

1. From an international human rights law perspective, do concerns arise if:
 - i. intervening factors (such as a person's geographical isolation, or lack of public transport or childcare) interfere with their capacity to fulfil the conditions associated with their social welfare payments;

Yes. The UN Committee on Economic Social and Cultural Rights has made clear that accessibility is a key element of the right to social security. In doing so, it has stated that, '[q]ualifying conditions for benefits must be reasonable, proportionate and transparent. The withdrawal, reduction or suspension of benefits should be circumscribed, based on grounds that are reasonable, subject to due process, and provided for in national law.'¹ The Committee has also stated that enjoyment of the right to social security must not be subject to discrimination on the basis of right-holders' place of residence or economic or social situation.² Where a conditionality is set to have a disproportionate impact on a group of persons due to their location, lack of public transport or childcare, it raises concerns from the perspective of both Article 9 and Article 2(2) of the International Covenant on Economic, Social and Cultural Rights.

- ii. a private contractor is making the decision to suspend a person's welfare payment (or making a decision which will cause their payment to be suspended);

Privatisation is not per se prohibited by international human rights law, including the International Covenant on Economic, Social and Cultural Rights. However, it is not possible for the state to 'outsource' its ultimate responsibility for securing rights under that treaty. While the state may involve private contractors in delivery of the right to social security, the UN Committee on Economic, Social and Cultural Rights has stated that,

'Where social security schemes ... are operated or controlled by third parties, States parties retain the responsibility of administering the national social security system and ensuring that private actors do not compromise equal, adequate, affordable, and accessible social security. To prevent such abuses an effective regulatory system must be established which includes framework legislation, independent monitoring, genuine public participation and imposition of penalties for non-compliance.'³

Furthermore, when discussing the 'obligation to protect' the right to social security (i.e., to prevent third party (non-state actor) interference with enjoyment of that right), the Committee has made clear that:

'The obligation [to protect] includes, inter alia, adopting the necessary and effective legislative and other measures, for example, to restrain third parties from denying equal

¹ UN Committee on Economic, Social and Cultural Rights, 'General Comment No.19 on the right to social security (Art. 9)', UN Doc. E/C.12/GC/19 (4 February 2008), para 24.

² UN Committee on Economic, Social and Cultural Rights, 'General Comment No.20 on non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights the right to social security (Art. 9)', UN Doc. E/C.12/GC/2019 (2 July 2009), paras 34 and 35.

³ UN Committee on Economic, Social and Cultural Rights, 'General Comment No.19 on the right to social security (Art. 9)', UN Doc. E/C.12/GC/19 (4 February 2008), para 46.

access to social security schemes operated by them or by others and imposing unreasonable eligibility conditions ...’⁴

It is thus clear that there are wide-ranging requirements that the state must comply with where they make provision for third party involvement in the delivery of the right to social security (Article 9 ICESCR).

iii. payment conditions and sanctions have a disproportionate impact on women (who have young children); and

Article 2(2) of the International Covenant on Economic, Social and Cultural Rights provides that States parties:

‘undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, **sex**, language, religion, political or other opinion, national or social origin, property, birth or **other status**.’

Where payment conditions are neutral on their face but have a disproportionate impact on women’s enjoyment of the right to social security (and hence their right to an adequate standard of living), this raises the issue of indirect discrimination in terms of Articles 9 and 11(1) ICESCR contrary to the Article 2(2) ICESCR prohibition of discrimination on the grounds of sex.

In deciding whether indirect differential treatment (which is at issue here) is discriminatory, it needs to be considered whether the indirect differential treatment based on prohibited grounds is reasonable and objective.⁵ According to the Committee, this will include an assessment as to whether the aim and effects of the measure in question are legitimate and compatible with the nature of the Covenant rights,⁶ including the rights to social security and to an adequate standard of living. Furthermore, any indirect differential treatment of a particular group in terms of enjoyment of the ICESCR rights must be solely for the purpose of promoting the general welfare in a democratic society.⁷ In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realised and the measures or omissions and their effects.⁸ As such, any indirect differential treatment produced by the Instrument, including on women (with young children), must satisfy this test.

I would also refer the Committee to Professor Goldbatt’s submission, which provides additional information on this issue from the perspective of the UN Convention on the Elimination of All Forms of Discrimination against Women, including with regard to intersectional discrimination.

Where payment conditions and sanctions have a disproportionate impact on women with young children, this also raises questions from the perspective of children’s rights under the UN

⁴ UN Committee on Economic, Social and Cultural Rights, ‘General Comment No.19 on the right to social security (Art. 9)’, UN Doc. E/C.12/GC/19 (4 February 2008), para 45.

⁵ UN Committee on Economic, Social and Cultural Rights, ‘General Comment No.20 on non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights the right to social security (Art. 9)’, UN Doc. E/C.12/GC/2019 (2 July 2009), para 13.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

Convention on the Rights of the Child (UNCRC). I refer the Committee to my evidence on 25 June, particularly my comments on the prohibition of discrimination on the basis of children's parents' sex or 'other status' (Article 2 UNCRC) with regard to respecting and ensuring children's rights to benefit from social security (Article 26 UNCRC) and to a standard of living adequate for their development (Article 27 UNCRC)).

- iv. demonstrating your compliance with your welfare conditions requires you to have access to a computer, smart phone or tablet with internet or phone credit?

In his 2019 report to the General Assembly, the then UN Special Rapporteur on extreme poverty and human rights, Philip Alston, focused on digital welfare states and human rights. In doing so, he flagged that:

'For its part, the digital welfare state sometimes gives beneficiaries the choice to go digital or to continue using more traditional techniques. In reality, however, policies such as "digital by default" or "digital by choice" are usually transformed into "digital only" in practice. This in turn exacerbates or creates major disparities among different groups. A lack of digital literacy leads to an inability to use basic digital tools at all, let alone effectively and efficiently. Limited or no access to the Internet poses huge problems for a great many people. Additional barriers arise for individuals who have to pay high prices to obtain Internet access, travel long distances or absent themselves from work to do so, visit public facilities such as libraries in order to get access, or obtain assistance from staff or friends to navigate the systems.'⁹

It is worth noting that the Special Rapporteur made explicit, critical reference to Australia's Targeted Compliance Framework. In doing so, he stated that 'problems have been highlighted that result from a lack of Internet access and digital literacy and to the rigidity of an automated system which fails to take real-life situations into account.'¹⁰

Where requirements for demonstrating compliance with welfare conditions do not make provision for a genuine non-digital option - or are not accompanied by programmes designed to ensure reasonable access to the necessary equipment, as well as effective online access - then this will pose clear issues in terms of the ability of right-holders who do not have access to a computer, smart phone or tablet with internet or phone credit to realise their human rights to social security and to an adequate standard of living.¹¹

2. Do welfare conditions that require a person's conduct to be regularly monitored (e.g. their completion of studies, their attendance at regular activities) raise concerns from a right to privacy perspective?

I cannot speak to this question as I am not a right to privacy expert.

⁹ Special Rapporteur on Extreme Poverty and Human Rights, 'Report on Digital Welfare States and Human Rights', UN Doc. A/74/493 (11 October 2019), para 45.

¹⁰ Ibid, para 31.

¹¹ For more on the importance of digital equality in the context of social security, including the information drawn on for the purposes of the text above, see *ibid* paras 46-49.