

Ulrich Becker, Frans Pennings  
& Tineke Dijkhoff (eds)

# International Standard-Setting and Innovations in Social Security



Wolters Kluwer  
Law & Business

# International Standard-Setting and Innovations in Social Security

Edited by

Ulrich Becker  
Frans Pennings  
Tineke Dijkhoff



**Wolters Kluwer**  
Law & Business

*Published by:*  
Kluwer Law International  
PO Box 316  
2400 AH Alphen aan den Rijn  
The Netherlands  
Website: [www.kluwerlaw.com](http://www.kluwerlaw.com)

*Sold and distributed in North, Central and South America by:*  
Aspen Publishers, Inc.  
7201 McKinney Circle  
Frederick, MD 21704  
United States of America  
Email: [customer.service@aspenpublishers.com](mailto:customer.service@aspenpublishers.com)

*Sold and distributed in all other countries by:*  
Turpin Distribution Services Ltd  
Stratton Business Park  
Pegasus Drive, Biggleswade  
Bedfordshire SG18 8TQ  
United Kingdom  
Email: [kluwerlaw@turpin-distribution.com](mailto:kluwerlaw@turpin-distribution.com)

*Printed on acid-free paper.*

ISBN 978-90-411-3728-9

© 2013 Kluwer Law International BV, The Netherlands

**DISCLAIMER:** The material in this publication is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author, they are not necessarily those of the publisher of this volume and they do not reflect the views of any institution or organization.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: [permissions@kluwerlaw.com](mailto:permissions@kluwerlaw.com)



# List of Editors and Contributors

Tulia Ackson, Senior Lecturer and Associate Dean Academic and Students Affairs at the University of Dar es Salaam School of Law (Tanzania).

Pablo Arellano Ortiz, Professor of Labour Law and Social Security Law at the Universidad Austral de Chile.

Ulrich Becker, Director at the Max Planck Institute for Social Law and Social Policy, Munich (Germany).

Olga Chesalina, Researcher at the Max Planck Institute for Social Law and Social Policy, Munich (Germany).

Barbara Darimont, Senior Researcher at the Max Planck Institute for Social Law and Social Policy, Munich (Germany).

Ockert Dupper, Professor of Labour and Social Security Law at the University of Stellenbosch (South Africa).

Tineke Dijkhoff, Senior Researcher at the Max Planck Institute for Social Law and Social Policy, Munich (Germany).

Edwell Kaseke, Professor at School of Human and Community Development at the University of the Witwatersrand (South Africa).

Katsuaki Matsumoto, Professor at Hokkaido University (Japan).

Kristina Koldinská, Senior Lecturer in Labour Law and Social Security Law at Faculty of Law, Charles University Prague (Czech Republic).

Carmelo Mesa-Lago, Distinguished Service Professor Emeritus of Economics, University of Pittsburgh (USA).

James Midgley, Harry and Riva Specht Professor of Public Social Services and Dean Emeritus at the University of California, Berkeley (USA).

Matti Mikkola, Professor of Labour Law at the University of Helsinki (Finland).

George Mpedi, Professor and Co-Director of Centre for International and Comparative Labour and Social Security Law (CICLASS), Faculty of Law at the University of Johannesburg (South Africa).

Marius Olivier, Adjunct-Professor at Faculty of Law at the University of Western Australia and Extraordinary Professor at Faculty of Law at the North-West University; Director International Institute for Social Law and Policy (IISLP) (South Africa).

Lorena Ossio Bustillos, Senior Researcher at the Max Planck Institute for Social Law and Social Policy, Munich (Germany).

Frans Pennings, Professor of Labour Law and Social Security Law at the Utrecht University (Netherlands), Tilburg University (Netherlands) and Gothenburg University (Sweden).

Walter J. Pfeil, Professor of Labour Law and Social Security Law at the University of Salzburg (Austria).

Laura Pautassi, Attorney-at-law, Researcher at Law School at the Universidad de Buenos Aires (Argentina).

Simon Roberts, Honorary Associate Professor at the University of Nottingham (United Kingdom).

Angel Guillermo Ruiz Moreno, Professor at the University of Guadalajara (Mexico).

Cristina Sánchez-Rodas Navarro, Professor of Labour Law and Social Security at the University of Seville (Spain).

Bernd Schulte, Researcher and Consultant; 1976 – 2011 Research Fellow at the Max Planck Institute for Foreign and International Social Law, Munich (Germany).

Kari Tapiola, Special Adviser to the Director-General of the International Labour Office (Geneva).

## Preface

In several international instruments, it is laid down that everyone has a right to social security, and there are also instruments dealing with the standards that social security schemes should meet. Indeed, international organizations have accepted the responsibility of fighting poverty and encouraging their Member States to realize decent levels of social protection. A major role in this is played by the International Labour Organization, which has adopted a whole range of standards in the area of social security.

These standards have contributed to the development of social security systems in many countries in recent decades. However, it also appears that the enthusiasm for adopting social security conventions has waned considerably. One major reason that is often cited is that standards are not considered appropriate for dealing with new developments in developed countries, like privatization and activation measures in social security. The other major reason that is cited is that standards were developed in Western Europe in the 1960s and are not suited to deal with the (enormous) challenges in low-income countries.

In the past six years, several Ph.D. studies have been conducted at Tilburg University (Netherlands), funded by the *Instituut Gak*, on the impact of ILO Conventions on national social security systems. In recent decades the *Max Planck Institute for Social Law and Social Policy* (former Max Planck Institute for Foreign and International Social Law) has also undertaken several studies on the international dimension of social security, and it has enabled many researchers from all parts of the world to work at the Institute. The cooperation of these research groups in this project offered a unique possibility to cover many aspects of the main challenges for international standards.

In order to ensure a structured approach, we started by identifying the issues to be addressed and the countries that could be good study areas for dealing with the issue concerned.

The selected experts were invited to write a paper in which they described their topic. These papers were discussed during a seminar, held in October 2009 in Lake Chiemsee (Germany). On the basis of the outcomes of the conference, and with

guidance from the project team, the papers were finalized and discussed during a second seminar in May 2011 in Munich.

For the organization of the project we are indebted to several organizations and persons. First of all, we would like to thank *Instituut Gak* that contributed to the costs of the seminar.

We are also indebted to Barbara Darimont and Mareike Kiy who organized the seminars and tried to keep all the contributors on track.

Fiona McGrath had the huge task of correcting the chapters of this book, which she kept doing enthusiastically and thoroughly. We are very grateful to her, and also to Christina McAllister, who contributed to the editing of some of the contributions. Lisanne van Kouterik was very helpful in supplementing information on references and in putting the bibliographical information into the right format.

Finally, we would also like to thank the authors who had to adjust their outlines and chapters to the structure and approach we had chosen for the book, and who were willing to attend and contribute to the seminars.

By discussing the present challenges to the international standards in the contexts of many different countries, we were able to present a book, not only on these standards, but which also paints a kaleidoscopic picture of current social security issues in the world, of which the experts know the full context. As such, it can serve as a handbook dealing with the strengths and weaknesses of social security standards and on present global social security issues.

During the completion of this project, the sense of urgency to set standards for the advancement of social security protection within the ILO has grown considerably, of which the adoption of Recommendation 202 on Social Protection Floors (June 2012) – with no votes against and only one abstention – is a convincing milestone. This book contains some issues similar to those raised in the Recommendation and its underlying considerations, and is very useful for clarifying its purpose and background and highlighting its limitations. The book can thus contribute to the discussion on the further development of standards and the realization of a right to social security for all.

Munich/Utrecht, October 2012

Ulrich Becker

Frans Pennings

Tineke Dijkhoff

## List of Abbreviations

ADLs	Activities of Daily Living
AFPs	<i>Administradoras de Fondos de Pensiones</i> (Pension Fund Administrators)
AIDS	Acquired Immune Deficiency Syndrome
APS	<i>Aporte Previsional Solidari</i> (State Solidarity Contribution)
AU	Africa Union
AUGE	<i>Acceso Universal con Garantías Explícitas</i> (Universal and Guaranteed Access to Health Care)
BIG	Basic Income Grant
BGB	German Civil Code
BLA	Basic Living Allowances
BGBI	<i>Bundesgesetzblatt</i> (German Federal Law Gazette)
BGH	<i>Bundesgerichtshof</i> (German Court on Matters of Civil Law)
BOB	Bolivian Boliviano (Bolivian Currency)
BPGG	(Austrian) Federal Care Allowance Act
BVerfGE	Decisions of the Bundesverfassungsgericht (German Federal Constitutional Court)
CCT	Conditional Cash Transfer
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CEE	Member States from Eastern and Central Europe
CERD	International Convention on the Elimination of all Forms of Racial Discrimination
CESCR	UN Committee on Economic, Social and Cultural Rights
CICLSS	Centre for International and Comparative Labour and Social Security Law & Institute for Development and Labour Law



## List of Abbreviations

---

CLP	Chilean Peso (Currency)
CoE	Council of Europe
CRF	Constitution of the Russian Federation
CZK	Czech Koruna (Currency)
DB	Defined Benefits
DC	Defined Contributions
DRC	Democratic Republic of Congo
EAP	Economically Active Population
ECHR	European Convention on Human Rights
ECLAC	Economic Commission for Latin America and the Caribbean
ECR	European Court Reports
ECSA	European Community Ship Owners' Associations
ECSR	European Committee of Social Rights
ECtHR	European Court of Human Rights
e.g.	For Example
ed.	Edited by
EJSS	European Journal of Social Security
EMA	Education Maintenance Allowance
ESC	European Social Charter
et seq.	and following
ETF	European Transport Workers' Federation
EU	European Union
EUR	Euro
FIDH	International Federation of Human Rights
FONASA	<i>Fondo Nacional de Salud</i> (National Health Care Fund)
GDP	Gross Domestic Product
GEAR	Growth, Employment and Redistribution
GEPF	Government Employees' Provident Fund
GCIM	Global Commission on International Migration
GG	<i>Grundgesetz</i> (German Basic Law)
HAART	Highly Active Antiretroviral Therapy
HDI	Human Development Index
HIPC	Heavily Indebted Poor Countries
HIV	Human Immunodeficiency Virus
HMSO	Her Majesty's Stationary Office
IACHR	Inter-American Commission on Human Rights (of (OAS))
IADLs	Instrumental Activities of Daily Living
ICESCR	International Covenant on Economic, Social and Cultural Rights
i.e.	<i>id est</i> (that is)
ILC	International Labour Conference

ILO	International Labour Organization (or: International Labour Office)
IMF	International Monetary Fund
IMSS	Mexican Social Security Institute
INEI	National Institute of Statistics and Informatics
INP	<i>Instituto de Normalización Previsional</i>
IOM	International Organization for Migration
IPC	Consumer Price Index
IPS	Institute of Social Security
ISAPRE	<i>Instituciones de Salud Previsional</i> (Health Insurance Institutions)
ISSA	International Social Security Association
ISSSTE	State Employees' Social Security and Social Services Institute
IVA	(Dutch) Benefit for the Permanently Disabled
LAPF	Local Authorities' Pensions Fund
MERCOSUR	<i>Mercado Común del Sur</i> (Southern Common Market)
MOUs	Memoranda of Understanding
NDLP	New Deal for Lone Parents
NHS	National Health Service
NSSF	National Social Security Fund
OAS	Organization of American States
OECD	Organization for Economic Cooperation and Development
OMC	Open Method of Coordination
PASIS	Non-contributory Pension
PAYG	Pay-As-You-Go
PEA	Active Working Population
PBS	<i>Pensión Básica Solidaria</i> (Basic Solidarity Pension)
PPF	Parastatal Pensions Fund
PPS	Poverty Threshold
PSPF	Public Service Pensions Fund
PSS	Protocol of San Salvador
RMB	Renminbi (Chinese Currency)
RSA	revenu de solidarité active
SADC	Southern African Development Community
SAFP	Superintendencia de AFPs
SBA	(Dutch) Sickness Benefits Act
SGB	<i>Sozialgesetzbuch</i> (Social Code)
SNSS	<i>Sistema Nacional de Servicios de Salud</i> (National Health Services System)
TACAIDS	Tanzania Commission for AIDS
TEBA	The Employment Bureau of Africa
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union

UIF	Unemployment Insurance Fund
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
USA	United States of America
VAT	Value Added Tax
Vol.	Volume
WAO	<i>Wet op de Arbeidsongeschiktheidsverzekering</i> (Dutch Law on Disability Benefits)
WDI	World Bank World Development Indicators
WGA	<i>Werkhervattingsregeling Gedeeltelijk Arbeidsge- schikten</i> – Benefit Scheme for Partially Abled Persons
WIA	<i>Wet Werk en inkomen naar arbeidsvermogen</i> (Dutch Act on Work and Income According to Work Capacity)
WTO	World Trade Organization
ZAR	South African Rand
ZEF	<i>Zentrum für Entwicklungsforschung</i>
ZIAS	<i>Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht</i>

# Summary of Contents

List of Editors and Contributors	v
Preface	xxxi
List of Abbreviations	xxxiii
CHAPTER 1	
General Introduction	
<i>Ulrich Becker and Frans Pennings</i>	1
Part I Setting of International Social Security Standards	
A Background	11
CHAPTER 2	
Historical and Theoretical Background of Standard Setting in Social Security	
<i>Frans Pennings</i>	15
B Different Levels of Standard Setting	39
CHAPTER 3	
Different Levels of Standard Setting: Introduction	
<i>Frans Pennings</i>	41
CHAPTER 4	
Global Standards: The Policy of the ILO	
<i>Kari Tapiola</i>	43

CHAPTER 5	
The Guiding Role of ILO Convention No. 102	
<i>Tineke Dijkhoff</i>	53
CHAPTER 6	
Social Security Standards in Latin America	
<i>Laura C. Pautassi</i>	73
CHAPTER 7	
Social Security Standards in Southern Africa	
<i>Marius Olivier</i>	89
CHAPTER 8	
Social Security Standards in Europe	
<i>Matti Mikkola</i>	107
CHAPTER 9	
Different Levels of Standard-Setting: Analysis	
<i>Frans Pennings</i>	123
Part II Material Scope: Uncovered and New Risks	131
A Poverty	133
CHAPTER 10	
Poverty: Introduction	
<i>Barbara Darimont</i>	135
CHAPTER 11	
Poverty Policy, Development and the State: Toward a Typology of Strategic Approaches	
<i>James Midgley</i>	139
CHAPTER 12	
Poverty Reduction in South Africa: The Old-Age Pension	
<i>Edwell Kaseke</i>	159
CHAPTER 13	
Poverty Reduction in Bolivia: The Universal Pension	
<i>Lorena Ossio Bustillos</i>	171

CHAPTER 14	
Poverty in the United Kingdom	
<i>Simon Roberts</i>	183
CHAPTER 15	
Poverty: Analysis	
<i>Barbara Darimont</i>	199
B New Social Risks	205
CHAPTER 16	
New Social Risks: Introduction	
<i>Bernd Schulte</i>	207
CHAPTER 17	
HIV and AIDS in Southern Africa	
<i>Lethokwa George Mpedi</i>	215
CHAPTER 18	
HIV and AIDS in Tanzania	
<i>Tulia Ackson</i>	229
CHAPTER 19	
HIV and AIDS in Russia	
<i>Olga Chesalina</i>	241
CHAPTER 20	
Long-Term Care Insurance in Japan	
<i>Katsuaki Matsumoto</i>	255
CHAPTER 21	
Long-Term Care in Austria	
<i>Walter J. Pfeil</i>	267
CHAPTER 22	
New Social Risks: Analysis	
<i>Bernd Schulte</i>	275

## Summary of Contents

---

Part III Personal Scope: Informal Sector and Migrants	281
A Informal Sector	283
CHAPTER 23	
Informal Sector: Introduction	
<i>Letlhokwa George Mpedi</i>	285
CHAPTER 24	
The Informal Sector in Mexico	
<i>Angel Guillermo Ruiz Moreno</i>	295
CHAPTER 25	
Social Protection for Informal and Low-Paid Work in Germany	
<i>Eberhard Eichenhofer</i>	305
CHAPTER 26	
Informal Sector: Analysis	
<i>Letlhokwa George Mpedi</i>	313
B Migrants	319
CHAPTER 27	
Migrants: Introduction	
<i>Lorena Ossio Bustillos</i>	321
CHAPTER 28	
Migrants in South Africa	
<i>Ockert Dupper and Marius Olivier</i>	327
CHAPTER 29	
Social Protection of Migrants in China	
<i>Barbara Darimont</i>	345
CHAPTER 30	
Social Protection of Migrants in Spain	
<i>Cristina Sánchez-Rodas Navarro</i>	361

CHAPTER 31	
Migrants: Analysis	
<i>Lorena Ossio Bustillos</i>	371
Part IV Methods and Tools: Privatization and Activation	379
CHAPTER 32	
Privatization and Activation: Introduction	
<i>Ulrich Becker and Frans Pennings</i>	381
CHAPTER 33	
Privatization of Chile's Pension and Health Care Systems	
<i>Carmelo Mesa-Lago</i>	387
CHAPTER 34	
Protection of Old Age in Chile	
<i>Pablo Arellano Ortiz</i>	415
CHAPTER 35	
Voluntary Pensions in the Czech Republic	
<i>Kristina Koldinská</i>	429
CHAPTER 36	
Privatization and Activation in the Netherlands	
<i>Frans Pennings</i>	443
CHAPTER 37	
Privatization and Activation: Analysis	
<i>Ulrich Becker</i>	457
Part V Conclusions	469
CHAPTER 38	
Final Conclusions	
<i>Frans Pennings and Ulrich Becker</i>	471
Bibliography	483



# Table of Contents

List of Editors and Contributors	v
Preface	xxxix
List of Abbreviations	xxxiii
CHAPTER 1	
General Introduction	
<i>Ulrich Becker and Frans Pennings</i>	1
§1.01 Aim of the Book	1
[A] Starting Points	1
[B] Underlying Assumptions and Concepts	2
[C] Outline	3
§1.02 The Role of International Social Standards in a Globalized World	4
[A] International Social Standards as an Element of a Global Social Order	4
[B] Normative Approaches	5
[1] Employment-Related and Human Rights-Related Approaches	5
[2] Social Security and Social Protection	6
[3] A Global Approach despite Different Starting Points	6
§1.03 National Innovations and International Standards	7
[A] Methods	7
[B] Innovations in Social Security	8
[C] Possible Reactions at the International Level	9