

The Need for a Comprehensive Legal Framework for Social Protection in Kenya

1. Introduction

Globally, social protection (SP) is recognised as one of the approaches for tackling poverty and promoting inclusive growth. In Africa, social protection has become a mainstay in poverty reduction strategies with many African countries developing SP strategies. In Kenya, the government has put in place various policy strategies to guide the implementation of SP interventions. These include: the Constitution of Kenya (2010), the Kenya Vision 2030, (2007) and the National Social Protection Policy (2011). However, these policies have not been fully operationalised to ensure enjoyment of these rights by the beneficiaries. Two main challenges stand on the path to operationalising SP policy. They include limited research and the extent to which available evidence inform SP interventions.

This Policy Brief presents findings of various innovative research and engagement activities supported by a collaboration of the Partnership for African Social and Governance Research (PASGR), Knowledge Platform on Inclusive Development (INCLUDE) and the AIHD. The activities – research and a Research-policy Community (Utafiti Sera) on Social Protection in Kenya were aimed at informing and influencing policy uptake.

2. The State of Social Protection in Kenya

The Kenyan Government, with support from development partners, is implementing various social protection interventions which include social assistance, social security and health insurance. However, these programmes, especially the social assistance programmes, are limited in reach, are fragmented, have inadequate exit/graduation mechanisms and inadequate mechanisms for financing. Experience from other countries such as Brazil, Mozambique and South Africa has shown that these issues can be addressed by developing comprehensive legislation on social protection that can harmonise social protection programmes and link efforts of key stakeholders in the social protection sector.

Case Study: Brazil

Brazil, in compliance with various provisions in its 1998 Constitution such as the right to social security and social assistance, gradually developed a legal and institutional framework for comprehensive social protection that includes the Organic Law on Social Assistance (1993) as well as a range of institutions to support and coordinate social programmes, including the Ministry of Social Development and Fight Against Hunger (2004).

In line with these legal frameworks, the Government of Brazil launched a Bolsa Família (Family Grant) programme in 2003. Its main objective was to transfer income to the poorest families so as to combat hunger and poverty as well as to promote these families' access to health, education and social-welfare public services. Families with per capita income below US\$80 totaling around 12.4 million poor families (almost 50 million people) have benefited. In 2010, the budget provided for the Continuous Cash Benefit was US\$12 billion, representing 0.6 per cent of Brazilian Gross Domestic Product.

3. Legal Context of Social Protection in Kenya

- i. The Constitution of Kenya (2010) contains a comprehensive Bill of rights. Article 43 of the Constitution guarantees all Kenyans economic, social and cultural rights including the right to health, education, food and decent livelihoods. Article 21 commits the State to working towards the gradual realization of the social and economic rights.

- i. **The Kenya Vision 2030 (2007)** aims to provide a “high quality of life for all citizens by the year 2030” and encourages the Government to increase expenditure on social protection in order to reduce poverty, increase equity and promote equal access to sustainable livelihoods.
- ii. **The Kenya National Social Protection Policy (2011)** reviews existing social protection strategies, programmes and activities with a view of promoting synergy and minimising duplication and conflict.
- iii. **The Social Assistance Act (2013)** addresses social assistance to vulnerable populations such as orphans and vulnerable children. The assistance may be in the form of financial assistance and social services.
- iv. **The National Hospital Insurance Fund (NHIF) Act No 9 (1998)** regulates the NHIF which covers salaried workers and their dependants on a compulsory basis, as well as informal sector workers and people sponsored by individuals or institutions on a voluntary basis.
- v. **The National Social Security (NSSF) Act (2013)** provides workers with financial security in retirement and basic security against contingencies such as employment injury, illness and/or disability and death.

Apart from the above laws and policies, existing social assistance programmes are guided by three broad categories of legislations and policies, namely, sector specific, vulnerability and locality-based laws and policies.

- i. **Sector-specific legislation** is aimed at guiding the implementation of interventions for the welfare of poor and vulnerable members of society. These include: Education Act, 2007; the HIV Prevention and Control Act, 2006; and the National Food Security and Nutrition Policy, 2007.
- ii. **Vulnerability focused laws and policies** aim to protect the rights of the disadvantaged and to ensure their enjoyment of these rights. They include: National Children’s Act, 2001; the National Policy on Older Persons and Ageing, 2009; the National Policy on Youth, 2006; the National Gender and Development Policy, 2000; and the Persons with Disabilities Act, 2003.
- iii. **Locality-based laws and policies** include the National Policy for Sustainable Development of Arid Lands (ASALs), 2007 that calls for specific interventions to bring the economic development of ASALs up to the levels that

prevail in other parts of the country after many decades of negligible economic development.

4. Policy-Related Gaps in Social Protection in Kenya

Kenya’s social protection sector faces several policy-related challenges. These include:

- i. Poor coordination of the various government policies on social protection
- ii. Prevailing political and donor interests since policies on social protection are informed and influenced various interests, a change in government and/or donor interests and priorities are bound to affect the implementation of the programmes.
- iii. Weak implementation structures for example, major requirements and provisions of the laws and policies have not been enforced fully, resulting in fragmentation of SP interventions.
- iv. Sectoral interests and focus - the impetus to draft the various legal frameworks is driven by specific sectors and actors thus limiting the capacity and/or willingness of sectoral policy-makers to cross-reference legislation in other sectors;
- v. Multiplicity of services providers, uncoordinated in their approaches –SP interventions are provided by many different stakeholders including government ministries and agencies, the private sector, communities, households and other non-state actors.

These sectors have often operated in isolation thus diminishing the potential impact of the initiatives.

5. Utafiti Sera Agenda on Social Protection Legislation in Kenya

The Partnership for Social and Governance Research (PASGR) is collaborating with the African Institute for Health and Development (AIHD) to implement *Utafiti Sera* on Social Protection in Kenya. *Utafiti Sera* is an intervention that provides opportunities for new ways of thinking and collaborating to address challenges that hinder the

use of research evidence to inform policy action and programming decisions.

Activities under *Utafiti Sera* include conducting research on social protection and packaging research evidence to inform policy makers and practitioners, providing a virtual platform for active knowledge exchange on social protection issues in the country and creating spaces for policy advocacy and uptake.



Figure 1: Participants in the Social Protection Legislation Forum

While implementing *Utafiti Sera*, PASGR and AIHD have held two consultative meetings with key stakeholders in the social protection sector. The first forum brought together representatives from Government ministries, County Officials, Development Partners, Civil Society Organisations, Researchers and the media.

It emerged from this forum that developing a comprehensive legal framework on social protection was a matter of priority. Therefore, the *Utafiti Sera* house took it up as its top agenda for the first phase of the Project.

Utafiti Sera House, with support from the Ministry of East African Community, Labour and Social Protection, organised the second forum that brought together key stakeholders in the social protection sector to discuss and solicit input on a zero draft National Social Protection Bill. The Bill aims at coordinating the three pillars of social

protection and link key stakeholder in the social protection sector.

6. Key Policy Recommendations

An effective legal framework on social protection should aim to:

- i. Promote synergies and integration among social protection providers as well as engagement among stakeholders in the social protection sector. This can be achieved by bringing stakeholders together in an effective partnership to agree on the way forward for SP at both the national and county levels.
- ii. Put in place an oversight mechanism that will ensure coordination of social protection initiatives at the national, county, and sub-county levels. Its functions should include: designing and developing integrated social protection programmes and identifying gaps and priority areas for increasing the impact of social protection programmes.
- iii. Put in place effective and sustainable
- iv. SP financing mechanism – this can be achieved through expanding the financing base. SP being a public good, there would be need for the government to provide a larger position of the funds. Non-state actors including, the private sector, employers, workers, development partners, community groups, and voluntary organisations should augment these resources.
- v. Enhance SP research and evidence use additional research on areas such as targeting, the adequacy of the transfer value, delivery mechanisms and community/ beneficiary participation is

References

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For further information on the activities of Utafiti
Sera contact

**1. Partnership for African Social and
Governance Research (PASGR)**

I&M Bank Building, 6th Floor
2nd Ngong Avenue, Upper Hill, Nairobi, Kenya
Tel: +254 729111031/731000065

Email:

info@pasgr.org

www.pasgr.org

**2. African Institute for Health and Development
(AIHD)**

Commodore Office Suites, 7th Floor
Kindaruma Road, Nairobi, Kenya Tel: +254
727850851/736699225

Email: info@ahdint.org www.ahdint.org.