

Gender, poverty and the development of the right to social security

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Abstract

The international right to social security has been given limited attention as a vehicle for addressing women's poverty. This paper highlights some of the issues shaping women's poverty globally that require a more responsive right to social security. It discusses the nature and purpose of social security and examines the international law relating to this right, arguing that recent interpretations lack an adequate framework for ensuring women's interests are fully accommodated. The paper challenges the relationship between the right to social security and traditional conceptions of work that exclude women's labour. It also argues that the right must have application at the transnational level if it is to address the changing nature of women's work. Drawing on ideas of substantive equality, it proposes an approach to the development of the right from a gender perspective including a set of principles to be followed in applying the right.

I Introduction

In every country of the world, women are overrepresented among the poor due to a range of inequalities – social, cultural, political and economic – that serve to exclude them from full and equal participation in society. Multiple responses are required to address gendered poverty, including structural economic reforms at the global and domestic level alongside political, social and cultural transformations. The provision of social security is one component of the response to this situation. However, simply providing social security without consideration of the gender dimensions of poverty may ignore and even reinforce underlying inequalities facing women. This paper argues that the international human right to social security, developed from a gender perspective, can assist in ensuring that social security responds to women's poverty and disadvantage.

The paper begins by setting out the concepts and terms relating to social security and how its purpose is understood here. Thereafter, it considers the right to social security in international law and explores recent developments in the interpretation of this right. It argues that this interpretation fails to address the complex circumstances of women and the need for a rights framework that ensures that gender equality is promoted through social security. The paper outlines key features of women's poverty in a global context alongside feminist insights into the factors that contribute to this, and explores some of the gender discrimination that occurs within social security. It proposes a gendered approach to the right to social security. This necessitates an understanding of the labour that women perform and how it has been overlooked in traditional conceptions of work that underlie the right to social security. The paper also requires the right to social security to reach women at both the national and transnational level, given the changing nature of work, related to globalisation and labour migration. A gendered approach to the right to

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social security is strongly informed by the relationship between the right to social security and the right to equality. This approach draws on transformative understandings of substantive equality and informs a set of principles for a substantively equal, gendered right to social security.

II The nature and purpose of social security

Social security is a central feature of the modern welfare state that emerged from late-nineteenth-century Europe in response to the social problems of industrial capitalism (Townsend, 2009, p. 52). Every country in the world has some form of social security, but only one-third of these countries (inhabited by just over a quarter of the world's population) have comprehensive social security that covers all areas including old age, unemployment and health care (ILO, 2010, p. 1). For those in the working-age population and their families, the International Labour Organisation (ILO) estimates that just 20 per cent have such protection worldwide (ILO, 2010, p. 1). While high-income countries spend as much as 19 per cent of GDP on social security, low-income countries spend around 4 per cent of GDP (ILO, 2010, p. 3).

Social security takes a range of forms and is provided as social transfers from one group in society to another group in cash or in some other way (such as goods or social services) (ILO, 2011a, p. 9). Social security takes three main forms (Townsend, 2009, p. 36; ILO, 2011a, pp. 9–10): *Social insurance* is a form of social security generated from contributions by the individual earner, the employer and sometimes also by the state, generally paid out for a period of time to meet certain contingencies. It is prevalent in developed countries, particularly in Europe, and is also available in some developing countries for the small proportion of formal sector workers. Social transfers may also be non-contributory and financed through the tax system. *Universal* schemes may be available to all residents or to all members of certain groups such as the elderly. *Social assistance* is a form of social security for qualifying groups facing poverty or life-cycle circumstances requiring support. It is generally targeted at such groups, usually by way of a means test. It may take the form of tax-financed transfers or grants, but may also take the form of tax-credits. In recent years, social assistance in the form of cash transfers have gained importance in many low- and middle-income developing countries, with prominent examples being found in Brazil, Mexico and South Africa (see UNDP, 2011). Cash transfers may be conditional (for example, applicants must show that their children are attending school), described as Conditional Cash Transfers (CCT), or unconditional (ILO, 2011a, p. 9).

Social security includes access to health care and the provision of social services, alongside income support (Reidel, 2007, p. 21). Social security can be provided from a range of sources, sometimes in combination with each other, including the state, employers, employee and individual contributions, communities, families and non-governmental agencies (ILO, 2011a, p. 10). Social security schemes are sometimes privately funded and managed and may even include community-based schemes. Where the state is not the direct provider of social security it has an important regulatory function, as do international organisations and institutions (Townsend, 2009, p. 38).

The term 'social security' is often used interchangeably with the term 'social protection' (ILO, 2010, p. 13). However, the latter term bears a number of other meanings as well. Social protection is sometimes used to refer to the results of the provision of social security, since social security protects people facing a range of difficult circumstances. 'Social protection' can be understood very broadly to include all anti-poverty and development measures (Sabates-Wheeler and Kabeer, 2003), and it can also be used more narrowly than 'social security' to refer to measures to address the most vulnerable groups facing poverty (Barrientos, 2013, pp. 25–26). The idea of social protection floors requiring the provision of basic social security guarantees is a recent innovation of the ILO.¹

1 As formalised in ILO Social Protection Floors Recommendation, 2012 (No. 202).

There are many purposes of social security articulated by a range of groups, often related to their different ideological positions. These correspond to contested ideas about the causes of and responses to poverty and inequality, and about the role of the state in a market economy (Carney, 2006). While some see social security providing a residualist function in times of crisis, others see it having a broader role in addressing economic disadvantage in society (Reynaud, 2007, pp. 4–5). This paper sees social security as providing both a safety net for individuals in times of difficulty, throughout the life-cycle, while also playing a broader redistributive role in ensuring that wealth is shared in society, based on principles of equality and dignity. As with social policy more broadly, social security can be designed and used to mitigate inequalities and contribute towards shaping progressive social outcomes. From a human rights perspective, social security should be understood as a rights-based entitlement rather than a concessionary benefit.

III The right to social security

The recognition of a right to social security first appeared in 1948 in Article 22 of the Universal Declaration of Human Rights (UDHR), as follows:

‘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.’

Article 25 is closely related to Article 22:

- (1) ‘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 other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.’

Earlier reference to social security was made in the Declaration of Philadelphia of 1944, adopted by the International Labour Conference, which listed as one of the obligations of the ILO:

‘the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care.’ (III(f))

A right to social security was included in the International Covenant on Economic, Social and Cultural Rights (ICESCR), making it a binding obligation on States Parties that join this treaty.² Article 9 says that ‘The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance’.

The right to social security also appears in a number of other human rights conventions, in the human rights instruments of many regional bodies and in the constitutions and legislation of many States (ILO, 2011b). Of particular interest from a gender perspective, the right to social security is

² There are 70 signatories to the ICESCR out of 162 States Parties as at 29 April 2014, online: <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en>.

referred to in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) relating to the employment rights of women (Article 11), and the social and economic rights of women (Articles 12 and 13), with a special mention of the rights of rural women (Article 14(2)(c)) (see Raday, 2012; Banda, 2012; Pruitt, 2009). The ILO has played a major role in setting standards for social security for almost a century. During the past decade, the ILO has consciously articulated its social security role in terms of human rights. In 2012 the International Labour Conference produced the Social Protection Floors Recommendation (No. 202) to guide members on the provision of basic levels of social protection alongside the extension of their social security systems in pursuit of the right to social security for all.

The most detailed elaboration of the right to social security by a United Nations treaty body is General Comment No. 19 on the Right to Social Security produced, in 2007, by the Committee on Economic, Social and Cultural Rights (CESCR), which is responsible for the ICESCR.³ While a full examination of the international law on the right to social security is not possible here, this paper will briefly consider this General Comment, from a gender perspective.

3.1 CESCR General Comment No. 19

The General Comment (at para. 2) defines the right to social security as follows:

‘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.’

This definition follows the ILO’s Social Security (Minimum Standards) Convention, 1952 (No. 102) in linking income support to work interruptions based on nine contingencies. While the General Comment recognises that social security plays a role in poverty alleviation (at para. 3), it fails to move from the traditional work-related formulation of social security to a broader inclusion of causes of poverty, such as lack of housing and food, and natural disasters and emergencies (Langford and King, 2008, p. 505). For millions of women who have no access to formal employment, this definition is problematic. The ILO has itself begun to define social security more broadly by including a fourth category in the definition – ‘general poverty and social exclusion’ (2010, p. 13). Accordingly, the General Comment lags behind recent advances in this area by remaining tied to a traditional definition that fails to acknowledge large sections of the population facing poverty, predominantly women.

In addition, by restricting itself to the ILO’s nine contingencies, the General Comment fails to mention other contingencies that may be specific to working women, such as domestic violence, a frequent cause of work interruption for women. Violence and sexual harassment affect many women’s earning capacity, requiring them to leave or move jobs or remain unemployed (McFerran, 2011). Caring functions, often performed by women, are not listed as a contingency, since the focus is on the worker who cannot work due to disability (for example), rather than the

3 Committee on Economic, Social and Cultural Rights, *General Comment No. 19: The Right to Social Security (Art. 9)* (2008) UN Doc E/C.12/GC/19.

carer of such a person, whose work may also be affected. Thus, the sickness, disability, injury and old age of those depending on the care of another person, whose income is affected by these obligations, are also contingencies against which the right should protect.

Despite the shortcomings in the definition, the General Comment pays specific attention to gender issues. It notes that the obligation to ensure the right to social security is ‘enjoyed without discrimination, and equally between all men and women . . . pervades the Covenant’ (para. 29). It devotes specific attention to gender equality (para. 31). First it cross-refers to the earlier CESCR General Comment No. 16 on the equal right of men and women,⁴ which highlighted (at para. 26):

‘equalization of the compulsory retirement age for both men and women; ensuring that women receive equal benefits in both public and private pension schemes; and guaranteeing adequate maternity leave for women, paternity leave for men, and parental leave for both men and women.’

It then adds the following (at para. 32):

‘In social security schemes that link benefits with contributions, States parties should take steps to eliminate the factors that prevent women from making equal contributions to such schemes (for example, intermittent participation in the workforce on account of family responsibilities and unequal wage outcomes) or ensure that schemes take account of such factors in the design of benefit formulas (for example by considering child rearing periods or periods to take care of adult dependents in relation to pension entitlements). Differences in the average life expectancy of men and women can also lead directly or indirectly to discrimination in provision of benefits (particularly in the case of pensions) and thus need to be taken into account in the design of schemes. Non-contributory schemes must also take account of the fact that women are more likely to live in poverty than men and often have sole responsibility for the care of children.’

This paragraph raises a number of important issues. It gives further content to CESCR General Comment No. 16 by showing how equality in public and private pension schemes can be achieved. By recommending that States Parties remove factors that create unequal wage outcomes or address the impact of family responsibilities, presumably by providing, for example, child care or equal wage laws, the General Comment hints at more structural changes to the workplace, economy and society. This substantive and more far-reaching approach is needed if gender inequalities in social security are to be addressed. Similarly, by requiring States Parties to take account of care responsibilities in calculating benefits, the General Comment goes considerably further than most countries are doing at present and renders visible care work that is so often naturalised and ignored. The acknowledgment of women’s poverty reflects a recognition that women generally earn less than men and face greater financial hardship. Again, women’s unequal care burden is acknowledged. Elsewhere in the General Comment there is specific mention of domestic work and homework (para. 31), both women-dominated forms of work that have had limited visibility and protection in the past.

The paragraph does not, however, expressly note that women are often involved in unpaid subsistence labour, work in family enterprises, and in household and reproductive labour, which means they have no opportunities to access contributory social insurance. Their labour is not seen as work. The paragraph also makes no reference to violence against women, alongside other cultural measures that serve to restrict and control women’s access to work and to social security.

4 Committee on Economic, Social and Cultural Rights, *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (art. 3)* (2005) UN Doc E/C 12/2005/4.

While the detailed elaboration of the meaning of the right to social security by the CESCR in General Comment No. 19 is welcome, a more fully developed gender-based approach to the right is needed. Before looking at what might inform such an approach, this paper considers the circumstances in which gender shapes women's poverty, including their relationship to work and to social security.

IV Gender, poverty and social security

4.1 Women's poverty in a global context

Women throughout the world, in developed and developing countries alike, face disproportionate poverty, un- or under-employment, poorer working conditions, and greater responsibilities for the care of others than their male counterparts. Recent decades have seen positive changes in certain development indicators relating to women and girls in many parts of the world, including educational enrolment and labour force participation (World Bank, 2011). However, despite their increased access to work and income opportunities, women predominate in the informal sector, in unpaid work in family enterprises, in less profitable agriculture and other business, and in the lowest paid jobs (UNRISD, 2010, pp. 111–119). As a consequence, women in all countries generally earn less than men (World Bank, 2011, pp. 16–17). While employment of women has increased, less than half of the world's women have income-producing work, as opposed to nearly four-fifths of the world's men (World Bank, 2012).

As a result of the negative impact of neoliberal economic policies on women in the developing world (Elson, 2002), the majority of women are located in precarious informal work, including migrant labour, which is inadequately protected (Standing, 2011, pp. 60–63; Kabeer, 2008, pp. 32–33). Globalisation has resulted in growing international migration flows that are increasingly feminised as women migrate to provide care and other labour elsewhere in the world or within states (Fudge, 2012). This work is often exploitative, dangerous and precarious. Women migrant workers are particularly vulnerable. Many take on domestic work in the unprotected confines of private homes, or engage in the sex trade and are trafficked (Ehrenreich and Hochschild, 2002). Women migrate to richer countries to perform care work in part to meet 'care deficits' caused by the increasing entry into the labour market of women in the developed world (Fudge, 2011). The migration of these women workers is in turn causing 'care deficits' in their home countries, where they have left children and other dependants (Hassim, 2008). The growing 'feminisation of labour' has seen women take the bulk of casual and seasonal jobs and work in export processing zones without any expectation of an adequate wage or benefits (Standing, 2011, p. 60). The increasing casualisation and informalisation of work ensures flexibility for employers and reduced social responsibility for corporations and states (Razavi, Arza, Brunstein, Cook and Goulding, 2012, p. xxii).

These changes, accompanied by globalisation, have resulted in growing inequality, insecurity and the loss of workplace rights for workers (Standing, 2011, p. 14). Unemployment, underemployment and low-earning self-employment and subsistence work is a reality for most workers in developing countries and many in the developed world (World Bank, 2012). In fact, the model worker around whom social security standards were designed (the formally employed, full-time, male breadwinner) (Lamarche, 2002) is rapidly becoming a rarity in global terms. Women are particularly vulnerable to these forms of precarious work (Razavi *et al.*, 2012, p. xxii). There has been a 'feminisation' of work in terms of its gender composition alongside a 'feminisation' of working conditions amounting to deregulation, discrimination and reduced protection (Sabates-Wheeler and Kabeer, 2003). Women also engage in homework for multinationals and face harsh working conditions on the bottom rungs of their own societies' labour markets. A further impact

of globalisation occurs where land is sold to multinationals, affecting women's subsistence livelihoods (UN Women, 2013, pp. 3–4).

The increasing number of women in the labour market has not seen a reduction in their caring responsibilities, nor an adequate societal response to this unequal burden (Razavi and Hassim, 2006, p. 7). In fact, increased life expectancy has meant that women are now caring for both children and elderly relatives while also needing to earn an income – a 'triple burden' (Standing, 2011, p. 61). The global financial crisis since 2008 has added to the struggles of poor women. Higher food prices, job losses, austerity measures and cuts to development aid have deepened vulnerability in rich and poor countries (Ortiz and Cummins, 2012, pp. 4–7).

4.2 Discrimination underlying women's poverty

The gender dimensions of poverty are causally related to women's unequal position in all realms of society – family and community, the economic and the political. Feminist legal theorists have highlighted the way in which different roles are allocated to men and women, through the law, within the public and private spheres (for example Olsen, 1983; O'Donovan, 1985; Boyd, 1997). The division of labour in the family restricts women's access to the labour market (Fineman, 1995, 2004). This means that women are generally poorer than men and have less power, status and influence both in the home and in society. The 'feminisation of poverty', a term coined to describe the growing number of women who comprise the poor, has been used to record this phenomenon at both the micro-level of home and family and at the macro-level within nations and globally (Chant, 2006). Women are primarily responsible for caring in society, an activity which is devalued, usually unremunerated or poorly paid, and which restricts women's entry into other parts of the labour market (Williams, 2000; Rhode, 1999; Mahony, 1995). Subsistence work is also women-dominated and, along with care-giving work, is usually poorly paid or unpaid. Feminists working in development and economics have pointed to the significant unpaid and invisible contribution that women make to the economy through such work (Waring, 1999; Kabeer, 2008, pp. 28–29).

In addition to general disadvantage experienced by women as a result of their gender, specific groups of women face heightened inequality as a result of further forms of discrimination based on factors such as race, disability, age, religion, ethnic and indigenous status, or geographical location. This discrimination often translates into economic disadvantage, affecting vulnerable groups of women's access to resources, and results in greater poverty. Violence against women, prevalent worldwide (WHO, 2014), is sometimes used to control women's access to property and often contributes to the impoverishment that follows when women leave abusers. Legal and cultural barriers prevent women in many parts of the world from owning land and other property (Pruitt, 2009). It is estimated that just 1 per cent of the world's women own land (UN Women, 2013, p. 3). Even where women do own resources or bring in income they may not be able to fully access or control these in patriarchal settings where men are designated household heads (UN Women, 2013, p. 7). Women also encounter stigma and stereotyping in a range of contexts that have bearing on their economic access (Cook and Cusack, 2010, p. 22). For example, women applying to rent property or for bank loans may be turned away because they are seen as incapable of managing money. Women also face exclusion from political representation, decision-making and full participation in many parts of the world, which has an impact on their life chances and material position.⁵ The many facets of discrimination against women, discussed here in brief, contribute to gendered poverty across the globe (Fredman, 2011a).

5 (2013) *Report of the Working Group on the Issue of Discrimination against Women in Law and in Practice (Political Representation and Participation)*. UN Human Rights Council (23rd Session) UN Doc A/HRC/23/50.

4.3 Gender and social security

As noted, social security is one of the means to address women's poverty and disadvantage. The absence of adequate or appropriate social security adds to the poverty burden faced by women. Where social security does exist, it sometimes discriminates directly against women, but more usually does so indirectly (Sepúlveda and Nyst, 2012, pp. 32–33). Direct discrimination may occur where women are deliberately excluded from participating in a scheme. Indirect discrimination may occur where, for example, social assistance payments are provided to household heads. Since these are usually men because of patriarchal assumptions in families and the wider society, such an approach may have a discriminatory impact. Men are less likely than women to use the income for the benefit of the whole household (Bradshaw, 2008). Access to social security is in some cases more difficult for women who face the danger of violence when collecting payments, or within households where men attempt to attach or control women's income (Goldblatt, 2005). Women's caring responsibilities for children, the elderly and sick are often unremunerated or unacknowledged in social security provision and very little has been done through social security measures to challenge the lack of involvement of men in the care and support of families (Razavi, 2011b).

Even where women are in the workforce, they often work part-time, are poorly paid, have smaller social security entitlements and hence still rely on men for support. Welfare states in the developed world and under state socialism have proved generally deficient (to varying degrees) in addressing sex/gender discrimination in relation to pay and the status of women's work, and in relation to their reproductive and caring functions in those societies (Razavi and Hassim, 2006, p. 7; Fraser, 1989, 1994). While some European countries have tried to address the impact of the gender wage gap and work interruptions faced by women assuming caring functions (Luckhaus, 2000, pp. 168–169), many countries perpetuate gender inequalities through gender 'neutrality' or indirectly target women through cutbacks to existing programmes. In some countries, welfare provision has become increasingly punitive, especially for single mothers, with recipients stigmatised, stereotyped and burdened with conditions (Fraser and Gordon, 1994; Williams, 1994). Welfare restructuring and cutbacks since the 1980s have been accompanied by a corrosive discourse that casts women recipients of welfare as irresponsible, immoral and lazy, and that sees dependency as deviant (Fineman, 1995). Recent austerity measures since the global financial crisis of 2008, often involving reductions to single-parent payments (Goldblatt and Lamarche, 2014), have also been accompanied by negative discourse.

In the developing world, the lack of adequate welfare safety nets has a significant impact on women's poverty (UNRISD, 2010, pp. 107–134, 185–206). In the past decade some of the middle-income developing countries have introduced social assistance programmes that have had marked impacts on human development (UNDP, 2011). While traditional social security systems were often designed around male-dominated formal employment, more recent programmes in developing countries have tried to address this imbalance by specifically targeting women (as citizens rather than as workers). Social assistance programmes targeted at women in some developing countries have had positive results, but many gaps in provision remain and certain problems have emerged. The development literature illustrates how policies can reinforce existing gender inequalities based on patriarchal assumptions about work, family and the economy (Chant, 2008; Bradshaw, 2008). Some of the programmes targeted at women have the effect of perpetuating gender divisions by making women responsible for care, yet addressing women's disproportionate responsibility for care in these societies has been highlighted as a critical consideration for social protection policy (UNRISD, 2010, pp. 185–206; Williams, 2010; Razavi, 2011b). Conditions that are attached to such assistance often impose additional burdens on women (Molyneux, 2008; Lund, Noble, Barnes and Wright, 2009).

At the global level, women worker migration results in a range of challenges around social security provision and rights (Lister *et al.*, 2007) – the social insurance and other rights of the migrant workers and the complexities of claiming rights as non-citizens; the adequacy of the social security systems in destination countries in meeting the rights of women workers and their dependents; and the rights of women and their dependants in the countries from which they originate.

This overview has highlighted the nature and causes of women's poverty and the gender issues implicated in social security systems in both developed and developing countries. Feminists working within the social policy and development fields have proposed a variety of approaches to ensure that social security addresses women's poverty while also promoting gender equality. Many of these writers place value on a human rights approach to underpin their proposals (Waring, Mukherjee, Reid and Shivdas, 2013; Holmes and Jones, 2013; Sen, 2011; Razavi, 2011a; Sabates-Wheeler and Kabeer, 2003). The next section proposes a gender-based approach to the right to social security and a set of principles for ensuring that the right is interpreted and applied following such an approach.

V Developing the right to social security from a gender perspective

This paper focuses on three main areas in developing an approach to the right to social security from a gender perspective. First, it proposes a rethinking of the way 'work' is understood for the purpose of the right to social security that takes account of the full range of women's experience. Second, it suggests that the right must have application beyond the level of the nation-state if it is to reach women in need of social security in a globalised workforce. Third, it draws on transformative understandings of substantive equality to embed gender equality within the right to social security, taking account of the diversity of women. Finally, a set of principles for a substantively equal, gendered social security right are advanced.

5.1 Rethinking 'work' in the right to social security

While the ILO's Social Protection Floor Recommendation and wider international use of the term 'social protection' is drawing poverty into understandings of the scope of social security, the narrower worker-oriented definition of social security still has prominence in human rights law, as discussed above in relation to CESCR General Comment No. 19. 'Work' is central to the meaning of social security in this definition since it is the absence of 'work-related income' that prompts the operation of the right. Thus, it is essential to deconstruct the meaning of 'work' as it is used in human rights law, to consider what work means for the world's women, and to redefine this core concept to better reflect these realities. This is important for two reasons: first, it means that where social security is linked to work, greater numbers of women workers should be given access to social insurance benefits by being brought within the definition of worker; and second, it suggests the concurrent need to ensure that social security, delinked from work, is also available to all who need it (often women) as a citizenship entitlement (in the form of universal schemes and social assistance).

In order to appreciate the different dimensions of women's labour⁶ and other activity, the following categories are discussed: reproductive work (unpaid and paid); productive work (formal and informal that is paid and unpaid); and non-productive activity.

Reproductive work is both unpaid work in the home and paid domestic work. It can be formalised or informal. Because unpaid reproductive work (household labour and care activities) is located in

6 There is a long-standing consideration within feminist theory of the nature of women's work and its role in the production of commodities and the reproduction of labour (for example Barrett, 1981; Walby, 1986).

the home it is deemed private and is not recognized as work. It is seen as the 'natural' responsibility of women and separate from the public world of work, where labour requires remuneration and (sometimes) social security.

Productive work can be formal work that is paid⁷ (recognising that this in itself is gender defined, i.e. certain jobs are reserved for women at lower status and pay) and informal work that is paid but unregulated. It can also include work that is unpaid, such as subsistence work or work in family enterprises where women receive no income for their labour. As with unpaid reproductive work, this type of labour is 'privatised' and seen as falling outside the employment contract.

Note that some of these categories are concurrent, such as unpaid reproductive and unpaid or paid productive labour. Women may perform different types of work simultaneously, for example by looking after children while engaging in homework for income and also undertaking unpaid subsistence work such as collecting water or looking after livestock. Paid care work is both reproductive and productive work. In fact, care work highlights the blurring of the boundaries between these different types of work and the fact that these categories are used to justify hierarchies of reward.

Non-productive activity must also be acknowledged as a dimension of human experience. Not every person is able to engage in reproductive or productive labour due to their age, disability or illness. Yet such people are part of society and have equal entitlement to the fundamental preconditions for a dignified life (Fineman, 2010; Nussbaum, 2006). Non-productive activity requires recognition in the conceptualisation of social security as a social good that meets the needs of all people, regardless of their capacity to produce. In many cases it is only a person's initial location within paid productive labour that allows for the recognition of their inability to work that in turn entitles them to social security of any sort. Yet structural unemployment, together with discrimination, mean that for millions of women a paid job is not attainable in their lifetimes. Social security should be available as of right for those who have no access to the labour market in the first place – predominantly women – as well as for those who are unable to work.

Social security is generally linked to formal work which is just one of the categories of women's work. Even then, the benefits attaching to formal work do not always extend to forms of formal work such as part-time or casual work, in which women predominate. The small formal sector in the developing world and the shrinking formal sector in the developed world mean that social security linked to work is limited in most countries of the world. The past decade has seen important growth in social assistance in Latin America, Asia and Africa, often directed at women (UNDP, 2011). While social assistance is usually the major form of income support where it exists, it is often minimalist in developing countries (UNRISD, 2010, pp. 107–134) and facing attrition in many developed countries (Goldblatt and Lamarche, 2014). In addition, social assistance, without efforts to recognise women's existing contribution through unpaid work, to bring women into work, or to formalise informal work with attendant benefits (Heintz and Lund, 2012), is not enough.⁸

This requires two responses. First, the work that women already do (reproductive and productive) should be recognised as work that attracts social insurance rights. This should occur alongside the generation of additional opportunities for work and livelihood for women, and the restructuring of society's approach to employment and care-giving work (Fraser, 1994). Second, and at the same time, social security must be understood as an entitlement, not related to an individual's location

7 Unpaid formal work can take the form of community work and volunteering. Much of this work is provided by women.

8 Maxine Molyneux (2012) has noted that 'women want the means to escape poverty, not just the means to manage it'.

within the labour market, that is provided through universal schemes or as social assistance, in a manner that promotes gender equality.

5.2 Application of the right to social security beyond the national level

Women's work in its multiple forms is crossing borders in a range of new ways, with profound implications for their working conditions, family responsibilities and entitlements. Globalisation has led to a situation where a woman from country A might be employed by a company located in country B in a workplace in country C with her family remaining in country A or accompanying her to country C. The issues of transnational commerce, global work flows, and multiple levels of labour regulation (or lack thereof) require a right to social security that has the flexibility to accommodate work (and its absence) across national boundaries.

Writing in the field of legal geography has employed the geographical concept of 'scale' used in mapping to focus on the impact of law and justice at different levels of spatial and legal experience (Pruitt, 2008, p. 383).⁹ Nancy Fraser has drawn on this geographical idea of scale in combination with the metaphor of justice as the balancing of scales to think about ways of applying her theory of justice in a world that is no longer operating purely on the basis of territorial delimitations (2008, 2010, 2011). Fraser (2008) has noted an historical focus on the territorial state as the site of citizenship entitlements and a growing contemporary awareness that social and economic issues 'routinely overflow national borders' (p. 13). She argues that political space has been 'misframed' to exclude certain groups such as the global poor (what she terms the 'transnational precariat') from justice claims. Ideas of justice are often framed as citizenship entitlements that are restricted to members of nation-states without addressing what she terms 'transborder injustices' (p. 2). Her concern is with the question of *who* 'counts as a bona fide subject of justice' (p. 5) and *how* justice can be achieved rather than just *what* the idea of justice contains. For Fraser, 'scale' is a conceptual device or lens to ensure that justice (in all its dimensions) takes account of transnational realities in this 'politics of framing'.

Fraser's notion of 'scale' or 'framing' within her political theory of justice has value in developing a right to social security that has relevance and application to multinationals with workers in many countries, migrants who are often denied rights in the destination countries, international bodies, arrangements between states, and so on. It encourages us to look not just at the content of the right and what it promises but also at the contextual realities of the subjects of the right and the agents that hold the power to realise or frustrate it. These are important insights in using the right to social security to address global poverty at a range of levels and not to look only to states to accommodate the needs of their own workers and local poor.

Susan Williams (2014) has suggested that Fraser's concept of scale can also be extended to the local or subnational level. This additional level also has relevance for the development of the right to social security. If the right is to have value across contexts it should be able to operate at the village or community level where women are subject to (often male) traditional leaders, local authorities and customary rules. These bodies play a role in allocating benefits and work and defining social entitlements. Private provision of social security through burial and loan societies, micro-insurance, trade union and worker association funds, and so on, should also be covered by the right. In addition, internal migration, affecting many workers in countries such as China (Li, 2014), should not lead to reduced social security rights for women.

⁹ Pruitt (2008) combines concepts developed by legal geographers together with those of feminist geographers to understand how women's physical location contributes to their experience of law and justice.

International human rights law recognises that richer countries will need to assist poorer countries through international assistance and co-operation.¹⁰ Agreements between countries and international standards also need to ensure that women's rights are protected and met.¹¹ Recent work on transnational or extra-territorial obligations proposes that rights should have a wider purview in global distributions, including in relation to non-state actors (De Schutter, Eide, Khalfan, Orellana, Salomon and Seiderman, 2012). Ensuring that these obligations include a clear conceptualisation of the gender dimensions of the right to social security is essential.

5.3 The right to social security and substantive equality

As noted in the discussion of the international law above, equality and non-discrimination against women are central human rights, closely related to the realisation of other rights, including the right to social security. Equality, understood substantively, offers a valuable means of developing the right to social security from a gender perspective. Substantive equality can be used transformatively to address structural inequalities and achieve far-reaching social change. This paper uses Sandra Fredman's four-dimensional concept of substantive equality (2011b), which includes the following aims (2011c, p. 577):

'First, it aims to break the cycle of disadvantage associated with status or out-groups. This reflects the redistributive dimension of equality. Secondly, it aims to promote respect for dignity and worth, thereby redressing stigma, stereotyping, humiliation, and violence because of membership of an identity group. This reflects a recognition dimension. Thirdly, it should not exact conformity as a price of equality. Instead, it should accommodate difference and aim to achieve structural change. This captures the transformative dimension. Finally, substantive equality should facilitate full participation in society, both socially and politically. This is the participative dimension.'

This substantive equality framework assists in understanding the multidimensional nature of inequality as it affects women's experiences of social security. Thus, for example, obtaining a smaller pension on retirement because of child-rearing responsibilities and lower income over a lifetime denies women their equal rights to social security. Discrimination both causes this situation and results in economic disadvantage, lower social status and less control over women's life choices. The right to social security, interpreted in relation to substantive equality, should address the material dimensions of women's unequal status in the economy that result in women earning less and consequently suffering disadvantage in relation to social security (redistribution). It should also tackle issues such as stereotyping that prevent women from accessing certain forms of work or controlling social security payments within households (recognition). It should be a right that does not simply extend existing male-oriented social security models to women but requires a fundamental restructuring of such systems (transformation). Last, it should be a right that requires the involvement of women in the design and management of appropriate forms of social security and encourages their inclusion in society (participation).

10 The ICESCR, art. 2; CESCR General Comment No. 19 at paras. 52–58 sets out international obligations with respect to the right to social security.

11 At the international law level, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 27, requires bilateral or multilateral agreements to provide contributory social security schemes for migrants. The ILO provides for migrant workers' social security rights in C143 – Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and C097 – Migration for Employment Convention (Revised), 1949 (No. 97).

It is also important to note that gender equality and the discrimination it seeks to address cannot be understood with reference to the experience of one group of women alone. Gender discrimination occurs alongside many other forms of discrimination such as race, age and disability. Forms of gender discrimination may affect women of one economic class differently from another and may take very different forms in different cultural contexts. The development of the right to social security, informed by substantive equality, requires careful focus on the particular context in which women find themselves. Close attention must be given to diversity, vulnerability and the complexity of discrimination.

VI Principles for a substantively equal, gendered right to social security

The following principles combine the above discussions on the redefinition of work within the right to social security, the need for transnational application of the right to social security, and a transformative understanding of substantive equality. Awareness of these elements is built into the following principles:

- (1) *Women's **reproductive** labour and care work* (of children, the sick, elderly and disabled) *must be recognised and supported and care must be understood as a responsibility of the whole society.* This feminist fundamental has important implications for the right to social security. Providing the right in a substantively equal way requires ensuring that social security measures do not discriminate against women due to their caring functions. Framed positively, this means that social security systems must overcome substantive inequalities in the distribution of care. The right can play a redistributive role in allocating resources to care work. It can also address the negative value attached to this work and therefore fulfil the recognition dimension of substantive equality. It should bring men into care, ensuring transformation of gender relations, and challenge fixed notions of family (rather than state) responsibility for care. The participation dimension requires consideration of the views of carers as well as those in their care in designing improved social responses to care that enable women's full participation in society. Attention to the transnational dimensions of care will make the right more responsive to migrant labour and other features of the 'global care chain'.
- (2) *Women's other **unpaid work** such as in subsistence production and family industries must be recognised and supported for the purpose of social security.* The recognition, redistribution, participation and transformation dimensions of substantive equality are very apparent as they apply to this issue: women as a disadvantaged group require material and social acknowledgement of their labour and a voice in decisions relating to this work and the social security entitlements that attach to it. The cultural, religious and other barriers that render women's work invisible require transformative responses to which a right to social security can contribute.
- (3) *Women's work in the **informal** sector, in the many forms this takes, requires an accompanying right to social security.* Again, this is a challenge to recognise and protect work that is often hidden from view (such as homework) or is purposefully unregulated (such as in free-trade zones). Precarious work within and across borders also requires a right that is responsive at the global scale.
- (4) *Women's work must be valued and attract sufficient and equal social security.* Even within **formal** employment, where social security exists, there are gender inequalities. Equal pay, a long-standing demand of women workers, has not yet been achieved (Razavi *et al.*, 2012, p. xxi). This relates also to the type of work that is valued – work that is related to caring is associated with unpaid caring work and is often the domain of women workers, resulting

in low pay and status. In addition, work interruptions and part-time work necessitated by caring responsibilities lead to smaller accrued benefits for women who are often unable to live adequately in their retirement. A right to social security that fails to acknowledge these multidimensional inequalities will perpetuate this structural discrimination.

- (5) *Social security must be provided to all women who **need** it, regardless of their relationship to work.* Gendered understandings of dependency across the life-cycle and the nature of human vulnerability and need should inform the right to social security. This has important recognition and redistribution dimensions and requires a transformative approach to supporting those in need of care and those providing care. The representation and inclusion of vulnerable groups is central to the development of appropriate social security.
- (6) *The **design** of social security systems must promote gender* (Sepúlveda and Nyst, 2012, pp. 34–37). The issue of transnational work should also be addressed in this design. The participation of women affected must be central to ensuring that gender issues are addressed. A right that is responsive to the needs of different groups of women is critical. The transformation dimension of substantive equality requires the reform and creation of social security systems that challenge gender discrimination inherent in society. Such systems must operate to advance gender equality at transnational, regional, national and subnational levels to protect women migrants.
- (7) *Women must have full and equal **access** to social security.* Issues of illiteracy, violence, culture and other factors that affect women's ability to access the right are central recognition concerns. Access also relates to issues of dignity, choice and agency in providing appropriate services that take account of women's (diverse) needs and views. Redistribution will also be needed to address many of the barriers women face. Transforming the unequal power relations that limit women's access is essential if the right is to have equal meaning for all men and women.

VII Conclusion

This paper sets out seven principles for a substantively equal, gendered right to social security. These may not encompass all that is entailed in the right, and engagement, critique and development of these principles should be an ongoing endeavour. The principles need to be tested in practice to ensure their appropriateness to a variety of contexts and may be subject to reformulation over time as circumstances change. Consideration should also be given to strategies to convince decision-makers to adopt and implement these principles, and the mechanisms required for their achievement.

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