



Utafiti Sera High Level Policy Forum on a Legal Framework for Social Protection

Held at the Pride Inn Hotel, Mombasa Kenya
March 23, 2018



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Acronyms

APSP	Africa Platform for Social Protection
CAS	Chief Administrative Secretary
CoP	Community of Practice
CS	Cabinet secretary
CSOs	Civil Society Organization
CT	Cash Transfer
EAC	East Economic Community
GoK	Government of Kenya
HISP	Health Insurance Subsidy Programme
MEACL&SP	Ministry of East African Community, Labour and Social Protection
NHIF	National Hospital Insurance Fund
NSAs	Non-State Actors
NSSF	National Social Security Fund
NSPP	National Social Protection Policy
PASGR	Partnership for African Social and Governance Research
RBA	Retirement benefits Authority
SADC	Southern African Development Community
SP	Social Protection
SPAF	Social Protection Actors Forum

Executive Summary

The Utafiti Sera High-Level Policy Meeting brought together 19 key stakeholders operating in the Social Protection (SP) sector to discuss the legal and policy framework for SP programmes in Kenya with the Members of the National Assembly from the Departmental committee on Labour and Social Welfare. The meeting was held on March 23, 2018 in the backdrop of the National Social Protection Conference in which the Kenyan government underscored its commitment to ensuring safety nets as a tool for reducing poverty among vulnerable citizens.

The main objectives of the meeting were:

1. To deliberate on the status of legal and policy framework for SP programmes in Kenya;
2. To discuss the challenges and bottlenecks of the operationalising the Social Assistance Act 2013; and
3. To discuss strategies for the realisation of the legislative framework for social assistance.

The meeting discussed the status of the Social Assistance Act 2013 signed in December 2013. The Act seeks to make social security a legal right and anchors existing social protection initiatives in law. Although the law was signed in 2013, it was not given a commencement date and is yet to be operationalised 5 years later.

The main conclusions and follow-up actions derived from the meeting are as follows:



1. Draft policy brief to inform the public on the changes that need to be made to enable the operationalization of the Act
2. Hold further consultations with other high-level stakeholders to discuss the way forward in operationalising the law, particularly with regards to whether the act will be amended or reviewed entirely. These meetings should target the Cabinet Secretary, Ministry of Labour and Social protection, the Chief Administrative Secretary, Ministry of Labour and Social protection, and the Principal Secretary Ministry of Labour and Social protection.
3. Hold further stakeholder consultative meetings with relevant ministries implementing social protection, institutions that provide legal advice to the government, including the Attorney general's office, Kenya Law reform Commission human rights institutions, researchers, civil society organizations, academicians, and beneficiaries of the cash transfers to foster an inclusive approach in reviewing/amending the Social Assistance Act 2013.

Introduction

In the last decade, Kenya has initiated several SP programmes to cushion the poor and vulnerable populations. Most of these programmes have been in the form of cash transfers examples which include: the Orphans and Vulnerable Children (OVC), the Older Persons Cash Transfer (OPCT) and the Persons with Severe Disability Cash transfer. Additionally, under the “Inua Jamii” programme, Kenya launched a universal pension for all older persons of age 70 and above in 2018. Other SP initiatives include the Hunger and Safety net programme, mainly targeting inhabitants of arid and semi-arid areas. It is currently estimated that the Kenyan government’s annually expenditure on social protection is KES 26 billion, reaching approximately 1,500,000 households¹.

The agenda of this high-level meeting was informed by the discussions and outcomes of the previous Utafiti Sera forum held on 25th January 2018. The forum covered key issues around social protection in Kenya, with a focus on the policy and legislative environment, the status of programme implementation, and sustainable financing for the sector. It was noted that although there is an increasing expansion in the cash transfer programmes to serve vulnerable populations, these programmes are implemented in the absence of a legal framework and are therefore subject to revocation by successive governments. The Social Assistance Act that was adopted in 2013 anchors social protection initiatives within a legislative framework. However 5 years later, the act remains non-operational owing to political and administrative challenges. The cash transfer programmes and other social protection gains therefore remain subject to political will and continue to be treated as an act of charity as opposed to a legal right to protect vulnerable persons.

The high-level meeting held on March 23, 2018 targeted 13 members of the National Assembly from the Departmental committee on Labour and Social Welfare. It aimed to inform legislators and other policy makers on the general legal environment of social protection programmes in Kenya and to generate recommendations for strengthening the social assistance sector.

The specific objectives of the meeting were:

4. To deliberate on the status of legal and policy framework for social protection programmes in Kenya;
5. To discuss the challenges and bottlenecks of the operationalization of the Social Assistance Act 2013; and
6. To brainstorm on a strategies for the realization of the legislative framework for social assistance.

About APSP by Dr. Tavengwa Nhongo

The Africa Platform for Social protection is a pan-African organization established in 2008, to respond to the demand for “voice” and more active engagement of African civil society in the shaping of Social Protection policies, programmes, and practices in Africa. To achieve this, the APSP promotes the establishment and active engagement of national platforms to shape Social Protection legislation, policies, programmes and practices in Africa. APSP has established 27 platforms in 27 countries in Africa. It also works closely with the African Union and other regional blocks including the EAC and the SADC, to promote harmonization of continental and national legal frameworks.

About PASGR and Utafiti Sera by Radwa Saad

Established in 2011, PASGR works to enhance research excellence in governance and public policy to contribute to the overall wellbeing of women and men. PASGR’s vision is ‘A vibrant African social science community addressing the continent’s public policy issues’. In partnership with individual academics and researchers, higher education institutions, research think tanks, civil society organizations, business and policy communities both in the region and internationally, PASGR supports the production and dissemination of policy relevant research.

Utafiti Sera (Kiswahili for research-policy) is an initiative derived from the research department at PASGR after the realization that research evidence was not reaching relevant policy makers and/or shaping policy processes. Utafiti Sera seeks to enhance policy processes and outcomes by establishing communities of practice around specific policy issues where research evidence can be packaged, disseminated and debated. In specific, Utafiti Sera works to:

- Create & sustain a vibrant research-policy community on a development/policy issue through well planned programme activities;
- Make policy relevant research evidence available to policy makers and practitioners using policy briefs, newspaper articles, video documentary; and
- Engage key policy makers and practitioners through direct contact, policy advocacy and use of issue

¹ www.socialprotection.or.ke/single_registry

champions during breakfast meetings, policy debates and workshops.

The Africa Platform for Social Protection (APSP) in partnership with The Social Protection Actors Forum (SPAF) and the Partnership for African Social and Governance Research (PASGR) are hosting the Utafiti Sera House on Social Protection in Kenya. Since its inauguration in 2017, the house has convened forums around five thematic areas namely: Legislation on social protection; Universalism as a way of reducing targeting errors; Exit/graduation mechanisms; Financing mechanisms; Effective coordination of social protection as well as the ongoing mapping of Social protection programmes to establish the status of and areas of improvement for the delivery of social protection programmes.

PASGR has established Utafiti Sera Platforms in a number of thematic areas, these include:

- Employment creation in agriculture and agro-industries in Kenya
- New forms of social and political action – Nigeria
- Social Protection and policy uptake in (II) Kenya
- Youth and Employment Creation in Agribusiness – Kenya
- Urban Governance & city transformation – Kigali
- Urban Governance & city transformation – Nairobi

→ About SPAF by Dr. Samuel Kabue

The Social protection Actors Forum (SPAF) was registered in 2012 with the aim of strengthening civil society engagement in social protection in Kenya. Membership is drawn from NGOs, FBOs, CBOs and other stakeholders' whose mandate is working with vulnerable members of the society. These include organizations working with children, persons with disabilities, older persons, women, health rights organizations including mental health. The work of SPAF includes legal and policy advocacy, strengthening social protection service delivery, building capacity of civil society organizations in social protection and promoting social accountability in social protection.

→ Social Accountability in Social Protection, By Helen Mudora

Ms. Mudora made a brief presentation on issues related to social accountability in the government cash transfer programmes. She noted that social accountability interventions enhance the capacity of citizens and civil society actors to articulate their needs to governments and service providers, and hence improve the impact and scope of services. Social

accountability brings the perspective of citizens and CSOs to government activities such as policy making, the management of public finances and resources, and service delivery. It allows civil society an opportunity to monitor the public sector and provide feedback on government performance.

Since 2009, The Africa Platform for Social protection (APSP) has promoted citizen engagement in the delivery of cash transfer programmes by governments. APSP has developed a social accountability tool to monitor various service delivery parameters of the cash transfer programmes. The specific parameters being monitored include:

- 1. Amount paid to beneficiaries:** All cash transfers in Kenya, (except the Hunger Safety Net Programme), pay Kshs. 2000 (USD 20) per month to the beneficiaries. This money is paid every two months, meaning that at every cycle of payment, beneficiaries receive a bimonthly payment of Kshs. 4,000 (USD 40). Beneficiaries need to be aware of the exact amount in case there may encounter unscrupulous service providers.
- 2. Timeliness of payment:** The period for payment of the cash transfers is every two months. From a human rights perspective, the grant should be predictable and made on time to minimize stress. APSP tracks whether the beneficiaries receive their grants on time.
- 3. Targeted beneficiaries/targeting process:** The tool also provides methods on mapping the beneficiary target group to determine the inclusion and exclusion errors.
- 4. Regular and accurate information on the program:** The beneficiaries require accurate information of the programme. Information on payment dates, delays or any other information on the programme is key for beneficiaries to access information.
- 5. Transparency in recruitment and management process:** How transparent is the recruitment process, are communities aware? This is closely related to targeting, to understand how the recruitment process is conducted and managed.
- 6. Distance to payment collection points:** The policy guideline by the Ministry of Labour and Social Protection asserts that the beneficiaries should not travel a distance of more than 6 kilometres to receive their money. This aspect determines whether the beneficiaries have easy physical access to the payment service providers.
- 7. Dignity in service delivery:** This determines aspects such as waiting period for service delivery, privacy, security, comfort (chairs while waiting) especially at the banks and pay points.
- 8. Effectiveness of the complaints and redress mechanism:** Like with all other services, there are complaints emerging

at the different stages of payments. The tool establishes the different complaints of beneficiaries and existing redress mechanisms. It also identifies the period of waiting before a complaint is addressed.

9. **Voice of the beneficiary:** Beneficiary voice is important in service delivery. The tool determines if beneficiaries have platforms for voicing their concerns without victimization.
10. **Linkages with other government programmes-** The government has many other programmes for the poor and vulnerable. The cash transfers on their own may not be sufficient in addressing the needs of the beneficiaries. Therefore tracking linkages with other government programmes such as bursaries, health insurance, and access to relief food is important. Some questions in the tool capture the information from the beneficiaries regarding other programmes they are benefiting from or are eligible for.
11. **Impact –** It is important to document any positive changes in lives of the beneficiaries, or positive stories resulting from the grant.

→ Legal Framework for Social Assistance in Kenya by Martin Pepela

Martin Pepela provided a brief overview of the legal status of social protection initiatives in Kenya. He placed particular emphasis on the Social Assistance Act of 2013 by outlining the challenges and gaps in the act and providing recommendations for intervention.

He noted that the Act seeks to give effect to article 43 (1) (e) of the Constitution of Kenya which provides for the right to social security. Even though the Act was signed in December 2013, is was not given a commencement date, hence it has not been operational 5 years later and operational challenges in the Act have limited its implementation.

Gaps in the Social Assistance Act 2013

Mr Pepela highlighted the following gaps in the Act:

1. The National Social Assistance Authority

The act seeks to implement the right to social security by establishing the National Social Assistance Authority, which has a broad mandate to manage the provision of social assistance in the country. The Authority established by the Act has simultaneously taken up the roles of oversight, advisory and implementation. This goes against good governance principles. There is also need for clarity of the role of the body created by this law- will it espouse advisory, regulatory or implementing functions? If its role is advisory or oversight, then implementation should be done by other agencies.

2. Functions of the Authority (section 4)

The Act proposes too many functions for the authority. The authority has over 20 functions, a factor that complicates administrative procedures and allows scope for bureaucratic hurdles. It will require about 22 departments to coordinate the functions of the Act. The functions of the act need to be reduced to 5 or 6 for easy monitoring and implementation.

3. Alignment with other legal provisions

The body to be established should be aligned with other legal provisions including the Sessional Paper No 2 of 2014, on the National Social protection Policy, which provides for a National Social Protection Council.

4. The Director of the Authority

Section 9 (4) provides that the Director shall be the Chief executive of the Board and shall be subject to the direction of the Authority and assume responsibility for the day-to-day management of the Authority. The provision makes the director head of the board which runs counter to the structure of the Authority that is headed by the Chairperson. This maybe a typographical error but has serious omissions in management.

5. Eligibility of Social Assistance (section 17 (a-e); 22(1) a-c):

From section 17 – 24, the target persons in need of social assistance are mentioned in broad terms and need to be delineated further. For example section, 17(e) of the law broadly states that widows and widowers are guaranteed a right to social protection. However, one cannot assume that all widows or widowers are poor or are in need of social assistance.

6. Section 26 – Appeals

This section provides for a person aggrieved by the decision of the Authority to appeal to the magistrates' court. This is erroneous from a legal standpoint. The only court that has powers to annul an administrative decision is the high court.

7. Alignment with the Constitution of Kenya 2010.

The drafting process was not aligned with the new constitution. The Act uses the old government office titles and not the current e.g Minister, Permanent secretary, as opposed to cabinet Secretary and Principal Secretary respectively.

8. Financial provisions

Section 34 establishes a fund entitled the National Social Assistance Fund. However, the section does not explicitly acknowledge that government funding currently accounts for over 90% of cash transfers programmes, suggesting that a fund is already in place but its functions need to be delineated further.

9. Risk of loss of funds

There is need for a social assistance law to provide for the administration of programmes and finances.

10. Regulations

There is need for the development of regulations as provided for in Section 42, to introduce penalties for the different crimes affiliated with service delivery including rogue service providers, presentation of wrong data, criminal private service providers among others.

Conclusions

Mr Pepela concluded by proposing a number of actionable points viz.

- a) Stakeholders should re-examine the provisions of the Act whilst taking into account the principles of good governance
- b) Relevant government departments - Attorney general's Office and the Kenya Law Reform commission, the Departmental Committee on Labour and Social Welfare and the Departmental Committee on Justice and Legal Affairs - should be brought on board during the reform process.

Plenary Discussions

Legal Framework to Support the Current Political Goodwill in Social Assistance

It was noted that there is strong political will in support of social assistance in Kenya. This is demonstrated by the annual increase in the national budget directed towards social assistance programmes. The present National Safety Net Programme (NSNP) cost Kshs 29.9 billion in 2016/2017 fiscal year which constitutes approximately 2.5 per cent of GDP. It was agreed that this political will needs to be anchored in law; the absence of which might result in a reversion of the programmes depending on the ideological leanings of future governments. From a human rights perspective, legal provisions can ensure the social assistance becomes an irrevocable right guaranteed to the most vulnerable, rather than an act of charity. Although SP is provided for in the Constitution of Kenya 2010, lack of a subsidiary legislation to guide the provisions of this service can limit the gains made by the beneficiaries. Similarly, an established legal framework is less vulnerable to political manipulation and expediency, ensuring the state's long term political and financial commitment to designated programmes.

Expending Social Assistance Resources

Participants inquired whether it is appropriate to issue social assistance grants without a specific law on social assistance. It was noted that the use of the Public Finance Management Act 2012 and the amendments of 2015 for purposes of expending SP funds is not sufficient because it makes issues of transparency and accountability evasive. The Public Finance Management Act is also very broad covering all government expenditure and does not provide sector specific regulations. A social assistance specific law could provide structures through which such funds would be expended, thereby making it possible to hold stakeholders accountable. It is important for social protection interventions to be enshrined in national legal frameworks, including national strategies and plans for effective enforcement and delivery of social protection programmes. Additionally, since social protection initiatives are provided by different actors, a legal framework provides a basis for coordination of such programmes to avoid wastage and duplicity of efforts.

Coordination and setting standards in the delivery of cash transfers

It was noted that there is need for wider coordination of both state and non-state actors in social assistance interventions particularly in regard to regulating standards to cushion citizens from abuse. Currently, there is no clear record of non-state organizations providing social assistance services. Lack of a specific law on social assistance exposes citizens to abuse and exploitation as specimens in the design of social assistance programmes. Such a law should promote compliance through regulations and guidelines for implementers of different pillars of social assistance.

Litigation

Participants noted that in the absence of a legal framework, beneficiaries of the social assistance programmes are put in a precarious situation if any citizen moves to court to block the implementation of a programme. It was noted that the National Gender and Equality Commission (NGEC) had moved to court to compel the Cabinet Secretary in charge of social protection to operationalize the law. However the case was withdrawn to allow the NGEC and other legal government departments to consolidate their efforts to provide legal guidance to the process.

What type of Social Assistance should be provided for the youth?

Some participants questioned why social assistance for youth was highlighted as one of the contentious issues in the Social Assistance Act 2013. It was noted that there are situations where youth can be vulnerable to shocks and risks, therefore making them eligible for social assistance. Section 17 of the

Social Assistance Act 2013 broadly implies that unemployed youth would be eligible for social assistance. This section was challenged by policy makers who argued that it would have catastrophic implication for the economy since unemployed youth could easily account for 50% of the population in the absence of clear data and identification methods.

It was also noted that in many countries Kenya included, social assistance programmes targeting the youth often come in the form of work programmes. An example in Kenya was the “Kazi kwa Vijana” work scheme programme. However it was noted that there are youth who are vulnerable due to other factors, and it is important that the parameters for such vulnerability is outlined.

Older persons cash transfers

Some of the participants were concerned with the age of older persons targeted for the cash transfer programmes. It was noted that currently in Kenya, there are two programmes targeting older persons. The first social assistance programme for older persons was started in 2008 and targets vulnerable older persons of 65 years and above. The Social Development

Department has developed parameters to guide the targeting of the beneficiaries for this program. It was noted that through experience the government spends a lot of money in the administration of this fund, especially the process of identification of beneficiaries. It might be prudent to consider making this a universal social pension. Participants made a proposal to reduce the age of older persons to be considered for social assistance from 65 to 60, in line with the retirement age in Kenya. Insisting on an eligibility criterion of 65 years and above can deny older persons of this right since some of them may not live to see 65 years due to poverty and vulnerability.

Conclusions

The Chairman of the Labour and Social Welfare committee thanked APSP and PASGR for finding time to enhance the understanding of members of the Departmental Committee on Labour and Social Welfare in SP. He urged the two organizations to partner with Parliament in promoting SP rights.

→ As a way forward, the following actions were suggested:

a) Development of Policy briefs

Draft policy brief to inform the public on the changes that need to be made to enable the operationalization of the Act

b) Review/amendments of the Social assistance Act 2013.

Hold further consultations with other high-level stakeholders to discuss the way forward in operationalising the law, particularly with regards to whether the act will be amended or reviewed entirely. These meetings should target the Cabinet Secretary, Ministry of Labour and Social protection, the Chief Administrative Secretary, Ministry of Labour and Social protection, and the Principal Secretary Ministry of Labour and Social protection.

c) Stakeholder Consultative meetings

Hold stakeholder consultative meetings to foster an inclusive approach in reviewing/amending the Social Assistance Act 2013. The stakeholders should be drawn from the relevant ministries implementing social protection, institutions that provide legal advice to the government, including the Attorney general’s office, Kenya Law reform Commission human rights institutions, researchers, civil society organizations, academicians, and beneficiaries of the cash transfers among others.

Annex 1 participants list

No	Name	Position	Organization
1.	Hon. Ali Wario	MP, Committee member.	National Assembly
2.	Hon. Janet Nangabo	MP, Committee member.	National Assembly
3.	Hon. Ronald K. Tanui	MP, Committee member.	National Assembly
4.	Hon. James O. K'Oyoo	MP, Committee member.	National assembly
5.	Hon. Rose Museo	MP, Committee member.	National Assembly
6.	Hon. Fabian Muli	MP, Committee member.	National Assembly
7.	Hon. David Ole Sankok	MP, Committee member	National Assembly
8.	Hon. Abdi Ibrahim	MP, Committee member	National Assembly
9.	Hon. Michael Muchira	MP, Committee member.	National Assembly
10.	Hon. Safia Adan	MP, Committee member	National Assembly
11.	Hon. Tom Odege	MP, Committee member	National Assembly
12.	Hon. Catherine Wambilianga	MP, Committee Member	National Assembly
13.	Hon. Ombok Milemba	MP, Committee Member	National Assembly
14.	Dr. Tavengwa Nhongo	Executive Director	APSP
15.	Dr. Samuel Kabue	Chairman	SPAF
16.	Martin Pepela	Facilitator	KNCHR
17.	Radwa Saad	Programme Associate	PASGR
18.	Dacia Douhaibi	Evaluation Consultant	PASGR
19.	Duncan Njuguna	Guide	SPAF
20.	Helen Mudora	Programme Manager	APSP



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