup>

### Criticism by United Nations Human Rights Bodies

The Committee *on Economic, Social and Cultural Rights* noted with concern “generally poor conditions of work, including excessive working hours, lack of sufficient rest breaks and hazardous working conditions”. It also noted that “the low level of wages, particularly in rural areas and in the west of the country is insufficient to provide a decent standard of living for workers and their families... the situation is aggravated by the persistent problem of wage arrears, especially in the construction sector”. Further, the Committee deplored that “many of the reforms in the formal welfare system have not been extended to the countryside”. Among other things the Committee recommended that the Chinese authorities “establish a wage enforcement mechanism that periodically adjusts minimum wages to the cost of living, facilitate the redress of wage claims, and take sanctions against employers who owe wages and overtime pay and impose fines and penalties on their workers.”<sup>199</sup>

The *Committee on the Elimination of Racial Discrimination* was concerned by “the de facto discrimination against internal migrants in the fields of employment, social security, health services, and education that indirectly result from that system [hukou],<sup>200</sup> which also affects members of ethnic minorities, and in

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<sup>197</sup> Ibid., § 34.

<sup>198</sup> Ibid., § 42.

<sup>199</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations: China*, E/C.12/1/Add.107, 13 May 2005, §§ 24, 25, 27 and 54:

<http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/E.C.12.1.Add.107.En?Opendocument>

<sup>200</sup> Although in recent years the Chinese authorities have taken measures to end this system, it has not yet completely disappeared and continues to have discriminatory effects for a considerable number of internal migrants (see the mission report of the Special Rapporteur on the Right to Food to the 19<sup>th</sup> session of the Human Rights Council, A/HRC/19/59/Add.1, 20 January 2012, §§ 17-19). The Chinese *hukou* system is a population registration and control system established in the mid-1950s. It has long been used to restrict migration, especially from rural areas to urban areas. The hukou system determines individuals' opportunities and their socio-economic position in the social structure. In the minds of most Chinese, hukou positioning and classification define not only their general well-being but also their status – the non-agricultural hukou is superior to the agricultural hukou; big city dwellers (*shihui*) are superior to mid-size city dwellers (*zheng*), who are superior to village dwellers (*xiang*). Thus, hukou has created a double society with two distinct entities, urban areas and rural areas. In 1980, the number of internal migrants was estimated at around 2 million persons; in 2007, they were between 150 and 200 million. The migration of rural workers from the countryside to urban areas contributes to Chinese economic development: it has enabled rapid industrialization, it has created a huge flexible and cheap labor reserve producing a *lumpenproletariat* in a system that claims to be socialist. These internal migrants are subjected to very real segregation at several levels: employment, social welfare, education of their children. Some jobs in state-owned business enterprises and public services are closed to them; they work at the most menial and worst paid jobs, disdained by urban dwellers, such as construction and maintenance; they generally do not have access to social services, in particular to schools, nor to social security. Internal migrants are most often without work contracts, without social rights and living in deplorable housing conditions. (See Catalina Santana's April 2011 article: <http://www.reseau-terra.eu/article1147.html>)

particular women”. It requested that the government reform the *hukou* system and assure equality of rights for all citizens.<sup>201</sup>

The *United Nations Special Rapporteur on the Right to Food* noted: “China has made remarkable progress in raising its levels of agricultural production. Domestic food availability has increased from 1,500 calories per capita per day at the start of the 1960s to 3,000 calories per capita per day in 2000.” He recommended, however, that the Chinese government improve “the situation of people living in rural areas and the situation of rural migrant workers, improving security of land tenure and access to land”. He also recommended that the government “define the right to social security as a human right” in order to allow the beneficiaries access to justice and to reduce the risks of corruption and favoritism at the local level.<sup>202</sup>

### Complaint to the ILO

Through representations to the ILO dated 5 and 18 March 2003, the Trade Union Congress of the Philippines (TUCP) appealed to the ILO alleging that the Chinese government did not observe the provisions of the ILO's *C097 - Migration for Employment Convention (Revised), 1949 (N°. 97)* in the Hong Kong Special Administrative Region (SAR). According to the TUCP, there were specific measures taken by the Hong Kong administration that had serious consequences for Filipino workers in the SAR. They can be summarized as follows: 1. a reduction of the minimum wage by HK\$ 400 per month starting 1 April 2003; 2. the imposition of a monthly tax of HK\$ 400 starting 1 October 2003, on all those employing foreign domestic workers; 3. the possible exclusion of foreign domestic workers not residing in the Hong Kong SAR for at least seven years from benefiting from subsidized public health services; 4. in the event of violation of work contracts by employers or domestic workers, foreign domestic workers would be forbidden to work again in the Hong Kong SAR whereas the current model work contract, according to the TUCP, presented problems in work security.

In its decision of 17 November 2003, the ILO Tripartite Committee found there had been a violation of Article 6.1.b.ii of *C097 - Migration for Employment Convention (Revised), 1949 (N°. 97)*, and requested the Chinese government: “not to take the measure to exclude foreign domestic helpers, who have resided for at least seven years in Hong Kong SAR, from public health-care services, so as to remain in conformity with Article 6(1)(b) of Convention No. 97; take all necessary measures to ensure that the social security provisions of the standard employment contract are strictly enforced; review the above-described levy and minimum wage policies on imported workers, especially foreign domestic workers, taking into account the Committee's conclusions and recommendations as to the requirements of

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<sup>201</sup> Committee on the Elimination of Racial Discrimination, *Concluding Observations: China*, CERD/C/CHN/CO/10-13, 15 September 2009, § 14.,

<sup>202</sup> *Report of the Special Rapporteur on the right to food, Olivier De Schutter, Addendum: Mission to China*, A/HRC/19/59/Add.1, 20 January 2012, §§ 4, 40, 43.d.

Article 6 of Convention No. 97 that non-nationals shall not be treated less favorably than nationals and the principles of equity and proportionality.”<sup>203</sup>

#### **4. Rwanda**

Rwanda is a typical country where the overwhelming majority of the population does not benefit from a social security system. We have chosen it, however, for its government seems to be making efforts in the area of social security, in spite of the modest resources of the country.

A former African kingdom of the great lakes region, Rwanda became a German protectorate at the end of the nineteenth century. After the end of the First World War, the *Treaty of Versailles* granted Rwanda to Belgium within the framework of a protectorate mandate. In November 1959, the first great crisis within the population caused many deaths, and a considerable portion of the population went into exile in Uganda, Congo, Burundi, Tanzania, Kenya and Europe.

Having become independent in 1962, Rwanda experienced a genocide in 1994 with some 800,000 victims.<sup>204</sup> With currently more than 10 million people, of whom 80% work in agriculture, and with a life expectancy of 44 years,<sup>205</sup> this country is considered one of the poorest on the planet. With US\$ 1,251 per capita gross income, Rwanda is ranked 166<sup>th</sup> on the UNDP Human Development Index.<sup>206</sup> Noteworthy also is that Rwanda is among those countries with the highest number of households headed by children owing to the genocide and the recurrence of HIV/AIDS.<sup>207</sup>

#### Commitments of the Rwandan State

Rwanda has ratified most of the United Nations human rights treaties, including the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* and several ILO conventions (28 in all),<sup>208</sup> but not *Convention 102 – Social Security (Minimum Standards)*. Rwanda has also ratified the *African Charter on Human and Peoples' Rights* and recognizes the purview of the African Court of Human Rights. It has also ratified the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*.

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<sup>203</sup> Representation (article 24) - China, Hong Kong Special Administrative Region, C097-2003 [http://www.ilo.org/dyn/normlex/fr/f?p=1000:50012:0::NO:50012:P50012\\_COMPLAINT\\_PROCEDURE\\_ID,P50012\\_LANG\\_CODE:2507277,en:NO](http://www.ilo.org/dyn/normlex/fr/f?p=1000:50012:0::NO:50012:P50012_COMPLAINT_PROCEDURE_ID,P50012_LANG_CODE:2507277,en:NO)

<sup>204</sup> <http://www.un.org/french/events/rwanda/fiche.html> (French only)

<sup>205</sup> <http://web.worldbank.org/WBSITE/EXTERNAL/ACCUEILEXTN/PAYSEXTN/AFRICAINFRENCHEXT/RWANDAINFRENCHEXTN/0,,menuPK:468450~pagePK:141159~piPK:55000052~theSitePK:467785,00.html> (French only)

<sup>206</sup> <http://www.socialsecurityextension.org/gimi/gess/ShowCountryProfile.do?cid=300>

<sup>207</sup> *Assistance to survivors of the 1994 genocide in Rwanda, particularly orphans, widows and victims of sexual violence: Report of the Secretary-General*, A/64/313, 20 August 2009, § 7.

<sup>208</sup> See [http://www.ilo.org/dyn/normlex/fr/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:103460](http://www.ilo.org/dyn/normlex/fr/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103460)



### Rwandan Social Security

There is a significant disparity between the working population of the “formal” sector of the economy and the working population of the “informal” sector. According to a study conducted by the Institut rwandais de la statistique and published in 2007,<sup>209</sup> the population working in the formal sector represents less than 7% of the Rwandan working population, which in 2011 was over 5 million people.<sup>210</sup> In 2009, the Rwandan government committed itself to developing all necessary programs and mechanisms with a view to attaining the ideal situation of social security coverage for all.<sup>211</sup> In 2010, the country's authorities revised Rwandan social security policy with, as a goal, “the obligation to extend social coverage to more than 70% of the working population by 2015.”<sup>212</sup> This means extending social security coverage to the working population in the informal sector. Among the strategies studied by the Rwanda Social Security Board (RSSB) were “the establishment of work partnerships with key institutions of the informal sector, the drafting of baskets of attractive benefits for the informal sector, the simplification of administrative procedures to reduce costs of implementing uniformity, and the reinforcement of the decentralization of services.”<sup>213</sup> At the present time, the initial results of this social security policy revision suggest that the objective of covering 70% of the population by 2015 will be reached.<sup>214</sup> In fact, the implementation of the RSSB strategies has increased the rate by 11% in one year (from 7 to 18%) “... as well as an increase of 35% of the amount of contributions.”<sup>215</sup>

**Old-age, disability and survivors** insurance is available only to “salaried workers, including temporary, and casual workers; professional and in-service trainees; apprentices; civil servants; political appointees; and government officials. It should be noted that this insurance is voluntary “for self-employed persons and for persons who were previously insured for at least six consecutive months and had mandatory coverage in the last 12 months”. Further, old-age pensions and allowances are paid starting at 55 years of age (even younger in the case of premature aging). Regarding the financing of this insurance, the insured pay 3% of their gross earnings (6% for those insured voluntarily) and the self-employed pay 6% of their declared income. Employers pay 3% of payroll (up to a certain ceiling).<sup>216</sup>

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<sup>209</sup> Republic of Rwanda, Ministère de la fonction publique et du travail, *Genre et Marché de l'emploi au Rwanda*, 2008, p. xii.

<sup>210</sup> *Annuaire Statistique pour l'Afrique*, 2011, p. 270.

<sup>211</sup> Republic of Rwanda, Ministry of Finance and Economic Planning, *National Social Security Policy*, 2009, p. 11.

<sup>212</sup> International Social Security Association, *Extension de la couverture de sécurité sociale au secteur informel: Une pratique du Conseil de la sécurité sociale du Rwanda, Bonnes pratiques en sécurité sociale*, 2011, p. 1.

<sup>213</sup> *Ibid.*

<sup>214</sup> Further information on legislation on the organization of social security can be found on the website of the Rwandan Ministry of Justice:  
[http://www.amategeko.net/display\\_rubrique.php?ActDo=all&Information\\_ID=959&Parent\\_ID=3070721&type=public&Langue\\_ID=Fr&rubID=3070725](http://www.amategeko.net/display_rubrique.php?ActDo=all&Information_ID=959&Parent_ID=3070721&type=public&Langue_ID=Fr&rubID=3070725)

<sup>215</sup> ISSA, *Extension de la couverture de sécurité sociale au secteur informel...*, p. 1.

<sup>216</sup> International Social Security Association, Rwanda Profile:

**Employment related accident and illness insurance** is available only to wage earners and not for the self-employed nor those voluntarily insured. The financing of this insurance comes entirely from employers, who contribute 2% of payroll.<sup>217</sup>

According to Rwandan government figures, 92% of the population had medical insurance at the end of 2009. Insurance premiums cost 1,000 Rwandan francs per year,<sup>218</sup> and the government pays for the indigent.<sup>219</sup>

**Maternity insurance**, comes under Rwandan Labor Law, which provides for the payment of 100% of earnings for a maximum of 30 days and the payment of 66.7% of earnings for 12 weeks for maternity.<sup>220</sup>

### Criticism by Trade Unions and NGOS

In addition to criticism of government interference in the area of trade-union freedom,<sup>221</sup> NGOs have denounced that “numerous pieces of land have been expropriated and offered for larger agricultural production companies that produce cash crops for the global market such as tea, flowers and spices. This policy helped to increase the export rates of the Rwandese national agricultural economy, but left several thousand farmers without land and income.”<sup>222</sup> It is no different for the Batwa who “lost much of their land to the thousands of people who returned from exile and they have not received compensation for the loss of their land and land settlements that would allow them to rebuild their lives.”<sup>223</sup>

### Criticism by and Observations from United Nations Bodies

Regarding food, the **UNDP** noted in 2007 that chronic malnutrition in Rwandan children was 45%, that 78% of all households experienced “a certain vulnerability” in access to food and that 28% of households were “in a situation of food insecurity”.<sup>224</sup>

In a study published 6 June 2007, the **United Nations Development Assistance Framework (UNDAF)** deplored the geographic and social disparities that persist in access to basic health care.<sup>225</sup>

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<sup>217</sup> <http://www.issa.int/Observatory/Country-Profiles/Regions/Africa/Rwanda/Scheme-Description>  
<sup>217</sup> Ibid.

<sup>218</sup> 1,000 Rwandan francs equals US\$ 1.60 (2 November 2012 exchange rate).

<sup>219</sup> In 2008, 714,250 persons benefited from free health cards. See *National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council: Rwanda*, A/HRC/WG.6/10/RWA/1, 8 November 2010 § 36.

<sup>220</sup> International Social Security Association, Rwanda Profile.

<sup>221</sup> International Trade Union Confederation, *Annual Survey of Violations of Trade Union Rights: Trade union rights violations around the world in 2011*, Brussels, p. 64.

<sup>222</sup> *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1: Rwanda*, A/HRC/WG.6/10/RWA/3, 4 November 2010, § 32.

<sup>223</sup> Ibid., § 37.

<sup>224</sup> UNDP, *Turning Vision 2020 into Reality: From Recovery to Sustainable Development – National Human Development Report, Rwanda*, 2007, p. 7, box 1:

[http://hdr.undp.org/fr/rapports/national/afrique/rwanda/RWANDA\\_2007\\_en.pdf](http://hdr.undp.org/fr/rapports/national/afrique/rwanda/RWANDA_2007_en.pdf)

<sup>225</sup> UNDAF 2008-2012 RWANDA; <http://www.undg.org/docs/8381/Rwanda-UNDAF-2008-2012.pdf>

Concerned about “the non-recognition of the existence of minorities and indigenous peoples” and “that members of the Batwa community are victims of marginalization and discrimination”, the United Nations *Human Rights Committee* requested that the Rwandan authorities “take steps to ensure that members of the Batwa community are protected against discrimination in every field.”<sup>226</sup> The United Nations *Committee for the Elimination of Racial Discrimination* also severely criticized the Rwandan government on the same matter.<sup>227</sup>

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<sup>226</sup> Human Rights Committee, *Concluding Observations: Rwanda*, CCPR/C/RWA/CO/3, 7 May 2009, § 22.

<sup>227</sup> Committee on the Elimination of Racial Discrimination, *Concluding Observations: Rwanda*, CERD/C/RWA/CO/13-17, 11 March 2011, § 17.

## V. ENFORCEMENT MECHANISMS

### A. At the National Level

Most states have ratified many ILO conventions as well as human rights instruments. And most of them have also incorporated them into their national legislation. In several countries, there is a social security system covering various areas of which some are universal, with, of course, variable effectiveness and performance. Since most social insurance is linked to employment, labor tribunals, available in many countries, have jurisdiction to deal with litigation arising in relation to this insurance. It is also possible, depending on the case, to bring a complaint before an ordinary court (for example an administrative tribunal) or to the supreme court, citing, in particular, the international human rights instruments, to obtain the fulfillment of the right to social security.

### B. At the Regional Level

On four continents (Africa, the Americas and Europe), there are human rights protection mechanisms. For lack of space and since the function of these mechanisms has already been discussed earlier booklets,<sup>228</sup> this presentation will be succinct, and this chapter will mention only several cases dealt with by these instances (and directly linked to the right to social security).

#### *1. The European Committee of Social Rights*

The 1995 protocol providing for a collective complaint system (which entered into force in 1998) makes it possible to bring a case before the European Committee of Social Rights for violations of the *European Social Charter*.<sup>229</sup> The following are several complaints, some of which the Committee agreed to hear, others of which resulted in a conviction.

On 29 May 2009, the Center on Housing Rights and Evictions (COHRE) filed a complaint with the the European Committee of Social Rights denouncing the implementation of “security measures” said to be urgent, and a racist and xenophobic speech in *Italy* that resulted in evictions and illegal campaigns targeting Roma and Sinti in a disproportionate way and forcing them into homelessness. The COHRE alleged violation of Articles 16 (right of the family to social, legal and economic protection), 19 (right of migrant workers and their families to protection and assistance), 30 (right to protection against poverty and social exclusion) and 31

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<sup>228</sup> See, inter alia, *The Right to Non-Discrimination*:  
[http://www.cetim.ch/en/publications\\_non-discrimination.php](http://www.cetim.ch/en/publications_non-discrimination.php) and *The Right to Work*:  
[http://www.cetim.ch/en/publications\\_droitautravail.php](http://www.cetim.ch/en/publications_droitautravail.php)

<sup>229</sup> See: [http://www.coe.int/t/dghl/monitoring/socialcharter/ecsr/ecsrdefault\\_EN.asp?](http://www.coe.int/t/dghl/monitoring/socialcharter/ecsr/ecsrdefault_EN.asp?)

(right to adequate housing), invoked singly or in combination with the non-discrimination clause in Article E of the Revised European Social Charter. In its 25 June 2010 ruling, the European Committee on Social Rights concluded that Italy had violated Articles 16, 19, 30 and 31 in combination with Article E.<sup>230</sup>

In a complaint filed 13 December 2011 against **Belgium**, the International Federation for Human Rights (FIDH) deplored the situation of highly dependent handicapped adults and their near of kin, lacking adequate assistance and housing. The FIDH alleged that Belgium was not satisfactorily enforcing Articles 13 (right to social and medical assistance), 14 (right to benefit from social services), 15 (rights of persons with disabilities), 16 (right of the family to social, legal and economic protection), either separately or in combination with Article E (non-discrimination) of the *Revised European Social Charter (1996)*. In its 22 March 2012 ruling, the Committee agreed to hear the complaint.<sup>231</sup>

On 2 January 2012, several trade unions and pension federations in **Greece** separately filed several collective complaints against the Greek state dealing with the same subject. They reproached their political authorities with having adopted laws imposing an across-the-board reduction of retirement pensions (public and private). They alleged that these laws were adopted in violation of Articles 12, §3 (right to social security) and 31, §1 (right to adequate housing) of the *European Social Charter (1961)*. In its 23 May 2012 decision, the European Committee of Social Rights agreed to hear the complaints relative to Article 12.<sup>232</sup>

## 2. The European Court of Human Rights

Created in 1959, the European Court of Human Rights is a regional jurisdiction entrusted with monitoring compliance with the *European Convention on Human Rights (ECHR)* by its states parties.<sup>233</sup> It deals with complaints individual and/or collective or by states alleging violations of the provisions of the *ECHR*. Although the European Court of Human Rights deals with violations of civil and political rights enshrined in the *ECHR*, it has also ruled on questions related to social security.

In 1978, Kjartan Ásmundsson, a citizen of **Iceland** born in 1949 and living in Reykjavik, seriously injured on a boat, had to abandon the profession of sailor, for his disability was judged to be 100%, and he was thus no longer able to work at

<sup>230</sup> Council of Europe, Complaint N° 58/2009, 29 May 2009, *Centre on Housing Rights and Evictions v. Italy*: [http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp)

<sup>231</sup> European Committee of Social Rights, *International Federation for Human Rights (FIDH) v. Belgium* Complaint N° 75/2011, 15 December 2011: [http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Complaints/CC75CaseDoc1\\_en.pdf](http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Complaints/CC75CaseDoc1_en.pdf)

<sup>232</sup> Complaint N° 76/2012, *Federation of employed pensioners of Greece (IKA-ETAM) v. Greece*; Complaint N° 77/2012, *Panhellenic Federation of Public Service Pensioners v. Greece*; Complaint N° 78/2012, *Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece*; Complaint N° 79/2012, *Panhellenic Federation of pensioners of the public electricity corporation (POS-DEI) v. Greece*; Complaint N° 80/2012, *Pensioner's Union of the Agricultural Bank of Greece (ATE) v. Greece*: [http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints\\_fr.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_fr.asp)

<sup>233</sup> To date 47 states have ratified the *la ECHR*. They include, in addition to the European Union countries, all Council of Europe member states.

his job. After his accident, the complainant was hired by a transport company, Samskip Ltd., as an office worker. In 1992, by virtue of a legislative amendment, the disability evaluation of the complainant as a basis of setting his pension was modified with the result that it was no longer the inability to perform the same work but the inability to work at all that was to be taken into account. The new provisions were adopted owing to financial difficulties of the pension fund. In keeping with the rules, the disability of the complainant was reevaluated, and the loss of ability to work in general was reckoned to be 25%, in other words below the required minimum, 35%. Accordingly, on 1 July 1997, the pension fund ceased to pay his disability pension as well as the concomitant child support that he had been receiving for 20 years. In all, he lost the right to a pension (disability and annual child support) representing 12,637,600 Icelandic kroner.<sup>234</sup> On 31 May 2000, K. Ásmundsson filed a complaint with the European Court of Human Rights, citing Article 1 of *Protocol 1* (protection property), taken singly and combined with Article 14 (prohibition of discrimination) of the *European Convention on Human Rights*; the complainant denounced the decision to interrupt the payment of his disability pensions. In its ruling of 12 October 2004, the Court judged that the complainant's case had merit and that it was legitimate for him to expect that his disability should be evaluated in function of his inability to carry on his previous work. It should be noted that the complainant lost his pension on 1 July 1997 not because of a change of personal situation but following legislative amendments that modified the evaluation criteria for disability. Although his disability, in other words his inability to carry on any work at all, was still evaluated as being 25%, he was deprived of his full right to a disability pension. Thus, the Court judged that the complainant was forced to assume an excessive and disproportionate burden that could not be justified by the legitimate interests of the collectivity, contrary to the claim of the Icelandic authorities. It would have been otherwise if the complainant had had to accept a reasonable and proportionate reduction of his pension rights without being totally deprived of them. The Court concluded, unanimously, that there had been a violation of Article 1 of *Protocol 1*. On these grounds, the Court required the government of island to pay the complainant € 75,000 as material compensation, € 1,500 for moral tort € 20,000 for court fees and expenses.<sup>235</sup>

### ***3. The Inter-American Court and Commission of Human Rights***

The Inter-American Court and Commission of Human Rights monitors compliance and implementation by states parties to the American Convention on Human Rights and the Protocol of San Salvador.

In its ruling of 7 March 2005, the Inter-American Commission of Human Rights agreed to hear the complaint of 39 persons afflicted by HIV/AIDS who reproached the Guatemalan government of not assuring them access to anti-

<sup>234</sup> Worth € 76,507.51 (15 November 2012 exchange rate)

<sup>235</sup> European Court of Human Rights, *Kjartan Ásmundsson v. Iceland*, Application No. 60669/00, *Judgement of 12 October 2004*: <http://www.humanrights.is/the-human-rights-project/humanrights/casesandmaterials/cases/regionalcases/europeancourtofhumanrights/nr/2619>

retroviral medicines, in violation of its commitments under the American Convention on Human Rights and the Protocol of San Salvador.<sup>236</sup>

#### **4. The African Commission on Human and Peoples' Rights**

Established in 1987, the African Commission on Human and Peoples' Rights is entrusted with overseeing compliance with the African Charter on Human and Peoples' Rights and the Protocol to the African Charter of Human and Peoples' Rights on the Rights of Women in Africa.

To the best of our knowledge, no complaint has yet been filed with either of these jurisdictions under the Protocol to the African Charter of Human and Peoples' Rights on the Rights of Women in Africa, which provides specifically for the right to social security.

### **C. At the International Level**

For the same reasons cited in the previous chapter, we shall not discuss these mechanisms,<sup>237</sup> but we shall give several examples of cases (dealing with the right to social security) heard by the international human rights protection mechanisms as well as those of the ILO.

#### **1. ILO<sup>238</sup>**

In 1983, the General Federation of Labor of Belgium (GFLB), citing Article 24 of the ILO constitution (“Representations of nonobservance of Conventions”), filed a complaint alleging the non-observance by the government of **Belgium**, inter alia, of Convention 102 – Social Security (Minimum Standards) of 1952, and in particular of its Article 68 on equality of treatment between residents and non-nationals. The source of the complaint was the exclusion from social security of research cadres of foreign nationality working for business enterprises resident in an area of employment for the duration of their employment in this area. In its 22 February 1984 judgement, the Tripartite Committee ruled that the exclusion of certain foreign workers from the applicable Belgian social security system was a violation of Article 68, § 2, of the 1952 Convention 102 – Social Security (Minimum Standards). The Committee requested, inter alia, that the Belgian government “supply full information on the application of the provisions called in question in order to enable the Committee of Experts on the Application of Conventions and Recommendations to ensure that national law and practice are consistent with the provisions of Convention No. 102.”<sup>239</sup>

<sup>236</sup> Luis Rolando CUSCUL PIVARAL et AL. Report N° 32/05, Petition 642/03:  
<http://cidh.org/annualrep/2005eng/Guatemala642.03eng.htm>

<sup>237</sup> See also note 229.

<sup>238</sup> For further information on the ILO protection mechanisms, see the CETIM booklet *The Right to Work*:  
[http://www.cetim.ch/en/publications\\_droitautravail.php](http://www.cetim.ch/en/publications_droitautravail.php)

<sup>239</sup> *Representation (article 24) - BELGIUM - C001, C004, C006, C014, C041, C087, C089, C098, C102 – 1984, 1. General Federation of Labour of Belgium: Report of the Committee set up to examine the representation made by the General Federation of Labour of Belgium under article 24 of the Constitution alleging the failure by Belgium to implement international labour Conventions Nos. 1,*

In a 2 March 2006 communication, the National Union of Federal Roads and Bridges Access and Related Services of Mexico (SNTCPF) filed a complaint under Article 24 of the ILO Constitution, alleging the non-observance by the government of *Mexico* of the Labor Inspection Convention, 1947 (No. 81); the Labor Inspectorates (Non-Metropolitan Territories) Convention, 1947 (No. 85); the Labor Administration Convention, 1978 (No. 150); the Occupational Safety and Health Convention, 1981 (No. 155); the Chemicals Convention, 1990 (No. 170); the Prevention of Major Industrial Accidents Convention, 1993 (No. 174); and Safety and Health in Mines Convention, 1995 (No. 176). The complaint dealt with an explosion in the Pasta de Conchos mine, in the municipality of Sabinas in the State of Coahuila, on 19 February 2006, trapping 65 miners. Afterward, the bodies of only two of the miners were recovered. The essence of the complaint, for the SNTCPF, was that the Mexican authorities were guilty of “serious shortcomings in the manner in which the Government has monitored compliance with safety and health measures, working conditions and preventative measures” in spite of the danger of mining coal in this mine, operating for more than a century (1,500 miners killed from 1889 to 2000). The SNTCPF backed up its criticism with the following circumstanciations: two work inspectors entrusted with the oversight of more than 129 underground coal mines, employing a total of 6,970 workers in the State of Coahuila; serious failings and inappropriate follow-up in scheduled routine inspection and monitoring of verification; flaws in the mine's ventilation system; violations detected in electrical equipment; structural faults... In its 19 March 2009 judgement, although declaring the parts of the complaint relative to *Conventions Nos 81, 85, 174, and 176* without merit, the Tripartite Committee ruled on *Conventions Nos 150, 155 and 170* requesting that the Mexican government take, inter alia, the following measures:

- assure that ILO *Convention No 155* be fully implemented and, in particular, that the periodic review of the security and health situation of the miners be pursued;
- adopt a new regulatory framework regarding OSH in the coal mining industry, taking into account the *Safety and Health in Mines Convention, 1995 (No. 176)*, and the ILO code of practice on safety and health in underground coalmines, 2006;
- guarantee, by all necessary means, the effective control of the enforcement in practice of the legislation and regulations related to the health and safety of workers and to the work place, through an appropriate and adequate inspection system, in conformity with Article 9 of *Convention No 155*, in order to reduce future risks of accidents such as that of Pasta de Conchos;
- closely oversee the organization and functioning of the work inspection system taking into account *Labor Administration Recommendation, 1978 (No. 158)*, including its Paragraph 26(1);

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4, 6, 14, 41, 89 and 102, Geneva, 22 February 1984.



- considering the time lapsed since the accident, assure the immediate payment of appropriate and effective compensation to the 65 families concerned, and that appropriate sanctions are imposed on those responsible for this accident;
- (...) reinforce the implementation of legislation and prescriptions in the area of health and safety in the mines.

The Committee further requested the International Labor Bureau Administrative Council to “entrust the Committee of Experts on the Application of Conventions and Recommendations with following up the questions raised in this report with respect to the application of the Labor Administration Convention, 1978 (No. 150), the Occupational Safety and Health Convention, 1981 (No. 155), and the Chemicals Convention, 1990 (No. 170).”<sup>240</sup>

## ***2. The United Nations Human Rights Treaty Bodies***

### ***The Committee on Economic, Social and Cultural Rights (CESCR)***<sup>241</sup>

During the examination of the periodic report of *Argentina* (December 2011), the CESCR expressed many concerns such as: exclusion of most workers employed in the informal economy, including migrants, from the social security system, in particular from retirement plans; discrimination regarding working conditions and minimum wage to which are subjected in particular workers involved in out-sourced jobs (*tercerizados*) or temporaries and women who are employed as domestics, in the textile industry and in the agricultural sector; the obstacles to the enjoyment of worker's rights and trade union rights; the de facto exclusion of certain groups such as migrants and their children from universal child support allowances (*Asignación Universal por Hijo*). Given these concerns, the CESCR requested that the Argentine government: assure all workers the full enjoyment of economic, social and cultural rights; extend the application of minimum wage legislation to those sectors to which it does not yet apply; assure complete legal protection for all workers, whatever their sector of activity; envisage amending residency rules applicable to migrant workers so that they may have access to social services under the non-contributory scheme; adopt necessary changes to the trade unions law so as to recognize basic collective rights of all categories of workers and trade unions and assure full compliance through national legislation with Argentina's international obligations; adopt all necessary measures to guarantee the unrestricted application of universal child support, in particular to children of disadvantaged and marginalized groups such as the children of

<sup>240</sup> *Representation (article 24) - MEXICO - C150, C155, C170 – 2009: 1. National Union of Federal Roads and Bridges Access and Related Services of Mexico, 2. Trade Union of Telephone Operators of the Republic of Mexico, 3. National Union of Metlife Workers, 4. Trade Union Association of Airline Pilots of Mexico, 5. United Trade Union of Workers in the Nuclear Industry, 6. Independent Union of Workers in the Automotive Industry, similar and related Volkswagen of Mexico, 7. Union of Workers of the National Autonomous University of Mexico, 8. United National and Democratic Union of Workers of the National Bank for Foreign Trade, Geneva, 19 March 2009, §§ 1, 12, 13, 15 to 19, 22, 23, 24, 99*

<sup>241</sup> Monitors implementation of the *International Covenant on Economic, Social and Cultural Rights* by its States parties.

migrants whose situation is irregular and of incarcerated persons; guarantee effective protection of indigenous communities' means of subsistence and the enjoyment of their economic, social and cultural rights and establish institutional and procedural guarantees to assure the effective participation of indigenous communities in the making of decisions concerning them.<sup>242</sup>

Upon completion of the review of *Estonia's* report (December 2011), the CESCR formulated the following recommendations addressed to the Estonian authorities: take all necessary measures so that the minimum wage guarantees a sufficient level of subsistence for workers and their families; review its social security policy so that benefits, both in amount and in duration, guarantee the beneficiaries and their families a sufficient level of subsistence; eliminate the conditions imposed for payment of unemployment compensation with regard to the reasons for the breaking of the work contract; reinforce the legislative framework of child protection rights; bring current legislation in line with international standards regarding the hours of authorized child labor for those under 15; prohibit the use of children for the production of erotic material as well as marriage with a child under 18; modify legislation so that detainee work is authorized only when it is freely chosen or accepted without constraint; remedy the persistence of the disadvantaged situation of Russian speakers in the enjoyment of economic, social and cultural rights and assure that strategies and policies adopted to this effect target both formal and concrete discrimination and provide for the adoption of special measures in the area of employment.<sup>243</sup>

Following the examination of the report of the *Netherlands* (December 2010), the CESCR, noting among other things discrimination and inequality in the enjoyment of economic, social and cultural rights throughout the four constituent territories of the country, requested that the Dutch authorities: guarantee each individual and group under its jurisdiction the enjoyment of economic, social and cultural rights in conditions of equality; take appropriate measures to guarantee that detainees in the Netherlands not be subjected to any form of compulsory work; assure that detainee work conditions, in particular their earnings and social security benefits, be just and fair; adopt corrective legislative or other measures so that domestic workers benefit from the same rights and benefits as other workers, especially regarding social security benefits; end discrimination against migrant workers regarding pension rights; accord priority to the improvement of the health care system for the aged, so as to fulfill its obligation to guarantee availability, accessibility, acceptability and the quality of health care intended for them; monitor the quality of the structures, goods and services intended for the aged through an effective inspection mechanism; remedy the problem of medical treatment of mentally disturbed detainees and take necessary measures to increase the trained

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<sup>242</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations: Argentina*, E/C.12/ARG/CO/3, 14 September 2011, §§ 10, 15, 19, 20, 22: <http://www2.ohchr.org/english/bodies/cescr/cescrs47.htm>

<sup>243</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations: Estonia*, E/C.12/EST/CO/2, 16 December 2011, §§ 10, 12, 16, 18, 19: <http://www2.ohchr.org/english/bodies/cescr/cescrs47.htm>

psychiatric personnel in penitentiary institutions or guarantee appropriate care in psychiatric institutions. Concerned by the negative repercussions on the enjoyment of the right to health in the Netherlands demonstrated by the seizure of generic medicines in transit expedited from a developing country to another developing country, the CESCR reminded the government “to take into account its international obligation to respect the right of everyone to the highest attainable standard of health and to desist from such seizures in the future”<sup>244</sup>.

#### The Human Rights Committee<sup>245</sup>

Concerned by child labor in the *Dominican Republic*, the Committee requested the authorities of this country to eliminate child labor and to continue to convict those involved in child labor. Concerned also by the situation of migrant workers working without a contract linking them to their employer and thus without the rights and benefits from which they should benefit, the Committee requested the government of the Dominican Republic to take measures to guarantee that all workers, be they in a regular situation or not, enjoy basic rights. It should also set up practical and easily accessible redress mechanisms so that employers guilty of violations have to answer for their acts.<sup>246</sup>

#### The Committee for the Elimination of Racial Discrimination (CERD)<sup>247</sup>

Following the review of the report of *Canada*, the CERD requested that the Canadian authorities, inter alia, take appropriate and concrete measures to favor the effective integration at the federal, provincial and territorial level of Afro-Canadians into Canadian society in the areas of employment and access to affordable housing, to work in the public sector and non-discriminatory earnings. Noting the legislative discrimination against women of the First Nations regarding matrimonial real property, the CERD requested that Canada adopt and implement as soon as possible the draft law on this matter. It also requested that the government “in consultation with Aboriginal peoples, implement and reinforce its existing programs and policies to better realize the economic, social and cultural rights of Aboriginal peoples, in particular through: a. speeding up the provision of safe drinking water to Aboriginal communities on reserves; b. intensifying efforts to remove employment-related discriminatory barriers and discrepancies in salaries between Aboriginal and non-Aboriginal people, in particular in Saskatchewan and Manitoba... d. facilitating their access to health services; ... f. discontinuing the removal of Aboriginal children from their families and providing family and child care services on reserves with sufficient funding”. Concerned also that indigenous

<sup>244</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations: Netherlands*, E/C.12/NLD/CO/4-5, 9 December 2010, §§ 5, 12, 14, 15, 17, 20, 23, 27-30: <http://www2.ohchr.org/english/bodies/cescr/cescrs45.htm>

<sup>245</sup> Monitors implementation of the *International Covenant on Civil and Political Rights* by its states parties.

<sup>246</sup> Human Rights Committee, *Concluding Observations: Dominican Republic*, CCPR/C/DOM/CO/5, 19 April 2012, §§ 15, 18 and 19: <http://www2.ohchr.org/english/bodies/hrc/hrcs104.htm>

<sup>247</sup> Monitors implementation of the *Convention on the Elimination of All Forms of Racial Discrimination* by its parties.

peoples are not always consulted regarding projects carried out on their lands or affecting their rights and that the treaties signed with the indigenous peoples are not fully observed or implemented, the CERD requested that the Canadian authorities “implement in good faith the right to consultation and to free, prior and informed consent of Aboriginal peoples whenever their rights may be affected by projects carried out on their lands... and ... find means and ways to establish titles over their lands, and respect their treaty rights.”<sup>248</sup>

#### The Committee on the Elimination of Discrimination against Women<sup>249</sup>

Concerned by the persistence of vertical and horizontal discrimination against women in the labor market, the Committee on the Elimination of Discrimination against Women (CEDAW) recommended that **Jordan** adopt laws guaranteeing equality of pay for work of equal value in order to reduce and eliminate the gap between women and men. Further concerned by the situation of women in rural areas, the CEDAW called on Jordan, inter alia, “a. To pay special attention to the needs of rural women; ensure that they have access to health, education; and intensify income-generating projects; b. To address negative traditional practices which affect the full enjoyment of rural women’s right to property, and launch awareness-raising campaigns on their legal right to inheritance”. Further, the CEDAW remained concerned by the persistence of economic and physical exploitation of women migrant workers; by the absence of regular inspections to monitor working conditions; by the lack of shelters for victims of exploitations; and, by the overall ineffective enforcement of the labor code on migrant workers. The CEDAW was also concerned that refugees and asylum-seekers who have been unable to obtain legal residency had no access to formal employment opportunities nor to basic social services. The CEDAW requested that the Jordanian government, inter alia “regularize the status of refugees recognized under the UNHCR mandate in order to provide them with basic rights and services, especially for refugee women.”<sup>250</sup>

#### The Committee on the Rights of the Child (CRC)<sup>251</sup>

Among the recommendations of the Committee on the Rights of the Child, following the consideration of the report of **South Korea**, one might note, inter alia: the amendment of legislation so that sufficient specific budgetary allocations be provided for child welfare; programs intended to reduce poverty and improve the standard of living of all children should guarantee equality and fairness; the increase of funds allocated to health and the establishment of a public health

<sup>248</sup> Committee on Elimination of All Forms of Racial Discrimination, *Concluding Observations: Canada*, CERD/C/CAN/CO/19-20, 4 April 2012, §§16, 18-20:

<http://www2.ohchr.org/english/bodies/cerd/cerds80.htm>

<sup>249</sup> Monitors implementation of the *Convention on the Elimination of All Forms of Discrimination against Women* by its states parties.

<sup>250</sup> Committee on the Elimination of Discrimination against Women, *Concluding Observations: Jordan*, CEDAW/C/JOR/CO/5, 23 March 2012, §§ 37-44, 47, 48:

<http://www2.ohchr.org/english/bodies/cedaw/cedaws51.htm>

<sup>251</sup> Monitors implementation of the *Convention on the Rights of the Child* by its states parties.

institutions allowing low-income families free access to health care; the increase of financial, technical and human resources allocated to small and medium-size local hospitals in order to assure access to emergency pediatric care and services throughout the entirety of the territory; the drafting of a mental health policy for children based on a detailed study of the profound causes of depression and suicide in children and investment in the creation of a complete service system, including mental health promotion and prevention activities, in specialized consultation and hospitalization services with a view to assuring effective prevention in dealing with suicidal behavior, especially in girls; the reinforcement of information and education campaigns, including by involving the media in order to sensitize people to the health risks of tobacco, alcohol and Internet addiction; taking additional measures to regulate the marketing of food products harmful to children's health; sexual education courses in the school curriculum conducted effectively and systematically.<sup>252</sup>

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<sup>252</sup> Committee on the Rights of the Child, *Concluding Observations: Republic of Korea*, CRC/C/KOR/CO/3-4, 2 February 2012, §§ 53-59:  
<http://www2.ohchr.org/english/bodies/crc/crcs58.htm>



## VI. SOCIAL SECURITY AS A RAMPART AGAINST POVERTY AND INEQUALITY

Establishing a social security system is more and more considered an indispensable and effective measure in the fight against poverty and inequality, as the ILO acknowledges: “Social security is an important tool to prevent and reduce poverty, inequality, social exclusion and social insecurity, to promote equal opportunity and gender and racial equality, and to support the transition from informal to formal employment.”<sup>253</sup>

The United Nations Independent Expert on the Question of Human Rights and Extreme Poverty studied the effect of social pensions (also called non-contributory pensions) on the living conditions of the aged: “Non-contributory pensions can significantly reduce poverty and vulnerability among old people, in particular for women, who live longer and are less likely to benefit from contributory systems.”<sup>254</sup> In another report to the General Assembly, the Independent Expert mentions Brazil, which reduced poverty: “Brazil identifies the expansion of its cash transfer program, ‘Bolsa Familia’, as the reason for its having met [Millennium Development Goal] target 1 ahead of schedule.”<sup>255</sup>

According to the estimations of the World Bank, “social protection interventions could reduce the total poverty head count rate by 5 to 10 percentage points.”<sup>256</sup> Thus the social allocations paid in South Africa “reduced the poverty gap by 48% and the destitution gap by 67% while at the same time supporting human capital development and labor market participation.”<sup>257</sup> Algeria apparently is following the suit, devoting some 11% of its budget to social security.<sup>258</sup>

As already emphasized above, current social security systems throughout the world are mostly linked to a job, in other words, to income. This has inevitable consequences on already existing social insurance systems, which continue to function for the most part according to the principle of “full employment” and full time. The unemployed, precarious workers, pregnant women, the aged, children, the handicapped, the “self-employed” (such as peasants, fishers, artisans, small shop keepers, all ground down by the “laws of the free market”), who constitute the overwhelming majority of humanity, find themselves excluded from any social

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<sup>253</sup> *Social Protection Floors Recommendation, 2012 (No. 202)*, Preamble, § 4.

<sup>254</sup> *Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona*, A/HRC/14/31, 31 March 2010, “Summary”.

<sup>255</sup> *Report on the question of human rights and extreme poverty submitted by Magdalena Sepúlveda Carmona, independent expert on the question of human rights and extreme poverty, in accordance with resolution 8/11 of the Human Rights Council*, A/65/259, 9 August 2010, § 19.

<sup>256</sup> World Bank, UNDP, United Nations Economic Commission for Africa and African Union, *Assessing Progress in Africa toward the Millennium Development Goals - MDG Report 2011*, p. 109.

<sup>257</sup> *Ibid.*

<sup>258</sup> *Ibid.*, p. 24.

protection worthy of the name, for they have only between US\$ 1.25 and US\$ 2 per day as survival income, if the World Bank is to be believed.

Moreover, in the context of globalization, this situation is anything but reassuring, for employees are required to accept an excessive flexibility (regarding hours and working conditions) and an unlimited mobility on the labor market (within a country but also at the international level and among various economic sectors). What solutions might be proposed? For several years now, the Danish example of flexibility<sup>259</sup> has been vaunted as a remedy for social protection of employees subject to the imperatives of a labor market “flexibilized” to an extreme, not to mention deregulated to such a point that the ILO conventions have become dead letters. However, coming from a country with a long tradition of the welfare state, a respectful social dialogue between social partners and with a very high level of trade union membership (80%), the Danish model does not seem to be transportable elsewhere, if one accepts the analysis of Katrine Søndergård.<sup>260</sup>

The aging of the population constitutes another significant challenge for the social security system.<sup>261</sup> But political proposals on this matter center essentially, for the time being at least, on an increase in the retirement age, with no serious discussion on the management and functioning of the pensions funds.<sup>262</sup>

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<sup>259</sup> Developed in the 1990s by Dutch researchers, “flexicurité” designates political strategies intended to make the labor market more flexible while increasing the security of the groups exposed to it. See Wilthagen *et al.*, 2003, quoted by Katrine Søndergård, researcher at the Employment Relations Research Center (FAOS), Copenhagen. “La flexicurité danoise – et tout ce qui l’entoure” in *Chronique internationale de l’IRES*, N° 110 - January 2008: <http://www.politiquessociales.net/IMG/pdf/Danemark.pdf> (French only)

<sup>260</sup> Ibid.

<sup>261</sup> Japan has the oldest population in the world with more than 22% of its inhabitants 65 and over. According to the International Social Security Association, the proportion of persons over 65 in the population in Europe will double in the next 40 years and will even triple in Asia, see the ILO press release of 10 September 2012: [http://www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS\\_189408/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS_189408/lang-en/index.htm)

<sup>262</sup> Besides the stock market speculation already mentioned (see above IV.A.2), the management of pension funds by private entities is problematic, as exemplified by the case of the United States company Enron. As an energy broker, Enron was ranked as the seventh biggest United States corporation (by virtue of its declared volume of business) before going bankrupt in December 2001, triggering a cascade of lay-offs and losses for retirees affecting hundreds of thousands of persons. It is worth presenting a brief summary of the history of accounting fraud and stock market speculation on a grand scale. On 2 December 2001, Enron filed for bankruptcy, and the price of its stock, which had stood at \$90 earlier in the year and was already dropping, fell to below a dollar. Some 5,000 employees were immediately laid off whereas hundreds of thousands of ordinary people whose pension funds had invested in Enron lost substantial portions of their retirement pension (not to mention all Enron employees whose entire pension fund the company had invested in Enron stock, who lost everything). Criminal investigations were opened against the company's executives. The financial director, Andrew Fastow, was sentenced to ten years of prison (his wife was also convicted of having aided and abetted in the manipulation of the accounts). On 25 May 2006, Kenneth Lay, 64, was found guilty of six charges including fraud and conspiracy, but he died of a heart attack on 6 July before the court pronounced its final judgment and sentenced him. The former number two of the company, Jeffrey Skilling, was found guilty of 19 of the 28 charges against him, including fraud, conspiracy, false testimony and insider trading and sentenced to 24 years and 4 months of prison, on 23 October 2006. Former companies closely involved in Enron's affairs were also prosecuted, in particular: the auditors Arthur Andersen, Citigroup, JP Morgan, Merrill



In this context, one should question the pertinence of the dependence of social security on the existence of a job, for income remains the determining element for setting up a social security system in keeping with what is already established. Thus, ever more voices are raised within civil society pleading for an unconditional universal revenue for everybody.<sup>263</sup> The variations proposed until now have been highly diverse and refer to different concepts (minimum income, citizen's income, universal allocation, guaranteed social income etc.).<sup>264</sup> Moreover, some proposals have a tendency to run contrary to the intended purpose. (A minimum income, for example risks putting downward pressure on wages et weakening, even eliminating, the role of trade unions.)

One must be careful lest the right to social security be debased. As has been mentioned throughout this booklet, for the United Nations and the ILO, it is a basic human right that must be universalized, linked to a job or not. The new ILO proposals for the creation of “universal” social security aim, precisely, to afford coverage to persons outside the labor market, so that the link social protection/employment is complemented by extended rights already recognized by the United Nations (see Chapter I). Today, it is the social assistance model, conditional cash transfers that are being promoted by certain influential international development organizations.<sup>265</sup>

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Lynch, Deutsche Bank, CICB and Barclays Bank:

[http://fdsp.univ-lyon2.fr/sites/fdsp/IMG/pdf\\_Gouvernement\\_d\\_entreprise\\_partie\\_2.pdf](http://fdsp.univ-lyon2.fr/sites/fdsp/IMG/pdf_Gouvernement_d_entreprise_partie_2.pdf)

<sup>263</sup> See, inter alia, *Final Declaration*, Asia-Europe Peoples' Forum, 9<sup>th</sup> session, Laos, October 2012: <http://www.aepf.info/aepf9/94-final-declaration-9th-asia-europe-people-s-forum-vientiane-laos>

<sup>264</sup> The discussion on this matter is far beyond the scope of the present booklet. For further information, see, inter alia, Robert Castel, *L'insécurité sociale: Qu'est-ce qu'être protégé?* (Paris: Seuil, 2003); Yannick Vanderborght, “Quelles sont les chances politiques de l'allocation universelle? Hypothèses à partir des exemples canadien et néerlandais”, in *Raisons politiques*, 2002/2, N° 6, pp. 53-66, <http://www.cairn.info/revue-raisons-politiques-2002-2-page-53.htm>, [http://fr.wikipedia.org/wiki/Revenu\\_minimum](http://fr.wikipedia.org/wiki/Revenu_minimum), [http://www.gboss.ca/revenu\\_universel.html](http://www.gboss.ca/revenu_universel.html)

<sup>265</sup> See in this regard Francine Mestrum, *Social Protection Floor: Beyond Poverty Reduction?*: [http://www.globalsocialjustice.eu/index.php?option=com\\_content&view=article&id=301:social-protection-floor-beyond-poverty-reduction-&catid=10:research&Itemid=13](http://www.globalsocialjustice.eu/index.php?option=com_content&view=article&id=301:social-protection-floor-beyond-poverty-reduction-&catid=10:research&Itemid=13)

## CONCLUSION

Social security is recognized as a human right in the international human rights instrument. In this regard, and to paraphrase once again the United Nations independent expert on the question of human rights and extreme poverty: “Ensuring access to social protection is thus not a policy option, but a State obligation under international human rights law.”<sup>266</sup>

Also in this regard, social security must be universal, covering – especially – those persons who are unable to contribute. The current insurance system, often linked to employment and contributions, is not the only model that can be used, and it is possible that it will be unable to keep pace with social developments in the context of globalization. Moreover, nothing prevents states from setting up a single, universal social security scheme (for both the active population and the unemployed), covering all its aspects (see Chapter II), in order to simplify (from all perspectives) the current system. This involves, of course, a major challenge for everybody concerned, especially for social movements, to make sure that this question is not instrumentalized by neo-liberals and, in the end, limited to social assistance. Today, it is the social assistance model, monetary transfers with conditions attached, that is being promoted by certain influential international development organizations whereas, as has been discussed above, social security is a human right that must be universalized and not charity in any form whatever.

In a world with ample ability and wealth, it is not tolerable that the overwhelming majority of humanity be deprived of the basic right to social security. It is also a matter of reducing, however modestly, the crying inequality between countries and within countries. It is no way an act of charity, for, as Robert Castel put it so well:

*“Social protection is not only the giving of assistance to the poorest so that they may avoid total destitution. In the best sense of the word, it is for all the basic condition allowing them to continue to belong to a society of their fellow human beings.”*<sup>267</sup>

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<sup>266</sup> Report on the question of human rights and extreme poverty submitted by Magdalena Sepúlveda Carmona, independent expert on the question of human rights and extreme poverty, in accordance with resolution 8/11 of the Human Rights Council, A/65/259, 9 August 2010

<sup>267</sup> Robert Castel, *L'insécurité sociale: Qu'est-ce qu'être protégé?* (Paris: Seuil, 2003), p. 79.

# ANNEX

## *INSTANCES TO WHICH ONE MAY RECUR*

### **At the international level**

#### **Human Rights Committee, CCPR** (to file complaints and request information)

Petitions Team  
OHCHR-UNOG  
1211 Geneva 10, Switzerland  
Fax: + 41 22 917 90 22 (particularly for urgent matters)  
E-mail: [petitions@ohchr.org](mailto:petitions@ohchr.org)

#### **Committee on Economic, Social and Cultural Rights, CESCR**

(to request information)  
Secretary of the CESCR  
OHCHR-UNOG  
1211 Geneva 10, Switzerland  
Fax: +41 22 917 90 08  
E-mail: [cescr@ohchr.org](mailto:cescr@ohchr.org)

#### **Committee on the Elimination of Racial Discrimination, CERD**

(to file complaints and request information)  
Petitions Team  
OHCHR-UNOG  
1211 Geneva 10, Switzerland  
Fax: + 41 22 917 90 22 (particularly for urgent matters)  
E-mail: [petitions@ohchr.org](mailto:petitions@ohchr.org)

#### **Committee on the Elimination of Discrimination against Women, CEDAW**

(to file complaints and request information)  
Petitions Team  
OHCHR-UNOG  
1211 Geneva 10, Switzerland  
Fax: + 41 22 917 90 22 (particularly for urgent matters)  
E-mail: [petitions@ohchr.org](mailto:petitions@ohchr.org)

#### **Committee on the Rights of the Child, CRC** (to request information)

Secretary of the CRC  
UNOG-OHCHR  
CH-1211 Geneva 10, Switzerland  
Tel.: +41 22 917 91 41 - Fax: +41 22 917 90 08  
E-mail: [crc@ohchr.org](mailto:crc@ohchr.org)

## **At the regional level**

### **African Commission on Human and People's Rights**

(to file complaints and request information)

N°31 Bijilo Annes Layout, Kombo North District,

Western Region, P.O. Box 673 Banjul, Gambia

Tel.: +220 441 05 05 / +220 441 05 06 / Fax: +220 441 05 04

E-mail: [au-banjul@africa-union.org](mailto:au-banjul@africa-union.org) / Website: <http://www.achpr.org>

### **African Court on Human and Peoples' Rights** (to file complaints)

Dodoma road, P.O. Box 6274, Arusha, Tanzania

Tel.: +255 732 97 95 09 / +255 732 97 95 51 / Fax: +255 732 97 95 03

E-mail: [registrar@african-court.org](mailto:registrar@african-court.org) / [info@african-court.org](mailto:info@african-court.org)

Website: <http://www.african-court.org>

### **Inter-American Commission on Human Rights**

(to file complaints and request information)

1889 F Street, N.W., Washington, D.C. 20006, United States of America

Tel.: +202 458 60 02 / Fax: +202 458 39 92 / +202 458 36 50 / +202 458 62 15

E-mail: [cidhdenuncias@oas.org](mailto:cidhdenuncias@oas.org) / Website: <http://www.oas.org>

### **Inter-American Court of Human Rights** (to file complaints)

Avenue 10, Street 45-47 Los Yoses, San Pedro,

Apartado Postal 6906-1000, San José, Costa Rica

Tel.: +506 2527 1600 / Fax: +506 2234 0584

E-mail: [corteidh@corteidh.or.cr](mailto:corteidh@corteidh.or.cr)

Website: <http://www.corteidh.or.cr>

### **European Committee of Social Rights** (to file complaints and request information)

Secrétariat du Service de la Charte sociale européenne et du Code européen de sécurité sociale

Conseil de l'Europe

Direction générale des droits de l'homme et état de droit

Direction des droits de l'homme

67075 Strasbourg Cedex, France

Tel.: +33 3 88 41 32 58 / Fax: +33 3 88 41 37 00

E-mail: [social.charter@coe.int](mailto:social.charter@coe.int)

Website: [www.coe.int](http://www.coe.int)

### **European Court of Human Rights** (to file complaints)

Conseil de l'Europe

67075 Strasbourg Cedex, France

Tel.: +33 3 88 41 20 18 / Fax: +33 3 88 41 27 30

Website: <http://www.echr.coe.int>