

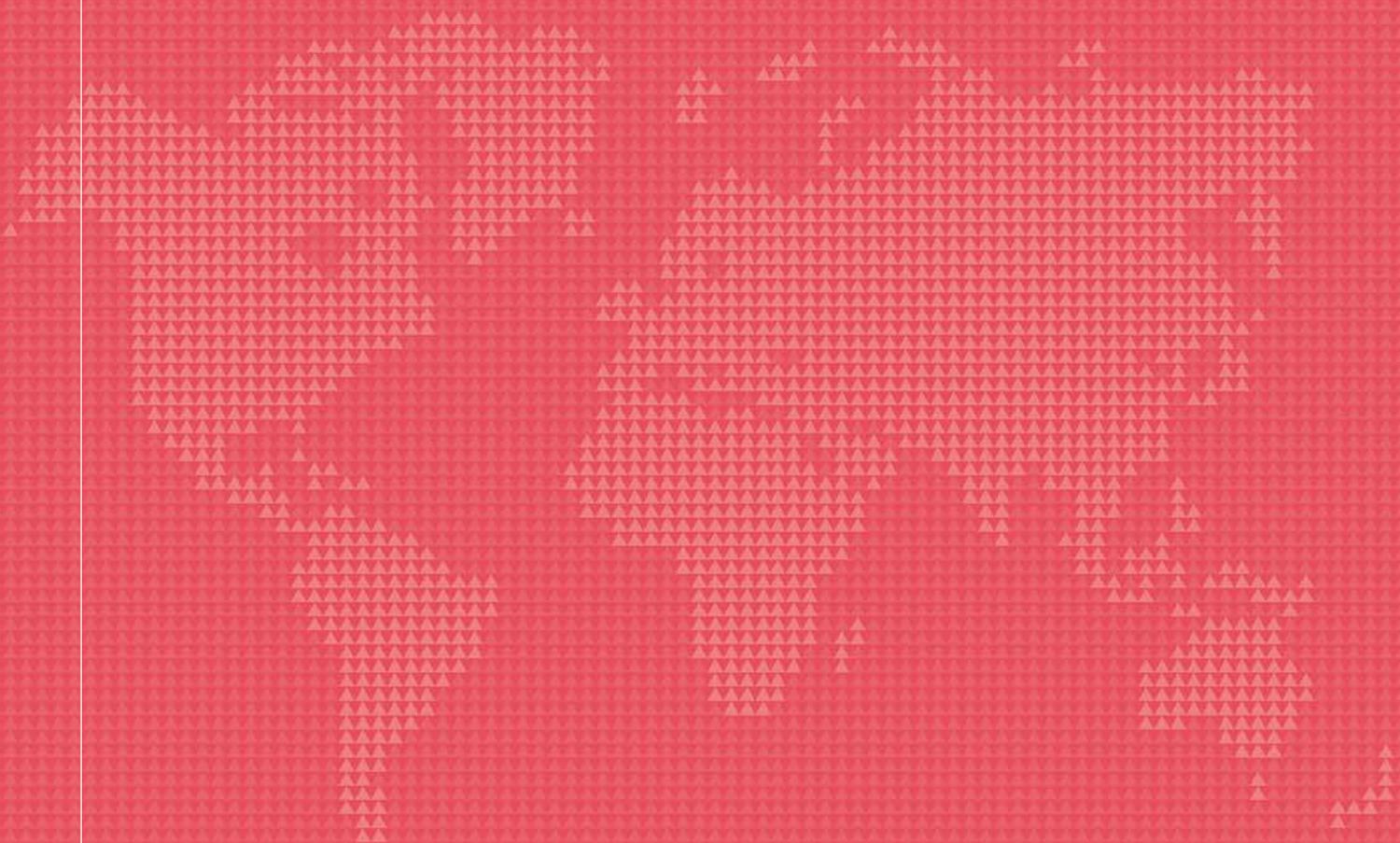
Workers' rights and human rights: Resolving historical tensions through a multi-tiered social security agenda

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Introduction

For far too long, social security in the Global South has been divided against itself: social insurance and so-called “social assistance” (small, tax-financed and typically means-tested schemes) have variously been characterized as mutually exclusive systems or meant for decidedly different population groups. Neither of these assumptions is accurate.

The impacts of COVID-19 on economies and societies around the world have forced a reckoning for social security systems. The choices that were once confined to back-room high-level policy circles have thrust themselves into public debate, and stakeholders have been asked to take positions on issues that affect them, from the immediate social protection responses to the vision for the future. Within this context, organizations representing workers are called to consider how their own interests align with the interest of broad swathes of society, in the context of the social security system and the broader social and economic development goals for recovery and beyond.

This article considers the historical development of social security systems; the mixed messaging and false choices in contemporary policy circles; the potential for resolving these tensions through a return to inclusive, lifecycle multi-tiered frameworks; the evolving role of workers' organizations within this context and some potential axes for action in a post-COVID world.

Historical development of social security systems and its limitations to address changing trends and COVID-19

The historical development of social welfare systems (in particular in Western Europe) saw a gradual coverage expansion through a basic social protection floor across the lifecycle and an attempt to consolidate social security policies to expand coverage after the Second World War. In many cases, social security systems came to be based on social justice principles and a solidarity pillar, across different age groups, those working in the formal and informal economies, and among high- and low-income workers. Nonetheless, as most individuals were working in formal employment, these social security systems were tailored to such labour market context, and social insurance schemes were accompanied by other benefits and increased investments in universal health and education.

The post-war period also spurred a wealth of human rights treaties and conventions, that in many instances included social and economic rights. The rights to social security¹ and an adequate standard of living are enshrined in both universal and regional human rights

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

frameworks,² and are, in many instances, incorporated into national legal frameworks and constitutions that guarantee these rights (Barrantes 2020). International normative frameworks set out the content of the right to social security and some of the principles by which States are to guarantee that everyone, as a member of society, has the right to social security and the right to an adequate standard of living (UN 1948, Articles 22 and 25). Among others, it is considered that everyone should have income security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control, as well as special care to motherhood and childhood (UN 1948, Article 25), and social insurance (UN 1966, Article 9). As individuals of all ages are right holders and might become vulnerable to shocks and risks of different types (including pandemics such as COVID-19), States – as duty bearers – should ensure that people are covered throughout their lifecycle, making sure that dignity is at the core of any social protection system.

In contrast to the experience of most high-income countries, low- and middle-income countries in the Global South have seen a more fragmented development of their social security systems. Many countries have large portions of their population working in the informal labour market, leaving large coverage gaps for social insurance schemes. In addition, in several of these countries a large percentage of the population experiences poverty and vulnerability, which has subsequently seen the implementation of tax or donor funded social protection schemes targeted at the poor. Taken together, the design of these systems resulted in fragmentations that undermine the achievement of the right to social security for the vast majority of people around the world.

Before COVID-19 became a global pandemic, around two billion people in the world were in informal employment (OECD and ILO 2019). When looking at total population in informal households by quintile (percentage of total population living in informal households in the subgroup), most recent data shows a disproportionately high informality in the bottom 20 per cent of the population, as seen in table 1 for a selected group of countries (OECD, n.d.). The numbers of this selected group of countries shows that large percentages of those working in informal employment are within the poorest households. It is noteworthy that none of these figures reflect COVID-19 impacts on the economies of any of these countries, so one can only assume that these informality percentages have spiked since.

² Including the following universal instruments: UN Universal Declaration of Human Rights, 1948 (Articles 22, 25); UN International Covenant on Economic, Social and Cultural Rights, 1966 (Articles 9, 10, 11); UN Convention on the Rights of the Child, 1989 (Article 26); ILO Social Protection Floors Recommendation, 2012 (No. 202), and regional human rights instruments.

▶ Table 1. Total population in informal households, by quintile

Country	Bottom 20%	Top 20%
Argentina (2010)	73.7%	18.2%
Chile (2017)	34.9%	9.4%
Colombia (2018)	91.9%	21.6%
Honduras (2019)	98%	39.4%
Egypt (2015)	80.2%	35.6%
Kyrgyzstan (2016)	48.5%	26.2%
Viet Nam (2016)	95.4%	43.5%

Source: OECD, n.d.

Current widespread informality on the one hand leaves a large portion of the population vulnerable and unprotected with no social protection coverage, and on the other hand also diminishes the capacity for governments to increase their public revenues and hence finance sustainable social security systems through taxes and contributions (OECD 2020).

High rates of informality have been recognized as a key risk for socio-economic development in the Global South, and policy recommendations for a transition to a formal economy have been taken up by several countries, such as through the ILO Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204). The Recommendation encourages countries to progressively extend to all workers in the informal economy, social security, maternity protection, decent working conditions and a minimum wage that takes into account the needs of workers; to build and maintain national social protection floors within their social security system and facilitate the transition to the formal economy; and to progressively extend the coverage of social insurance to those in the informal economy and adapt procedures, benefits and contributions, taking into account their contributory capacity.

The COVID-19 pandemic has only increased the vulnerability of millions of workers in both the formal and informal employment markets. In a region such as Latin America, in which social protection system programmes cover around 61.8 per cent of total workers, approximately 65.8 per cent of people working in the informal economy do not have access to any form of protection. It has also been estimated that this region could lose around 17 million formal jobs due to the negative impacts of COVID-19 (OECD 2020).

Given these circumstances, and the uneven development of social security in the Global South, a tension has resulted between the *human right* to social security – which is inherent, fundamental and universal – and *workers' rights* to specific and legally defined formal entitlements – which have been crystallized within a relatively narrowly prescribed framework of formal employment. COVID-19 has the potential to either sharpen or blur this division, depending on the policy choices countries make.

Social protection, yes, but what kind and for whom?

So far, social protection has been widely embraced as a necessary and appropriate response to the crisis, but the responses have varied widely in ambition and design, reflecting long-standing challenges and debates.

On the one hand, governments have been encouraged to “prioritize support for those who are particularly vulnerable to the crisis, including workers in the informal economy” (ILO 2020, 1). Some have interpreted this in narrow terms, employing surgical approaches in an attempt to reach specifically defined groups, for example by transfers to those deemed poorest or most vulnerable, often using databases that pre-dated COVID-19 which have almost certainly resulted in very high exclusion errors. Indeed, it is increasingly recognized that the methods typically used to identify “the poor” in many low- and middle-income countries,³ in addition to being ineffective at the best of times, are wholly inadequate in times of crisis, so that calls for universal responses have increased (Rutkowski 2020).

At the same time, and seemingly paradoxically, the crisis has made clear that a more universal and inclusive social protection system is much better prepared to address shocks such as COVID-19:

The comparative advantage of a universal social protection system that reaches everyone is that it is automatically primed to protect all those affected by a shock. Social protection transfers can be scaled up quickly and with relative administrative ease. In complex, fast moving and unpredictable crises like COVID-19, universalism is preferable to targeted approaches. This is especially true where targeting capacity is more limited and a very high proportion of the population is vulnerable. Universalism makes more practical sense than ad hoc efforts to “effectively” target, the limitations of which are well documented. (ILO 2020, 6)

However, generally speaking, these more ambitious, broad-based solutions to reaching the so-called “missing middle” have not been forthcoming (see for example Sibun 2021), beyond a handful of stand-out cases such as the United States.

In addition, even where governments may have been predisposed to pursue more ambitious solutions, the practical challenges of reaching people in a crisis have required them to graft responses onto the existing system, which means that support can end up being concentrated among those who already enjoyed relatively generous protections prior to the crisis.⁴ Indeed, because of this, many trade union representatives have expressed scepticism, pessimism or ambivalence about the likely impacts of COVID-19 on the social protection pillar of the Decent Work Agenda (ILO 2021a). Even so, there have been certain

³ Besides inherent design flaws, which have been well documented, proxy means tests are built upon the flawed logic that “the poor” is a fixed and stable category that can be accurately identified and reached. In reality, people’s incomes and circumstances are highly dynamic, making it virtually impossible, especially in low-resource environments, to pinpoint a delineated group at any given moment (Knox-Vydmanov 2014).

⁴ According to one respondent to an ILO-ACTRAV survey on the likely impacts of COVID-19 on social protection: “Social protection measures are largely restricted to [the] formal sector and [the] informal economy, which employs 70–80 per cent of the workforce, is not covered” (ILO 2021a).

noteworthy examples of coverage extension to informal workers through contributory systems. For example, some countries have introduced new benefits or extended them to new populations to incentivize registration.

This reminds us of the perils of fragmented social protection systems, that leave many of the most vulnerable behind and fare badly in the event of a pandemic. Although social protection systems are an essential part of the needed policy responses to the COVID-19 pandemic, many countries in the Global South do not have effective social protection systems in place that provide universal coverage and are, hence, less prepared to respond to the negative impacts of this global crisis.

Resolving the false choice between tax-financed and contributory schemes through multi-tiered social security systems

Even prior to COVID-19, many countries were already making the case for transformative social policies, and specifically an inclusive and lifecycle social protection system based on human rights principles and standards, that can support governments in ensuring that no one is left behind (Cichon 2013; Cichon and Hagemeyer 2007; Kidd 2017, 2013; Mkandawire 2006, 2004). However, defining what exactly that means in terms of particular policy and institutional arrangements has proved elusive even for well-intentioned national governments and other stakeholders.

Social insurance systems have long been out of fashion in international development circles, given the challenges with high (and often – though not always) growing informality in low- and middle-income countries.⁵ The UN-wide policy on Social Protection Floors (SPF) was a response to this perceived “ill-suitedness”⁶ of traditional employment-based social protection systems to adapt to the persistent challenges of poverty, social exclusion and labour market informality. The solution, as encapsulated in the ILO Social Protection Floors Recommendation, 2012 (No. 202), is a set of *basic* social protection guarantees — which have been widely interpreted to be best delivered through tax-financed schemes in countries with low social insurance coverage. The growing support among governments and development partners for the expansion of tax-financed social protection schemes is understandable and appropriate.

However, in the rush to embrace “cash transfers” targeted at the poor many governments, development partners and other stakeholders have failed to appreciate the fundamental qualitative differences between different types of transfers and their implications for the long-term development of social security systems. In particular, the distinction between

⁵ Recent work by the ILO (2018) has shown that informality is far from inevitable and, prior to COVID-19, had been on a downward trend in much of Latin America and a number of other countries such as Viet Nam, strongly suggesting that it can be addressed through serious and concerted policy efforts.

⁶ As the World Bank (2019, 113) noted: “this contributory approach is not a good fit for developing countries, where formal and stable employment are not common. Indeed, because eligibility is based on making mandatory contributions, this form of social insurance excludes informal workers, who account for more than two-thirds of the workforce in developing countries ...”

small, “last-resort” safety nets, which tend to be delivered at the household level and are based on proxy means tests, versus a set of core lifecycle guarantees (such as child benefits or old-age pensions) that are provided as individual entitlements (individuals as right holders entitled to the right to social security and an adequate standard of living), has been under-appreciated among both scholars and practitioners. Evidence is mounting, however, that the former are more complex and expensive to govern at all levels, are often associated with high exclusion errors, and jeopardize the realization of the right to social security, while the latter contribute to more inclusive, better governed and truly rights-based social protection systems (Barrantes 2020; Kidd, Gelders and Bailey-Athias 2017; Kidd and Athias 2019; McClanahan et al. 2021).

In addition, dispensing with social insurance as a fundamental component of a rights-based and inclusive social security system has been premature. The reality is that social insurance systems have shown surprising resilience in the face of complex challenges, evidenced by the steady introduction of new schemes and reform of existing schemes in low- and middle-income countries. Indeed, social insurance schemes and agencies have strong institutional legacies that continue to shape national social protection policy spaces; their purported fiscal neutrality still appeals in resource-strapped societies; and despite challenges, they remain the most effective instrument for financing higher-level benefits (vertical extension) in a relatively equitable way. Importantly, the resilience of contributory systems is owed in no small part to actions taken by trade unions to preserve the entitlements enshrined in these systems. And, crucially for them, they have a direct interest in expanding membership to help address serious challenges to the financial sustainability of the funds.⁷

Too often, tax-financed solutions and contributory schemes have been presented as mutually exclusive options. However, this is a false choice. In fact, the development of the two instruments can and should in tandem be placed under the same strategic policy framework, avoiding a fragmented delivery of social protection.

Building integrated, *multi-tiered* systems can harmonize the goals of so-called “horizontal” extension (extending entitlements to newly covered individuals and groups) with “vertical” extension (improving the comprehensiveness or adequacy of entitlements) in a way that achieves universal coverage by *design*. Unlike in fragmented systems in which “social assistance” (narrowly targeted) programmes are haphazardly tossed about as solutions to an array of social ills with no real logical connection to the contributory system and the large gaps in coverage, a truly multi-tiered system would combine core lifecycle tax-financed guarantees with mirror-image social insurance provisions for the same contingencies — typically those backed by international frameworks such as the ILO Social Security (Minimum Standards) Convention, 1952 (No. 102) — in a coordinated way. In this way, for a given contingency, universal coverage of the *system* is achieved through social insurance

⁷ Recognizing this, the ILO has consistently supported governments and social partners in introducing needed reforms to strengthen the long-term sustainability of social insurance funds, as well as to make them more attractive and better adapted to the evolving needs of workers in a changing labour market.

combined with either universal or benefit-tested tax-financed programmes, but not with poverty targeted ones.⁸ Smaller, last-resort “safety-net” schemes then supplement, but cannot replace, these core schemes (ILO and UNICEF 2021).

In addition, multi-tiered systems, when designed in a way that builds an incentive structure that both ensures basic, adequate protection for everyone — fulfilling the *human right* to basic social security — while preserving the incentive to join social insurance — fulfilling the *workers' right* to specifically defined higher-level entitlements — ensure that social protection systems are more directly aligned with broader development goals such as decent work, gender equality, formalization and economic growth. Indeed, registration with social insurance is, for workers, often indistinguishable from formalization – by definition – in many countries (ILO 2018). Therefore, multi-tiered social security systems help to resolve the historical tension between human rights and workers' rights through a clear incentive structure built on universal basic guarantees.

The (evolving) role of workers' organizations in social protection

Against this backdrop, workers' organizations have often found themselves somewhat awkwardly positioned in national discussions around social security extension, both before and during COVID-19. While trade unions have in many cases called for “universal health care, extended sickness, unemployment and family benefits, cash transfers, job and income security” (ILO 2021b), because contributory schemes reflect and cater to formal employment relationships, these organizations' interests are typically aligned most closely with the preservation of contributory entitlements.

COVID-19 has challenged all actors engaged with the social protection system to (re) consider their roles and responsibilities in a post-COVID world. Those organizations representing workers find themselves at the nexus between, on the one hand, preserving and promoting their own hard-earned entitlements in the face of extreme pressures on their own livelihoods and state resources, and on the other hand, confronting the very clear reality that large sections of society – workers, families, individuals – living alongside them are almost completely without basic income and health security.

In this context, a lifecycle and multi-tiered social security framework can help trade unions and other stakeholders to structure their understanding of roles and responsibilities vis-à-vis the overall national social protection system, enabling them to visualize how their own entitlements fit within an overall rights-based framework.

Moving toward this aligned vision of universal realization of the right to social security in the post-COVID world points to three potential axes of action that workers' organizations can pursue.

⁸ The potential for synergies between tax-financed and contributory tiers has long been recognized in the context of old-age pensions, but the application of the concept to other contingencies has rarely been pursued (see for example Duran 2018; ILO and UNICEF 2021; ILO 2010; Kidd 2015; McClanahan and Gelders 2019).

Follow the “do no harm” principle: Avoid lobbying against expansion to uncovered groups

It should go without saying, but it is imperative that trade unions avoid outright opposition of reforms that introduce non-contributory benefits to those with low or no capacity to pay contributions. In most places, entitlements to contributory benefits have been hard won. As a result of these efforts, trade unions enjoy a privileged statutory place on the boards of many social security agencies, and indeed, calls for the establishment of these kinds of official vehicles for stakeholder representation, – and specifically tripartite representation – are enshrined in ILO Convention No. 102 and Recommendation No. 202.⁹

However, in contexts of high informality, organized labour represents relatively small or narrowly defined populations, and competition over scarce resources has frequently been framed as a zero-sum battle. While it is essential that coverage extension efforts respect the integrity of social security funds and their associated entitlements, stakeholders must be open to dialogue around sensitive financing questions and, rather than taking an inflexible and defensive stance, engage proactively in search of solutions that benefit everyone, including themselves.

For example, universal tax-financed entitlements guarantee minimally adequate benefits for everyone while simultaneously – if carefully designed – reducing the level of mandatory contributions required to finance higher rate benefits provided through the contributory system. Alternatively, pension- or benefit-tested tax-financed benefits offer a way for the State to honour its obligation to provide minimally adequate, rights-based benefits to those who have not earned entitlement under the contributory system. This can be done in an affordable and administratively simple way without threatening the integrity of the contributory system. On the contrary, in both cases (universal or pension-tested benefits), if well-designed as discussed previously, the extension of tax-financed guarantees can and should actually *encourage* growth in coverage under contributory schemes, with potential for knock-on effects on informality and, by extension, union membership. Even if coverage of contributory schemes does not grow, bringing the two instruments closer administratively (if not financially) ensures that coverage remains stable in the face of increasingly dynamic attachments to the labour market, as individuals and workers move between the two tiers. Without open spaces for social dialogue, however, these nuances are unlikely to be fully appreciated, making resistance to reforms more likely.

Proper coordination of different social protection schemes is also at the very core of ensuring a rights-based social security system for all.

⁹ Notably, Recommendation No. 202, Article 3(r) calls for “tripartite participation with representative organizations of employers and workers, as well as consultation with other relevant and representative organizations of persons concerned”.

Invest in raising awareness of the rights-based principles embedded in inclusive social security systems

Many trade unions and workers' organizations have invested in developing and disseminating extensive knowledge about core issues that affect them, such as occupational safety and health and design of pension systems. However, there is a need to improve understanding, particularly (but not only) in low- and middle-income countries about how their own priorities fit within the social protection system writ large.

It is worth noting, however, that sometimes the position of trade unions vis-à-vis social security reforms, including their perceptions of their own interests, is not due to a lack of awareness but rather stems directly from gaps in the design of the systems themselves. For example, in Uganda, the national provident fund, like most defined contribution systems, is unable to provide basic protections for working-age contingencies. Trade unions in Uganda have demanded that a reform bill "expand the scope of benefits to allow individuals with various challenges such as unemployment, sickness, and school fees to help them solve their issues ... without waiting for retirement" (see Ahimbisibwe 2019). However, in a savings-based system, early withdrawal drains individual accounts leaving little to cover long-term risks. Rather than early access, broader structural reforms would be required to enable the introduction of short-term lifecycle benefits – such as sickness, unemployment or family benefits – which, if provided, could also make the system more attractive to new potential contributors (McClanahan et al. 2021). In situations like this, improved awareness of the functions and potential of an inclusive, lifecycle social security system could better direct the passions, energy and political capital of the labour movement toward a longer-term, strategic goal of a more comprehensive and sustainable system.

Proactively engage in coalition-based pursuit of common interests within a lifecycle framework

Building rights-based, lifecycle social security systems requires building support among broad sections of society for core tax-financed interventions – such as child benefits, disability benefits, and old-age pensions. As economic interest groups, organizations representing workers have particular demands that correspond to their position in the labour market and, with respect to social security, their role as both contributors and – eventually – as beneficiaries of contributory schemes. In contrast, the voices of those who currently do, or would stand to, benefit from the extension of tax-financed social protection are much more diffuse. This has been identified as a key challenge for ensuring effective stakeholder representation of beneficiaries in the management of these schemes, as called for in international frameworks (Cotinguiba et al. 2020; McClanahan et al. 2021; UNDP and African Union 2019). Yet, because they stand to gain from the development of comprehensive and sustainable social security systems, and given their comparative advantage in terms of organizational capacity and resources, trade unions have both an interest and an obligation to incorporate the demands of the broader population into their platforms and to lobby on their behalf.

Moreover, their own efforts to engage in effective national dialogue toward the realization of the universal right to social security is enhanced by aligning with groups representing broader segments of society, including issue-based or public interest groups. It is especially important to seek common ground with those representing “lifecycle-based” cleavages, such as groups representing children, older people or persons with disabilities who would have a clear interest – even if it is not yet on their radar – in supporting the introduction of tax-financed child benefits, a social pension or a disability allowance. Indeed, it was precisely this type of cross-sectional alliance to address the needs of older persons that led to the passage of a Law on Older Persons and the introduction of the Social Pension Scheme in Fiji (McClanahan and Hillson 2021).

Workers in the informal economy are also typically excluded from formal tripartite and bipartite negotiation, and pre-COVID recommendations have included ensuring freedom of association and the right to collective bargaining in the informal economy so that engagement in social dialogue can be facilitated, and as part of formalization efforts. Before the COVID-19 pandemic hit, global evidence suggested that trade unions were increasingly expanding services to also provide support to those working in the informal economy, such as in the case of Argentina and South Africa (OECD and ILO 2019, 122). Furthermore, during COVID-19 responses informal worker organizations in these two countries have taken steps to foster productive dialogue spaces with their respective governments around the social protection needs (Devenish and Afshar 2020). One key lesson learned during the COVID-19 pandemic is that the more established these structures and relationships are (between informal workers organizations and governments) the smoother the negotiations and resulting social protection solutions will be for any forthcoming crisis (Devenish and Afshar 2020).

Conclusions

If COVID-19 has taught us anything, it is that the social protection policy and institutional infrastructure in place prior to a crisis is the main determinant of how well a system is able to offer meaningful mitigating and corrective measures (Kidd and Sibun 2020; Razavi 2020; Razavi et al. 2020). Perhaps never before has the need for a set of universal basic protections been so apparent, but equally, the COVID-19 crisis has revealed the continued relevance of employment-based measures. These are not competing spaces, and workers' organizations have a vital role in setting the terms of national debates to orient them around lifecycle benefits within a multi-tiered framework. Integrating a multi-tiered perspective into national policy frameworks requires a high-level strategic vision, and it is vital that countries nurture the space for social dialogue to generate consensus for the transformative changes necessary to “build back better” (ILO 2021c, para. 9).

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