



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

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## ACRONYMS

GOK	Government of Kenya
INCLUDE	Knowledge Platform on Inclusive Development Policies
MEACL&SP	Ministry of East African Community, Labour and Social Protection
PASGR	Partnership for African Social Governance Research
SCAC	State Corporations Advisory Committee
SP	social protection
SPS	Social Protection Secretariat

## 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.

Gratitude is also extended to the Technical Committee of ten under the leadership of Mrs. Cecilia Mbaka, Social Protection Secretariat (SPS), for embracing a stakeholders'

This success of this forum could not be made possible without the generous technical and financial support of INCLUDE and the leadership and coordination provided by PASGR.

## 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. The event was a follow-up to a series of activities initiated under the Utafiti Sera project as well as the first Social Protection Conference that aimed to identify 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 demonstrated its commitment to social protection (SP) through various policy documents, development plans and budgetary allocations, as a means of combatting poverty and promoting inclusive growth. However, despite such efforts, implementing social protection has been faced with a number of challenges. The main challenge encountered by policymakers and stakeholders in the sector is the fragmentation of social protection programmes, which has led to duplication and inconsistencies in service delivery 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 undermining the potential impact of SP frameworks and initiatives. Consequently, the MEACL&SP proposed a draft 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 examined the possibility

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**Social Assistance**



**Social Security**



**Health Insurance**

of establishing a State Corporation to coordinate and manage social protection initiatives. However, it came out strongly during the discussions that although the rationale of establishing a state corporation was warranted, the functions of the corporation as outlined in the bill were unwarranted. This is because the state corporate proposed in the bill will serve many roles and functions simultaneously – a policy coordinator, service provider, a regulator and also a fund manager. Participants agreed there was a need for policymakers to revisit the bill and determine whether it should delineate narrower functions and mandates for the state corporate body or consider alternative options.

## INTRODUCTION

Mrs Cecilia Mbaka (Head, Social Protection Secretariat) welcomed participants to the meeting and extended her appreciation to the technical committee that drafted the bill. Despite all the efforts invested into the bill, Madam Cecilia expressed deep concerns on the bottlenecks experienced in taking the bill forward. It was envisioned that the bill would have been passed by the end of the financial year for 2016/17. Unfortunately, this has yet to 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 it will necessitate the creation of a new institution. This information led the ministry to examine other options that will expedite the



Mrs Cecilia Mbaka (Head, Social Protection Secretariat)

process of approval from the office of the President. One of the proposed options is to establish a state corporation, hence the agenda of the SCAC meeting. She made clear that the conversation with SCAC does not necessarily mean the state corporation option is definite, 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.

## 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 Act provides the governance and institutional framework for all state corporations in Kenya. The Act defines a State Corporation as any corporate body 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 with government owning over 50% of its shares. However, if it will be a State Corporation there may be some issues on the form it should take.

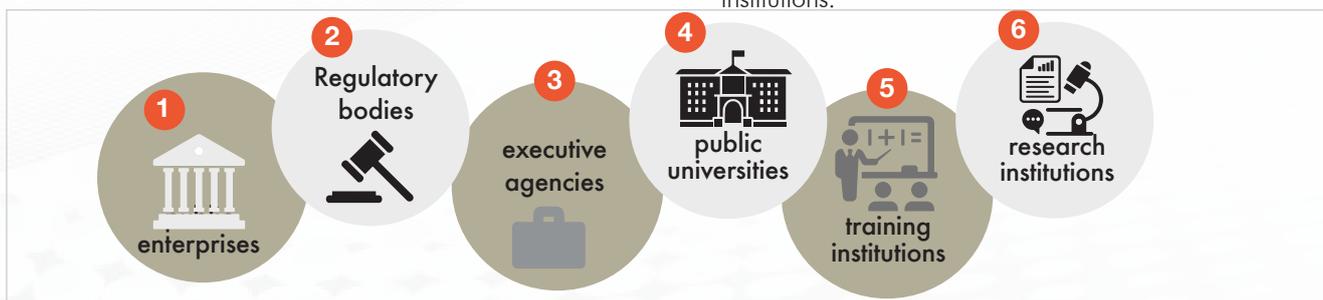


Mr Simon Ndimuli (Director for Governance, SCAC)

He expressed concerns that this is coming up at a time when parastatal 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 further explained that the recent parastatal reforms

reclassified state corporations into five functional clusters namely: public enterprises, regulatory bodies, executive agencies, public universities and tertiary education/training institutions, and research institutions.





**Mr Richard Rori (Communication and Policy Analyst, National Social Security Fund)**

Therefore, any State Corporation set up that does not fit within these five clusters would be a hard sell.

Based on the clusters, Mr Simon noted that there is a rationale within the bill to have a state corporation but this was lacking in support and feasibility.

This is because the state corporate proposed in the bill will serve many roles and functions simultaneously – a policy coordinator, service provider, a regulator and also a fund manager. The NSSF and NHIF for instance, were 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. A body that assists the ministry to coordinate its affairs cannot be a state corporate. 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. Similarly, the entity being proposed cannot concurrently provide service and be a regulator within the same sector, and if a regulatory body is being proposed, then its powers and functions must be demarcated.

Mr Christopher (Performance, Monitoring and Evaluation, SCAC) noted it may 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.

Therefore, the core functions of the bill should be defined within the framework of the permissible clusters. The gap it seeks to address must be clearly identified and addressed. It must be assured that the gap identified is not already being filled by another entity.



**Mrs. Winnie Mwasiaji (Act. Deputy Director, Dept. of Social Development)**

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## CONCLUSION

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.

**Table 1: Summary of Options**

Participants at the end of the meeting acknowledged 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 propositions of the bill focused on strengthening social assistance, since social security and health insurance were already strong sectors, but expanding the scope beyond this was not feasible. Madam Mbaka noted that from the advice of 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.



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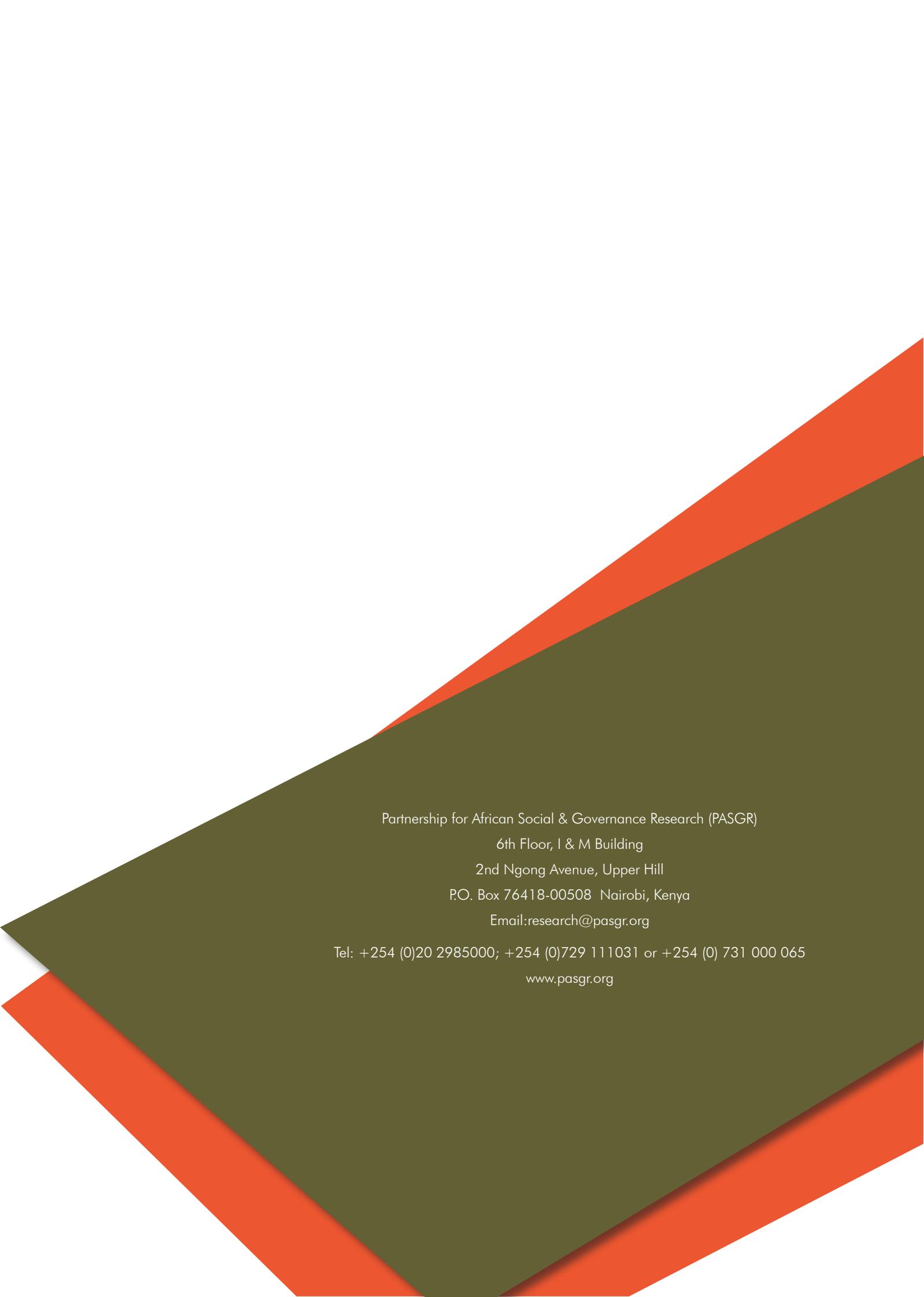
## Meeting Agenda

Meeting With The State Corporations Advisory Committee (SCAC) On The Draft National Social Protection Coordination Bill - 21/11/2017 - Panafrique Hotel

- 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.

## Participants List

No.	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. Julliet 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 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



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