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## *Introduction: Interpreting and Advancing Women's Rights to Social Security and Social Protection*

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### INTRODUCTION

**T**HIS COLLECTION PROVIDES a detailed examination of the human rights to social security and social protection as they pertain to women.<sup>1</sup> It brings together three broad areas of scholarship—social policy and development, law and human rights and gender/feminist studies. The chapters consider the content of the rights to social security and social protection and the relationship between these specific human rights and principles underlying human rights such as gender equality, participation and dignity. While women's poverty and exclusion is frequently examined outside a human rights framework, the contributors to this book see social protection as a women's right issue. Although women as a group are the focus, the intersections between gender and other categories of discrimination such as race, age, class, geographical location and family status are considered throughout the collection.

Alongside conceptual insights across the field of women's social security rights, the book analyses recent developments in international

<sup>1</sup> The chapters in this collection were first discussed at a workshop held at the International Institute for the Sociology of Law in Oñati, Spain on 6–7 June 2013. The workshop followed a webinar series in 2012, organised by the editors through the University of Ottawa Centre for Human Rights Research and Education, to highlight some of these issues for a wider audience. The webinar videos can be viewed at [www.cdp-hrc.uottawa.ca?p=4575](http://www.cdp-hrc.uottawa.ca?p=4575).

law and domestic law in a range of country settings.<sup>2</sup> It considers the International Labour Organization's (ILO) National Social Protection Floors Recommendation<sup>3</sup> and examines the work of the United Nations treaty bodies. It explores the different approaches to expansion of social protection in developing countries, with specific chapters on current legal developments in China, Chile and Bolivia. The debates around welfare conditionality in Conditional Cash Transfers Programmes, a central debate in social policy and development, are looked at through a gender lens. The book also considers the position of poor women, particularly single mothers, in developed countries (Australia, Canada, the United States, Ireland and Spain) facing the damaging consequences of recent welfare cuts following policy and legal reforms. It considers shifts in global discourse on the role of social policy and the way in which ideas of crisis and austerity have been used to undermine rights with harsh impacts on women.

The chapters in this collection engage with various frameworks for assessing social security law and policy from a women's rights perspective and for interpreting and advancing the rights of women in future social security and social protection measures.

This introductory chapter begins with a discussion of the global context of social security and social protection and its implications for the world's women. It then outlines the value of a gender lens in understanding social policy. Thereafter, the way in which social security and social protection are defined and understood within human rights is unpacked. The chapter then considers three possible ways of approaching the interpretation and development of the rights to social security and social protection. Finally, some of the major themes emerging from this collection are outlined with reference to the various chapters contained within the book.

## THE CONTEXT

Social security and social protection are in the spotlight internationally, particularly in the recent context of financial crisis. In the developing world social protection is increasingly seen as a valuable mechanism to address

<sup>2</sup> The editors have not tried to present an exhaustive survey of different country experiences in this book. The choice of contributions reflect the following typology: (1) developing countries illustrating significant, recent progress, from a women's rights perspective (China and Bolivia); (2) a developing country where gender equity adjustments followed the brutal privatisation of the pension system (Chile); (3) countries that have been severely hit by recent austerity measures (Ireland and Spain); and (4) countries where the welfare system is being gradually dismantled (United States, Canada and Australia).

<sup>3</sup> ILO Recommendation R202: Social Floors Protection Recommendation (Recommendation Concerning National Floors of Social Protection) (101st Conference Session, Geneva, 14 July 2012).

poverty and generate development and growth. In the developed world, governments looking to limit state expenditure on social programmes are reducing their commitments to social security. These processes of building up and breaking down welfare systems are not operating in isolation from each other. Ongoing ideological challenges to welfarism in rich countries are proving influential in the shaping of new programmes in poor countries in some instances.<sup>4</sup> At the same time, strategies being tested in developing countries are making their way into some of the policies of the developed world.<sup>5</sup> Challenges to the universalism of social security and a growing use of conditionality in social assistance programmes are two of the concerning features of the current phase. At the same time, greater numbers of people are accessing social security than ever before with many beneficial initiatives emerging from around the world.

Women's place within social security and social protection is of increasing interest to international bodies, development agencies and states. There is a growing recognition that women are the best human investment in the development context. As a result, women are sometimes being asked to carry the burdens of development without protection of their interests and needs. For example, conditional cash transfers are often designed in a way that adds to the responsibilities of women and that reinforce the stereotype of mothers as the parents responsible for children.<sup>6</sup> While the more redistributive intuition and the focus on women behind current efforts seem valuable, what is often missing is a human rights approach that shapes and guides these interventions. The focus should not just be on women's *roles* in development, but also on women's *rights* in relation to social provision. A human rights approach to women's rights to social security and social protection provides an entitlement and accountability framework that guarantees not only a better balanced gender redistribution of resources but, also a less discriminatory and a more participatory one.

Not all developing countries are following the conditional cash transfer approach—some, like China, have chosen a social insurance model.<sup>7</sup> Others, such as India, have combined a focus on employment creation with social assistance or have, as in some Latin American countries, combined social assistance and social insurance models in expanding health and

<sup>4</sup> See Fredman, in this collection, who notes the introduction of 'workfare' in the United States (US) and elsewhere in the developed world that was the forerunner of conditional cash transfer programmes in developing countries. Also see Williams, in this collection, for some of the history behind this approach in the US.

<sup>5</sup> Fredman, in this collection, refers to a conditional cash transfer programme being run in the city of New York. Goldblatt, in this collection, refers to a programme that links social assistance payments to school attendance in parts of Australia.

<sup>6</sup> Fredman, in this collection, explains how conditional cash transfers designed to benefit poor women often impose duties on them in relation to children's school attendance or medical visits.

<sup>7</sup> Li, in this collection.

pension coverage.<sup>8</sup> Clearly, modern social protection schemes rely more and more on mixed models and the frontier between social security and social protection schemes is being blurred.<sup>9</sup> These models, some more inclusive than others, are not always designed with women's rights in mind. A gender rights perspective is necessary in order to evaluate how new social protection designs address economic redistribution together with human dignity, women's equal citizenship and the transformation of gender relations in society.

Alongside the growth in social protection programmes in the developing context are cutbacks to social security programmes in the context of austerity measures in developed countries. These often have the harshest impact on women, with single mothers a particularly vulnerable target group.<sup>10</sup> These cuts should be understood, similarly from a rights perspective, not just as economic decisions but also as potentially retrogressive violations of human rights, with specific gendered impacts.<sup>11</sup>

#### THE GENDER LENS

There is a rich engagement with issues of gender and social security. Scholars of social policy and development have produced sustained critiques of the welfare state in advanced economies<sup>12</sup> and of development and social programmes in developing countries.<sup>13</sup> They have pointed to

<sup>8</sup> Ossio Bustillos, in this collection, explains the significance for Bolivian women—including aboriginal women—of the *Renta Dignidad*, a universal pension programme. Arrellano Ortiz, in this collection, describes how Chile opted for a mixed model of contributory and non-contributory systems in order to produce more gender equity in relation to pensions.

<sup>9</sup> For a thorough consideration of recent social protection initiatives, see UN Development Programme (UNDP), *Sharing Innovative Experiences Volume 18: Successful Social Protection Floor Experiences* (New York, UNDP, 2011); and International Social Security Association (ISSA), *Social Security Coverage Extension in the BRICs: A Comparative Study on the Extension of Coverage in Brazil, the Russian Federation, India, China and South Africa* (Geneva, ISSA, 2013).

<sup>10</sup> Williams, in this collection, describes the highly disciplinary and gender discriminatory reality of social welfare programmes in the US. Murphy and Loftus, in this collection, echo a similar (though more recent) situation in Ireland.

<sup>11</sup> See Goldblatt, Murphy and Loftus and Otto, respectively, in this collection.

<sup>12</sup> Eg, Fraser, N, 'After the Family Wage: Gender Equity and the Welfare State' (1994) 22(4) *Political Theory* 591; Lewis, J, 'Gender and the Development of Welfare Regimes' (1992) 2(3) *Journal of European Social Policy* 159; Gordon, L (ed), *Women, the State, and Welfare* (University of Wisconsin Press, 1990); Orloff, AS, 'Gender in the Welfare State' (1996) 22 *Annual Review of Sociology* 51; Orloff, AS, 'Gendering the Comparative Analysis of Welfare States: An Unfinished Agenda' (2009) 27 *Sociological Theory* 317; Pateman, C, 'The Patriarchal Welfare State' in C Pateman (ed), *The Disorder of Women* (Cambridge, Polity Press, 1989) 179; and Sainsbury, D (ed), *Gendering Welfare States* (London, Sage, 1994).

<sup>13</sup> Razavi, S and Hassim, S (eds), *Gender and Social Policy in a Global Context: Uncovering the Gendered Structure of 'the Social'* (Basingstoke, Palgrave Macmillan, 2006). See Holmes, R and Jones, N, *Gender and Social Protection in the Developing World: Beyond Mothers and Safety Nets* (London, Zed Books, 2013); Kasente, D, 'Gender and Social Security Reform in Africa'

the inbuilt biases in many of these systems that are designed around the archetype of the male breadwinner. This conceptualisation of the welfare state has denied women's right to social citizenship largely based on their lack of income as a product of their caring responsibilities.<sup>14</sup> Women, who generally earn less and have more insecure employment, gain more limited access to social security benefits. The system designs do not attempt to undermine structural inequalities around access to employment and responsibilities for care and household labour—in many cases they reinforce these inequalities.<sup>15</sup> The initial Western-centric critique of the welfare state has joined a more universal one as successive generations of structural adjustments programmes and the neo-liberal agenda increasingly put women from the global south at higher risk of poverty. Women in all countries are facing challenges as increasing 'informalisation', 'flexibilisation' and other features of globalisation change the nature of work which is becoming ever more precarious. Attempting to ensure that gender is taken into account in the development of social protection programmes that address these conditions is a central concern for feminists working in this area.

Today, women from both the north and the south are in urgent need of social protection in a globalised world of increasing poverty where adverse roles are assigned to women by both the market and neo-conservative ideology. As Razavi proposes, engendering social protection in a contemporary context requires efforts to prevent, to manage and to overcome all situations that adversely affect people's well-being and living standards.<sup>16</sup> This requires the promotion of transformative social policies that leave nobody behind and do not discriminate on the basis of attachment to the formal labour market.<sup>17</sup> This is aligned with ideas of redistributive gender equality.<sup>18</sup> In many countries there have been efforts to bring workers in the

(2000) 53(3) *International Social Security Review* 27; Sabates-Wheele, R and Kabeer, N, 'Gender Equality and the Extension of Social Protection' (ESS Working Paper No 16, International Labour Organization, 2003); and Sen, G, *Engendering Social Security and Protection: The Case of Asia* (Friedrich-Ebert-Stiftung, August 2011), available at: [library.fes.de/pdf-files/iez/08436.pdf](http://library.fes.de/pdf-files/iez/08436.pdf).

<sup>14</sup> See Scott, J, Dex, S and Plagnol, AC, *Gendered Lives: Gender Inequalities in Production and Reproduction* (UK, Edward Elgar Publishing, 2012).

<sup>15</sup> Smith, in this collection, shows how the failure to factor in the care responsibilities of women in the Australian social security system, ensures ongoing inequality. Similarly, Pumar Beltrán, in this collection, shows how recent pension reform in a struggling Spain fails to undo the underlying inequalities facing women who have primary responsibility for household labour and care.

<sup>16</sup> Razavi, S, 'Engendering Social Security and Protection: Challenges for Making Social Security and Protection Gender Equitable' (Berlin, Friedrich-Ebert-Stiftung, Global Policy and Development Division, June 2011). See also Razavi, S et al, 'Gendered Impacts of Globalization: Employment and Social Protection' (UN Research Institute for Social Development (UNRISD) Research Paper No 3, Geneva, UNSRID, March 2012).

<sup>17</sup> As discussed in Mkandawire, T, 'Transformative Social Policy and Innovation in Developing Countries' (2007) *European Journal of Development Research* 19, 13.

<sup>18</sup> See Fredman, in this collection.

informal sector and the self-employed into contributory pension or health schemes. But it is of questionable value to continue to retain the attachment between social protection and work given the unpredictable and unstable nature of women's work in the informal sector. While social assistance programmes are essential to address gendered poverty, these must be accompanied by greater investment in public services.<sup>19</sup> At the same time, efforts to restructure work<sup>20</sup> and gender roles should occur alongside such programmes to encourage women's right to livelihood.

Legal scholars have documented the difficulties involved in challenging the inbuilt gender inequalities in welfare systems.<sup>21</sup> The fight against sex discrimination in the workplace has largely hidden the centrality of paid and unpaid caring and domestic work done by women that is both a cause and a source of women's poverty and exclusion. Greater accessibility to social security benefits without discrimination, such as pensions, may partly remove the consequences of assumed dependency of women on the male breadwinner, but it does not address the negative impact of the peripheral connection of women to formal work and their role in care, combined with the poverty trap into which they fall. Feminist legal theorists have recognised that formal equality measures are inadequate in addressing gender disadvantage in the workplace and within social security systems and have looked instead to more substantive approaches to tackle inequality.

Some feminists working in both law and social policy have argued that a human rights-based approach must be central to efforts to reshape social security and protection. A human rights perspective is also valuable in assessing the gender dimensions of existing social security policies and programmes to see whether these will lead to far-reaching improvements in the lives of women facing poverty and vulnerability. The focus on gender as it relates to the right to social security and social protection, considered by a small number of writers until now,<sup>22</sup> is the subject of this book.

<sup>19</sup> *Ibid.*

<sup>20</sup> Williams, in this collection.

<sup>21</sup> For examples in the European context, see Luckhaus, L, 'Equal Treatment, Social Protection and Income Security for Women' (2000) 139(2) *International Labour Review* 149; and Sohrab, J, *Sexing the Benefit: Women, Social Security, and Financial Independence in EC Sex Equality Law* (Aldershot, Dartmouth, 1996).

<sup>22</sup> These include: Darooka, P, 'Social Security: A Woman's Human Right' (PWESCR Discussion Paper, New Delhi, Program on Women's Economic, Social and Cultural Rights (PWESCR), 2 April 2008); Goldblatt, B, 'The Right to Social Security—Addressing Women's Poverty and Disadvantage' in B Goldblatt and K McLean (eds), *Women's Social and Economic Rights* (Cape Town, Juta, 2011); Luckhaus, above n 21; Lamarche, L, 'Le PIDESC, les femmes et le droit à la sécurité sociale: considérations et propositions pour un droit "universel" à la sécurité sociale' (2002) 14(1) *Revue Femme Droit* 53; and Raday, F, 'Article 11' in S Freeman et al (eds), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford, Oxford University Press, 2012).

## SOCIAL SECURITY AND SOCIAL PROTECTION AS RIGHTS

Social security is a basic human right found in numerous international human rights instruments, regional human rights instruments and in the constitutions of many states.<sup>23</sup> While there is no question of the existence of this fundamental right, it has been, until recently, somewhat undeveloped in the human rights field. The phrase ‘social protection’ which has gained in popularity over the past decade, also has its origins in foundational human rights instruments. The term appears in the Universal Declaration of Human Rights<sup>24</sup> while the word ‘protection’ is mentioned in relation to social security in the ILO’s Declaration of Philadelphia.<sup>25</sup> The ILO has played an important role in setting standards for social security measures but these have only begun to have real relevance to the developing world over the last decade. Two key documents reflect a new interest, at the human rights level, in providing universal meaning to the right to social security. One is General Comment No 19, prepared by the United Nations Committee on Economic, Social and Cultural Rights (CESCR) in 2008, which provides a detailed interpretation of the right to social security in article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>26</sup> The other is ILO Recommendation No 202 on Social Protection Floors, which promotes the establishment of social protection floors as a fundamental element of national social security systems.<sup>27</sup> In addition to these important developments, the UN Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, has made a significant contribution to the elaboration of a principled human rights approach to social protection in addressing poverty and extreme poverty.<sup>28</sup>

<sup>23</sup> For an elaboration of the sources of the right see International Labour Organization (ILO), ‘Social Security and the Rule of Law: General Survey Concerning Social Security Instruments in Light of the 2008 Declaration on Social Justice for a Fair Globalization’ (Geneva, ILO, 2011).

<sup>24</sup> Universal Declaration of Human Rights (UDHR) (adopted 10 December 1948) UN Doc 217 A (III), art 25(2).

<sup>25</sup> International Labour Organization (ILO) ILO, *ILO Declaration Concerning the Aims and Purposes of the International Labour Organization (Declaration of Philadelphia)*, 10 May 1994, s III(f), available at: [www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2453907:NO#declaration](http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO#declaration).

<sup>26</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No 19: The Right to Social Security (art 9)*, 4 February 2008, UN Doc E/C.12/GC/19.

<sup>27</sup> ILO Recommendation R202, above n 3. This is discussed by Lamarche, in this collection.

<sup>28</sup> Some of the key reports by Magdalena Sepúlveda Carmona, Special Rapporteur on Extreme Poverty and Human Rights, include: *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, 27 March 2009, UN Doc A/HRC/11/9 (‘Cash transfer programmes’); *Final Draft of the Guiding Principles on Extreme Poverty and Human Rights, Submitted by the Special Rapporteur on Extreme Poverty and Human Rights* 18 July 2012, UN Doc A/HRC/21/39; *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, 9 August 2013, UN Doc A/68/293 (‘Unpaid care work’).

In this collection the right to social security is understood as a legal guarantee (whether in the form of contributory, non-contributory or universal programmes), while social protection is the normative aim of this legal guarantee. Women require access to the benefits of an effective and equal social security regime in order to exercise their rights to social protection. Increasingly, social security is understood as entailing combinations of social insurance and social assistance.<sup>29</sup> This should also include measures to enable women's participation in work and society such as the provision of childcare and other necessary social services.

While the importance of social security as a human right is increasingly being recognised, the gender dimensions of this right are not always fully appreciated or explored. The contributors to this collection have identified the need to develop and interpret the right to social security through a gender lens. This will strengthen and enrich the right and give it greater application in shaping meaningful social protection measures for women and men throughout the world. The following section will consider possible ways of 'gendering' the right to social security.

#### FRAMEWORKS TO BRING GENDER INTO THE RIGHTS TO SOCIAL SECURITY AND SOCIAL PROTECTION

There are different ways of undertaking the task of 'gendering' the right to social security. Three are suggested here. The first is to locate the work within the equality guarantee and ensure that the right to social security is realised in a gender equal way. The second requires a systematic gender-based reformulation of the social security right by critiquing and reframing it in light of feminist theory to ensure that every aspect of the right takes account of gendered considerations and results in a right with a deeply gendered content. The third devises a human rights approach to social protection that mainstreams gender and includes a set of guidelines that tests compliance of social protection programmes with human rights obligations informed by a gender perspective.

<sup>29</sup> This is a shift from the historically worker-biased, contingency-based approach of ILO Convention C102: Social Security (Minimum Standards) Convention (Convention Concerning Minimum Standards of Social Security) (adopted 28 June 1952, entered into force 27 April 1955) that emerged from a social insurance model. There is a growing recognition that poverty and social exclusion are social risks/contingencies just as are the more traditional categories such as illness, disability, and so on.



## The Equality Approach to the Social Security Right

This approach recognises that human rights will not in themselves ensure that women's needs and interests are addressed without further efforts to put these at the forefront and find ways of meeting them. It sees equality, which is both an underlying value and an operational human right, as the standard against which other human rights can be tested and reframed to ensure that they are not advantaging some over others. Equality, with a gender focus, requires that social security and protection rights contribute towards far-reaching, positive alterations to gender relations in society. This approach is taken by Fredman in her chapter in this collection<sup>30</sup> and followed and discussed in other chapters.<sup>31</sup> Fredman sees substantive equality as a multidimensional concept pursuing four overlapping aims of redistribution, recognition, transformation and participation.<sup>32</sup>

Applying this concept of equality to laws and policies that claim to advance the right to social security and protection means testing them against each dimension in turn, informed by a gendered understanding of inequality and how it is created and maintained.<sup>33</sup> Lessard's chapter focuses specifically on the dimension of participation as a core element of human rights protection.<sup>34</sup> This can be seen as an elaboration of an element of a substantive equality approach or as an additional approach to ensuring that gender is brought into discussion of social security and protection.

## Gendering the Social Security Right

The second approach is part of a feminist project that aims to expand and redefine the content of international human rights and social and economic rights in particular.<sup>35</sup> Otto argues that:

There is also the continuing need to take a dynamic and gender-inclusive approach to interpretation of the substantive articles of the *ICESCR*. Women should not always have to rely on the discourse of equality and non-discrimination to ensure their inclusion in the mainstream of the human rights paradigm. Rather, human rights must also be interpreted from women's perspectives ... the content of each *ICESCR* right must be understood so that it addresses women's actual needs

<sup>30</sup> Fredman, in this collection.

<sup>31</sup> Goldblatt, in this collection; and Murphy and Loftus, in this collection.

<sup>32</sup> Fredman, in this collection.

<sup>33</sup> For another equality based approach see Brodsky, G and Day, S, 'Denial of the Means of Subsistence as an Equality Violation' (2005) 2005 *Acta Juridica* 149.

<sup>34</sup> Lessard, in this collection.

<sup>35</sup> See the 'Montréal Principles on Women's Economic, Social and Cultural Rights' (2004) 26 *Human Rights Quarterly* 760.

when they are interpreted or implemented ... gender-inclusive interpretation is itself an important means of achieving substantive equality for women.<sup>36</sup>

This approach draws on key feminist concepts in engaging in a process of reinterpretation of the right to social security and protection. It assumes that the right will generally be understood using a male standard for the default rights holder. It takes women's lives as the starting point and requires attention to context. In so doing it requires that women's agency and voice are central to responses that address their circumstances. It recognises that women are not a homogenous group and that attention must be paid to the intersections between categories of disadvantage along lines of gender, race, culture, age, religion, disability and others. Efforts to address the needs of women should be careful not to leave certain groups of women behind, thus consideration of marginalisation and vulnerability is crucial. The structuring of the world into public and private domains sees women's experiences being privatised, diminished and ignored. The division of labour and the structuring role of care shape women's experiences over the life course and distinguish them from men's. Thus, work in the home, the usual preserve of women, is not regarded as work that counts; subsistence work and work in family enterprises is also often unpaid for women and children; and women's work in the informal and formal sector is often located at the bottom of the hierarchy in terms of value and recognition. Subordination of women is deeply embedded in the power structures of society leading to violence and oppression in all spheres of life. The need to understand and respond to the damaging conditions faced by women requires a focus that goes beyond national boundaries and pays attention to global challenges and the interplay between the global, national and local.

A number of the chapters in the collection follow this approach in their interpretation of the right to social security. Some of the chapters combine this approach with a substantive equality focus—a hybrid of the first two approaches set out here.<sup>37</sup>

### **Mainstreaming Gender into the Human Rights Approach to Social Protection**

As noted above, the UN Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, has contributed important thinking on the right to social security and social protection. She has also emphasised

<sup>36</sup> Otto, D, "Gender Comment": Why Does the UN Committee on Economic, Social and Cultural Rights Need a General Comment on Women?' (2002) 14 *Canadian Journal of Women and the Law* 1, 51.

<sup>37</sup> Goldblatt, in this collection; and Murphy and Loftus, in this collection.

that social protection systems should actively promote gender equality and empower women. She brings in many of the lessons of feminist development theory alongside feminist perspectives on social policy in a robust approach to human rights.

Her 2009 report on social protection measures identifies key issues for consideration in designing policies that promote gender equality and human rights more generally.<sup>38</sup> Her 2013 report considers the rights dimensions of unpaid care work and its effects on women's exposure to poverty. In this report, she highlights how care work forces women into informal, unpaid or precarious employment and increases their risk of being deprived of decent social protection.<sup>39</sup> The Guiding Principles on Extreme Poverty and Human Rights adopted by the Human Rights Council in 2012 note that states have an obligation to target resources to the benefit of women, who make up a majority of the poor, including resources allocated to public services and social protection.<sup>40</sup>

Sepúlveda and Nyst's recent book<sup>41</sup> summarises the human rights approach and makes specific gendered recommendations for the compliance of social protection systems with international human rights obligations.<sup>42</sup> They propose that states recognise the multiple forms of discrimination that women experience and their different needs over the life cycle in the design of social protection systems. They stress the recognition of women's care roles and the need for the state to take responsibility together with society for care, while encouraging a greater role by men. Appropriate gender-sensitive services designed and provided by gender aware administrators must be ensured to address problems of women's access. Social protection programmes must take account of intra-household dynamics to ensure that women are reached and are benefiting. Meaningful participation of women in all stages of social protection programmes must be facilitated. Lastly, gender related data collection must occur to ensure monitoring and evaluating of social protection programmes.

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

<sup>38</sup> Sepúlveda, *Promotion and Protection of all Human Rights*, above n 28.

<sup>39</sup> Sepúlveda, *Report of the Special Rapporteur*, above n 28, at para 49.

<sup>40</sup> Sepúlveda, *Final Draft of the Guiding Principles*, above n 28, at para 31.

<sup>41</sup> Sepúlveda, M and Nyst, C, 'The Human Rights Approach to Social Protection' (Ministry for Foreign Affairs, Finland, 1 June 2012) 72.

<sup>42</sup> *Ibid*, at 36–37.

It should be noted that the three approaches set out above are not mutually exclusive—on the contrary, they are closely interrelated and lead towards the same goal of a gendered social security right that is socially, economically and politically transformative. There is a recognised principle of international human rights law that human rights are universal, indivisible, interrelated and interdependent.<sup>43</sup> Thus, non-discrimination and equality are closely linked to social security in a rights framework.<sup>44</sup> The interdependence of rights also means that other rights may have a strong bearing on the right to social security such as the right to dignity, the right to life, the right to an adequate livelihood and the right to work. The gender dimensions of all these rights should also be considered and developed, alongside the development of the rights to social security and social protection.

#### KEY THEMES OF THE BOOK

Various themes emerge across the chapters in this collection concerning: the relationship between work and social security; the participation of women in the design and implementation of social security and social protection programmes; austerity and crisis; intersectional discrimination; differing approaches to equality; and the need for a rights-based response to address women's circumstances through social security and social protection. These are briefly surveyed.

The problematic relationship between participation in the formal labour market and social security entitlement is a frequent concern in this book. Women's responsibilities for household labour and care limit their access to the labour market and weaken their employment opportunities. Lower earnings affect their pensions in many countries. While there are some positive examples of efforts to factor women's work history into account in setting pensions, most countries ignore this issue. Women are also being forced into the workforce through social security policies that fail to provide the necessary support for their care and household work. For the millions of women who work outside the formal labour market, social security is often limited and inadequate. Thus, social assistance that is both universal and unconditional is an urgent need for women around the world. This basic protection needs to be complemented with the provision of other social services such as childcare if societies are serious about the full and

<sup>43</sup> UN General Assembly, *Vienna Declaration and Programme of Action*, 25 June 1993, UN Doc A/CONF.157/23, Part 1, para 5, which says that 'All human rights are universal, indivisible and interdependent and interrelated'.

<sup>44</sup> See Liebenberg, S and Goldblatt, B, 'The Interrelationship between Equality and Socio-Economic Rights in South Africa's Transformative Constitution' (2007) 23 *South African Journal on Human Rights* 335.

equal inclusion of women. Positive examples of attempts to include women in social security schemes are found in Chile where pension reforms have made provision for foreign domestic workers;<sup>45</sup> and in Bolivia where the basic, universal pension system is finally reaching indigenous women.<sup>46</sup>

Another central theme is the participation of women in ensuring their rights to social security. Reforms to social security systems will not prove adequate if women are not involved in consultation around the design of these changes. In both their chapters, Lessard and Fredman argue that women's right to participation in policymaking is an essential component of their right to equality. In China, the lack of participation by women has led to protectionist measures for women that are not always appropriate or equality enhancing.<sup>47</sup> In Australia, the failure to consult adequately with indigenous communities has led to the external management of social security payments that harm women in these communities.<sup>48</sup> In Ireland<sup>49</sup> and Spain,<sup>50</sup> poor women have been required to take on the burdens of austerity through reduced social security without being involved at the national level or the European level in shaping less painful solutions. In other cases, such as the United States<sup>51</sup> and Canada,<sup>52</sup> women are simply excluded from the debate about social protection, since they are seen as part of the problem in countries where welfare cutbacks are designed to discipline poor women and turn them into precarious workers.

Many chapters in this book highlight the challenges of economic austerity following financial crisis accompanied by the growing dominance of neo-conservative ideology.<sup>53</sup> Both of these have resulted in measures that negatively impact women, particularly those who are already facing the challenges of poverty and care responsibility. The ideological arguments for reduced or reformulated social security reinforce negative stereotypes of poor women.

Discrimination against women on the basis of gender intersects with other forms of discrimination such as race, class, age, citizenship and family status and deepens the difficulties facing these groups of women within various social security systems. Many authors in this collection note the multiple and intersecting forms of discrimination against women in their different national contexts. The chapters on the United States, Australia and Canada in this collection highlight the harsh impact of policies underpinned by race inequality

<sup>45</sup> Arellano Ortiz, in this collection.

<sup>46</sup> Ossio Bustillos, in this collection.

<sup>47</sup> Li, in this collection.

<sup>48</sup> Goldblatt, in this collection.

<sup>49</sup> Loftus and Murphy, in this collection.

<sup>50</sup> Pumar Beltrán, in this collection.

<sup>51</sup> Williams, in this collection.

<sup>52</sup> Mosher, in this collection.

<sup>53</sup> See, in particular, Mosher, in this collection.

on poor women.<sup>54</sup> The challenges facing women migrant workers internal to China and from outside Chile, many of whom are from Bolivia, are discussed in some of the contributions.<sup>55</sup> The plight of single mothers trying to manage with inadequate social security and increasingly precarious work is the focus of a number of chapters.<sup>56</sup>

The evaluation of current developments presented in this book shows a variety of approaches to gender equality. In Chile, recent changes to the pension system rely more on the concept of equity than on gender equality.<sup>57</sup> Bolivia has introduced the *Renta Dignidad* universal pension programme which tackles the extreme poverty of a significant percentage of women without grounding its reform in a gender equality framework.<sup>58</sup> The Spanish example illustrates a struggle between formal equality between men and women and a more transformative understanding of gender equality in a context of austerity and within the scope of European law.<sup>59</sup> The case of China is interesting as it claims to have attained formal equality between men and women while recognising that women from rural areas have been left behind.<sup>60</sup>

What is clear from most of the contributions is the need for a principled, human rights approach to social security and social protection based on a single, universal standard. While contexts may differ, this principled approach can be used to challenge removal of existing benefits (such as in Australia, Spain or Ireland), the imposition of conditions for receipt of social benefits (such as in the United States and Australia and in Conditional Cash Transfer Programmes in many parts of the developing world) and the failure to extend new social security programmes to women on a substantively equal basis (such as in China and Chile). It is also clear from many of the chapters that advances in social security protections will not be adequate unless issues of care and labour market restructuring are addressed in all the societies under consideration. Without challenging assumptions and practices that make care the responsibility of women, the fundamental inequalities will remain. Related to this, if women are relegated to precarious and inadequate work, they will not be able to participate in the workplace or the community as equal members of society. Addressing these issues of work and care within and alongside the rights to social security and social protection is essential for women in every country

<sup>54</sup> See Goldblatt, Lessard and Williams, respectively, in this collection.

<sup>55</sup> See Arellano Ortiz, Li and Ossio Bustillos, respectively, in this collection.

<sup>56</sup> See Smith, Williams, Loftus and Murphy, Pumar Beltrán and Goldblatt, respectively, in this collection.

<sup>57</sup> Arrelano Ortiz, in this collection.

<sup>58</sup> Ossio, in this collection.

<sup>59</sup> Pumar Beltrán, in this collection.

<sup>60</sup> Li, in this collection.

in the world. Otto points out that this is not just a challenge within national boundaries but a transnational struggle as well.<sup>61</sup>

## CONCLUSION

This introductory chapter has provided a brief discussion of the current context in which social security and protection are needed to address gendered poverty and disadvantage. It has looked at the way a gender lens informs our analysis of social policy and has outlined the human rights framework in which the rights to social security and social protection are located. It has set out three of the ways in which these rights might be interpreted and developed taking gender into account. Lastly, it has discussed the key themes that emerge in this collection with reference to the various chapters in this book.

<sup>61</sup> Otto, in this collection.

