

LABOUR AND SOCIAL JUSTICE

GOVERNANCE PRINCIPLES FOR A GLOBAL FUND FOR SOCIAL PROTECTION

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In line with the 2030 Agenda for Sustainable Development international support for establishing and financing social protection floors must be organised within a partnership-based framework.



The authors therefore argue that if a new international financing mechanism is set up for this purpose, it should be designed in such a way that recipient governments retain full ownership of their social protection systems.



Moreover, it will be necessary that the recipient countries, as well as civil society actors be included in the decision-making processes of the new mechanism and that effective accountability instruments are implemented.

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There is widespread agreement at the international level that building long-term and sustainably financed social protection systems can make an important contribution to combating extreme poverty and inequality. In addition to investments in education and job creation, solutions for financing universal basic social protection («social protection floors») should therefore top the priorities list of international development cooperation, especially support for countries that are currently unable to raise sufficient domestic resources for this purpose. In line with the 2030 Agenda for Sustainable Development, these efforts must be organised within a partnership-based framework.



If a financing mechanism is set up for this purpose (for example, within the framework of the Global Accelerator for Jobs and Social Protection proposed by the UN Secretary-General), it should be designed in such a way that the governments of the recipient countries retain full ownership of their social protection systems. It must therefore be ensured that the new financing mechanism's eligibility criteria are limited to a few core requirements, which are derived from ILO Recommendation No. 202 (such as a commitment to guarantee non-discriminatory access to social protection systems and to adopt a national social protection strategy and action plan, including an approach to how to ensure domestic funding in the long run).



In addition, the recipient countries (and their constituencies) must be included in the decision-making processes of this new mechanism with equal rights; likewise, the relevant civil society actors must be given appropriate opportunities to participate. Finally, it is also necessary that effective accountability instruments be implemented. It does not particularly matter whether this funding mechanism is subsequently called a «Global Fund for Social Protection» or something else, but it is important that its governance structure is shaped by these three principles: ownership, inclusiveness, and mutual accountability.

For further information on this topic:

<https://geneva.fes.de/topics/employment-and-social-policy>

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in Kooperation mit



Global Coalition for
SOCIAL PROTECTION FLOORS

Brot
für die Welt

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The Covid-19 crisis has demonstrated – and to an unprecedented extent – not only the vulnerability of our health, governance and economic systems, but also how important well-functioning social protection systems are for our societies. The lockdown measures and the global recession resulting from the pandemic have made it impossible for many people to continue working as normal, so that they have lost at least part of their livelihoods. In almost all countries, governments have therefore sought to provide additional social benefits to help their populations cope with the social hardships they have faced.¹ Many people belonging to particularly vulnerable groups have not been reached, however, or only to a very limited extent. Moreover, most of the programmes have been available for only a limited period of time and do not reach all potential beneficiaries. Several large-scale international aid programmes have also been launched in response to the pandemic, channelling funds into social protection activities in developing countries. But the financial challenges that some countries have to address in providing social protection for their citizens go far beyond the immediate consequences of the pandemic.² Above all, there is a risk that in the event of another major crisis – such as a climate-related humanitarian catastrophe or a new pandemic – social protection systems would again be faced with significant difficulties. Then it would be fatal if, once more, in many countries and regions the only measures taken were »maladapted, short-term, reactive and inattentive to the realities of people in poverty«.³

Therefore, the solution to these problems cannot be the repeated launch of new ad hoc aid programmes. What is needed is an international financing mechanism set up for the longer term that can support countries that are unable to guarantee and finance systemic rights-based basic social protection for their populations in the sense of the Social Protection Floors Recommendation (ILO R202, 2012)⁴ and Sustainable Development Goals (SDGs) 1.3 and 3.8.⁵ Within the framework of such an institution, donor states and donor organisations would decide together with the governments of the recipient countries and with representatives of civil society on a coordinated approach both for the long-term international financing of social protection floors and in the event of sudden crises. Following earlier work in the ILO, the

UN Special Rapporteurs Magdalena Sepúlveda and Olivier de Schutter proposed the establishment of a Global Fund for Social Protection in 2012 that would fulfil both functions.⁶ This proposal – in an updated version⁷ – has now been taken up by several international actors in the Covid-19 crisis and is currently under intense discussion.⁸ Among other things, it is not yet clear how the governance structure of such a financing mechanism could be set up. One option would be to establish it as an organisational unit within the Global Accelerator for Jobs and Social Protection proposed by the UN Secretary-General.⁹ But other models are also conceivable, such as a global fund independent of this initiative and managed by the UNDP Multi-Partner Trust Fund Office (MPTF Office).¹⁰

Regardless of the name given to the new international financing mechanism (in what follows, we will continue to refer to it as the »Global Fund for Social Protection« [GFSP] for the sake of convenience), and regardless of where it will be located in the UN structure, a number of fundamental principles of international human rights law and development cooperation law must be observed in the design of its governance structures. These principles are intended primarily to guarantee that the Fund has sufficient legitimacy. At the same time, they would help to ensure its operability and that it is able to contribute effectively to the establishment of social protection floors in low-income countries. The principles approach does not specify a concrete and detailed governance model, but it does provide a framework of orientation for the actors involved in setting up the Fund. This paper first discusses the legal and political background of the principles approach (I). Based on this, the question is addressed as to which structural requirements can be derived from the two key principles of ownership (II) and inclusiveness (III). Finally, some short notes will also deal with the implications of the accountability principle for the structure of the Fund (IV). Following the conclusions (V), recommendations for the establishment of a GFSP (VI) are presented.

The authors are grateful for the comments received from Roberto Bissio, coordinator of Social Watch and Third World Network (TWN) representative in Latin America, and from Michael Cichon, fellow of the International Council on Social Welfare (ICSW) and former Director of the ILO's Social Protection Department.

- 1 Available at: <https://www.social-protection.org/gimi/gess/ShowWiki.action?id=3426>; <https://www.social-protection.org/gimi/gess/ShowWiki.action?id=62>; see also Devereux (2021).
- 2 For a comprehensive analysis of the challenges involved in closing the social protection gaps after the Covid-19 crisis see the studies by Bierbaum/Schmitt (2022 and 2022a); see in this context also Manuel et al. (2020); Oxfam (2020); Bastagli/Lowe (2021); Razavi et al. (2020, 2021); Bierbaum et al. (2021); Rutkowski (2021); Lind et al. (2021); Leisering (2021).
- 3 De Schutter (2020), para. 6.
- 4 Available at: https://www.ilo.org/secsoc/areas-of-work/legal-advice/WCMS_205341/lang--en/index.htm.
- 5 2030 Agenda for Sustainable Development, UN Doc. A/RES/70/1, available at: <https://sdgs.un.org/2030agenda>.

6 De Schutter/Sepúlveda (2012); see also Cichon (2015).

7 De Schutter (2021).

8 UN Secretary General, Our Common Agenda, 10 September 2021, p. 28, available at: <https://www.un.org/en/un75/common-agenda>; International Labour Conference – 109th Session, 2021, Resolution concerning the second recurrent discussion on social protection (social security), 19 June 2021, para. 21 c; Global Coalition for Social Protection Floors (2020); see also McCord et al. (2021), 55; Samans (2021), 12; Cichon (2021); Kaltenborn/Wiebe (2021).

9 UN Secretary-General's Policy Brief Investing in Jobs and Social Protection for Poverty Eradication and a Sustainable Recovery, 28 September 2021. See in this context also Cichon/Lanz (2022, 8) who suggest that the Global Fund (or a facility that operates on similar principles) could »become an integrated part of the Accelerator concept, should it become reality«. In addition, they advocate a new convention on social protection floors that could be set by the UN or by the ILO.

10 Available at: <https://mptf.undp.org/>.

1

GOVERNANCE PRINCIPLES FOR INTERNATIONAL SOCIAL PROTECTION PARTNERSHIPS

1.1 THE HUMAN RIGHTS APPROACH TO SOCIAL PROTECTION

An international financing mechanism aimed at supporting the establishment and expansion of social protection systems in low-income countries and enabling the maintenance of social protection floors even in times of crisis is in line with the requirements that can be derived as an international obligation from the right to social security. This right, enshrined in Article 9 of the International Covenant on Economic, Social and Cultural Rights¹¹ and in numerous other international human rights treaties,¹² has an international (or extraterritorial) dimension, just like other social rights. The wealthier members of the global community are obliged – at least as far as their financial resources allow – to support poorer countries in their efforts to implement the right to social security.¹³ This obligation to provide international assistance was also expressly reaffirmed in the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights published by a group of experts in 2012.¹⁴

¹¹ 993 UN Treaty Series (UNTS) 3.

¹² Art. 5e iv International Convention on the Elimination of All Forms of Racial Discrimination (1966, 660 UNTS 195); Art. 11, paras 1e, 1f, Convention on the Elimination of All Forms of Discrimination against Women (1979, 1249 UNTS 13); Art. 26 Convention on the Rights of the Child (1989, 1577 UNTS 3); Art. 27 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990, 2220 UNTS 3); Art. 28 Convention on the Rights of Persons with Disabilities (2006, 2515 UNTS 3); Arts 12, 13 European Social Charter (1951, ETS No. 005); Art. 9 Additional Protocol of San Salvador (to the American Convention on Human Rights) on Economic, Social and Cultural Rights (1988, OASTS 69); Art. 13 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003, OAU Doc. CAB/LEG/66.6); Art. 30 Arab Charter of Human Rights (2004; 12 Int'l Human Rights Reports 893 [2005]). Moreover, it is expected that in the near future the African Union will adopt a Protocol to the African Charter on Human and People's Rights on the Rights of Citizens to Social Protection and Social Security.

¹³ Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 19 (2008) on the Right to Social Security (Art. 9 ICESCR), UN Doc. E/C.12/GC/19, para. 55, 61, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11.

¹⁴ Art. 33 Maastricht Principles, available at: <http://www.etoconsortium.org/en/main-navigation/library/maastricht-principles/>; see also De Schutter (2012); Vandenhole (2020); Chenwi (2022). Complementary to this extraterritorial obligation is the right of those states whose economic and fiscal capacities are inadequate to implement the social protection guarantees to seek international cooperation and support that complement their own efforts; see ILO Rec. 202 para. 12.

When implementing social rights, several principles must be observed at both the national and the international level. This is referred to as the human rights (based) approach to development. For multilateral development cooperation, they are set out in a paper issued in 2003 by the United Nations Development Group.¹⁵ Bilateral donor organisations and other international actors use similar concepts.¹⁶ The paper itself is not legally binding, but the principles can be derived from the relevant human rights conventions by interpreting the individual rights in accordance with the General Comments of the Committee on Economic, Social and Cultural Rights (CESCR).¹⁷

Two principles of this approach are particularly relevant for the governance structure of organisations involved in financing and implementing social protection tasks.¹⁸ The first is the requirement of adequate stakeholder participation in all relevant decision-making processes (legislation, executive program concretisation, individual decisions). Representatives of affected groups or non-governmental organisations (NGOs) that could give these groups a voice¹⁹ must therefore also be represented in decision-making bodies at the international level and have a real opportunity to get involved. Furthermore, civil society actors and, in particular, those directly affected must have access to review mechanisms (monitoring instruments, complaints and grievance procedures) that enable them to identify implementation deficiencies at an early stage and, if necessary, to defend themselves against them. This principle can also be applied to the work of international bodies. In other words here, too, it must be ensured

¹⁵ UNDG (2003).

¹⁶ See for an overview World Bank/OECD (2016).

¹⁷ Available at: <https://www.ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx>.

¹⁸ For more information on other principles of the human rights approach (interdependence and indivisibility of human rights, equality and non-discrimination, transparency, provision of an adequate legal and institutional framework) and their relevance to social protection policies, see Sepúlveda/Nyst (2012), 26–48, 54–57; see generally on the rights-based approach to social protection Ulriksen/Plagerson (2014), 756.

¹⁹ Cf. Tripone (2009), 206.

that the rights holders – or NGOs that represent their interests²⁰ – can exercise monitoring functions.²¹

1.2 DEVELOPMENT COOPERATION PRINCIPLES

In addition to human rights, the standards of international development law should also be considered in the design of international development partnerships – and thus also in the governance structure of a GFSP. Some principles that state and non-state actors should take into account in the context of development cooperation have been developed in the Global Partnership for Effective Development Cooperation (a). In addition, the documents of the UN Development Cooperation Forum also contain guidelines for structuring global partnerships (b).

1.2.1 Global Partnership for Effective Development Cooperation

The Global Partnership for Effective Development Cooperation (GPEDC), established in 2012, brings together governments, bilateral and multilateral organisations, civil society actors, private sector and trade union representatives, and parliamentarians to improve the instruments for achieving the goals of the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda.²² The partnership's policy documents – the Busan Partnership Agreement (2011)²³ and the Nairobi Outcome Document (2016)²⁴ – build on the Aid Effectiveness Agenda developed at several previous international conferences (Monterrey 2002, Rome 2003, Paris 2005²⁵ and Accra 2008²⁶). At the core of this agenda and of the GPEDC are a set of principles that should guide development cooperation²⁷ and will thus also be relevant for the conception and work of the GFSP. For the organisational set-up of development partnerships – that is, cooperation within the framework of multistakeholder initiatives or international

organisations – the principles of ownership, inclusive partnerships, and transparency/accountability are of particular relevance. Focusing on results, the fourth principle of the GPEDC, will have to be taken into account when it comes to the content of the work of the GFSP. Because it does not provide any guidelines for the governance structure of the new institution, it will not be discussed further below.²⁸

According to the ownership principle, as specified in the Nairobi Outcome Document, each country has »primary responsibility for its own economic and social development«; therefore »inclusive national policies and development strategies as the guiding strategic frameworks« are pivotal for all partners (para. 37). The recipient countries must »ensure, in active partnership with parliaments and civil society, that support of development partners falls within the ambit of the national policy and development strategy priorities, and reflects citizens' priorities and needs« (para. 42c). Their partners commit to »jointly support nationally-led programmes in order to reduce fragmentation in a voluntary, flexible, inclusive and context-specific manner« (para. 43e), moreover to »accelerate untying of aid« (para. 43g) and to »accelerate progress in aligning bilateral development co-operation with the inclusive national development strategies and planning processes of partner countries receiving support« (para. 43j).

The principle of inclusive partnerships requires GPEDC members to »strengthen and deepen partnerships with the business sector, civil society organisations, philanthropy, parliaments, local governments and trade unions to achieve local, national, sub-regional, regional and global development goals« (para. 60b). In this context, it is pointed out that civil society actors should be allowed »full participation in development processes at all levels« (para. 67); a similar formulation is found in the Busan Partnership Agreement with regard to the private sector (para. 32b). This need to pursue a »participatory approach« in development cooperation has already been emphasised explicitly in the Paris Declaration on Aid Effectiveness (paras 46, 48).

Finally, the principles of transparency and mutual accountability are important criteria for the governance structures of development partnerships. In the Busan Partnership Agreement, the members of the GPEDC emphasised that »mutual accountability and accountability to the intended beneficiaries of our co-operation, as well as to our respective citizens, organisations, constituents and shareholders, is critical to delivering results. Transparent practices form the basis for enhanced accountability« (para. 11d). The Nairobi Outcome Document additionally makes it clear that this obligation to mutual accountability applies not only to states, but

²⁰ In practice, it is not always easy to identify those NGOs that meet this requirement; cf. Hasl (2018) and Sändig et al. (2018). The problem can probably be solved best if there already exist umbrella organisations of potentially qualifying NGOs; examples in the field of social protection include the Global Coalition for Social Protection Floors (GCSPF, <http://www.socialprotectionfloorscoalition.org/>) and the Africa Platform for Social Protection (APSP; <https://africapsp.org/>).

²¹ Both aspects of the rights-based approach are also included in the Draft Protocol to the African Charter on Human and People's Rights on the Rights of Citizens to Social Protection and Social Security (participation in Art. 2 b, 5 a, 10 f, 11 j, 12 h, 23 i.; access to complaint mechanisms in Art. 26 of the Draft Protocol); see also paras 21–25 and 48 of the Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and People's Rights, adopted in November 2010 by the African Commission on Human and Peoples' Rights.

²² Available at: <https://www.effectivecooperation.org/landing-page/about-partnership>.

²³ Available at: <https://www.effectivecooperation.org/content/busan-partnership-outcome-document>.

²⁴ Available at: <https://www.effectivecooperation.org/content/nairobi-outcome-document>.

²⁵ Available at: <https://www.effectivecooperation.org/content/paris-declaration-aid-effectiveness-and-accra-agenda-action>.

²⁶ Available at: https://www.oecd-ilibrary.org/development/accra-agenda-for-action_9789264098107-en.

²⁷ Available at: <https://www.effectivecooperation.org/landing-page/effectiveness-principles>.

²⁸ The same applies to the principle of harmonisation, which has been given a larger section in the Paris Declaration (para. 32 et seq.). Closely related to this is the call for greater coherence in development cooperation, see Busan Partnership Agreement, para. 23 b). A more coherent and better coordinated, in parts even harmonised international cooperation in the field of social protection would be one of the tasks that would probably be assigned to the GFSP; see Kaltenborn/Wiebe (2021), 20.

also to all other non-state and international actors involved (para. 72).²⁹

1.2.2 UN Development Cooperation Forum

Even though the Aid Effectiveness Agenda and the GPEDC based on it are supported by a large number of countries, including from the Global South,³⁰ they are nevertheless based on an OECD initiative and have thus, as a »donor-driven approach«, not remained without criticism. The main objection is that it lacks sufficient legitimacy.³¹ Moreover, according to the critics, the negotiations between donor and recipient countries in the Paris Declaration process were conducted under asymmetrical conditions, with the result that »(r)ights and responsibilities are not distributed fairly« between developing and developed countries.³² While the recipient countries were required to make major changes in governance, the donors did not accept comparable obligations.³³

In the meantime, the partnership has been opened up to significantly more actors and its focus has been further developed.³⁴ In particular, the increasingly important approaches to South-South cooperation and the involvement of private foundations and other private sector actors in development cooperation are now being addressed. In addition, a closer linkage has been achieved between aid effectiveness issues and concrete substantive objectives, such as the leave-no-one-behind principle of the 2030 Agenda.³⁵ However, it cannot be ignored that it has not yet been possible to expand the circle of participants in such a way that one can truly speak of a »global« partnership. Important emerging economies such as Brazil, China and India were brought on board to support the Busan Outcome Document, but they left the partnership again after a short time.³⁶

Nevertheless, the question of the legitimacy of the GPEDC can be left open.³⁷ The three principles that are important for the governance structure of the GFSP – ownership, inclusiveness and accountability – are also recognised outside the GPEDC as essential guidelines for international cooperation in development policy. For example, references to all three principles can be found in the documents of the UN Development Cooperation Forum (UN DCF), which was founded in 2007 as a subsidiary body of the UN Economic and Social Council (ECOSOC) and is thus supported by all

193 UN member states.³⁸ The DCF documents remind us that countries »should use national development cooperation policies (NDCPs) as powerful tools for ensuring broad-based country ownership and for lifting the quality of partnerships over time«,³⁹ and that »(l)onger-term, programme-based approaches (e.g. budget support, pooled funding, etc.) facilitate better alignment with national sustainable development strategies of developing countries«. ⁴⁰ Like the GPEDC, the DCF emphasises the need for a participatory approach in development cooperation.⁴¹ In addition, the DCF advocates a broad understanding of the accountability principle: »Mutual accountability and transparency need to reflect the multiplicity of development actors and extend beyond the relationship between developing country Governments and international development cooperation partners to involve the full range of actors, stakeholders and beneficiaries.«⁴²

GPEDC and DCF in some respects have complementary functions, but in others they compete with each other.⁴³ While the former, despite the expansion of its membership in recent years, is often still seen as a forum steered primarily by the OECD countries, the latter is viewed with a certain indifference by some DAC donor countries, as they associate it with the Group of 77 (G77).⁴⁴ Because neither of the two platforms has yet been able to establish itself as a universally accepted institution for effective norm- and standard-setting in development cooperation,⁴⁵ it is important to note that the 2030 Agenda for Sustainable Development that has been adopted by consensus by all states⁴⁶ also contains statements on ownership (SDG 17.15, paras 46, 66, 74a), inclusiveness/participation (SDG 16.7, 16.8, paras 35, 74d) and accountability (SDG 16.6, paras 35, 45, 47, 73). Inclusive participation and accountability are to be realised »at all levels«, and the ownership principle is focused on international cooperation anyway. There can therefore be no doubt that meanwhile these principles have become globally recognised as important governance guidelines for development cooperation. Moreover, the 2030 Agenda now also offers a thematic framework that could help these principles gain new importance.⁴⁷

²⁹ For the development of mutual accountability mechanisms and data transparency in development cooperation, see OECD/UNDP (2019), 81, 141.

³⁰ 161 countries have signed the Nairobi Document, available at: <https://www.effectivecooperation.org/landing-page/effectiveness-principles>.

³¹ Bracho (2017), 10; Bracho (2021), 379; see also de Mello e Souza (2021), 351.

³² Bissio (2013), 234, 245 et seq.

³³ Ibid.

³⁴ See Atwood (2012); Sondermann (2012); Abdel-Malek (2015), 193.

³⁵ Nairobi Outcome Document, paras 83 et seq. Special emphasis is given to the topics »Gender Equality and the Empowerment of Women and Girls«, as well as support for children and young people.

³⁶ Bracho (2017); Brown (2020), 1243; de Mello e Souza (2021).

³⁷ For a deeper analysis see Ashoff (2015), 112 et seq.

³⁸ Available at: <https://www.un.org/development/desa/financing/what-we-do/ECOSOC/development-cooperation-forum/DCF-home>; cf. de Mello e Souza (2021), 351; Abdel-Malek (2015), 152, 234; Verschaeve/Orbie (2016).

³⁹ UN ECOSOC (2018), 6; see also UN DESA (2020), 10.

⁴⁰ UN ECOSOC (2016), 4.

⁴¹ UN ECOSOC (2018), 6.

⁴² UN ECOSOC (2018), 9; cf. also UN ECOSOC (2016), 7; UN DESA (2018).

⁴³ Janus et al. (2014), 2; see also Swiss (2021) 121; Esteves/Assunção (2014).

⁴⁴ Janus et al. (2014), 2.

⁴⁵ Chaturvedi et al. (2021), 4; Esteves/Klingebiel (2021), 187.

⁴⁶ See above, n. 5.

⁴⁷ Lundsgaarde/Engberg-Pedersen (2019). On concepts for further development of the aid-effectiveness and aid-quality debate, see McKee et al. (2020).

2

COUNTRY OWNERSHIP AS A BASIC PRE-REQUISITE FOR THE GOVERNANCE OF INTERNATIONAL COOPERATION IN THE FIELD OF SOCIAL PROTECTION

The ownership principle is one of the fundamental pillars of international cooperation in the field of social protection, just as it is for other sectors of development policy. It needs to be reflected in all governance structures of international financing mechanisms. Therefore, it is also important for the decision-making procedures of a GFSP because such proceedings deal with the criteria and conditions according to which official development aid (ODA) funds are made available to individual countries.

Decisions by GFSP bodies will be taken in an area characterised – at least in part – by divergent donor and recipient interests. Even if all countries and organisations involved in the new international financing facility pursue a common overarching goal – in this case, improved universal protection against social risks, including in low-income countries – there may nevertheless be different views on concrete implementation (instruments, substantive focus, scope of support and so on). Whose position prevails in such conflicts of interest is not least a question of political power. But this exercise of power can (and must) be limited within international financial institutions by means of both organisational and content-related guidelines. To ensure that controversial issues can be discussed transparently and decided with due regard for all interests, it is necessary, for example, to design the governance structure of such an organisation in line with the need to ensure sufficient and effective participation of all stakeholders in the decision-making process and maybe even to provide them with veto positions (see Section III below).

In addition, not only the Fund's procedural guidelines but also the funding criteria anchored in the organisation's statutes should provide a degree of pre-structuring for the individual decisions of its bodies. In this way obstructive forms of exercising power contrary to the overarching goals could largely be avoided from the outset. In the case of the GFSP, this could be achieved by orienting its eligibility criteria to some core demands of ILO Recommendation No. 202 (see Section II.1.a) and by establishing the ownership principle as the key directive in international support for the establishment of social protection floors (II.1.b).

2.1 FUNDING CRITERIA IN LINE WITH THE OWNERSHIP PRINCIPLE

2.1.1 Basic requirements of ILO Recommendation No. 202

Aligning the eligibility criteria with the objectives of ILO Recommendation No. 202, it is first important to note that the GFSP's sole task should be to help close the financial gaps that prevent states from guaranteeing basic social protection – the so-called national social protection floor – to their populations. What this core concern of the new financing mechanism means follows from para. 4 ILO Recommendation No. 202:

»Members should, in accordance with national circumstances, establish as quickly as possible and maintain their social protection floors comprising basic social security guarantees. The guarantees should ensure at a minimum that, over the life cycle, all in need have access to essential health care and to basic income security which together secure effective access to goods and services defined as necessary at the national level.«

In addition to this main objective, para. 3 ILO Recommendation No. 202 contains a list of essential principles that should be observed in the design of social protection systems.

Both the statutes of the GFSP and individual funding decisions should stipulate that the resources made available by the Fund must benefit solely the objectives stated in para. 4 ILO Recommendation No. 202,⁴⁸ and that the provision of financial support is subject to compliance with a few other basic criteria at the time of the funding application and during the envisaged funding period, which also correspond to

⁴⁸ Specifications of the minimum standards to be ensured via social protection floors are provided in para. 5 (essential health care that meets the criteria of availability, accessibility, acceptability and quality; basic income security for children, people of active age and the elderly) and in para. 8b of the Recommendation (»[B]asic income security should allow life in dignity. Nationally defined minimum levels of income may correspond to the monetary value of a set of necessary goods and services, national poverty lines, income thresholds for social assistance or other comparable thresholds established by national law or practice, and may take into account regional differences...«).

the minimum human rights requirements for social protection systems.⁴⁹ For example, it could be required of recipient countries that

- non-discriminatory access to social protection systems, especially for disadvantaged and excluded persons and groups, is guaranteed;⁵⁰
- a national social security strategy and action plan is adopted;⁵¹ and
- implementation of social protection floors is regularly monitored.⁵²

In order to establish effective accountability structures (see Section IV), it will also be necessary to require that recipient countries provide a precise legal basis for the provision of social benefits, and transparent and easily accessible complaint mechanisms.⁵³ Finally, another eligibility criterion could be that recipient countries demonstrate – at least in principle – their willingness and continuing commitment to make long-term efforts to finance social benefits from their own resources, as also required by para. 12 ILO Recommendation No. 202.⁵⁴ A financing plan to this effect could, for example, be included in the national strategy for social security.

2.1.2 Exclusive national responsibility for the design of the social protection floor

However, the specific characteristics of this policy field make it necessary that all further questions regarding the design of the social protection floor remain in the exclusive competence («ownership») of the respective government. Social protection can be provided in a variety of forms and should

⁴⁹ The core obligations with regard to the right to social security are listed in CESCR, General Comment No. 19 (see above n. 13), paras 59–61. See, generally, on the concept of «minimum» or «core human rights obligations» CESCR, General Comment No. 3 on the nature of States parties obligations (Article 2, para. 1) of 14.12.1990, E/1991/23, para. 10, 11, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4758&Lang=en; cf. also Chapman/Russel (2002); Scheinin (2013).

⁵⁰ CESCR, General Comment No. 19 para. 59 b; ILO Rec. 202 para. 3 a, d and 6). The fact that certain groups of people require special social protection is also emphasised in other parts of General Comment No. 19, for example, in paras 32–39 (women, workers inadequately protected by social security, workers in the informal economy, indigenous peoples and minority groups, migrant workers, refugees, asylum-seekers and stateless persons, internally displaced persons and internal migrants).

⁵¹ CESCR, General Comment No. 19 para. 59 d; ILO Rec. 202 para. 13 et seq.

⁵² CESCR, General Comment No. 19 paras 59 f; ILO Rec. 202 para. 19 et seq.

⁵³ ILO Recommendation No. 202 para. 7, see also CESCR, General Comment No. 19 paras 77, 78.

⁵⁴ See also de Schutter (2021), para. 51: «The assessment that a country's request for support should be granted ... would be based on an assessment that the road map presented by that country for the establishment and gradual extension of social protection is realistic, in particular as regards the sustainability of financing. In other terms, support by the global fund for social protection would be conditional upon recipient countries adopting a credible road map for the extension of social protection, including by identifying sources of funding (combining domestic resource mobilisation with international support).»

therefore be based on the relevant national strategies and priorities. ILO Recommendation No. 202 explicitly recognises this decision-making discretion in para. 9 (similar to General Comment 19 para. 4, 5 and 12):

«(1) In providing the basic social security guarantees, Members should consider different approaches with a view to implementing the most effective and efficient combination of benefits and schemes in the national context. (2) Benefits may include child and family benefits, sickness and health-care benefits, maternity benefits, disability benefits, old-age benefits, survivors' benefits, unemployment benefits and employment guarantees, and employment injury benefits as well as any other social benefits in cash or in kind. (3) Schemes providing such benefits may include universal benefit schemes, social insurance schemes, social assistance schemes, negative income tax.»

There is similar scope for governments regarding coordination of their social protection policies with other policy areas or expansion of technical and human resources capacities in the field of social protection. These aspects can certainly be included in the advisory services provided by the GFSP or by other international organisations or development agencies.⁵⁵ However, it would contradict the ownership principle if they were part of the eligibility criteria. The same applies to raising the funds needed for long-term domestic financing of social protection. How this challenge should be met remains a matter for the recipient governments' sovereign decision.⁵⁶

As already mentioned, it certainly should be clear to each recipient country that the Fund's resources are available only for transitional financing of social protection floors, and therefore that a strategy must be developed concerning how to ensure financing from national resources after this transition period – and the commitment to develop such a strategy should also be one of the preconditions for a country's eligibility. But the details of this strategy would have to

⁵⁵ A comprehensive range of advisory services are provided in particular in the ILO Flagship Programme (<https://www.social-protection.org/gimi/gess/Flagship.action#vision>). Together with UNICEF, the GCSFP and the EU, the ILO has also developed a programme dedicated to strengthening social protection systems through improved public financial management (<https://socialprotection-pfm.org/>). Advisory services and technical support on social protection are also provided by the World Bank (<https://www.worldbank.org/en/topic/socialprotection/overview#2>), the EU through its SOCIEUX+ programme (<http://socieux.eu/>), and the International Social Security Association (ISSA) (<https://www1.issa.int/>). The ISPA (Interagency Social Protection Assessments) tools (<https://ispatools.org/>) are a joint advisory service offered by several international organisations, governmental development agencies and NGOs.

⁵⁶ ILO Recommendation No. 202 leaves open the question of how ILO members will secure funding. It merely gives an indication of the options that should be considered for this purpose: «Members should consider using a variety of different methods to mobilise the necessary resources to ensure financial, fiscal and economic sustainability of national social protection floors, taking into account the contributory capacities of different population groups. Such methods may include, individually or in combination, effective enforcement of tax and contribution obligations, reprioritising expenditure, or a broader and sufficiently progressive revenue base. ... In applying such methods, Members should consider the need to implement measures to prevent fraud, tax evasion and non-payment of contributions» (para. 11).

be determined by the country itself, in accordance with the ownership principle. The GFSP's task is to contribute to more coherent, better coordinated and, in particular, more reliably financed international support for social protection floors throughout a country-specific transition period towards complete national financing, but it must not be misused as an instrument to interfere in the participating countries' social, financial and economic policies.

2.2 SHOULD ORGANISATIONAL REQUIREMENTS FOR IMPLEMENTATION AT COUNTRY LEVEL FOLLOW THE MODELS OF OTHER GLOBAL PARTNERSHIPS?

The ownership principle is also considered to be of great importance in a number of other global partnerships. The Global Fund to Fight AIDS, Tuberculosis and Malaria (GFATM), for example, has a policy that the programmes it supports »reflect national ownership and respect country-led formulation and implementation processes«.⁵⁷ To this end, it works in partner countries with so-called country coordinating mechanisms. These are national committees composed of representatives from all the sectors involved (including civil society, government, multilateral and bilateral organisations, academia, people affected by the diseases) who submit funding requests to the GFATM and monitor the funds provided.⁵⁸ Local fund agents are responsible for monitoring the appropriate use of these resources and the effectiveness of their implementation.⁵⁹ The Global Alliance on Immunization (GAVI), which also follows a country-led strategy,⁶⁰ works at country level with coordination forums, in which representatives of the respective governments and other key stakeholders address, among other issues, the strategic direction and monitoring of the Expanded Program for Immunisation (EPI) and related health sector activities.⁶¹ Another multi-stakeholder initiative, whose basic principles include support for »country ownership and nationally identified priorities«, is the Global Partnership for Education (GPE).⁶² At the national level, all relevant governmental and nongovernmental organisations work together in local education groups (LEGs) to support the Ministry of Education in identifying national education priorities and developing education sector plans and related programmes.⁶³ GPE funds are managed by grant agents selected by the governments of the recipient countries⁶⁴ (mostly international organisations such as UNICEF or the World Bank, sometimes also bilateral

development agencies or international non-governmental organisations).

What these examples have in common is that the organisation-related rules (or guidelines) of each of these partnerships provide quite far-reaching specifications for the design of the governance structure at the national level as well. The question now is whether one of these models should also be applied to the GFSP or whether it would be more in line with the objectives and tasks of the Fund to refrain from comparable specifications. The ownership principle speaks in favour of the second option: social protection is a task that requires state-organised programmes, usually set up nationwide and, if possible, also regulated by legislation. As in the health sector, non-governmental and international actors can be involved in performing these tasks with their own projects (for example, NGOs, private insurance companies, international organisations). However, only the government as the executive power on behalf of entire societies has overall responsibility for building and maintaining a social protection system that gives as many people in the country as possible equal and effective access to the benefits and services they need.

In addition, when designing and implementing social protection strategies and programmes, it is important to ensure that representatives of affected groups are given adequate opportunity to provide information and to participate, in accordance with the rights-based approach to social protection. Other stakeholders (parliamentarians,⁶⁵ academics, business representatives, trade unions and international organisations, as well as development agencies active in the field of social protection in the country, and civil society organisations not necessarily representing affected groups) should also be involved. Therefore, it might be useful to establish multi-stakeholder working groups at the country level to advise the government on implementation of its social protection programmes, whether financed from national or international sources. However, the specific mode of organisation in which this is done need not (and thus *should not*) be prescribed by the governance rules of the GFSP. According to the ownership principle, this task belongs to the governments of the recipient countries.⁶⁶ Of course, it is important not to neglect the fact that, in development practice, realisation of the ownership concept often leads to difficulties because the expectations of donor and recipient countries' governments on the use of the funds have not been sufficiently aligned.⁶⁷ Thus, the challenge of translating this principle into concrete action is significant. Nonetheless, the policy field of social protection and the proposal of a new global financing mechanism in particular could be good examples of how this challenge can be met. It is important that the eligibility criteria for funding are not too narrow and

⁵⁷ GFATM, The Framework Document, III.C, available at: <https://www.theglobalfund.org/en/governance-policies/>.

⁵⁸ Available at: <https://www.theglobalfund.org/en/country-coordinating-mechanism/>; see also Isenman/Shakow (2010), 27.

⁵⁹ Available at: <https://www.theglobalfund.org/en/lfa/>.

⁶⁰ <https://www.gavi.org/our-alliance/strategy/phase-5-2021-2025>.

⁶¹ <https://www.gavi.org/news/document-library/guidelines-national-coordination-forums>.

⁶² Art. 1.2 e) Charter of the Global Partnership for Education (GPE Charter), para. 1.2 e), <https://www.globalpartnership.org/content/charter-global-partnership-education>.

⁶³ <https://www.globalpartnership.org/content/principles-toward-effective-local-education-groups>.

⁶⁴ <https://partners.globalpartnership.org/stakeholders/grant-agents/>.

⁶⁵ Parliaments in particular are important actors for the implementation of the country ownership principle; see de Sepibus (2015), 300.

⁶⁶ A recent ILO study reveals that while civil society organisations are often involved in these proceedings, there is still scope for improvement in many countries with regard to the participation of social partners and gender equality organisations; see ILO (2019), 3.

⁶⁷ Cf. Savedoff (2019), 19, 22.

that they are clearly formulated – in the case of a GFSP, these are the key requirements of ILO Recommendation No. 202, as explained above (Section II.1.a)., Provided that these demands are met there can still be sufficient scope at the level of the recipient countries for setting political priorities, for the choice of social protection instruments and for the design of adequate participation mechanisms. It is therefore – in line with the principle of ownership – neither necessary nor appropriate to impose uniform governance requirements for this national level as well.

If these recommendations are applied, the direct cooperation of the GFSP with recipient countries – that is, funding application and administration of the resources made available by the GFSP – would not take place via national multi-actor bodies, but rather via the respective governments. Some global partnerships provide for »nationally designated authorities« (Green Climate Fund⁶⁸) or political and operational »focal points« (Global Environment Facility⁶⁹) as responsible contact partners on the government side of the recipient countries to give this collaboration a structured framework. Likewise, it would be advisable for the governance structure of the GFSP to establish such institutional links to the national authorities.

The ownership concept must also be considered at the intersectoral level. Programmes which are financed through the GFSP have to be coordinated with other international assistance that has links to the social protection sector. This could be organised in the recipient countries by the UN Country Teams operating there.⁷⁰ If the ownership requirements are to be taken seriously, their work, like that of the organisations involved, must be consistently aligned with national priorities. In this context, the establishment of an »integrated national financing framework« (INFF) could be particularly helpful for the intersectoral implementation of the ownership principle. This instrument can strengthen the beneficiaries' responsibility, mainly because such an integrated financing framework is often drawn up in conjunction with a national development strategy.⁷¹ The ILO Flagship Programme on Social Protection Floors also encourages participation in such INFFs.⁷²

⁶⁸ Available at: <https://www.greenclimate.fund/about/partners/nda>.

⁶⁹ Available at: <https://www.thegef.org/who-we-are/organization>.

⁷⁰ Available at: <https://unsdg.un.org/about/how-we-work>; <https://unsdg.un.org/un-in-action/country-level?tab=countries-listing>. On the role of international country teams for the implementation of GFSP finding see also de Schutter (2021), para. 64.

⁷¹ UN Inter-agency Task Force on Financing for Development (2019), 26.

⁷² ILO Social Protection Department (2021), 53 f.

3

INCLUSION OF ALL STAKEHOLDERS IN THE GOVERNANCE OF INTERNATIONAL SOCIAL PROTECTION FINANCING

The composition of the relevant bodies is one of the most critical governance aspects that need to be clarified in designing a new international financing mechanism. Closely related to this is the structure of the decision-making procedures – namely, whether certain individuals or institutions should be involved in the preparation stages of a decision and what the concrete voting modalities are. These aspects are important both for the effectiveness of the institution and for its legitimacy. On one hand, it is important that decision-making procedures can be carried out stringently and concluded within a manageable timeframe. If they are burdened with excessive participation requirements, it can happen that the institution loses its ability to react in time and in an appropriate manner to crisis situations that might become urgent. On the other hand, a broad-based approach to participation that takes all relevant stakeholders into account is indispensable for ensuring the necessary political legitimacy for an institution that operates in an area as important to society as social protection. Moreover, such a requirement also corresponds to the principle of inclusive partnerships under international development law (see Section I.2 above) and to the human rights principle of effective participation of all (potentially) affected parties in relevant political decision-making processes (see Section I.2 above).

To resolve this tension between effectiveness and legitimacy, in many global partnerships groups are formed that represent certain stakeholder constituencies.⁷³ On the boards, steering bodies or steering committees in which the concrete financing decisions are made, not all members of the partnership work together, but only representatives of those stakeholder groups. In most partnerships, in addition to this body, there are also general meetings,⁷⁴ conferences of the

parties,⁷⁵ or other high-level meetings,⁷⁶ in which all actors involved can participate and which are usually responsible for more general, strategic decisions of the organisation. It will probably be advisable to adopt such a two-tier governance structure – high-level body and steering board – for the GFSP as well.⁷⁷ The constituency-model described below is mainly relevant for the board's structure.

3.1 STAKEHOLDER CONSTITUENCIES

In global partnerships active in the context of the 2030 Agenda goals, it should be a matter of course for the group of recipient countries and the group of donor countries to participate in funding decisions with equal voting weight.⁷⁸ Any other division would contradict the basic idea of a »partnership«. ⁷⁹ Therefore, such a solution should also be sought for the GFSP. If the financing mechanism is to be used solely for the purpose of supporting low-income countries in building up their social protection floors, the representatives would have to be selected from this group of states. On the donor side, an equally large number of state repre-

⁷³ Even if this pragmatic approach to tackling the effectiveness-legitimacy dilemma is virtually without any alternative in practice, it should not be overlooked that it can also prove problematic in particular cases, for example if certain board members are unwilling or unable to act as genuine representatives of their constituency groups; see Heimans (2004), 4; cf. also Bezanson/Isenmann (2012), 25; Nestor (2018), 4. See, generally, on the governance of multistakeholder institutions, Beisheim et al. (2014), 107.

⁷⁴ Art. 7 Statutes of the Renewable Energy and Energy Efficiency Partnership (REEEP); available at: <https://www.reeep.org/reeep-legal-status> (»Meeting of Members«).

⁷⁵ Para. 4 Governing Instrument for the Green Climate Fund; available at: <https://www.greenclimate.fund/document/governing-instrument>.

⁷⁶ Art. 4.1.2. Charter of the Global Partnership for Education.

⁷⁷ In his report to the Human Rights Council, the Special Rapporteur on extreme poverty and human rights has recommended for the governance of the GFSP that »(a) high-level political alliance should be established to provide strategic direction, in particular by adopting guidelines on how to assess country requests for support and how to monitor the use of the funds provided, ... USP2030 could easily evolve into such a high-level political alliance to provide guidance, in particular by defining eligibility standards to the fund, to further the mobilization of resources, and to provide a platform to accelerate collective learning for the establishment of social protection floors«; see de Schutter (2021), paras 55, 56.

⁷⁸ See, for example, Art. 9 Gavi Alliance Statutes; Art. 4.2.4 Charter of the Global Partnership for Education; para. 9 Governing Instrument for the Green Climate Fund; Art. 10 para. 5 Montreal Protocol on Substances that Deplete the Ozone Layer (Multilateral Fund for the Implementation of the Montreal Protocol).

⁷⁹ For this reason, the board composition model recommended by the World Bank for its trust funds (World Bank 2020) would not be an adequate solution for the new funding mechanism: para. 15 of the Guidance Note states that »[t]he governing body is comprised of the Bank, contributing DPs (Development Partners) and in some cases other relevant stakeholders«. According to para. 17, »(o)ther stakeholders (e.g., client country representatives, United Nations, representatives of civil society or nongovernmental organisations, private sector representatives) may be invited by the Bank, in consultation with DPs, to attend governing body meetings in a non-decision-making role«.

sentatives from the participating high-income countries and upper-middle-income countries⁸⁰ would have voting rights on the board.⁸¹ In view of the fact that, by contributing more to the Fund's financial resources, the high-income countries may play a greater role in the GFSP than the middle-income countries, the latter group could be given a somewhat smaller share of the vote.

International organisations with special expertise in the field of social protection should also be involved in GFSP decision-making processes. This, too, is in line with the practice of the global partnerships already established. In numerous multistakeholder initiatives, international organisations, in particular the international financial institutions, are represented on the board with seats and voting rights (examples include GAVI⁸² or GPE⁸³). In other partnerships, representatives of international organisations are regularly involved in board meetings and can therefore influence decision-making, but they do not have voting rights (for example, GFATM⁸⁴). In the case of a new GFSP, the ILO and the World Bank in particular, as the co-founding members of the Global Partnership for Universal Social Protection to Achieve the Sustainable Development Goals (USP2030),⁸⁵ should be represented on the decision-making board. Moreover, their prominent role in international support for the development of social protection systems suggests that they should also be granted voting rights on the board in addition to their participation and co-advisory rights.

Other international organisations involved in social protection, such as UNICEF, the FAO or regional organisations, could be part of the decision-making body in an advisory capacity. Whether a further constituency on the donor side representing the interests of private funders (companies, philanthropic foundations) should be considered depends on whether the GFSP is also to receive funding from private sources for the international financing of social protection floors. If this is the case, then it would have to be considered whether – as has been done in some other global partnerships (such

as GFATM,⁸⁶ GAVI,⁸⁷ GPE⁸⁸) – private donors should also be granted voting rights in GFSP funding decisions.⁸⁹

Furthermore, the principles of tripartism should be taken into account in the organisational design of a new international financing mechanism in the field of social protection. This means that, in addition to state representatives, employers' associations and trade union federations should also be involved in the key decisions of the GFSP. Both actors are significantly involved in the design and implementation of social security programmes at the national level because social security rights are often historically linked to employee status. If the GFSP is set up under the umbrella of the ILO or in close organisational relationship to it, this is already required by ILO tripartism rules⁹⁰ and the relevant provisions of ILO Recommendation No. 202. But even if the GFSP were to be set up in a different institutional context both trade unions and employers' associations could be part of the main decision-making bodies. However, it should also be kept in mind that it is not likely that the Fund will primarily support social insurance schemes, but predominantly social assistance programmes (especially cash transfer or public works programmes), for which the tripartism rules are less relevant. In addition, therefore, the extremely large group of informal workers in recipient countries should also be represented on the board.⁹¹ It is precisely for this category of workers that the GFSP's activities will be of particular importance, so it would not be appropriate to leave them out of its governance structure.

Finally, both the inclusiveness principle of international development law and the human rights-based approach require that civil society be given a right to participate in the Fund's decision-making procedures. This is important, on one hand, because associations of affected people and NGOs working on social protection often have very precise expertise on the situation at the country and regional level, and can therefore assess the special needs of the rights holders, especially of vulnerable population groups (these include, in particular, women and children, people with disabilities, refugees and people living in remote rural areas who have problems accessing social services and health care facilities). In addition, however, the participation of civil society is indispensable, particularly as it performs an essential monitoring function vis-à-vis the implementing government agencies and the international organisations and development aid agencies involved on the ground (see also Section IV). Civil society organisations should not only report delays or shortfalls in the provision of social benefits, unjustified unequal treatment and other implementation deficits to the relevant mon-

⁸⁰ The so-called »new donors« include several upper-middle-income countries, such as China, Turkey, Brazil or South Africa. For the discussion in the GFATM to change the board composition so that new donors could also be included, see the Recommendations of the Transitional Governance Committee (TGC) on Board Composition and Size, at the 35th Board Meeting (GF/B35/17); available at: https://www.theglobalfund.org/media/4241/bm35_17-tgcreviewandrecommendationonboardcomposition_report_en.pdf.

⁸¹ A different solution has been found for the steering committee of the USP partnership: the three country groups – high-income countries, upper-middle-income countries and low-income countries – are represented there with two votes each; see Global Partnership for Universal Social Protection to Achieve the Sustainable Development Goals (USP2030), Governance structure; available at: https://usp2030.org/wp-content/uploads/gov_en.pdf.

⁸² Art. 9 Gavi Alliance Statutes.

⁸³ Art. 4.2.4 Charter of the Global Partnership for Education.

⁸⁴ Art. 7.1 Global Fund Bylaws.

⁸⁵ Available at: <https://www.social-protection.org/gimi/USP2030.action>. For a summary of the different approaches of the ILO and the World Bank with regard to social protection, see Seekings (2021), 497.

⁸⁶ Art. 7.1 Global Fund Bylaws.

⁸⁷ Art. 9 Gavi Alliance Statutes.

⁸⁸ Art. 4.2.4 Charter of the Global Partnership for Education.

⁸⁹ In the Strategic Advisory Group of the Joint SDG Fund, private sector and foundation representatives have only observer status; see Art. 4.1.1. Terms of Reference of the Joint SDG Fund.

⁹⁰ ILO Recommendation No. 152 (Tripartite Consultation, 1976).

⁹¹ See in this context ILO Recommendation No. 204 (Transition from the Informal to the Formal Economy, 2015), para. 6, 34.

itoring bodies in the respective country. Such information is also helpful for the GFSP's decision-making process. Via their board representatives, civil society organisations can exert particular influence to ensure that only those governments that adhere to the eligibility criteria (see Section II.1 above) actually receive funding. Another important task of the civil society representatives on the board is to ensure sufficient transparency of the activities of the GFSP – if this is not already provided by the representatives of the other groups. In this context, care should be taken to ensure that representatives of stakeholder groups from countries of the Global South are included in board decision-making processes, in addition to the Global Coalition for Social Protection Floors (GCSPF), which is the relevant civil society association at the international level.

3.2 QUALIFIED MAJORITIES IN DECISION-MAKING PROCEDURES

It will probably not always be possible to reach board decisions by consensus. Therefore, the requirements that must be imposed on decision-making in such a case are crucially important for legitimacy and the board's ability to function. The GFATM offers an interesting model for the necessary majority ratios in a global development partnership.⁹² In principle, it is the GFATM's aim that board decisions be made by consensus. If such a consensus is not reached in exceptional cases, however, decisions are not taken by simple majority vote. Instead, qualified majorities must be found, which in the end give those stakeholder groups particularly affected by the decisions – the constituencies of the recipient countries and of the donor countries – a veto position. This particular procedural structure also gives other stakeholders a major role to play in the decision-making process. In the GFATM, majority votes are possible only if both two-thirds of the group consisting of representatives of the donor countries, the private sector, and private foundations and two-thirds of the other board members (governments of the developing countries and NGOs) support the relevant decision.

If these structures are transferred to the new international financing mechanism (in the variant that it includes also private donors and is only tasked with supporting low-income countries), then the GFSP's board could consist of, for instance,

Group A

- six representatives of the different country groups on the donor side (for example, high-income countries with four votes and upper-middle-income countries with two votes);
- one representative of private donors;
- one representative of employers' associations; and

- two representatives of international organisations (ILO and World Bank with one vote each);

Group B

- six representatives of the low-income countries group;
- one representative each of the trade unions and informal workers' organisations); and
- two representatives of civil society (including at least one from the Global South).

Generally, the Board members would have to seek consensus. However, if this is not achieved, a decision could only be made if two-thirds of Group A and two-thirds of Group B agree.

⁹² Art. 7.6 Global Fund Bylaws. The governance structure of the GFATM is generally considered to be exceptionally inclusive and representative; see Bezanson/Isenmann (2012), 10. In this respect it can be seen as an exemplary model for other global institutions; cf. Gostin (2014), 148.

4

MUTUAL ACCOUNTABILITY OF ALL PARTNERS INVOLVED IN THE FINANCING MECHANISM

Mutual accountability is another guiding principle that can be drawn from both the various international legal frameworks on development cooperation and the human rights approach (see Section I) and which is of particular importance for the governance structure of a new international financing instrument in the field of social protection. This means that mechanisms must be in place to ensure accountability between all actors involved in GFSP activities. The requirements resulting from this principle are thus related both to the relationship between the Fund and the donors (donor governments, international financial institutions, possibly also private donors), and between the Fund and the governments of the recipient countries. Likewise, the Fund and the governments of the recipient countries are accountable to the potential recipients of social benefits.

Often, the term »accountability« is primarily understood as a call for subsequent (ex-post) control of decisions. But it can be helpful to strengthen the accountability of institutions also from an ex-ante perspective.⁹³ In fact, such mutual control is already partly achieved by the participation mechanisms in the Fund's organisational structure, where representatives from both the donor and the recipient side, as well as civil society actors can participate in the Fund's bodies and thus influence its decisions. Whether such preventive control is effective depends to a large extent on the intensity and structure of participation options. In addition, it is very important that sufficient transparency is ensured for all stakeholders regarding all decision-making elements.⁹⁴

The funding decisions taken by the GFSP and their implementation by the governments of the beneficiary countries, however, must also be subject to subsequent (ex-post) control. The review mechanisms used for this purpose contribute to increased accountability, as they both lead to greater transparency of decision-making procedures and form the prerequisite that actors be held responsible and, if necessary, also be obliged to carry out compensatory measures. Studies have shown that it is necessary to use both internal and

external review mechanisms.⁹⁵ Because this article focuses on the governance structure of a GFSP, its recommendations are limited to how accountability can be improved through internal review mechanisms.

First, it is important that representatives of the donor and (potential) recipient countries be given the opportunity to have all decisions regarding the selection of the countries to be supported and the amount of the financial assistance reviewed, based on the eligibility criteria laid down in the GFSP statute. The review should cover not only the approval of funding, but also the rejection of funding applications. These reviews can take place at the board level. However, it is also possible to establish a dedicated monitoring body, composed of independent experts, to provide this part of the accountability process. In addition, following the example of other international institutions, further bodies could be set up to deal with the evaluation of the GFSP's work⁹⁶ and with staff misconduct (for example, in cases of corruption or fraud).⁹⁷

But it should not be overlooked that not only the new financing mechanism is responsible to the other actors involved. The governments of the recipient countries must also be accountable, both to the Fund and to the potential beneficiaries for the proper use of financial resources. Therefore, on one hand, regular reporting by the recipient countries is essential (in this context the Fund's monitoring bodies must ensure that they always pay sufficient attention to the principle of ownership when reviewing the reports). On the other hand, it is important that control mechanisms are also avail-

⁹³ On these two perspectives on accountability see Moncrieffe (2011), 10 et seq.; on »accountability through participation« see also Steets (2010) 126 et seq.

⁹⁴ See Peters (2016), 49: »Transparency is *conditio sine qua non* both for critique of an organisation and for an informed consent to its activities.«

⁹⁵ Heldt (2018), 574, 583.

⁹⁶ For the evaluation mechanisms of other global partnerships, see, for example, <https://www.gavi.org/governance/gavi-board/committees/evaluation-advisory-committee>; <https://www.theglobalfund.org/en/technical-evaluation-reference-group/>; <https://www.theglobalfund.org/en/oig/>; <https://ieu.greenclimate.fund/>; <https://gefio.org/>; <https://www.globalpartnership.org/results/monitoring-evaluation>; Art. 7 Terms of Reference of the Joint SDG Fund.

⁹⁷ The GCF's Independent Integrity Unit (IIU; <https://iiu.greenclimate.fund/>) provides an example of this: It investigates allegations of fraud, corruption, misconduct, and other prohibited practices, such as whistleblower retaliation, made by staff, external stakeholders, implementing agencies, and intermediaries in connection with the Fund. The IIU reports to the Fund's Board of Directors or the Board's Ethics and Audit Committee. Similar examples can be found in other global partnerships; see, for example, <https://www.theglobalfund.org/en/board/committees/>.

able to civil society actors, especially rights holders. For this purpose, in line with para. 7 ILO Recommendation No. 202, the review and complaint procedures (already in place or to be established) at the national level should be used in the first instance.⁹⁸ In addition, however, it seems advisable to give representatives of the affected parties the opportunity also to report directly to the Fund at least serious deficiencies in the implementation of the funding programmes. Such reports could, for example, also be reviewed by the independent monitoring unit already mentioned or alternatively by the board at the suggestion of representatives of the social partners or civil society.

⁹⁸ On national accountability mechanisms in the field of social protection, cf. Sepúlveda/Nyst (2012), 60; Ayliffe et al. (2017); Lindert et al. (2020), 328; ILO (2021b).

5

CONCLUSIONS

The challenge of combating extreme poverty and inequality continues to be of major importance for the global community. The Covid-19 crisis has made the relevant tasks even more demanding. There is now widespread agreement at the international level that building long-term and sustainably financed social protection systems can make an important contribution to this. In addition to investments in education and job creation, solutions for financing universal basic social protection («social protection floors») should therefore be at the top of the list of priorities of international development cooperation, especially support for those countries that are currently unable to raise sufficient domestic resources for this purpose. In the spirit of the 2030 Agenda for Sustainable Development, these efforts must be organised in a partnership-based framework. Therefore, if a financing mechanism is set up (for example, within the framework of the Global Accelerator for Jobs and Social Protection proposed by the UN Secretary-General) to support low-income countries in

providing their inhabitants with a minimum level of social protection, it should be designed in such a way that the governments of the countries concerned retain full ownership of their social protection systems. In addition, they (or rather their constituencies) must be included in the decision-making processes of this mechanism with equal rights; likewise, the relevant civil society actors must be given appropriate opportunities to participate. Finally, it is also necessary that effective and transparent accountability instruments be implemented. It does not particularly matter whether this funding mechanism is subsequently called a «Global Fund for Social Protection» or something else. But it is important that its governance structure be shaped by these three principles: ownership, inclusiveness, and mutual accountability.

6

RECOMMENDATIONS

If a new financing mechanism is to be set up at the international level to support low-income countries in establishing and maintaining national social protection systems, it is important that its governance structure be guided by certain overarching principles: the principles of ownership, inclusiveness and mutual accountability. These principles are enshrined in international law, specifically in the law of development cooperation and in human rights law.

1. According to the ownership principle, it has to be ensured that the recipient countries retain full responsibility and sufficient policy leeway for the design of their social protection systems, and that the eligibility criteria of the new financing mechanism are therefore limited to a few core requirements. The resources provided by the Fund must be used exclusively for the purpose of ensuring the financing of »social protection floors«, as defined by ILO Recommendation No. 202. Recipient countries should guarantee non-discriminatory access to social protection systems, especially for disadvantaged and excluded persons and groups. Moreover, a national social protection strategy and action plan must be adopted (including an approach to long-term domestic financing), and implementation of social protection floors must be regularly monitored. Review mechanisms must also be available for rights holders. If these conditions are met, a country would in principle be eligible for financial assistance from the Fund. In addition, the Fund – in cooperation with other multilateral or bilateral institutions – can offer advisory services in the field of social protection. However, the implementation of such services should not be made a regular precondition for funding.
2. The composition of the most important decision-making body of the new institution – the board or steering committee – must comply with the inclusiveness principle. All constituencies affected by the Fund's financing decisions should be represented on this board. These are, on one hand, the donor and recipient countries, which should have the same voting rights on the board. On the other hand, the ILO and the World Bank should also be represented, as should private donors, provided they can participate in the financing of the Fund in accordance with its statutes. Furthermore, it must be guaranteed that trade unions, employers' associations and informal workers' organisations, as well as members of civil society be represented on the board. For the design of the decision-making procedures, the requirement of qualified majorities could be included in the statutes, following the example of other international financing mechanisms. This would prevent any of the relevant stakeholder groups from being outvoted.
3. To ensure that the requirements of the accountability principle are met, it is necessary for the new international financing mechanism to have transparent procedures. It is also crucial to guarantee that funding decisions can be reviewed by both donor and recipient countries (including those whose applications have not been approved) for compliance with the eligibility criteria. A special committee staffed with independent experts could be set up for this purpose. Also, it should be ensured that the work of the Fund be regularly evaluated and that complaints bodies be set up in the event of misconduct on the part of individual staff members. Civil society actors should also have control mechanisms at their disposal. Primarily, they are supposed to use the review and complaint procedures available at the national level. But it should also be possible to report at least significant deficiencies in the implementation of the support programmes directly to the Fund.

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