



REPUBLIC OF KENYA

**MINISTRY OF EAC, LABOUR AND SOCIAL PROTECTION
STATE DEPARTMENT OF SOCIAL PROTECTION**

**Consultative Meeting with the State Corporations Advisory
Committee (SCAC) on the Draft National Social Protection
Coordination.**

Forum Report



21st November, 2017

PanAfric Hotel, Nairobi Kenya.

ACKNOWLEDGEMENTS

The Ministry of East African Community, Labour and Social Protection (MEACL&SP), Knowledge Platform on Inclusive Development (INCLUDE), and the Partnership for African Social and Governance Research (PASGR) express their sincere gratitude to all the participants who contributed to the forum agenda.

Many thanks to the Technical Committee of ten under the leadership of Mrs. Cecilia Mbaka, Social Protection Secretariat (SPS), for embracing a stakeholders' consultative process on the development of the National Social Protection Bill.

And also appreciating the Knowledge Platform on Inclusive Development (INCLUDE) for technical and financial support in the Utafiti Sera initiative and PASGR staff for their tireless efforts and hard work to make this forum a success.

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Executive Summary

On 21st November, 2017, the Ministry of East African Community, Labour and Social Protection (MEACL&SP) in Kenya, the Knowledge Platform on Inclusive Development (INCLUDE), and the Partnership for African Social and Governance Research (PASGR) held a consultative meeting with the State Corporations Advisory Committee (SCAC) on the draft national social protection coordination bill. This is a follow up to series of activities, Utafiti Sera forums as well as the first Social Protection Conference that articulated 12 strategic issue areas having a central objective of seeking ways in which the three key areas of Social Security, Social Assistance and Health Insurance can be effectively integrated and strengthened through the national social protection coordination bill.

The Government of Kenya (GoK) has remained committed to social protection (SP), as articulated in various policy documents, development plans and budgetary allocations, as means to win the war against poverty and promote inclusive growth. Despite Government's efforts, implementing social protection has been faced with a number of challenges. The main challenge that policymakers and stakeholders in the sector are facing is fragmentation of social protection programmes, which has led to duplication and inconsistencies throughout the country. Moreover, social protection interventions are provided by many different stakeholders including Government ministries, the private sector, communities, households and other non-state actors (NSAs). These sectors often operate in isolation thus diminishing the potential impact of the initiatives. Consequently, the MEACL&SP birthed the idea of a bill that will link key stakeholders in the social protection sector and coordinate its three pillars - social assistance, social health insurance and social security.

This report highlights the key aspects of the consultative meeting with SCAC on the proposed national social protection bill that took place on 21st November, 2016. This meeting brought together 19 selected policy stakeholders with the aim of providing a way forward for the proposed bill. The meeting helped an understanding of the option of proposing the establishment of a State Corporation for social protection and highlighted the key issues. It came out strongly that there was rationale for the bill to have a state corporation, but it did not resonate with its objects, because the state corporate proposed in the bill wants to be many things at the same time – a policy coordinator, service provider, a regulator and also manage funds. Participants agreed there was a need to revisit the objects of the bill and decide whether to have a narrow focus or seek other ways to remain broad and still meet the goal.

Introduction

Mrs Cecilia Mbaka (Head, Social Protection Secretariat) having welcome participants to the meeting appreciated the technical committee that drafted the bill. Despite all the effort invested into the bill, Madam Cecilia expressed deep concerns on the bottlenecks experienced in the taking the bill forward. It was hoped that the bill would have been passed by the end of the financial year for 2016/17. Unfortunately, this could not happen because information from the office of the Attorney General, indicated that the bill would require clearance from the Treasury and the Office of the President, if the bill it intends to set up an institution. This information led the ministry have a rethink and to explore other options that will get a nod from the office of the President. One of the options is to establish a state corporation, hence the meeting with SCAC. She made clear that the conversation with SCAC does not necessarily mean the state corporation option is cast in stone, but just one of the many ideas to be explored to move the agenda forward. Other options may be to create an advisory body, or a secretariat within a state department. Madam Mbaka noted that another forum will be organised to discuss the other alternatives and welcomed other suggestions.



Figure 1: Mrs Cecilia Mbaka (Head, Social Protection Secretariat)

Understanding the stakes of establishing a State Corporation

Mr Simon Ndimuli (Director for Governance, SCAC) expressed gratitude for the invitation and extended greetings from the CEO/Secretary of SCAC- Mrs Jane Mugambi (OGW). He noted that the State Corporations Acts provides the governance and institutional framework for all state corporations in Kenya. The Act defines a State Corporation as anybody corporate established by an act of parliament or under an act of parliament. Hence the entity that the bill proposes to create is a State Corporation because it will be established by an Act of Parliament owned by government with more than 50% shares. However, if it will be a State Corporation there may be some issues on the form it should take.



Figure 2: Mr Simon Ndimuli (Director for Governance, SCAC)

He expressed concerns that this is coming up at a time when parastatals reforms have taken place. Therefore, the justification for the establishment of a State Corporation should be able to identify and clearly state the gaps to be filled within the sector.

Mr Simon explained further that part of the parastatals reforms reclassified state corporations into five functional clusters including: public enterprises, regulatory bodies, executive

agencies, public universities and tertiary education/training institutions, and research institutions. Therefore, any set up that does not fit into these five clusters, then it would be a hard sell and cannot be a state corporation.



Figure 3: Mr Richard Rori (Communication and Policy Analyst, National Social Security Fund)

Based on the clusters, Mr Simon noted that there is a rationale within the bill to have a state corporation but it does not resonate with its objects. This is because the state corporate proposed in the bill wants to be many things at the same time – a policy coordinator, service provider, a regulator and also manage funds.

The NSSF and NHIF for instance, has been established under an Act of parliament to execute a specific mandate, under the regulation and coordination of the parent Ministry. As such, the role of policy making and coordination will not be appropriate for a state corporate. One cannot set up a state corporate to coordinate other state corporations. However, if there is a body that should assist the ministry to coordinate it cannot not be incorporated. It may be a statutory body that is purely advisory.

Furthermore, it was emphasised that it is inappropriate for a state corporate to hold funds and also disburse funds at the same time. Similar, the entity being proposed cannot provide service and at the same time be a regulator within the same sector, and if a regulatory body is being proposed, then the powers to be exercised also need to be made clear.

Mr Christopher (Performance, Monitoring and Evaluation SCAC) noted it may however be useful to have an agency which will provide the service of managing a registry of vulnerable persons in Kenya. He emphasised that there is a clear gap in terms for providing assistance to vulnerable groups, as there is currently no agency designated by law to maintain a register of vulnerable persons, or determine who is vulnerable.



Figure 4: Mrs. Winnie Mwasiaji (Act. Deputy Director, Dept. of Social Development)

Therefore, the core business of the bill should be defined within the framework of the clusters. The gap must be identified and made clear and how it will be addressed. As such, it must be certain that the gap identified is not already being filled by another entity.

Conclusion

Participants at the end of the meeting acknowledge that the meeting was indeed an eye opener which requires deep reflections with regards to the appropriate direction for the bill. Mrs. Winnie Mwasiaji (Act. Deputy Director, Dept. of Social Development) indicated that the initial ideas on the bill focused on strengthening social assistance, since social security and health insurance were already strong, but expanding the scope made the puzzle a harder nut to crack. Madam Mbaka noted that from the advice from SCAC a State Corporation may not be the right direction for the bill and requested another brainstorming meeting that will be communicated at a later date. The government will be reviewed on social protection in 2018, because it had committed to put in place laws, policies and functional entities to promote social protection. This presents an opportunity for what is to be done.

Table 1: Summary of Options

No.	Options	Issues
1.	Policy advisory and coordination	This can be a directory or a department within the Ministry
2.	Registry (providing service)	There is an obvious gap in this area, as there is currently no agency designated by law to maintain a register of vulnerable persons, or determine who is vulnerable. This will be an executive agency which does not require the function of coordination. It can be named as an agency not a council because it is providing service.
3.	Regulator	If there is a gap in this area, then the regulator must be independent, because the regulator cannot also be a player or service provider in the same sector. It may be useful to devolve the regulatory role to an existing agency because of the parastatals reforms.
4.	Manage Funds	A state corporate cannot hold funds and at the same time disburse funds.

Annex 1

MEETING WITH THE STATE CORPORATIONS ADVISORY COMMITTEE (SCAC) ON THE DRAFT NATIONAL SOCIAL PROTECTION COORDINATION BILL - 21/11/2017 - PANAFRIQUE HOTEL

AGENDA

- 1) Introduction
- 2) Opening remarks (*Committee chair*)
- 3) Highlights on the draft National Social Protection Coordination Bill (*SPS*)
- 4) Remarks/guidance on the draft National Social Protection Coordination Bill (*Secretary SCAC*)
- 5) Committee & stakeholder remarks
- 6) Recommendations on way forward and closing.

Annex 2

PARTICIPANT LIST

	Name	Job Title	Organization
1.	Mr. Simon Indimuli	Director Governance	The State Corporations Advisory Committee (SCAC)
2.	Mr. Christopher Ombega	Performance Monitoring and Evaluation	The State Corporations Advisory Committee (SCAC)
3.	Ms. Mary Kambo	Programme Advisor-Labour Rights	Kenya Human Rights Commission. Nairobi, Kenya.
4.	Ms. Everlyne Khamasi	Principal Officer	National Hospital Insurance Fund
5.	Mr. Jjabali Pepela		Social Protection Secretariat State Department of Social Protection
6.	Mr. Richard Rori	Communication and Policy Analyst	National Social Security Fund
7.	Mrs. Cecilia Mbaka	Head,	Social Protection Secretariat State Department of Social Protection
8.	Ms. Peninna Mello	Programme Officer	African Platform for Social Protection
9.	Ms. Juliet Kola	Senior Assistant Director	Department of Social Development
10.	Mrs. Winnie Fiona Mwasiaji	Act. Deputy Director	Department of Social Development National Social Protection Secretariat
11.	Mr. George N. Kamau	Social Protection Lead	HelpAge International
12.	Ms. Hellen Mudora	Programme Officer	African Platform for Social Protection
13.	Ms. Stefanie Bitengo	Coordinator	M & E, Research Unit

	Name	Job Title	Organization
			National Social Protection Secretariat
14.	Ms. Milka Salvin		Social Protection Secretariat State Department of Social Protection
15.	Mr. Lazarus Keizi		Retirement Benefit Authority
16.	Mrs. Elizabeth Mueni	Senior Programme Manager	Evidence Action
17.	Ms. Flavia Emily Kokonya	Programme Officer	Ministry of Labour Social Security and Services
18.	Dr. Martin Atela	Manager, Research and Policy Engagement	PASGR
19.	Mr. Femi Balogun	Consultant	PASGR