



# International Legal Framework of Disabled Children's Right to Benefit from Social Security

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**Abstract.** This article explores the international legal framework governing the social security rights of disabled children, emphasising its foundation in various international treaties and conventions. Social security, often defined as a comprehensive system that addresses risks such as illness, disability, unemployment, and old age, is critical to ensuring equitable living standards. This study highlights key instruments, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, and International Labour Organization conventions, which collectively establish minimum standards for social protection. The Convention on the Rights of Persons with Disabilities (CRPD) marks a paradigm shift by advancing the human rights model of disability and moving beyond traditional welfare approaches to promote empowerment, inclusion, and active citizenship. This article underscores the intersection of disability, children's rights, and social protection by focusing on the Convention on the Rights of the Child (CRC). It examines how these frameworks advocate for social security systems that respect children's dignity, ensure their inclusion in society, and address specific challenges such as accessibility, non-discrimination, and support services. Notably, the CRPD calls for policies that account for disability-related costs, facilitate independent living, and encourage community participation, thus bridging the gaps in traditional approaches that often perpetuate dependence. The recommendations include the adoption of inclusive social protection systems that integrate disability-related needs, ensure equity, and contribute to Sustainable Development Goals (SDGs). By highlighting best practices, such as tailored cash transfers, in-kind support, and accessible health services, this article emphasises the need for legislative reform, data-driven policymaking, and international cooperation to foster a human-rights-based approach to social security for disabled children.

**Keywords:** social security, disability rights, Convention on the Rights of Persons with Disabilities (CRPD), children's social protection, inclusive policy frameworks

## 1. Introduction. The International Legal Framework of the Right to Social Security

Social security is rarely defined in international legal sources, whereas the social security system itself is most often defined in professional literature as a set of all measures that should, in certain cases (illness, accident at work, old age, death, birth of a child, and unemployment), reestablish a disturbed balance. In most cases, it is assumed that social security represents an umbrella concept, that is, the basic goal of the science of social law, which is achieved through various subsystems such as social insurance and social protection systems. Consequently, social security can be a goal that society strives for to ensure decent living conditions and an existential minimum for as many residents as possible; this goal will be achieved by the developed social insurance and social protection systems, which will enable individuals to exercise their basic rights and receive appropriate protection in cases of occurrence of a certain social risk.

Social security is the subject of several international documents and treaties. Among the most relevant are ILO Convention No. 102 concerning Minimum Standards of Social Security, 1952; ILO Convention No. 128 concerning Invalidity, Old-Age, and Survivors' Benefits, 1967; and the International Covenant on Economic, Social and Cultural Rights (UN), 1966. Among the regional international treaties, the most important are the European Social Charter of 1961, the Additional Protocol to the European Social Charter, and the most recent document, the European Social Charter of 1996 (Revised).

The Universal Declaration on Human Rights recognises the right of everyone to social security (Article 22) and affirms that everyone has the 'right to a standard of living adequate for the health and well-being of himself and of his family' 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' (Article 25).

The UN legal framework on human rights contains several provisions specifying the various rights of children that form part of their right to social protection. These comprise the right to social security, considering the resources and circumstances of the child and persons responsible for their maintenance; the right to a standard of living adequate for their health and well-being; and the right to special care and assistance. The UN Convention on the Rights of the Child (CRC) states that 'The States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law [...]' (Article 26).

The International Covenant on Economic, Social and Cultural Rights (ICESCR) requires states to provide the widest possible protection and assistance to families, particularly for the care and education of dependent children. ILO social security

standards complement this framework and provide guidance to countries on how to affect the various rights that form part of children's right to social protection.<sup>1</sup>

The ILO Social Security (Minimum Standards) Convention, 1952 (No. 102), Part VII, sets minimum standards for the provision of family (or child) benefits in the form of either a periodic cash benefit or benefits in kind (food, clothing, housing, holidays, or domestic help), or a combination of both, allocated for the maintenance of children. Thus, the fundamental objective of family benefits should be to ensure the welfare of children and economic stability of their families.<sup>2</sup>

As specified by the ILO's Committee of Experts on the Application of Conventions and Recommendations, these standards require that family benefits be granted with respect to each child in the family and to all children as long as the child is receiving education or vocational training on a full-time basis and is not receiving an adequate income determined by national legislation. They should be set at a level which relates directly to the actual cost of providing for a child, and should represent a substantial contribution to this cost. Family

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- 1 United Nations General Assembly, 1966. Article 9 provides a brief and general reference on the right to social security, thereby leaving it to the UN specialised agencies (in particular the ILO) to identify the details of this clause, Article 10(2) awards special protection to mothers during a reasonable period before and after childbirth. To working mothers, it offers, during such a period, paid leave or leave with adequate social security benefits.
  - 2 While Convention No. 102 covers all branches, it requires that only three of these branches be ratified by Member states, which allows for the step-by-step extension of social security coverage by ratifying countries. Among ILO Security Standards, the following are worth mentioning:
    - The Medical Care Recommendation, 1944 (No. 69), which envisages comprehensive social security systems and the extension of coverage to all and laid the foundations for Convention No. 102 (1952).
    - The Medical Care and Sickness Benefits Convention, 1969 (No. 130) and the Medical Care and Sickness Benefits Recommendation, 1969 (No. 134), which make provisions for medical care and sickness benefits.
    - The Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168) and the Employment Promotion and Protection against Unemployment Recommendation, 1988 (No. 176), relating to unemployment benefits.
    - The Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), and the Invalidity, Old-Age and Survivors' Benefits Recommendation, 1967 (No. 131), covering the old-age benefit, invalidity benefit, and survivor's benefit.
    - The Employment Injury Benefits Convention, 1964 (No. 121) and the Employment Injury Benefits Recommendation, 1964 (No. 121), which make provisions for employment injury benefits.
    - The Maternity Protection Convention, 2000, (No. 183) and the Maternity Protection Recommendation, 2000 (No. 191), covering maternity benefits.
    - The Equality of Treatment (Social Security) Convention, 1962 (No. 118), the Maintenance of Social Security Rights Convention, 1982 (No. 157), and the Maintenance of Social Security Rights Recommendation, 1983 (No. 167), which provide reinforced protection to migrant workers.
    - The Social Protection Floors Recommendation (No. 202), which provides guidance for the establishment and maintenance of social protection floors and their implementation within strategies for the extension of social security aiming at achieving a comprehensive social security system.

allowances at a minimum rate should be granted regardless of the means. The benefits above the minimum rate may be subjected to a mean test. Furthermore, all benefits should be adjusted to consider changes in the cost of providing for children, or in the general cost of living.<sup>3</sup>

The ILO Recommendation No. 102 further refines and extends the normative framework, aiming at universal protection. Income security for children is one of the basic social security guarantees constituting a national social protection ‘floor’, and it should ensure ‘access to nutrition, education, care and any other necessary goods and services’ (Para. 5(b)). Although the guarantee should be nationally defined, the Recommendation provides clear guidance on its appropriate level: the minimum level of income security should allow for life in dignity and be sufficient to provide effective access to a set of necessary goods and services, such as may be set out through national poverty lines and other comparable thresholds (Para. 8(b)). Providing universality of protection, the Recommendation sets out that the basic social security guarantee should apply to at least all residents and all children, as defined in national laws and regulations, and subject to existing international obligations (Para. 6), that is, to the respective provisions of the CRC, ICESCR, and other relevant instruments. Representing an approach that strongly focuses on outcomes, Recommendation No. 102 allows for a broad range of policy instruments to achieve income security for children, including child and family benefits.<sup>4</sup>

Article 12 of the European Social Charter 1996 (Revised) guarantees the right to social security and identifies the four principles with which the system should comply. Article 12 refers to the European Code of Social Security of the Council of Europe (1964). The latter is similar to ILO Convention 102, but the minimum requirements for acceptance for ratification are twice as high for the Code.

Article 16 of the American Declaration of Rights and Duties (1948) includes the right to social security in specific areas. Article 9 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights ‘Protocol of San Salvador’ (1988) refers to provisions related to old age and disability and to social security benefits for employees in the field of healthcare, work-related injuries, diseases and maternity.

3 c), paras. 184–186.

4 International Labour Organization, 2012. See also United Nations, 2015, p. 5. The Recommendation reflects the ILO’s two-dimensional extension strategy, which provides clear guidance on the future development of social security in its 187 member States by: achieving universal protection of the population by ensuring at least basic levels of income security and access to essential healthcare (national social protection floors: horizontal dimension); and progressively ensuring wider scope and higher levels of protection, guided by ILO social security standards (vertical dimension). See International Labour Organization, 2017, pp. 6–8. 13. This report was adopted virtually unanimously (one abstention) by the Governments, as well as workers’ and employers’ organizations, of the ILO’s 187 Member States.

## **2. The Convention on the Rights of Persons with Disabilities**

The drafting of a new human rights convention on the rights of persons with disabilities had to meet two basic requirements. On the one hand, it had to reflect the paradigm shift from the medical model to the human rights model thanks to the disability rights movement. On the other hand, it had to set minimum standards that would protect people with disabilities in the most vulnerable situations in their lives.<sup>5</sup>

For more than 20 years, organisations have called for a convention to protect nearly 600 million people with disabilities. The first Italian proposal was made in 1987 as part of the Decade of People with Disabilities (1983–1992), followed by a Swedish proposal in 1989; however, these remained mere proposals. The time was ripe for a catalogue of rights.<sup>6</sup> This is supported by two exceptional reports that placed disabilities in the context of international human rights policies for the first time.<sup>7</sup> Within the UN framework, disability was previously treated as a medical or social issue. During this period, the focus was on prevention, rehabilitation, and social security.<sup>8</sup> In 1982, the idea of equal opportunities was introduced; however, disability was still viewed as a medical and social problem. Leandro Despouy drew attention to human rights violations that led to disabilities, raising the issue to an international level within the UN. Among these violations, Despouy highlighted the use of inhumane treatment in wartime (e.g. amputations), female mutilation, medical experiments on human beings, forced sterilisation in institutions for people with disabilities, psychological violence, and sexual harassment.<sup>9</sup> Finally, the United Nations Standard Rules were established within the Decade of People with Disabilities. However, they did not bind to each other.<sup>10</sup>

Following a proposal by Mexico on 19 December 2001, on 26 February 2002 the UN General Assembly, by resolution A/RES/56/168, established an Ad Hoc Committee to finalise the Convention.<sup>11</sup> The January draft followed a holistic approach based on the principle of non-discrimination and sought to declare existing human rights in a catalogue. Therefore, the Convention can be considered specific, even though its wording itself is unfortunate, as it suggests that it is a declaration of specific rights. Rather, it is specific because some articles of the Convention have been drafted through the lens of autonomy, equal

5 Degener, 2006, p. 104; Lachwitz, 2008, p. 143.

6 Ibid.; Dhanda, 2008, p. 44.

7 Daes, 1986, p. 9; Despouy, 1993.

8 Degener, 2006, p. 104; Lachwitz, 2008, p. 143.

9 Degener, 2006, p. 104.

10 Degener, 2009, p. 34.

11 United Nations General Assembly, 2002.

opportunities, and the need for participation, and the civil, political, economic, social, and cultural rights it contains have been given a disability-specific interpretation. However, Aichele and Bernstorff stress that the Convention, thanks to the disability rights movement, is new compared to previous human rights conventions and represents the next stage in the development of human rights protection, particularly with regard to the definition of disability and the concept of non-discrimination. This new perspective and context sets the Convention apart from other human rights conventions.<sup>12</sup>

Article 1 sets out the purpose of the Convention, which is '[...] to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity.'

In addition to the social (societal) model of disability, which holds that disability is the responsibility of society, and goes beyond it, the Convention is the most prominent representative of the human rights model of disability.<sup>13</sup> The human rights model is an active participation (fourth-generation) model, whereas the social security model is a third-generation model. According to the human rights model, people with disabilities are subject to human rights, which the state has a duty to respect, protect, and ensure; that is, they require both active and passive behaviour.

The definition of the Convention's purpose has greatly contributed to the empowerment of people with disabilities.<sup>14</sup> Empowerment is a developmental process whereby people are empowered to live better lives through their own means over time. This concept can also be viewed as an open normative form filled with beliefs, values, and moral judgements. Various approaches exist: political, everyday, reflexive, and transitive.<sup>15</sup>

In the political approach, the concept describes a process by which people and groups are empowered to engage in political decision-making. Many see civil rights and emancipation movements as originating from this concept.<sup>16</sup>

The everyday approach to the concept focuses on the microenvironment of everyday life, in which individuals autonomously determine their lifestyle, personal and property relations. This approach is relevant in social work, as it focuses on the recognition of people's strengths and resources, which are used in the provision of social assistance.<sup>17</sup>

The reflexive understanding approach refers to the process of gaining vitality; it refers to some change in the life process, usually a release from dependency,

12 Lachwitz, 2008, p. 144; Aichele and Bernstorff, 2010, pp. 199–204.

13 Dhanda, 2008, pp. 43–61.

14 Aichele, 2008, p. 4; Bielefeldt, 2009, p. 4; Dhanda, 2008, p. 44.

15 Herriger, 2010, pp. 13–19.

16 Id., pp. 14–15.

17 Id., pp. 15–16.

such as being placed under guardianship. This can also be understood at the level of everyday life and politics.<sup>18</sup>

The transitive approach is also relevant in social work as an aid to self-determination and refers to all the reserved resources needed to lead a successful life.<sup>19</sup>

In summary, empowerment is self-actualisation, the empowerment of oneself, and the strengthening of qualities and autonomy. At the same time, it is a process in which people take control, move out of disadvantage, and use their own and collective skills and resources to determine their own lives according to their choices, needs, interests, and desires.<sup>20</sup> This concept relates to the findings on the measurement of capability and the concept of decision-making capability, which will be discussed later. Thus, similar to mental health law and therapeutic justice, empowerment has emerged from the Independent Living Movement over the decades.

To achieve this goal, the Convention draws a precise distinction between the different domains of life and the state's obligations in relation to them.<sup>21</sup>

Respect for human dignity is a central concept of the Convention; it is repeatedly mentioned in it and has become a tool for shaping awareness. However, it is necessary to shape the awareness not only of society but also of persons with disabilities. This is the purpose of awareness-raising programmes and training.<sup>22</sup>

The Preamble to the Convention, articles 3(i) and (m), 3(d) (General Principles), 24(1)(a) (Education), contain the construction that disability is part of human diversity and humanity. This is known as the principle of diversity<sup>23</sup> and is important for the development of genetic engineering. However, it can often give the reader the impression that it is a document for the protection of minorities since each disability group has its own culture that requires support from the state and society.<sup>24</sup> Also new in Preamble (m) is the notion that ensuring the full participation of people with disabilities helps them feel a sense of belonging to society (*Zugehörigkeit*).<sup>25</sup>

Often, human rights conventions, precisely by providing protection, inadvertently delimit protected subjects to society. Thus, the Convention has a negative protective function, but it simultaneously creates a strong demand for

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18 Ibid.

19 Id., p. 17.

20 Id., p. 20.

21 Aichele, 2008, p. 4.

22 Bielefeldt, 2009, pp. 4–5.

23 Id., pp. 6–8; Dhanda, 2008, p. 46.

24 Bielefeldt, 2009, p. 9.

25 Id., p. 10.



development in the community. According to Bielfeldt, this is not the case under any other human rights convention.<sup>26</sup>

The Convention covers eight thematic areas of disability policy, reflecting the achievements of the disability rights movement: general disability policy; women with disabilities; children with disabilities; protection and safety of persons with disabilities; self-determination; freedom and participation rights / freedom from barriers; solidarity; and international cooperation.<sup>27</sup>

Disability policy should consider the fact that international developments and disability rights movements have made disability a human rights issue, as well as a medical and social one. Articles 1 (Purpose of the Convention), 3 (General principles), 4 (General obligations), 5 (Equality and nondiscrimination), and 8 (Raising awareness) lay the basis for a state's disability policy.<sup>28</sup>

We consider it important to emphasise all these points because if the right to social security is to be established, the enjoyment of rights requires respect for human dignity, personal autonomy, and access in general, without prejudice to equal treatment.<sup>29</sup>

### 3. Social Protection and Children in the Convention

Historically, social protection policies have been constructed from the perspective of the loss of capacity to earn income and the need for rehabilitation and care. This approach guided the adoption of ILO Conventions 102, 121, and 128 and national disability contributory income security schemes. While providing essential protection for workers, it has cemented a dichotomy between persons with disabilities deemed able or unable to work and participate in society contributing to schemes fostering 'dependency, exclusion from society, and institutionalisation'.<sup>30</sup>

The human-rights-based approach to disability, which contributed to the adoption of anti-discrimination legislation in the 1990s and the United Nations

<sup>26</sup> Id., 12–13.

<sup>27</sup> Degener, 2009, pp. 36–51.

<sup>28</sup> Id., p. 36.

<sup>29</sup> The joint report lists the following: non-discrimination and accessibility, respect for dignity, personal autonomy, choice, control over one's life and privacy, full and effective participation and inclusion, consultation and involvement of persons with disabilities, attitudes and awareness, adequacy of benefits and support, eligibility criteria and disability assessments, and monitoring and evaluation. The importance of disability assessment is also highlighted by Côte: Disability assessments can produce a better understanding of individual support requirements. Until recently, most countries used medical assessments focused on health conditions and impairments (medical model). While valued for their apparent objectivity, they leave out significant parts of what constitutes disability and provide little information about the actual support required. Côte, 2021, p. 358.

<sup>30</sup> Committee on the Rights of Persons with Disabilities, 2017.



CRPD in 2006, challenged this entrenched perspective. It re-conceptualised disability as a result of the interaction between persons with impairments and diverse barriers that may restrict their participation. This implies policies across sectors that combine the removal of barriers (awareness raising, non-discrimination, and accessibility) with the provision of required support (assistive devices, rehabilitation, support services, and social protection).<sup>31</sup>

Article 28 refers, for the first time in an international instrument, to the right to social protection and links it to the right to an adequate standard of living with reference to adequate food, clothing, and housing and the continuous improvement of living conditions. It also tailors the right to social protection for persons with disabilities, recognising that they must enjoy this right without discrimination on the basis of disability, and establishes a pathway for their inclusion in all efforts related to the realisation of this right.<sup>32</sup>

More specifically, Article 28 creates an obligation for State Parties to take appropriate measures to ensure that persons with disabilities receive equal access to mainstream social protection programmes and services, including basic services, poverty reduction programmes, housing programmes, retirement benefits, as well as access to specific programmes and services for disability-related needs and expenses.<sup>33</sup> These obligations emphasise that social protection should always contribute to the empowerment, participation, and inclusion of all persons with disabilities.

Social protection also resonates with other provisions of the Convention, including the right to live independently and be included in the community (Article 19), respect for home and family (Article 23), education (Article 24), health (Article 25), enablement and rehabilitation (Article 26), and work and employment (Article 27). Importantly, social protection interventions should be measured against the Convention's principles of non-discrimination, participation and inclusion, equal opportunities, accessibility, and equality between men and women (Article 3).<sup>34</sup>

In addition to Article 7 on children with disabilities, age-specific statements are made in points (d) and (r) of the preamble,<sup>35</sup> Article 3(h), Article 4(3) (inclusion of children with disabilities in legislation), Article 8(2)(b) (raising awareness, including for children up to the age of majority), Article 16(5) (child-centred legislation), Article 18(2) (children's right to acquire citizenship), Article 23(3), (4) and (5) (family rights), Article 24(2)(a) and (3)(c) (integrated education),

31 Côte, 2021, p. 358.

32 United Nations, 2015, p. 8.

33 Ibid.

34 Ibid. International Labour Organization and International Disability Alliance, 2019, p. 5.

35 '[...] Recognizing that children with disabilities must be guaranteed the enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling further the obligations of States Parties to the Convention on the Rights of the Child to this end [...].'

Article 25(b) (access to health services), and Article 30(5)(d) (participation in cultural and leisure activities).

Social protection is central to the implementation of the CRPD and ensures that persons with disabilities are not left behind in their efforts to achieve the SDGs. The report of the Special Rapporteur concludes the following:

Securing the right of persons with disabilities to social protection must be a priority for States and the international community. Inclusive social protection systems, including social protection floors, can contribute significantly to supporting the social participation and inclusion of persons with disabilities by ensuring income security and access to social services. They can also play an important role in fostering the realization of the Sustainable Development Goals for persons with disabilities. For that purpose, States must move away from traditional disability-welfare approaches and turn towards rights-based ones, and must develop comprehensive social protection systems that guarantee benefits and access to services for all persons with disabilities across the life cycle. The inclusion of persons with disabilities in social protection systems is not only a human rights issue, but also a crucial investment for development that States cannot afford to miss.<sup>36</sup>

Historically, social protection has viewed disability through the lens of loss of capacity or incapacity to earn income. Consequently, persons with disabilities were considered one of the groups which required protection rather than support. This approach reflects a societal perspective on disability as an individual problem that ignores the negative impact of social barriers and attitudes and is based on very low, if any, expectations of persons with disabilities to be able to contribute actively to society. Consequently, many social protection policies focus solely on providing a basic level of subsistence or maintaining income after a loss of earning capacity in ways that may not promote participation and inclusion. The shift of paradigm initiated by the CRPD implies a change of perspective in the design of social protection policies mostly focussing on three interrelated issues: moving away from an ‘incapacity to work’ approach,<sup>37</sup> from institutionalised

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<sup>36</sup> United Nations, 2015.

<sup>37</sup> A new enabling approach is needed that recognizes the capacities of all persons with disabilities and addresses the barriers that they face in the labour market. Such approach should promote an adequate and flexible combination of income security and disability-related support to promote economic empowerment. International Labour Organization and International Disability Alliance, 2019, p. 6.

care to support for living in the community,<sup>38</sup> beyond one-size-fits-all eligibility thresholds and benefit levels.<sup>39</sup>

## **4. The Convention on the Rights of the Child**

The Preamble of the Convention acknowledges that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members, particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.

The child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love, and understanding; be fully prepared to live an individual life in society; and be brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, particularly in the spirit of peace, dignity, tolerance, freedom, equality, and solidarity.

Particular care shall be extended to the child, as stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognised in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular, in articles 23 and 24), the International Covenant on Economic, Social and Cultural Rights (in particular, in Article 10), and in the statutes and relevant instruments of specialised agencies and international organisations concerned with the welfare of children.

As indicated in the Declaration of the Rights of the Child, 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth'. The provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), and the Declaration on the Protection of Women and Children in Emergency and

<sup>38</sup> In combination with other policies, social protection plays a key role in preventing institutionalisation. It can help tackle poverty and support coverage of disability-related costs, as well as facilitate or incentivize the development of community support services that foster the full and effective participation, choice and control of persons with disabilities. *Ibid.* In order to make social protection more inclusive for persons with disabilities and more supportive of their social and economic participation, eligibility thresholds should consider disability-related costs, and benefits should adequately cover these costs through appropriate mechanisms in cash or in kind. Where an income threshold for disability-related support is needed, this threshold should be significantly higher than that for accessing basic income support. *Ibid.*, p. 7.

<sup>39</sup> Joint statement, 2019, pp. 5–6.

Armed Conflict recognise that, in all countries in the world, there are children living in exceptionally difficult conditions and that such children need special consideration.

Article 26 deals with a child's right to benefit from social security and insurance. As underlined by the Committee, this right is important in itself and plays a key instrumental role in the realisation of other Convention rights.<sup>40</sup> It guarantees financial and other support for the child provided by the state in all cases where the adult(s) responsible for the child is/are not in a position to provide for the child because they are unemployed or for other reasons, such as illness, disability, childbearing, old age, widowhood, being a single parent, and in total absence of both parents (orphanhood). These circumstances may prevent adults(s) from securing work or income.

Contrary to other international legal provisions dealing with the issue of social security, Article 26 does not guarantee the right to social security but the right to 'benefit from' social security. The use of this expression is due to a proposal of the International Labour Organization (ILO) delegation during the drafting of the Convention, which underlined that recognising children's 'right to social security' would not mirror their real position regarding entitlement to social security benefits. Parents and/or legal guardians hold the rights to receive benefits 'by the reason of their responsibility for the maintenance of the child' <sup>41</sup> based on Article 18. Therefore, the position of dependency of the child towards their parents or legal guardians and their entitlement to social security would have been more adequately reflected by recognising the child's right to 'benefit from' social security and not the right to social security. Nevertheless, Article 26(2) ensures that applications for benefits cannot be made on behalf of the child. Furthermore, in the general guidelines for periodic reports, the Committee asks State Parties to describe in their reports the circumstances and conditions under which children are authorised to apply for social security benefits, either directly or through a legal representative.<sup>42</sup>

With reference to the implementation of Article 26, it is worth underlining that it is subject to the provision of Article 4, which sets forth that State Parties are obliged to 'undertake all appropriate, legislative, administrative, and other measures to the maximum of the available resources and where applicable within the framework of the international cooperation'.<sup>43</sup> Therefore, the right of the child to benefit from 'social security is not an immediate States Parties' obligation,

40 United Nations Committee on the Rights of the Child, 2003, para. 6; United Nations Committee on the Rights of the Child, 2006, paras. 10, 26; United Nations Committee on the Rights of the Child, 2007, para. 20; Vandenhoe, 2007.

41 Detrick, 1999, p. 447.

42 Ruggiero, 2022, p. 218.

43 Hodgkin, Newell, and UNICEF, 2007, p. 385.

but one of progressive achievement'.<sup>44</sup> So far, the Committee has not provided a comprehensive clarification of Article 26 by way of General Comments, nor through the Concluding Observations on reports of States Parties.<sup>45</sup> Therefore, the specific and technical meaning of 'social security' needs to be identified in many universal and regional treaties dedicated to the right to social security. In these treaties, 'social security' is composed of the nine traditional branches identified by ILO Convention 102 on Minimum Standards, namely healthcare, sickness, unemployment, employment injury, family, maternity, invalidity and survivor's benefits; and a social security system should comply with the following four principles identified by the 1996 European Social Charter (Revised):

1. The social security system should be set up or maintained.
2. A minimum level should be defined for each social security system.
3. The principle of progressive improvement of the system should apply.
4. Equality of treatment should be ensured for nationals of other contracting states, along with 'granting, maintenance and resumption of social security rights'.<sup>46</sup>

## **5. A Social Protection System for Persons (Children) with Disabilities**

Social protection should be aimed at achieving universality and thus contribute to the objective of enjoyment of an adequate standard of living by all persons. Universal social protection involves comprehensive systems that guarantee income security and support services for all people across their lifecycle, paying particular attention to those experiencing poverty, exclusion, or marginalisation. Simultaneously, universal social protection should entail inclusiveness, that is, consider the particular circumstances of all persons, including those with disabilities.<sup>47</sup>

What does the CRPD tell us about the proper social protection system for people with disabilities? The CRPD moves beyond traditional disability-welfare considerations towards a complex equality model that highlights the interdependence and indivisibility of all human rights, stressing that persons with disabilities must enjoy these rights on an equal basis with others. Traditional disability welfare approaches have been instrumental in building and spreading the medical model of disability worldwide, as they are part of a societal structure

<sup>44</sup> S. L. de Detrick, 1999, p. 447; Vandenhoe, 2007, pp. 24–30

<sup>45</sup> Vandenhoe, 2007, p. 1, 15.

<sup>46</sup> Ruggiero, 2022, p. 219.

<sup>47</sup> United Nations, 2015, p. 7.

that considers disability as a medical condition, and persons with disabilities as unable to work, cope independently, or participate in society. Unsurprisingly, these approaches triggered further segregation and the loss of self-determination. Children with disabilities were sent to special schools, and persons with disabilities received medical attention and rehabilitation in segregated settings, along the lines of ‘fixing’ or ‘curing’ them while disregarding their own will. When persons with disabilities were granted disability benefits, this was often based on the premise that they were unable to work. Therefore, social protection for persons with disabilities needs to move towards intervention systems that promote active citizenship, social inclusion, and community participation, while avoiding paternalism, dependence, and segregation. The ultimate aim is to achieve the right to live independently and be included in the community, in line with Article 19 of the Convention. This creates an obligation for States to ensure that persons with disabilities enjoy: choice on an equal basis with others about life-shaping decisions (e.g. where and with whom they wish to live), and thus have control over their own lives; access to necessary support services as a condition for free choice on an equal basis with others (including the provision of personal assistance); and access to all community services available to others, including in the context of the labour market, housing, transportation, health care, and education.<sup>48</sup>

The Special Rapporteur made the following recommendations to States with the aim of assisting them in developing and implementing disability-inclusive social protection systems:<sup>49</sup>

- a) Ensure that the rights of persons with disabilities to social protection are recognised in domestic legislation and considered in national social protection strategies and plans, including nationally defined social protection floors.
- b) Implement comprehensive and inclusive social protection systems that mainstream disability in all programmes and interventions and ensure access to specific programmes and services for disability-related needs.
- c) Design disability benefits in a way that promotes the independence and social inclusion of persons with disabilities and does not limit their full and equal enjoyment of other human rights or fundamental freedom.
- d) Ensure that eligibility criteria and targeting mechanisms do not discriminate directly or indirectly against persons with disabilities. Disability determination, when established, must respect the rights and dignity of persons with disabilities.

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48 Id., p. 8.

49 Id., pp. 14–25.

- e) Guarantee that the benefits and services offered by social protection programmes are relevant for persons with disabilities and consistent with the right to an adequate standard of living.
- f) Refrain from adopting any retrogressive austerity measures that directly or indirectly affect the rights of persons with disabilities to social protection.
- g) Develop disability-related indicators, undertake research on social protection, and collect data disaggregated based on disability and gender to adequately assess the impact of social protection programmes on persons with disabilities.
- h) Establish formal consultative mechanisms to ensure the active involvement and participation of persons with disabilities and their representative organisations in decision-making processes related to social protection, including budget cuts.
- i) Encourage international cooperation to support inclusive social protection systems, facilitate cooperation to make mainstream social protection programs inclusive of persons with disabilities, and develop and improve disability-specific programmes and services.

Not accounting for the extra costs for people with disabilities in social protection policies undermines their effectiveness of social protection policies in diverse ways. In the following section, we refer to some of these.

1. Persons with disabilities may be excluded from social protection programmes because the standard means that the tested benefits understate the extent of poverty among persons with disabilities. Because poverty measurements rarely account for direct disability-related costs, they underestimate the socioeconomic vulnerabilities of persons with disabilities. Consequently, poverty-targeted and means-tested programmes that do not factor disability-related costs into their eligibility thresholds exclude many persons with disabilities and their families with a standard of living below the set thresholds.

2. The regular benefits of social protection programmes may provide a lower standard of living for people with disabilities because of the extra costs they face. Social transfer programmes that provide equal benefits to persons with and without disabilities do not allow them to maintain equal standards of living. To do so, the benefits must be increased or complemented by other benefits to cover disability-related costs. Additionally, because disability-related costs vary depending on the type and degree of disability, social protection mechanisms must be adjusted to fit the support costs for a particular disability category.



3. Social protection may fail to support the economic empowerment of people with disabilities. By not recognising that seeking and retaining work can raise disability-related expenses, social protection payments may be insufficient to support persons with disabilities in obtaining employment. This failure can be magnified if the receipt of social protection benefits is contingent on the perceived inability to work or if disability benefits can be lost if the person starts working or earns above a defined threshold, which is the case in many countries.<sup>50</sup>

While the extra cost of disability varies greatly depending on the availability and financial accessibility of goods and services, researchers have calculated that it amounts to almost 50 per cent of an individual's income. A recent study on older persons with disabilities estimated that, on average, disability costs are approximately 65 per cent higher than the net weekly pre-disability household income.<sup>51</sup>

The ILO Joint Statement titled *Towards Inclusive Social Protection Systems Supporting the Full and Effective Participation of Persons with Disabilities* presented a comprehensive and inclusive social protection system that should ensure that persons with disabilities have access to programmes that adequately: ensure income security that enables access to necessary goods and services; ensure coverage of disability-related costs and facilitate access to the required support, including services and assistive devices; ensure effective access to healthcare, including disability-related medical care and rehabilitation, as well as HIV services; improve access to services across the life-cycle, such as child care, education, vocational training, support with employment and livelihood generation, including return to work programmes; and take into account the diversity of this population group, both in terms of type of disability and other factors such as age, gender, and ethnicity.<sup>52</sup> Côte summarizes these desiderata as follows: making social protection systems inclusive first requires understanding the diversity of persons with disabilities, the inequalities and barriers they face, and the support they require. Second, delivery mechanisms must be fully accessible. Finally, it requires investments in a blend of cash transfers, in-kind support, including services. According to Côte, inclusive social protection combines a diversity of schemes to provide basic income security, cover disability-related costs, including support services, and grant access to healthcare and other essential services. He outlined the system according to the following:<sup>53</sup>

50 Mont, Cote, Hanass-Hancock *et al.*, 2022. United Nations, 2015, p. 10.

51 United Nations, p. 11. See: Cullinan, Gannon, and Lyons, 2011, pp. 582–599; Saunders, 2014; Loyalka *et al.*, 2014, pp. 97–118.

52 International Labour Organization and International Disability Alliance, 2019, p. 7.

53 See this system in Côte, 2021, pp. 363–364.

1. Countries have adopted different tax-financed cash transfers that can be broadly divided into three categories depending on their purpose: basic income security; coverage of disability-related costs; and hybrids, whose purpose depends on individuals' circumstances.
2. In-kind support and concessions can respond directly to disability-related needs such as healthcare, assistive devices, or support services, which are quite costly and cannot be covered by a basic disability allowance. Other concessions, such as free public transportation or tax exemptions for disability card holders, can offset disability-related costs. The concessions that appear to be the most valued are free or heavily subsidised healthcare, assistive devices, transport and housing, and utility bill subsidies. Income tax exemptions are valued in countries with a wide formal sector because they provide relief to many parents of children with disabilities and increase the benefits of entering the formal economy.
3. Access to health care, including rehabilitation and assistive technology.
4. Support services such as personal assistance, sign language interpreters, circles of support for persons with intellectual disabilities, and respite services are critical for the survival and basic socioeconomic participation of many persons with significant disabilities.
5. Inclusive combinations of scheme.
6. There are some general design choices to be considered that can have significant impact on effective support for the inclusion of a given scheme.

Unfortunately, in many countries, cash transfers are mutually exclusive, which undermines their effectiveness.

## **6. Closing Remarks**

In the case of social protection systems that include disabilities, it is necessary to ensure that the right to social protection for persons with disabilities is recognised in national legislation. There is a need to implement comprehensive and inclusive social protection systems that mainstream disability into all programmes and interventions, and design disability benefits to promote the independence and social inclusion of persons with disabilities. It is also essential to: ensure that eligibility criteria do not discriminate directly or indirectly against persons with disabilities; develop disability-related indicators; conduct research; establish formal consultation mechanisms; and encourage international cooperation to promote inclusive social protection systems.

Inclusive social protection combines a diversity of systems to ensure basic income security, cover disability-related costs, including support services, and provide access to healthcare and other essential services.

The referenced provisions of the CRPD and CRC call for the development of inclusive social protection for all State Parties. This is an important part of the human rights model for disabilities.

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