PATHWAYS' PERSPECTIVES

ON SOCIAL POLICY IN INTERNATIONAL DEVELOPMENT

WHY ARE HUMAN RIGHTS CONSIDERATIONS FUNDAMENTAL TO INCLUSIVE AND LIFECYCLE SOCIAL PROTECTION SYSTEMS?

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DEVELOPMENT
PATHWAYS

WHY ARE HUMAN RIGHTS CONSIDERATIONS
FUNDAMENTAL TO INCLUSIVE AND LIFECYCLE
SOCIAL PROTECTION SYSTEMS?

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A human rights-based approach to Social Protection entails framing social protection debates and policy decisions around entitlements rather than charity or handouts. The rights to social security[1] and a minimum standard of living are enshrined in both universal and regional human rights frameworks.[2] Beyond that, in many cases, they are mirrored in national legal frameworks and Constitutions that guarantee the right to Social Protection.[3]

These instruments around the right to social protection are legally binding, requiring an adequate institutional, legal and regulatory – including social protection operational regulations – framework within countries. Within this framework, States become duty-bearers and individuals are understood as rights-holders entitled to enjoy this right.

The 2030 Agenda recognises social protection as a key policy tool in achieving several of the goals including the eradication of income poverty, gender equality, and reducing income inequality.

To do so, countries are to implement nationally appropriate social protection systems and measures for all, including floors, and, by 2030, achieve substantial coverage of the poor and the vulnerable.

So, beyond the unavoidable fact of human rights being legally binding, why are human rights considerations fundamental to building inclusive and lifecycle social protection systems in line with governments' commitments to the 2030 Agenda? I set out some of the main reasons here:

Guiding principles and standards. Human rights provide a framework for the design and implementation of social protection programmes, services and policies through human principles and standards.

Human dignity becomes central. By establishing a social contract between the State and individuals, a human rights approach can enhance social cohesion and place human dignity at the very core of this relationship. As rightsholders, individuals become agents of change, also signifying a shift from being merely passive agents or beneficiaries.

Lifecycle perspective. Human rights considerations incorporate a lifecycle perspective based on human rights principles and standards. Individuals of all ages are right holders and vulnerable to shocks and risks of different types (including pandemics).
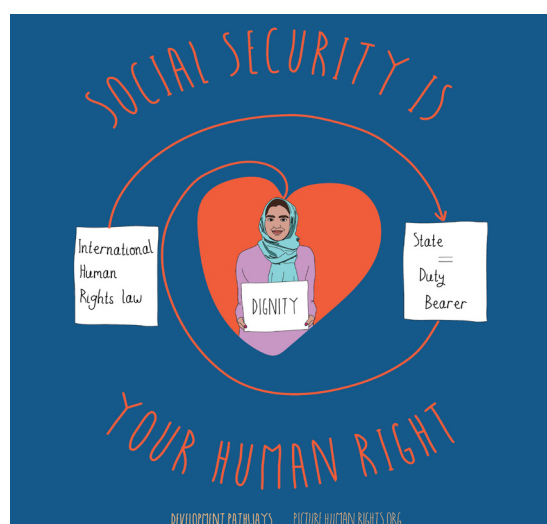
Source: Picture Human Rights and Development Pathways

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[1] As per Sepúlveda (2014), in this paper the concepts of the right to social protection and the right to social security are considered as synonyms, based on the work of the United Nations Committee on Economic, Social and Cultural Rights (CESCR).

[2] Including the following universal instruments: Universal Declaration of Human Rights articles 22, 25; International Covenant on Economic, Social and Cultural Rights articles 9, 10, 11; Convention on the Rights of the Child article 26; International Labour Organisation Social Protection Floors Recommendation, No. 202, and regional human rights instruments.

[3] Social protection entails both social security (contributory schemes and tax-financed schemes) as well as personal social services (including child and adult social services, and social care).

The latter aspect reinforces the need to ensure that people are covered throughout their lifecycle, making sure dignity is at the core of any social protection system.

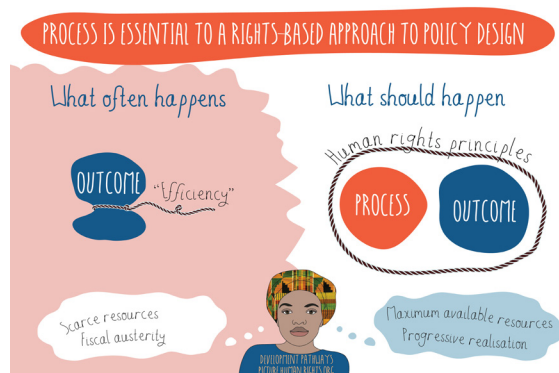**FIGURE 1: APPROACHES TO SOCIAL PROTECTION**

Human rights: social protection for all

Based on solidarity and entitlements

Charity: for "the other"

Based on an unequal relationship and the "deserving poor"

Source: Development Pathways

Inclusivity. Unlike a social protection approach that focuses primarily on issues around fiscal austerity and the "efficient" allocation of scarce resources by targeting the "poorest of the poor" (which is, in reality, impossible)[4] or "the other," a rights-based investment in social protection requires Governments to push for the use of the maximum resources available and for a progressive realisation of the right to social protection for all (as illustrated in Figure 1). This allows for inclusive social protection systems for all, not leaving anyone behind and not just providing for the "deserving" or "the other".

Shock-responsiveness. Inclusive social protection can build resilience to idiosyncratic risks that affect all of us at different times across the lifecycle. Due to the inclusive nature of universal lifecycle schemes, and the fact that they usually have larger coverage among a certain population (old age, children, persons with disabilities), they are also a more effective response to widespread covariate shocks as support can be rapidly increased to large numbers of the affected population. Universal lifecycle programmes reach a higher proportion of vulnerable households and offer up to date information, hence making a rapid scale-up of transfers possible.

The best way to develop shock-responsive social protection programmes is to strengthen the national core social protection system by developing an effective, lifecycle system that guarantees all citizens regular and predictable income transfers. Moreover, within the context of a pandemic,[5] the "deservingness" issue of who should receive government income or some other kind of support, is highly questionable. Many segments of society beyond those that poverty-targeted programmes consider "the poor" or "ultra-poor" are being pulled into income insecurity and vulnerability by losing their jobs as their employers close down. So, what is the best solution? Rights-based, inclusive and universal social protection is the best way forward, since pandemics do not choose who falls sick depending on an abstract construct of deservingness. As a matter of fact, pandemics are the consummate ghastly case to show that we are all in the same boat and that everyone is at risk of shocks, crises, diseases and poverty. Hence the need for inclusive lifecycle support from Government.

PROCESS IS ESSENTIAL TO A RIGHTS-BASED APPROACH TO POLICY DESIGN

What often happens

OUTCOME "Efficiency"

Scarce resources fiscal austerity

What should happen

Human rights principles

PROCESS OUTCOME

Maximum available resources Progressive realisation

Source: Picture Human Rights and Development Pathways

It is also about the process, not just the policy outcomes. A rights-based approach allows us to look at the entire policy process instead of just the desired outcomes of social protection public policies.

[4] Kidd and Athias (2019).
[5] Currently the world is being affected by the COVID-19 virus.

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As such, "states' obligations also apply to the content of their social protection policies, as well as in the process by which they implement them."[6] This includes the design, regulation, and implementation of social protection programmes and systems, from high level decision-makers through to social workers, street-level bureaucrats and local government officials tasked with on-the-ground implementation. Human rights principles must be applied to the entire process and not concentrate only on the outcome (which might be focused on human development outcomes, income security or poverty reduction, among others). The crux of the matter is for the whole process to incorporate principles such as dignity and non-discrimination, instead of just focusing on the efficiency in reaching the intended outcomes.

As such, the state is ultimately responsible for decisions made on social protection policy options and making sure that the progressive realisation of the right to social protection for all is achieved. But, how can this be done in practical terms?

WHAT TO DO: INCORPORATING HUMAN RIGHTS PRINCIPLES AND STANDARDS

Many people working on social protection believe that a rights-based approach to social protection is an abstract ideal, a mere ethical desire or an unattainable yearning from a few idealists or human rights advocates. But, is this really the case?

Not at all. Human rights frameworks - both at the universal and regional level (as in the case of the Inter-American system)- are built around indicators that are specifically tasked with assessing progress towards economic and social rights, including the right to social protection. These indicators are a grouping of socioeconomic indicators (many of them coinciding with human development indicators) combined with process[7] and structural indicators.

In practical terms, therefore, human rights principles and standards are highly applicable to the design and implementation of social protection programmes.[8] So, what are some of the principles and standards that social protection policy-makers should bring to the table when designing, assessing and implementing programmes and policies? Here are some ideas below.

Equality and non-discrimination. Social protection schemes must be available to all. States should ensure that nobody is directly or indirectly excluded from programmes and services based on factors such as age, race, gender or locality. Social protection must promote substantive gender equality and women's rights and consider the different experiences of men and women, and the lifecycle risks they face.

Source: Picture Human Rights and Development Pathways

Accessibility. Social protection systems should be barrier-free and inclusive and structured in a manner which ensures that everyone has equal opportunities to access social protection schemes. This may require special measures for particular categories of the population who may face additional barriers, such as those living remotely and/or with disabilities.

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[6] Sepúlveda and Nyst (2012).

[7] OAS (2015).

[8] These principles are adapted from: the CESCR General Comment No. 19, Sepúlveda et all (2012), Recommendation 202/2012 of the International Labour Organisation and UNRISD's Social Protection & Human Rights Platform.

Adaptability. States must guarantee that social protection programmes, services and materials are adapted to the needs of individuals, including persons with disabilities, as well as to local contexts and deprivations. They should also be culturally acceptable.

Adequacy of the benefits provided. States should ensure that social protection schemes provide quality services and benefits of an adequate amount and duration to enable all beneficiaries to enjoy an adequate standard of living, including ensuring that persons with disabilities enjoy equal opportunities to access the same standard of living as other citizens.

Ensuring the right to privacy. Social protection schemes must respect people's right to privacy and international standards on confidentiality when collecting and storing information identifying programme beneficiaries. This is particularly important in terms of the use of technology-based instruments and tools used to support social protection schemes.

Transparency and access to information. Social protection systems must provide transparent and comprehensive access to information and communications on all aspects of programme delivery and services provided. In the case of persons with disability, information is to be accessible according to specific needs. It must also be culturally appropriate and available in all relevant languages and forms.

Accountability. States must ensure access to accountability mechanisms, independent and effective complaints procedures and effective remedies. States and responsible parties in social protection systems are to be held accountable for decisions and actions that might have a negative impact on the right to social protection for all. Institutions' responsibilities need to be clearly defined and stipulated in a legal and regulatory framework to ensure accountability.

Participation. All citizens should have the right and ability to participate in all stages of social protection schemes – from design to implementation – and specific measures must be put in place to actively encourage and enable the participation of those experiencing structural discrimination. Human dignity is also to be at the centre of the participation process.

Incorporating these principles and standards in the design, monitoring and, ultimately, the implementation of social protection schemes is vital if we want to establish or consolidate inclusive social protection systems. These principles and standards can be incorporated into different inclusive lifecycle schemes that constitute progressive building blocks towards a comprehensive and inclusive social protection system.

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WHAT NOT TO DO: SOME SOCIAL PROTECTION "NO–NOS"

There has been a significant amount of research in the international development field with regard to evaluating the impact of social protection programmes and their impact on human capital, but less so on how these programmes fare vis-a-vis these human rights principles and standards. Significant progress has been made in incorporating a rights-based approach within social protection discourse, but this has not necessarily been carried over into the programming or implementation levels across the globe.

So, what are some of the "no-nos" that constitute a step back (or several) from a human rights approach to social protection (as illustrated in Figure 2)?

FIGURE 2: SET BACKS TO A HUMAN RIGHTS APPROACH

Source: Development Pathways

Othering and "deservingness".[9] As rightsholders, all individuals are entitled to social protection. It is not meant to only provide income support to "the needy" but also to provide welfare and coverage for risks and shocks faced by all citizens in any country. Providing social protection on the basis of group identities or characteristics might lead to a sense of "othering" and the development of policies for special groups or individuals who are regarded as "deserving" of support instead of aiming to ensure social protection for all. A universal approach, of course, is also much more conducive to strengthening the social contract. Basing policy design and implementation on "deservingness" is not the way to go and seems to be more reminiscent of "poor relief" policies and the old "poor laws" instituted centuries ago in Europe.[10]

Negative narratives around poverty. From a human rights perspective, poverty is not inevitable but is both a cause and a consequence of multiple violations of civil and political rights, as well as economic, social and cultural rights.[11] Indeed, poverty is a political choice.[12] From a capability approach, poverty has also been framed as a denial of human rights, based on the following propositions: that poverty can be seen as the failure to achieve basic capabilities; that many human rights can be seen as "capability rights" (rights to certain basic capabilities); and that poverty can be seen as the failure to fulfil, or deny, a range of human rights.[13] Nevertheless, negative narratives around "the poor" still abound, and they are often blamed for their own poverty. There has always been labelling around people experiencing poverty, stigmatisation around the receipt of social welfare for "the poor" and debates around so called temptation goods.[14] Misconceptions around scarce resources, and the need to target the poorest of the poorest[15] or the "deserving poor" is, as a result, at the centre of national and international policy debates.[16]

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[9] Othering can be defined as "a set of dynamics, processes, and structures that engender marginality and persistent inequality across any of the full range of human differences based on group identities" (Powell and Menendian, 2016).

[10] Ávila (2019).

[11] IAHRC (2017).

[12] United Nations Special Rapporteur on extreme poverty and human rights (2018 & 2020).

[13] Osmani (2005).

[14] Evans and Popova (2017).

[15] Kidd and Athias (2019).

[16] Report of the Special Rapporteur on extreme poverty and human rights, A/HRC/35/26, June 2017, p.4: "Social security and social protection was transformed, including through the explicit policies of the World Bank and the International Monetary Fund, into a minimalist notion of "social safety nets" designed to avoid the very worst outcomes and make the State look beneficent while empowering officials dedicated to devising ever more efficient "targeting" mechanisms and to rooting out overinclusion while playing down under inclusion."

But persons living in poverty have a right to be protected from the negative stigma attached to conditions of poverty. Besides, given that poverty is not inevitable – and is, intrinsically, linked to structural circumstances and exclusions – governments should examine in more depth the linkages between the nature of social protection policies and fiscal austerity measures and fiscal prioritisation.

Conditionalities and sanctions. Incorporating conditionalities and sanctions into social protection schemes and services can negatively impact on an individual's dignity and enjoyment of rights. Conditionalities and sanctions are usually aimed at changing "bad behaviours" of "the poor" and are not based on the recognition of their right to make their own decisions and respect their capacity to fulfil their own potential, or their sense of dignity. Likewise, the imposition of sanctions and conditions might lead to discrimination, humiliation and a lack of respect for privacy (such as naming and shaming and public lists of recipients in communities), the stigmatisation of recipients, humiliating and punitive welfare fraud campaigns, or undignified service delivery as people are treated as the – often undeserving – objects of charity.[17] As a large research project showcased for the case of the United Kingdom,[18] social protection services that are mainly focused on monitoring compliance with conditions, as opposed to providing support to people experiencing poverty or in vulnerable situations – or a benefit system built around sanctions and depersonalised services and packages by coercive, rather rather than supportive, welfare services – ultimately undermine national social security systems.

Unclear rules, unaccountable institutions. In some cases, countries designing or implementing social protection schemes do not establish clear programme regulations and operations nor make it obvious which institution/party is responsible for implementation. Unclear communications around a certain programme or service can lead to a lack of sense of entitlement of individuals, as they are not aware of the benefits being a right and, therefore, are seen as "hand-outs" or a gift from the Madame/ Mr. President or local authorities. This also applies to non-transparent rules and unclear rules and eligibility criteria for social protection programmes.

Insisting on social protection instruments that fall short on human rights considerations. All technocratic decisions or recommendations on social protection have human rights and political implications. Hence, neutral solutions do not exist. When technical advice is provided on social protection policy or programming within low and middle-income countries, serious thought needs to be given to the fact that, at the implementation stage, the policies and programmes that are being recommended are not just abstract constructs, but will impact heavily on the lives of actual individuals (rightsholders) and communities.

> **"...persons living in poverty have a right to be protected from the negative stigma attached to conditions of poverty."**

[17] Barrantes (2018).
[18] The Welfare Conditionality project in the United Kingdom has issued a number of reports and briefings.

There are several examples of social protection technocratic solutions that might hamper human rights:

Poverty-targeting tools. Targeting is not fully compatible with the right to social security for all, but is usually brought in by countries to direct (or rather ration) the budget towards the poorest of the poor. [19] A rights-based approach points towards universal social protection policies, based on social rights and non-discrimination, not just achieving the "best possible" results for a targeted part of the population.[20] As has been argued, while targeting is often treated as merely an administrative method, "the choice between targeting and universalism is quintessentially a political economy problem: it involves the choice of instruments for redistributing resources in society."[21] As the evidence from several low and middle income suggests, poverty targeting instruments are still very arbitrary and are not able to achieve the very objective they were created for: identifying the poorest in a society; as they leave most of those intended beneficiaries behind. And ultimately, there seems to be an over-focus on inclusion errors instead of concentrating on addressing exclusion. The latter is much more serious from a human rights standpoint.

Unlawful payment practices. Payment service providers for social transfers and financial inclusion actors have also been found to forget human rights principles and standards. Some examples include long waiting lines under the scorching sun, no real accountable mechanisms to channel complaints, payments being withheld if payday is missed, or a lack of respect for the right to privacy for programme recipients or consumer rights.[22]

Technological state surveillance of "the poor". Another feature that can be seen in low- middle- and high-income countries alike, is a set of tools or policy solutions that are aimed at the policing or surveillance of "the poor" or benefit recipients. A recent example of such a tool can be seen in the Netherlands, where a System Risk Indication (SyRI) allowed government authorities to analyse data to determine risks of benefit fraud and was used exclusively on low-income residents, migrants and ethnic minorities. This, of course, undermines the rights to privacy and social security as well as stigmatising people experiencing poverty or needing to use certain Government services.[23]

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[19] Barrantes (2017).
[20] Lavergne (2012).
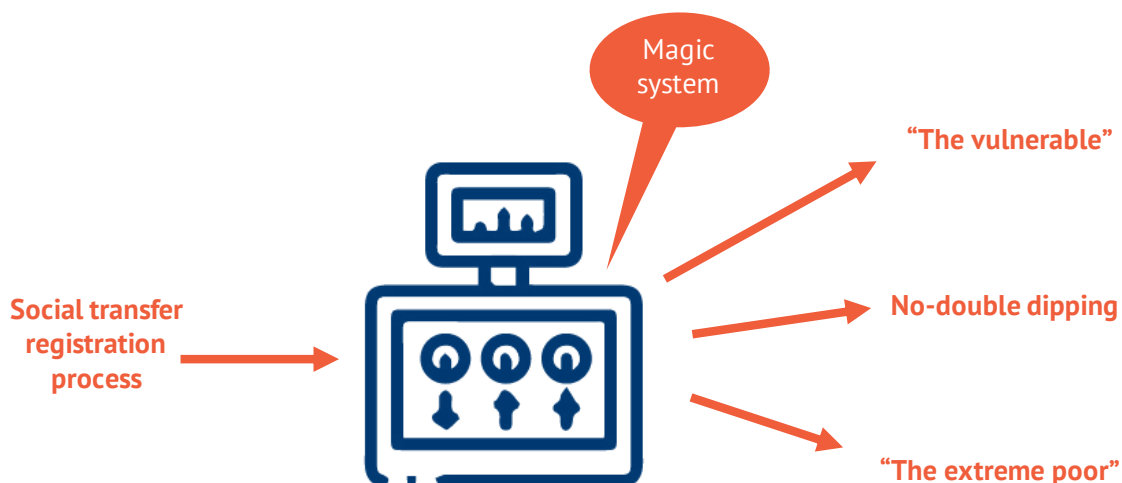[21] Mkandawire (2005).
[22] Kidd and Langhan (2019).
[23] Kidd and Langhan (2019).

There are, increasingly, more and more examples due to the fact that social protection systems are utilising technology and digital data not only to automate but to also "identify, surveil, detect, target and punish"[24] as well as determine who deserves to benefit from a certain programme.[25] It is quite common in policy design discussions to hear issues around wanting to make sure that potential beneficiaries are not "taking advantage" or cheating, as well as avoiding the supposed "double dipping" of services and or programmes. The latter, from a human right perspective seems rather worrying, considering individuals should be able to access a wealth of services and/or programmes depending on the specific risks or vulnerabilities they might face across their lifecycle.

There seems to be in the social protection world – in my view – wilful blindness in trusting that all technocratic solutions (such as some of the technological tools and systems being used) are indeed the best response to support different programmes and services (see Figure 3 on magical social protection systems). Again, many of these solutions seem to be aimed at making sure scarce resources are targeted towards the "deserving poor" or the "undeserving poor" with the application of sanctions, instead of ensuring an inclusive approach of incorporating all individuals as right holders.

FIGURE 3: MAGICAL SOCIAL PROTECTION SYSTEMS

Magic system

"The vulnerable"

No-double dipping

"The extreme poor"

Social transfer registration process

Source: Development Pathways

[24] United Nations Special Rapporteur on extreme poverty and human rights (2019).
[25] Cunha and Ivo (2019).

SO, WHAT DOES AN INCLUSIVE AND RIGHTS-BASED SYSTEM LOOK LIKE (VERSUS CHARITY HAND-OUTS)?

An inclusive lifecycle social protection system (see Figure 4) requires governments to base their policy design and programme implementation on human rights principles and build national legal and regulatory frameworks that acknowledge the right to social protection and the right to an adequate standard of living. Since individuals of all ages are rightsholders and vulnerable to shocks and risks of different types, governments need to ensure that people are covered throughout their lifecycle, making sure dignity is at the core of any social protection system. The design of the system and the underlying policies needs to be constructed on principles of dignity and be implemented using these standards throughout the whole process.[26] In other words, they should be programmes that have the kind of quality that we would all want to access whenever we are in need.

If governments – and development partners providing policy advice to low and middle-income countries – base their social protection provision on negative narratives around poverty and the "deserving and undeserving poor", instead of focusing on inclusive lifecycle systems, ultimately they are fragmenting service delivery systems based on different audiences (services for the poorest, the non-poor, those more prone to shocks and risks, etc.), and are bound to fail in their endeavour to comply with the Sustainable Development Goals (SDGs) and "leave no one behind." Leaving no one behind can only be achieved by inclusive systems that incorporate human rights principles and standards, commit to respecting the inherent dignity of every human being, and invest in sound and inclusive systems instead of palliative poverty-targeted approaches.

FIGURE 4: INCLUSIVE LIFECYCLE SOCIAL PROTECTION
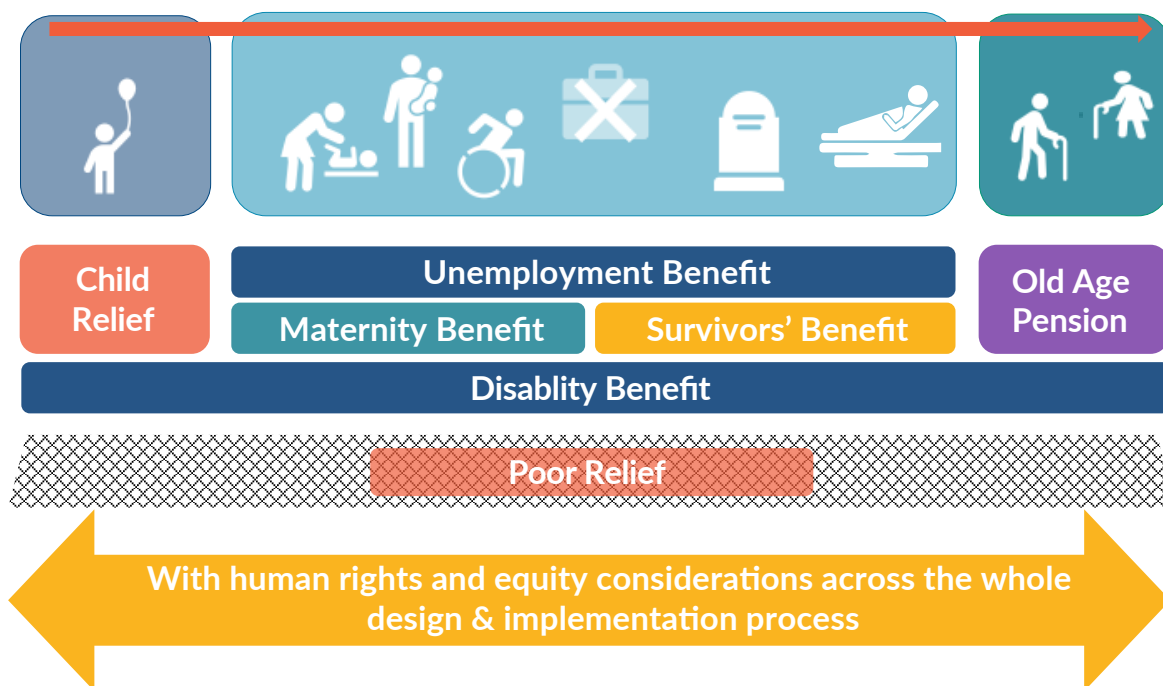
Source: Development Pathways

[25] Barrantes (2017).

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NOTE:
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