**Filling gaps in existing human rights instruments regarding older persons:**

**Specifying the right to social security**

Resolution 65/182 of the UN-General Assembly of 21 Dec 2010, following up to the Second World Assembly on Ageing, required UN member states “to establish an open-ended working group, open to all States Members of the United Nations, for the purpose of strengthening the protection of the human rights of older persons by considering the existing international framework of the human rights of older persons and identifying possible gaps and how best to address them, including by considering, as appropriate, the feasibility of further instruments and measures”.

In this statement, HelpAge Deutschland draws attention to a major gap in the existing international framework of the human rights of older persons, namely in the field of social security. The **right to social security** is laid down in Articles 22 and 25 of the Universal Declaration of Human Rights (UDHR) and in Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, Article 9 is the shortest article in the Covenant, and it names no standards, no instruments (except social insurance), and no agency in charge. Article 12 on the right to health, e.g., is much more specified. The insufficient specification of the right to social security constitutes a major legal gap, not only in view of older persons. While the right to social security pertains to all persons, the right is particularly relevant to older persons since older persons often have fewer means to secure a living on their own.

The right to social security is under-specified because since the negotiations for the UDHR in 1946-1948, the specification of the right to social security had been left to the International Labour Organization (ILO).[[1]](#footnote-1) Social security was considered the remit of the ILO. Moreover, social security moved to centre stage of politics and society only after the UDHR, as part of the emergence of "welfare states". Before, issues of labour rights and working conditions had been at the centre of national social policies in the global North.

Article 11 ICESCR on living standards is also vague, positing only "adequate" standards. The reason is that during the negotiations in 1946-1948, a consensus on standards could not be reached, not even a consensus on securing a minimum.[[2]](#footnote-2) In fact, present-day documents by major international organisations tend to focus on extending coverage, while largely remaining vague or silent on the level of benefits, let alone defining benefit standards.

We argue that the right to social security needs to be specified in a new human rights instrument in view of strengthening the protection of the human rights of older persons:

**1. Set standards for an adequate age of retirement** (age threshold that qualifies for receiving a pension). In some countries of the global South, the qualifying age of social pensions is so high that most older persons have died before reaching that age. This nullifies the right to a pension.

**2. Set standards for a socio-cultural minimum.** Older persons have the right to a pension that secures a socio-cultural minimum and enables participation in society. When it comes to standards of living and welfare benefits, human rights documents often use vague terms like “adequacy”. This should be specified to a socio-cultural minimum.[[3]](#footnote-3)

**3. Secure a legal base for old-age pensions.** The rights to an old-age pension ought to be laid down in statute[[4]](#footnote-4) or even be constitutionalised. Nationally defined "guarantees", as called for in the ILO Social Protection Floors, are not enough. A study of social pensions in the global South found that 40% of social pensions have a weak legal base,[[5]](#footnote-5) and this impairs the right to a pension.

**4. UN human rights law should take account of new forms of old-age security** that have spreadafter 1948, 1966, and 2002, that is, after the UDHR, the ICESCR, and the Madrid International Plan of Action on Ageing (MIPAA) respectively. Two major changes are not accounted for in either of these three documents:

4.1 The rise of **social** (i.e. non-contributory) **pensions** for older persons

One major change not accounted for in the three documents is the massive spread of non-contributory social cash transfers for the poor in the global South since the late 1990s, which include social (non-contributory) pensions for older persons. The rise of social cash transfers for the poor constituted a "development revolution from the global South"[[6]](#footnote-6), which for the first time bestowed social rights on millions of poor persons, including older persons. The idea of "just giving money to the poor"[[7]](#footnote-7) was remote in 1948 and 1966 (even though the ILO had always mentioned social assistance besides social insurance, most explicitly in Recommendation 67 of 1944, the Income Security Recommendation).

The rise of social cash transfers was reflected in the UN human rights systems as late as 2008, when the General Comment no. 19 on Article 9 ICESCR[[8]](#footnote-8) required “Non-contributory schemes … or targeted social assistance schemes”, including for older persons[[9]](#footnote-9). But non-contributory (“social”) pensions need to be spelt out and regulated in a human rights convention beyond the General Comment, since social pensions have become the mainstay of social security for many of the poor in the global South and only 50% of the Southern countries have set up a social pension.[[10]](#footnote-10)

4.2 The rise of **occupational and private pensions**

Another major change not accounted for in either of the three documents has been the rise of the middle classes in Southern countries and the attendant spread of occupational and private provisions. Push factors included the global campaign by the World Bank to spread private pensions, in conjunction with the globalization of financial markets ("financialization"). Occupational and private welfare are often forgotten in development and human rights debates. But human rights are not only geared to the poor, the middle classes also have a right to social security, and this may include private schemes. Moreover, there is social mobility. Some of the poor may move up on the social ladder and also seek private provision to complement public provisions for old age.

Occupational and private welfare largely depend on how they are regulated by the state. **Regulating private welfare**, therefore, is part and parcel of social protection policies and should also enter human rights law. The rights of workers to join an occupational pension plan need to be secured, against widespread discriminatory practices. The state may also impose rules on the management of the assets of funded private and occupational schemes and on the adequacy and equity of programme design, such as unisex tariffs or subsidies for families and the low paid.

1. Davy, Ulrike (2014) ‘How Human Rights Shape Social Citizenship: On Citizenship and the Understanding of Economic and Social Rights’, Washington University Global Studies Law Review, 13, 201–363. [↑](#footnote-ref-1)
2. Davy, Ulrike (2015) ‘Der “Universalismus” der Allgemeinen Erklärung der Menschenrechte: Die Arbeit am Konsens, 1946–1948’, in Bettina Heintz and Britta Leisering, eds., Menschenrechte in der Weltgesellschaft. Deutungswandel und Wirkungsweise eines globalen Leitwerts, Frankfurt and New York: Campus Verlag, 198–235. [↑](#footnote-ref-2)
3. See Social Code Book (Sozialgesetzbuch), part XII (Germany). For (lower, less distinctive) standards of „adequacy“ see ICESCR Art.9, 11; CRPD, Art. 28; MIPAA, par. 50, 52. But see ILO Convention No. 102, Art. 67. For a minimum with qualifications see ICESCR General Comment No.19, 2008, par. 59. For “basic social protection” and a “sufficient minimum” (relating to income protection) see MIPAA, par. 52, 53. [↑](#footnote-ref-3)
4. See ICESCR General Comment No.19, 2008, par. 11. [↑](#footnote-ref-4)
5. Leisering, Lutz (2019) The Global Rise of Social Cash Transfers. How States and International Organizations Constructed a New Instrument for Combating Poverty. Oxford: Oxford University Press. [↑](#footnote-ref-5)
6. Hanlon, Joseph, Armando Barrientos, and David Hulme (2010) Just Give Money to the Poor: The Development Revolution from the Global South, Sterling: Kumarian Press. [↑](#footnote-ref-6)
7. Hanlon, Joseph, Armando Barrientos, and David Hulme (2010) Just Give Money to the Poor: The Development Revolution from the Global South, Sterling: Kumarian Press. [↑](#footnote-ref-7)
8. See ICESCR General Comment No.19, 2008, par. 4, 23. [↑](#footnote-ref-8)
9. See ICESCR General Comment No.19, 2008, par. 15. [↑](#footnote-ref-9)
10. Leisering, Lutz (2019) The Global Rise of Social Cash Transfers. How States and International Organizations Constructed a New Instrument for Combating Poverty. Oxford: Oxford University Press. See also HelpAge International, http://www.pension-watch.net/social-pensions-database/social-pensions-database--/ [↑](#footnote-ref-10)