

30 November 2020

## Call for reactions on a proposal for a Global Fund for Social Protection

Dear Professor De Schutter,

Thank you very much for giving me the opportunity to contribute to the call for reactions on a proposal for a Global Fund for Social Protection. As a member of the Global Coalition for Social Protection Floors I fully support the position paper which the Coalition has submitted in response to this consultation (<http://www.socialprotectionfloorscoalition.org/2020/04/a-global-financing-mechanism-for-social-protection/>). Additionally, I would like to make some comments which, however, only reflect my personal view. They mainly relate to **question 8** of your Call on the **governance structure of a new Fund** and are part of a co-authored paper on 'Governance principles and considerations for a Global Fund for Social Protection for All' (working title) which is planned to be published by the ILO.

Regardless of the institutional context in which the Fund will be set up and which members it will have, there are two sets of rules that require careful consideration when designing its governance structures. These are, on the one hand, the **principles of effective development cooperation**, laid down in the *Nairobi Outcome Document* (2016; <https://www.effectivecooperation.org/content/nairobi-outcome-document>) and its predecessor documents, mainly the *Paris Declaration on Aid Effectiveness* (2005) and the *Busan Partnership Agreement* (2011). Although these documents can only be classified as soft law under international law, they nevertheless represent the relevant political frame of reference for the design of new global development partnerships. On the other hand, the concept of the new Fund aims to make a significant contribution to the universal implementation of the human right to social security. Therefore, it is essential to ensure that the requirements of the **rights-based approach to social protection** are sufficiently taken into account in the organizational design of the Fund. The legal background on which this approach is based can be found in the relevant human rights and social security documents, in particular in Art. 9 of the *International Covenant on Economic, Social and Cultural Rights* (1966), in *General Comment No. 19 on the right to social security* which has been published by the Committee on Economic, Social and Cultural Rights in 2008, and – last but not least – in the *ILO Social Protection Floors Recommendation (ILO Recommendation No. 202, 2012)*.

I. A clear commitment to **country ownership** which is one of the core principles of effective development cooperation would be an indispensable prerequisite for the success of the Fund project. The concrete design of national social protection systems lies solely within the competence of the respective countries and must not be prescribed by donor institutions. This allocation of competencies in the relationship between international and national level is additionally supported by the relevant human rights and social security standards: Although both *General Comment No. 19* and *ILO Recom-*

*mendation No. 202* prescribe minimum standards with regard to the level of protection and the population groups to be covered, they leave considerable scope for shaping national social policies and social protection floors. This decision-making flexibility would have to be strictly respected by the Fund's bodies.

In practice, this implies a strong involvement of countries that belong to the potential beneficiaries of the Fund: Decision-making structures and voting rights of the Fund must be designed in such a way that no decisions can be taken against the will of recipient countries. Even though it would be desirable to reach consensus in the decision-making bodies as often as possible, sometimes it is not feasible to find consensual agreement on certain issues. In such exceptional cases it should not be allowed to outvote the group of the recipient countries in a majority decision. Moreover, it is essential to ensure that, as far as possible, social protection programmes are administered by existing institutional structures in the countries concerned and that international support is used to further strengthen the institutional capacities of these structures. The Fund's decision-making and monitoring bodies would merely verify that the recipient country adheres to the key principles of *ILO Recommendation No. 202* (paras. 3-8). When countries are unable to implement these programmes due to a lack of adequate administrative structures, international agencies should focus on capacity strengthening so that the respective governments can build up administrative capacities for performing these tasks.

II. Both the effectiveness principles and the relevant human rights and social security standards provide guidance for **stakeholder participation** in the decision-making procedures of an international funding mechanism. In addition to the governments of recipient and donor countries it is important also to include other actors involved in the financing and design of social protection floors as well as the potential beneficiaries of social protection programmes. *ILO Recommendation No. 202* (para. 3r) calls on Member States to guarantee "tripartite participation with representative organizations of employers and workers, as well as consultation with other relevant and representative organizations of persons concerned" when establishing social protection floors. The human rights approach stipulates that „(t)he right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to social security should be an integral part of any policy, programme or strategy concerning social security“ (*General Comment No. 19*, para. 69). This means that employers, workers, and civil society organisations must have the opportunity to contribute their views and opinions to the Fund's decision-making procedures.

Consequently, the following groups can be regarded as relevant stakeholders which should be represented in the organizational structure of a Global Fund for Social Protection: 1) recipient governments; 2) employers' organizations; 3) workers' organizations (trade unions); 4) civil society organizations active in the social protection sector; 5) donor governments; 6) private donors (if a decision is taken that resources can also be made available for the Fund from the private sector); 7) international financial institutions (IFIs); and 8) other international organisations that mainly provide technical assistance. Each of these groups should be allowed to send a certain number of representatives to the relevant bodies. The distribution of seats and voting-rights could be based on the experiences of existing global multi-actor partnerships such as the Global Fund to Fight AIDS, Tuberculosis and Malaria (GFATM). In order to ensure that decisions that cannot be taken by consensus remain well-balanced, it would be appropriate to provide for rules requiring qualified majorities and ensuring that certain actors (e.g. the recipient and the donor governments) cannot be outvoted. Here too, best practice examples from other organisations such as the GFATM can provide important orientation.

III. Country-led **coordination** and improved **policy coherence** in relation to multilateral institutions, global funds and programs are among the core requirements of the *Busan Partnership Agreement* (2011, para. 25 b). This applies in particular also to the field of social protection as there is an obvious need for increased coordination of international cooperation. For the governments of recipient countries, the large number of governmental and non-governmental international actors supporting them in building their social protection systems poses a significant policy and administrative challenge. Additional problems arise from the fact that donor institutions sometimes use different terminology and base their activities on different underlying principles and priority areas. Therefore, one of the main tasks of a new Fund would be to ensure better coordination with regard to the implementation of social protection systems and adequate resource mobilisation. The Fund could leverage synergies of existing, well-functioning forms of cooperation between individual donors, development agencies, IFIs and recipient countries; these existing forms of cooperation should also be coordinated with the activities of the Fund, as well as with the projects of other donors. In terms of the Fund's governance structure, this means that there is a need for a close cooperation of its bodies with the relevant institutions at country level. For this purpose, it might be useful to set up, for example, international country teams that would bring together representatives of relevant UN organizations, IFIs, bilateral donors etc. in the area of social protection.

IV. A global funding mechanism needs strong **accountability** structures. Again this requirement follows both from the principles of effective development cooperation and the rights-based approach to social protection. Already the *Paris Declaration* (2015, para. 47) stipulated that "(a) major priority for partner countries and donors is to enhance mutual accountability and transparency in the use of development resources" (see also *Busan Partnership Agreement*, 2011, para. 11d, *Nairobi Outcome Document*, 2016, paras. 72-82). But accountability is also an important principle for the relationship between the State actors involved in the Fund and those people who are potential beneficiaries of the international support by the Fund. According to *General Comment No. 19* (para. 7) "(a)ny persons or groups who have experienced violations of their right to social security should have access to effective judicial or other appropriate remedies at both national and international levels". This has clear consequences for the governance of the Fund: Mechanisms need to be established to ensure accountability between all actors involved in the activities of the Fund, namely 1) between the Fund and the donors (as well as international organizations providing technical assistance), 2) between the Fund and recipient governments, and 3) between recipient governments and potential beneficiaries as well as between the Fund and the beneficiaries.

Though it is possible that *preventive* mutual control is already provided – at least to a considerable extent – in advance by the participation mechanisms in the Fund's organisational structure (see above 2.), decisions taken by the Fund's bodies must also be subject to *subsequent* review. Therefore, representatives of the donor side and of the recipient countries should be given the opportunity to check compliance with the common roadmap of all the decisions related to the choice of countries, nature of technical assistance and amounts of financial support. One option is to have these reviews held in the course of meetings of the respective bodies. Another option would be to establish a separate accountability unit, e.g. a supervisory committee consisting of independent experts. It is, however, equally important that the governments of the recipient countries are accountable to the Fund as well as to the potential beneficiaries for the correct use of the financial resources. This can, of course, be done by regular reporting; but it might be advisable also to set up a monitoring unit whose task would be to supervise and evaluate the implementation processes and outcomes. Moreover, review mechanisms should also be accessible to potential beneficiaries. For this purpose, in line with para. 7 of *ILO Recommendation No. 202*, it is necessary to provide for review and appeal

procedures at national level. In addition, it should be considered whether to give representatives of affected persons the opportunity also to directly report to the Fund at least about severe shortcomings in the implementation of the support programmes.

I hope that these considerations have been helpful for you. If you have any further questions or would like to discuss individual aspects in more detail, please do not hesitate to contact me.

Best regards

Markus Kaltenborn