



► Social Protection Spotlight

November 2021

Complaint and appeals mechanisms: Protecting the right to social security

Key points

- ▶ Access to sound and effective complaint and appeal mechanisms, as well as remedies, is core to any rights-based social security system.
 - ▶ Redress mechanisms are essential to ensure the proper application of social security legislation, as they provide users with a means to seek an impartial review of the due application of the legal framework. In so doing, they also allow for the effective exercise of every individual's human right to social security.
 - ▶ Such mechanisms also represent a good sounding board, allowing social protection systems, to stay "in touch" with their constituency. Concretely, they represent a valuable source of information and feedback for the detection and possible remedy of malfunctions, inefficiencies or violation of rights and obligations across the different social security schemes.
 - ▶ International human rights and social security standards set out the principles underpinning the design and implementation of social protection systems generally and of complaint and appeal mechanisms specifically.
- In particular:
- ▶ The Social Security (Minimum Standards) Convention, 1952 (No. 102), as well as the more advanced standards adopted subsequently, lay out the basic principles governing the right to complaint and appeals in social security.
 - ▶ The Social Protection Floors Recommendation, 2012 (No. 202) provides that redress mechanisms should be: impartial, transparent, effective, simple, rapid, accessible and inexpensive, and that access should be free of charge for the applicant.
 - ▶ States have a duty to establish and effectively implement complaint and appeal mechanisms by translating the principles set out in international social security standards into tangible rights and obligations.

Introduction

Access to complaint and appeal mechanisms,¹ as well as effective remedies, is core to any human rights-based social protection system. Every human being has a right to social security and it is up to the state to adopt measures that enable protected persons to effectively exercise and claim their rights. Remedy mechanisms provide interested parties with the procedural means to hold social security institutions, as well as employers or the state, accountable for effectively complying with applicable legal frameworks. They also serve to hold social protection administrators and policymakers accountable for how schemes are implemented and fundamental human rights are secured.

Thus, to fully give effect to the human right to social security, social protection systems should incorporate effective mechanisms that (a) allow for complaints to be lodged and processed and (b) provide for independent appeal procedures.

International human rights treaties and ILO social security standards lay down the right to efficient and accessible complaint and appeal procedures, and enshrine guiding principles that are at the heart of sound normative frameworks (see box 1). In this respect, the ILO's normative framework sets out the overarching principle that the state should assume the general responsibility for the proper administration of the national social security system. The ILO's landmark social security standards have also cemented the importance of grievance procedures for the proper functioning of social security systems.

In particular, the Social Security (Minimum Standards) Convention, 1952 (No. 102) establishes a core set of principles that are applicable to all social security systems, including the right to complaint and appeal (Art. 70). The Social Protection Floors Recommendation, 2012 (No. 202), which calls for constituting national social protection floors as part of comprehensive social security systems, also advocates for enshrining complaint and appeal mechanisms in law and specifies the principles in which such mechanisms should be rooted (Para. 7).

In view of the above, anchoring the right to recourse in national legal frameworks should be seen as an indispensable step in creating a sound social security system as well as part of the State's responsibility.²

► Box 1: International guiding framework for the establishment of complaint and appeal mechanisms

The following international standards enshrine the right to recourse, as well as underlying procedural principles, such as the right to an independent tribunal and effective remedies, to guide states in the design of accountability mechanisms and rights-holders in the realization of their rights.

International human rights instruments

- Articles 8 and 10 of the Universal Declaration of Human Rights, 1948
- Article 2(3) of the International Covenant on Civil and Political Rights, 1966

International labour standards

- Article 70 of the Social Security (Minimum Standards) Convention, 1952 (No. 102)
- Article 23 of the Employment Injury Benefits Convention, 1964 (No. 121)
- Article 34 of the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)
- Article 29 of the Medical Care and Sickness Benefits Convention, 1969 (No. 130)
- Article 27 of the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)
- Paragraphs 63 and 112–114 of the Medical Care Recommendation, 1944 (No. 69)
- Annex, Paragraph 27 of the Income Security Recommendation, 1944 (No. 67)
- Paragraph 7 of the Social Protection Floors Recommendation, 2012 (No. 202).

For further clarification on the above-mentioned international instruments, consult the publication "Building Social Protection Systems: International Standards and Human Rights Instruments" (ILO 2021a).

This priority has also been highlighted by Sustainable Development Goal (SDG) 16 on promoting peace, justice and strong institutions,³ which is key for achieving SDG target 1.3, "Implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and

¹ For the purposes of this brief, grievance, redress or recourse mechanisms, referred to as complaint and appeal mechanisms by International Labour Standards (ILS), are used interchangeably and include the right to lodge a complaint regarding the quality or quantity of benefits, as well as other rights and obligations established in the national social security legal framework and the right to appeal this decision, notably through judicial or specialized tribunals (ILO 2019).

² See ILO, "Guide to draft social security legal frameworks in line with international social security standards", forthcoming.

³ "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels".

the vulnerable” and other SDG targets related to social protection (ILO 2010, 2017, 2021c).

The role of complaint and appeal mechanisms: Subjecting social protection systems to the rule of law

As part of its general responsibility, the state should ensure the due provision of benefits to those who are rightfully entitled to them, as well as the proper administration of the social security system. Complaint and appeal mechanisms play an essential role in guaranteeing that social security rights and obligations are respected by all stakeholders. Establishing a declaratory right to social security is therefore not sufficient. Giving it substance also means setting up a complaint and appeals system and establishing procedural and legal guarantees to secure the right of complaint and appeal (ILO 2019).

In this regard, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has reiterated that “however well-drafted or comprehensive the legal framework, it can only be effective when supported by an adequate institutional framework to ensure that the rights and guarantees set out in the legislation are materialized as benefits for the persons protected” (ILO 2019).

The proper implementation of social protection systems requires states to provide protected persons as well as employers with legally established means for voicing their grievances, in particular in relation to the rights and obligations established by the national legal framework. This serves to promote claimants’ ownership of the system. For instance, if the provision of benefits is suspended, as permitted under Article 69 of Convention No. 102, the suspension would need a legal basis and to be justified according to the particularities of the case.

Grievance and recourse mechanisms also foster the accountability of the institutions responsible for delivering social protection. In addition, they prevent the sense of injustice or the unlawful or arbitrary deprivation or violation of rights. In so doing, they enable the effective functioning of both the administration of social security and the administration of the justice system (ILO 2011).

It may be recalled that the right to lodge a complaint or appeal is a fundamental part of ensuring procedural fairness, which in turn is a pivotal dimension of strengthening the legality of social protection systems (ILO 2011). As such, it is also important that legal frameworks are accompanied by readily accessible and reader-friendly legal information about the rules governing complaint and appeals. This is particularly important where benefits are refused, suspended or paid at lower rates or during shorter time frames.

Moreover, grievances can also serve to evaluate and improve the effectiveness of existing frameworks, further ensuring the responsiveness of social protection systems to protected persons’ needs. For example, the judiciary may have the power to declare that legislative or regulatory provisions violate higher legal norms, such as objectives established by the national constitution or a ratified international treaty, thus initiating the progressive reform of the national legal frameworks.

In sum, without the establishment of institutional mechanisms to receive and process complaints, a state can hardly ensure the proper administration of social security services and institutions. This forms an essential element of a rights-based approach to social protection. Furthermore, by monitoring the functioning of grievance mechanisms, policymakers can also identify the implementation pitfalls of the social security system and seek ways to redress these, including through reforms or securing greater compliance. Together with action taken by the state at the levels of the legislative and executive powers, the setting up of effective complaint and appeal mechanisms represents the third lever by which the state fulfils its responsibility for the proper administration of its social security system (ILO 2016).

International standards: Calling on States to establish effective grievance mechanisms

Considering that the existence of strong grievance mechanisms are essential for the effective implementation of human rights generally and social security rights and obligations in particular, both human rights and ILO social security standards include them in their purview. Complaint and appeal mechanisms should not only be an integral part of national social security frameworks but should also be guided by the principles set out by various international instruments in order to fully implement a rights-based approach to social security.⁴

In addition to specifically establishing the right to complaint and appeal, Convention No. 102 provides that

⁴ This objective is fully in line with the Conclusions concerning the second recurrent discussion on social protection (social security) (ILO 2021b), which calls on ILO Member States to strengthen rights-based social protection systems that are adequate, sustainable and inclusive of all workers and enterprises.

these rights are an essential part of the state's responsibility in the administration of social security (Arts 70–72). The state is responsible not only for the due provision of benefits but also for the institutions that manage services and must take all measures required to ensure the respect of social security rights and obligations. Often, national social security legislations have explicitly defined the responsibility of the state in the proper supervision and administration of social security to include the settlement of complaints and disputes, as is the case in Spain and Viet Nam.⁵

In carrying out their responsibility for the proper administration of social security systems, states have the flexibility to organize the administration of both social insurance and social assistance schemes according to their national needs and circumstances with a view to optimizing outcomes and reaching universal coverage. This is clearly reflected in Recommendation No. 202, for instance, which calls on States to consider different approaches with a view to implementing the most effective and efficient combination of benefits and schemes in the national context (para 9(1)). The organization of grievance mechanisms tends to mirror these structures. For example, in a number of countries one institution is responsible for administering both contributory and non-contributory benefits. This is the case of the National Social Security Administration (ANSES) in Argentina and the Social Insurance Institution (KELA) in Finland. Other countries, including Austria, Cambodia, Madagascar and Malaysia, have established separate institutions to manage social insurance and social assistance benefits and accordingly their respective grievance procedures. In the case of Bulgaria, the Social Assistance Agency and the Social Security Institute administer the contributory and non-contributory benefits, respectively. However, both entities are subject to the same administrative rules, thus simplifying, by bringing under the same roof, the complaint and appeal procedures for beneficiaries.⁶

Although a large majority of states have directly incorporated grievance mechanisms into their national social security legislation,⁷ many social assistance programmes throughout the world are still guided merely by policy documents, operational frameworks and practical arrangements rather than by proper legal frameworks. Without such a legal basis, it can be difficult

to challenge the application of the law before the competent national authorities. Given that non-contributory schemes are generally designed to support groups in situations of vulnerability and precariousness, adequate and legally established grievance mechanisms are all the more important in these cases (Sepúlveda and Nyst 2012). Ultimately, without a sound legal framework that prescribes accountability mechanisms, the state fails to fulfil its obligations towards the individuals most in need.

In Ecuador, the Social Security Law establishes two administrative bodies responsible for handling complaints concerning the approval or denial of benefits claims brought by insured persons: (a) the National Appeals Commission; and (b) the Provincial Benefits and Disputes Commission. The Provincial Benefits and Disputes Commission resolves claims and complaints of insured persons or their beneficiaries in the first instance. In the second and final instance, the National Appeals Commission hears and decides appeals against administrative decisions made by the Provincial Benefits and Disputes Commission (art. 44). Although the decisions of the National Appeals Commission are not subject to administrative appeal, they can be challenged via judicial proceedings, as prescribed in article 173 of the Ecuadorian Constitution.

The overall responsibility of the state for the proper administration of social security systems includes the design of grievance mechanisms that are culturally sensitive and avoid stigmatization. This is also core to any rights-based social security system, in line with the principles of non-discrimination and equality.⁸ The state is responsible for mainstreaming these principles in the design, implementation and monitoring of social protection systems ensure they are accessible to all and do not stigmatize beneficiaries, paying special attention to groups that may be vulnerable, for instance with regard to their poverty, disability or ethnicity. This can be achieved by adapting complaint and appeal procedures, for example by integrating multiple channels for presenting complaints; allowing anonymous complaints; ensuring confidentiality; and considering low levels of literacy (including both legal and digital) (Sepúlveda and Nyst 2012).

Requirements should also be designed to not impede effective access to grievance mechanisms and remedies.

⁵ See Spain, Real Decreto Legislativo 8/2015, de 30 octubre, por el que se aprueba el texto refundido de la Ley General de la Seguridad Social (arts 135, 303(3) and 350); and Viet Nam, Law No. 58/2014 on Social Insurance (art. 7(6)).

⁶ See Bulgaria, Social Assistance Act, 2014 (arts 13(5) and 14b) and Code of Social Insurance, 1999 (as amended in 2018) (art. 117(5)), which both refer to the Administrative Procedure Code, 2006 (as amended in 2019).

⁷ In 2019, 75 per cent of governments indicated this was the case (ILO 2019).

⁸ For example, Universal Declaration of Human Rights, Article 8; and International Covenant on Civil and Political Rights, Article 2.

For example, they should take into account gender power dynamics within the community, digital literacy and cultural differences. As such, in order to adequately serve all segments of the population, states may consider creating facilitation centres that assist in formulating claims. In South Africa, for instance, the Social Assistance Act requires the South African Social Security Agency to offer all reasonable assistance in the official language of the country which the person concerned is likely to understand, if due to age, disability or inability to read or write, he or she is unable to understand, appreciate or exercise his or her rights, duties or obligations in terms of the Act.⁹ Similar measures to promote, inter alia, the accessibility of services for persons living in remote locations or in need of assistance with communications have been adopted in Bulgaria, Malaysia, Viet Nam and Thailand. The Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) and the Domestic Workers Convention, 2011 (No.189) also recognize the need to adapt complaint and appeal mechanisms to the particular contexts of the informal economy and domestic work.

Strategies to develop strong complaint and appeal mechanisms in line with international instruments

Setting the foundation for the right to recourse in national constitutions

According to international social security standards, claimants should at least have a right of complaint as regards the quality or quantity of benefits as well as a right to appeal in case of refusal of the benefit.¹⁰ Concretely, a claimant considering that their legal entitlements have been either partially or fully unobserved should be able (a) to have their claim examined by the social security institution and (b) in case of disagreement with the decision, to seek appeal through an impartial and independent tribunal. The right of appeal should also extend to employers, including when their contributions or other obligations are called into question. In some countries, all social security-related claims are settled by special tribunals that have been established to deal with social security questions and comprise representatives of the persons protected.¹¹ In such cases, Convention

No.102 does not require that an appeal procedure be in place as it considers that such mechanisms give sufficient guarantees in terms of independence and impartiality, in particular given their composition (Art. 70(3)).

In line with international social security standards, many national constitutions also reflect the need to establish effective, independent and impartial grievance mechanisms. Doing so guarantees that any law that contradicts the rights set out in the constitution may be deemed unconstitutional and inoperable (ILO 2016). As a result, this may lead tribunals to invalidate the laws or regulations found in breach of these general constitutional principles. Indeed, many countries have adopted this approach and protected the right to judicial review in their national constitutions, thus demonstrating the fundamental role such mechanisms play in guaranteeing the supremacy of the rule of law. In Portugal, for example, the Constitution stipulates that every citizen has the right to individually, or jointly with others, submit petitions, representations, claims or complaints in defense of their rights (Art. 52(1)). Although this is not an exhaustive list, the right to complaint or appeal can also be found in the Constitutions of China, Colombia, Namibia, Poland, Slovenia, Spain, the Russian Federation and Viet Nam.

Anchoring complaint and appeal mechanisms in strong legal frameworks

Anchoring and defining social protection rights in national legal systems, including the right to lodge complaints and appeals, is a fundamental part of ensuring their effective realization (UN 2008). On the one hand, states need to develop reliable legal frameworks that give effect to constitutional rights and principles (ILO forthcoming). In addition, in line with international human rights and ILO social security standards, legal frameworks will serve to properly regulate the exercise of power, as well as to increase protected persons' visibility and capacity to claim their rights (Sepúlveda and Nyst 2012).

Effective legal frameworks should therefore expressly address substantive elements, such as:

- the right to have a decision concerning benefit eligibility reviewed;
- conditions for the examination of instances of reported abuse or fraud;
- compliance by social security institutions and other implementing agencies with the legal framework;

⁹ South Africa, Social Assistance Act No.13 of 2004 (section 2(3)).

¹⁰ See Convention No. 102, Arts 1 and 2.

¹¹ See Recommendation No. 69, Paras 63 and 112; and Recommendation No. 67, Para. 27.

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- types of remedies available; and
- sanctions applicable to the non-observance of law.

They should also include procedural elements, such as:

- how to initiate a complaint or appeal a decision;
- which authority is in charge of the decision;
- what are the time limits and formalities to be fulfilled; and
- the conditions regarding judicial representation.

These parameters allow users to clearly identify where they stand and what are their legally established rights and obligations within the system. In Namibia, the national Constitution sets the foundation for the right to recourse by enshrining its underlying principles:

- **Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed upon such bodies and officials by common law and any relevant legislation, and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a competent Court or Tribunal.**¹²

Such constitutional provisions are an imperative that guide the state in the subsequent organization of the norms, rules and design of public services in the field of social security (ILO 2016). The Employees' Compensation Amendment Act of Namibia then translated these general principles into key parameters for accountability mechanisms, stating that:

- **any person aggrieved by a decision in social security matters may, within 60 days of receiving notice of the decision, lodge an appeal with the Labour Court.**¹³

Moreover, normative frameworks must not only define the right to social security but also map out the procedures that individuals can resort to in order to actively exercise their right to benefits (see Annex 1). For example, in accordance with the national legislation, any decision rendered by the Norwegian Labour and Welfare Administration will include an explanation on how to proceed should one decide to appeal the decision, whom to address and the deadline.¹⁴

Establishing comprehensive complaint and appeal processes

Generally, grievance procedures should be twofold, consisting first of an administrative review and subsequently a judicial appeal. The design of claims proceedings varies in each country, but can ultimately be classified into four main procedural legal categories: (a) internal administrative procedures; (b) special judicial procedures; (c) judicial procedures before general courts; and (iv) mixed procedures (ILO 2011). In principle, for a social security system to comply with the requirements set out in ILO social security standards, including Convention No. 102, grievance mechanisms must allow claimants to appeal against the decision of the administrative authority that reviewed the initial claim. Where social security claims are settled by special tribunals on which the persons protected are represented, the ILO social security minimum standards do not require establishing a right of appeal against the decisions of such authorities (Convention No. 102, Art. 70(3)).

In most cases, lodging an administrative complaint is the first procedural step, often made directly with the administrative authority involved in rendering the contested decision, for example with regard to the eligibility conditions or the amount or duration of benefits. The decision may be reviewed by the initial decision-maker, but more often than not the complaint is then lodged with a higher-level administrative authority in the social security system itself. In some cases, such as in Panama, the Philippines and Norway, a second level of administrative review exists.¹⁵

Once this initial phase is completed, claimants usually have the right to appeal to an external independent authority, which in most cases is part of the country's judiciary system. This second-level appeal may be lodged in administrative courts, labour courts, social security jurisdictions or in the general court. Recommendation No. 67 specifically advises that appeals be treated by a specialized social security tribunal (Annex, Para. 27(8)). Accordingly, many countries, such as Kenya, Malaysia and Spain, have opted for the creation of tribunals that specifically address social security disputes.¹⁶ National legislations generally prescribe certain requirements, such as professional training, education and years of

¹² Constitution of Namibia, 1990, as amended in 2010 (art. 18).

¹³ Employees' Compensation Amendment Act No. 5, 1995 (art. 21).

¹⁴ For more information, see Norway, *nav*, "Your Right to Appeal"

¹⁵ Panama, Ley No. 51 que reforma la Ley Orgánica de la Caja de Seguro Social, 2005 (arts 114, 116 and 119); Philippines, Social Security Act No. 11199, 2018 (section 5); Norway, National Insurance Act, 1997, as amended in 2017.

¹⁶ Kenya, National Social Security Fund Act, 2013 (arts 15(8)(c) and 53); Malaysia, Employees' Social Security Act, 1969, as amended in 2019 (art. 83); Spain, Ley 36/2011 reguladora de la jurisdicción social (art. 1).

experience, for an individual to be named a member of such specialized tribunals, in which representatives of the persons protected are often also present.

Similarly, states may go beyond establishing a general social security tribunal and create specialized chambers in such tribunals to address particularly complex contingencies. Alternatively, they can also create specific chambers in general tribunals charged with examining social security matters. For example, risks such as disability or employment injury involve an assessment of the level of incapacity. Establishing a committee of experts under such circumstances serves to provide a more comprehensive and just treatment of the complaint or appeal. In Oman, the Public Authority of Social Insurance transfers all requests pertaining to the evaluation of the degree of disability to the Appellate Medical Committee, composed of specialists appointed by the Ministry of Health.¹⁷

► **Box 2: Tripartite approaches to social security dispute resolution**

- In **Cambodia**, Prakas No. 177 (2010) requires the Dispute and Claims Settlement Commission to be composed equally of representatives of workers, employers and the National Social Security Fund. Members must have at least 3 years of experience in social security and labour matters, as well as possess a bachelor of law degree or relevant legal competencies.
- In **Djibouti**, both employers and workers have the right to lodge complaints before a tripartite board appointed by the Administrative Board of the National Social Security Fund (NSSF).
- In **Thailand**, the Social Security Act (1990, as amended in 1999) provides for the lodging of complaints to the Appeal Committee, which is composed of individuals with experience in legal, medical, social security and labour affairs, as well as representatives of employers, workers and the government.

Certain legislations require a tripartite composition consisting of a chairperson, a representative of employers and a representative of workers to ensure the representation of all stakeholders (see box 2). Such provisions give effect to the principle of tripartite participation enshrined in Recommendation No. 202 (Para. 3(r)) and help secure effective and accessible grievance mechanisms, which in turn are crucial to ensure that protected persons can exercise their social security rights

and that the different schemes comprising the social security system can reach their objectives.

Grounding complaint and appeal mechanisms on key internationally agreed principles

In fulfilling their overall responsibility, states also need to ensure that grievances mechanisms and the legal frameworks on which they are grounded are designed with due regard to a set of key principles. Not only did Recommendation No. 202 establish complaint and appeal procedures as a fundamental element of social protection systems, but it also established a set of principles across labour, civil and administrative procedures that contribute to fostering a culture of compliance and embody elements of a rights-based approach. Equally essential elements of the rule of law, these key principles stand as prerequisites for the full realization of social security rights and obligations.

Independent and impartial

Taking further the provisions of Convention No. 102, Recommendation No. 202 provides that complaint and appeal mechanisms must be impartial and independent. Social security legislation should therefore guarantee the right to have recourse to an external body independent from that which administers benefits. The majority of countries have indicated that their accountability mechanisms reflect this particular principle recognized by social security standards (ILO 2011), while also recognizing the possibility to see claims initially examined by the relevant social protection institution. In Australia, for example, a person affected by a decision made under the Social Security Law can apply for internal and external reviews of the relevant decision. Internal reviews are conducted by officers of the Administrative Appeals Tribunal who had no involvement in making the original decision and are subject to a second review by the same body. In cases where after a second review the disagreement persists, the decision can be appealed to a Federal Court, which constitutes the first instance of the external review mechanism. The decision of a Federal Court may be further appealed to the High Court.¹⁸

Transparent

Grievance mechanisms must be transparent, simple and accessible. Decisions taken by the relevant authorities should be motivated, clearly explaining, in writing, the

¹⁷ Oman, Royal Decree No. 72/91 Promulgating the Social Insurance Law, as amended in 2019 (arts 2(15), 43 and 44).

¹⁸ For more information, see Australia, "Guides to Social Policy Law: Social Security Guide, 6.1.7, Steps in the Social Security Review and Appeals System".

applicable legal basis and the reasoning leading to a particular outcome. For example, in Spain, any decision issued by the mutual insurance companies that administer employment injury benefits, by which they recognize, suspend, annul or extinguish rights in the cases attributed to them, shall be reasoned and shall be formalized in writing and their effectiveness shall be subject to the notification to the interested party.¹⁹ In addition, reporting procedures should be clearly established and information on the financial and administrative operations of social security programmes should be publicly available, allowing persons to understand how programmes function and who is responsible for their implementation.

Simple

Similarly, all formalities, instructions, time frames and procedures should be simple. The language and terminology should be easily understandable, irrespective of a claimant's background, education or other related circumstances. Measures should facilitate dialogue and promote cooperation between the social security system and its stakeholders, including as regards user disagreements and potential claims. Such an initiative has been promulgated in El Salvador, where protected persons have the right to be informed of any irregularities in their claim and must be provided with sufficient time to remedy the situation.²⁰ As previously mentioned, it falls within the state's responsibility for the proper administration of schemes to safeguard and actively extend social security rights to all members of the community. In this sense, complaint channels should also be flexible to respond to various realities that may affect an individual's capacity to claim their rights. In Mexico, recognizing the administrative hurdles that disproportionately affect workers in the informal economy, legislation was adopted to allow the lodging of complaints by means of mail, drop boxes, email, telephone, fax, in person or on the internet, complemented by a time-sensitive response requirement.²¹

Accessible and inexpensive

Complaint and appeal mechanisms should also, according to Recommendation No. 202, be accessible, inexpensive

and free of charge to the applicant (Para. 7). Accessibility requires respecting the rights and dignity of persons covered, including beneficiaries throughout the judicial and non-judicial procedures as set out in Recommendation No. 202²². In other words, these mechanisms should ensure that the principle of non-discrimination and the dignity of applicants is upheld at all stages of the process and appropriate safeguards are in place to prevent them or their families being subject to requirements which may undermine their physical or mental integrity, result in stigmatization, or involve the need to divulge private information unnecessarily, which may be prejudicial or demeaning to their dignity²³. Given the complexity of social security legislations, protected persons should also be entitled to legal aid to assist them in identifying and understanding their rights and obligations and also as means to not be discouraged from enforcing their rights. In many countries, users may be represented by a local non-governmental organization or state-appointed attorneys. This practice can be identified in several countries, including Viet Nam, where trade unions may represent and even file lawsuits for violations of the social insurance law on behalf of workers.²⁴ Similarly, the costs associated with accessing such mechanisms should not cause financial hardship to claimants nor deter them from lodging a complaint. In 2019, approximately 40 per cent of the 114 countries which responded to an ILO survey reported that access to claims procedures was free of charge to the applicant (ILO 2019).

Rapid and effective

Finally, grievance mechanisms should be rapid and effective. As Portugal has illustrated with its digital information technology system, the *Segurança Social Direta* (Social Security Direct), users should receive an answer to their claim and be provided with adequate remedies in a timely manner. This technology, including the electronic submission of certain complaints, was introduced to improve the speed, efficiency, security and convenience of the services of the social security system (Portugal 2020). Moreover, granting social security claims a priority status in national judicial systems, as in the

¹⁹ Spain, Real Decreto Legislativo 8/2015, de 30 de octubre, por el que se aprueba el texto refundido de la Ley General de la Seguridad Social (art. 82(2)).

²⁰ El Salvador, Ley del Seguro Social, 1953, as amended in 1993 (art. 94) and Código de trabajo, 1972, as amended in 2004 (arts 381 and 369).

²¹ Mexico, Acuerdo Ministerial No. 512 de 4 de Julio del 2003, publicado en el registro oficial No. 142 de 7 de agosto del 2003, mediante el cual se expide el Manial Operativo del Program Bono de Desarrollo Humano BDH (arts 13 and 3.6.1).

²² See Recommendation No. 202, para. 3(f)

²³ 2019. Universal Social Protection for Human Dignity, Social Justice and Sustainable Development: General Survey Concerning the Social Protection Floors Recommendation, 2012 (No. 202). ILC.108/III/B, paras 182-189

²⁴ Viet Nam, Trade Union Law, 2012 (art. 10(8)) and Law on Social Insurance No. 58, 2014 (art.14(1)d).

Philippines, ²⁵ encourages claimants to lodge complaints knowing they will be treated with minimal delay.

Often, social security benefits are claimants' only source of revenue and they rely on these benefits to make ends meet. Unnecessarily postponing the payment of benefits can seriously threaten a protected person's ability to survive. In consideration of this, states should adopt measures to support users as long as their claim is not resolved. For example, the procedures surrounding the provision of disability pensions may involve various instances and evaluations that together prolong the period during which a protected person is not receiving any form of income. In Bulgaria, to remedy this situation, claimants may receive a temporary basic pension while awaiting a decision on the degree of disability. ²⁶

Linking complaint and appeal mechanisms with effective remedies

The effectiveness of complaint and appeal mechanisms also entails providing the relevant authorities with the mandate to impose effective remedies when a complaint results in a confirmed violation. In this regard, it can be noted that the UN Committee on Economic, Social and Cultural Rights, a body of independent experts that monitors the implementation of the International Covenant on Economic, Social and Cultural Rights, recommends that all victims of violations of the right to social security be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition (UN 2008).

Conclusion

Complaint and appeal mechanisms are guided by due process principles, empowering protected persons and other persons with legitimate interest in claiming their rights and enforcing obligations by the corresponding social security institution. As such, they are a fundamental part of procedural fairness and the respect for due process (ILO 2011). When states establish such mechanisms, they provide protected persons with the legal means of accessing the benefits to which they are entitled. They also allow the state to build trust and awareness among its population by empowering users to claim their rights, seek to secure observance of social security-related obligations, signal implementation gaps and feed into policymaking debates on social protection reforms.

In addition to establishing the key benefit parameters and rules for the administration and financing of social security, establishing complaint and appeal mechanisms in sound legal frameworks is also an essential part of guaranteeing the human right to social security. Fully aligned with the objective of ensuring that no one is left behind, such complaint and appeal mechanisms also bring states closer to achieving the SDGs, in particular SDG target 16.3 on promoting the rule of law at the national and international levels and ensuring equal access to justice for all; SDG target 1.3 on implementing nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieving substantial coverage of the poor and the vulnerable; and SDG 3 on ensuring healthy lives and promoting well-being for all at all ages.

Ultimately, the rights-based approach reflected in international human rights instruments and ILO social security standards provide detailed guidance for states to design adequate and effective grievance mechanisms so as to ensure the proper implementation of national legal frameworks, in particular the enforceability and predictability of social security rights and obligations. The end result is respect for the rule of law, improved trust and increased social justice.

²⁵ Philippines, Social Security Act No. 11199, 2018 (section 5(c)).

²⁶ Bulgaria, Code of Social Insurance, 1999, as amended in 2018 (art. 98(7)).

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Annex 1: Navigating claims procedures: the Québec pension plan

In the province of Québec, Canada, persons entitled to retirement, survivorship or disability benefits under the Act Respecting the Québec Pension Plan, 1965, may file a claim against the relevant authority (Retraite Québec) in charge of administering benefits. Once a person has received notice of a decision rendered by the administrative entity concerning them with which they disagree, the Act outlines these steps to be followed:

