

REPUBLIC OF KENYA



MINISTRY OF EAC, LABOUR AND SOCIAL PROTECTION

STATE DEPARTMENT OF SOCIAL PROTECTION

Consultation Meeting on Social Protection Legislation

Forum Report



**August 22, 2016
Panafric Hotel, Nairobi, Kenya**

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LIST OF ABBREVIATIONS AND ACRONYMS

AIHD	-	African Institute for Health and Development
BISP	-	Benazir Income Support Programme
CEO	-	Chief Executive Officer
CCT	-	Conditional Cash Transfer
CoG	-	Council of Governors
COTU-K	-	Central Organization of Trade Unions Kenya
CSOs	-	Civil Society Organization
GoK	-	Government of Kenya
ILO	-	International Labour Organization
INCLUDE	-	Knowledge Platform on Inclusive Development
MEACL&SP	-	Ministry of East African Community, Labour and Social Protection
MoA	-	Ministry of Agriculture
MoE	-	Ministry of Education
NHIF	-	National Hospital Insurance Fund
NSAs	-	Non-State Actors
NSPP	-	National Social Protection Policy
NSSF	-	National Social Security Fund
PASGR	-	Partnership for African Social and Governance Research
SP	-	Social Protection
SPS	-	Social Protection Secretariat
UCT	-	Unconditional Cash Transfer
UN	-	United Nations
WB	-	World Bank

EXECUTIVE SUMMARY

Background: The Government of Kenya (GoK) is committed to social protection (SP), as articulated in various policy documents, development plans and budgetary allocations, as a powerful way to fight poverty and promote inclusive growth. Despite Government's efforts, the SP sector faces a few major challenges. The main challenge that policymakers and stakeholders in the sector are facing is fragmentation of SP programmes, which has led to duplication and inconsistencies throughout the country. Moreover, SP 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 Government is developing a National SP Bill that will link key stakeholders in SP sector and coordinate the three pillars of SP- social assistance, social health insurance and social security.

This report focuses on the follow-up "stakeholders' consultative forum" on the proposed National SP Bill that took place on 22nd August, 2016. This meeting brought together policy makers, practitioners, researchers and media and aimed to share the content of the "Zero Draft" National Social Protection Bill; share experiences on SP legislation from other countries such as Pakistan, South Africa, Mozambique and Tanzania; make input into the current draft bill; and agree on the way forward.

Stakeholders' Input on the Bill: The key recommendations on the bill as highlighted in the forum include:

- i. In accordance to its title, "the National SP Bill", the bill should enhance focus on SP unlike its current focus on the establishment of a "Directorate".
- ii. The need to adopt the definition of SP as contained in the National SP Policy (NSPP) and its sessional paper No.2 of 2014.
- iii. Amplify the three pillars of SP namely, social assistance, social security and social health insurance in the draft bill.
- iv. Capture "Financing" as a stand-alone section in the Draft Bill as it is a key component in SP.
- v. Incorporated into the draft bill an appeal mechanism for persons who disagree with decisions made concerning SP services.
- vi. Reconsider the provision of creating a "Directorate" since such a structure has provision to be established administratively and not through a legal mechanism. Furthermore, a directorate may not have the requisite authority to effectively link all SP Actors.
- vii. The need for the draft bill to provide more clarity on the mandate of the Directorate vis-à-vis the mandate of county governments.
- viii. The need to have clear provisions in the draft bill on linkages between the National and County Governments as well as the private sector in SP.

Next Steps: Participants in the forum deliberated on the way forward in the development of the bill. They proposed the following action points:

- i. The technical committee will undertake a second round of drafting of the bill to incorporate into the Zero Draft inputs from this forum;
- ii. The draft bill will be shared online for input from stakeholders;
- iii. Hold a third round stakeholder forum to review the draft bill;

- iv. Share the draft bill with top management of MEACL&SP and other SP line Ministries such as, the Ministry of Agriculture (MoA) and Ministry of Education (MoE), Ministry of Health, Ministry of Devolution and Planning etc;
- v. Undertake regional sensitization and validation forums for SP stakeholders;
- vi. Host sensitization meetings with the Social Welfare Committee (National Assembly, Senate) and the Council of Governors (CoG);
- vii. Hold final round drafting to incorporate inputs; and
- viii. Submit Draft National Social Protection Bill to the Attorney General.

1.0 INTRODUCTION

1.1 Background

Social protection (SP) gets direction from policy prescriptions that seek to address social issues such as; poverty, sustainable development, cohesion, food security, healthcare benefits among others. These are drawn from both local and international recommendations that inform the development agenda of a country (Hakijamii, 2014). The most successful experiences of SP systems are those grounded in legal instruments that create entitlements to SP benefits, ensure the permanence of these initiatives, and give rights-holders the legal ability to invoke their rights (Sepúlveda and Nyst, 2012).

In many cases however, SP programmes are implemented in the absence of an appropriate legal framework. They are commonly based on presidential decrees, policy statements or simply operational manuals and guidelines. Consequently, the programmes are more vulnerable to political manipulation and the long-term involvement of state authorities in all stages of the programme cannot be guaranteed. Moreover, these SP initiatives are not viewed as an inherent social entitlement or as a right of the beneficiaries.

In Kenya, for example, although the Government is committed to SP as articulated in various policy documents, development plans and budgetary allocations, there is no legal framework specific to SP as a whole. Therefore, challenges abound in the implementation of SP programmes. The key issue policymakers and stakeholders in the sector are facing is fragmentation of SP programmes, which has led to duplication and inconsistencies throughout the country. Moreover, SP interventions are provided by many different stakeholders including Government ministries and agencies, the private sector, communities, households and other non-state actors (NSAs). These sectors have often operated in isolation thus diminishing the potential impact of the initiatives.

Notably, the absence of a comprehensive legal framework on SP has made it difficult for beneficiaries to hold key stakeholders in the sector accountable. Experience shows that for effective legislation of SP programmes, the following key questions should be answered:

- i. At what point should the stakeholders be involved in policy formulation?
- ii. How much is being done in terms of public participation?
- iii. How are policies being enforced?
- iv. How are policies being recognized and coordinated?
- v. How can the policies be linked to sectors such as agriculture and education?

The Government of Kenya (GoK) through the MEACL&SP is in the process of developing a National SP Bill. The bill mainly aims to link key stakeholders in the sector and coordinate the three pillars of SP namely, social assistance, social health insurance and social security.

1.2 Evidence-Based Policy Uptake on SP

Bridging the gap between research and public policy is a major challenge and preoccupation of organizations that support and fund research with the aim of informing and influencing policy uptake. For the past three years, PASGR has supported major policy relevant studies on SP, employment creation, urban governance and city transformation in Africa with the aim of informing and influencing policy. In line with this, PASGR has developed *Utafiti Sera* as part of its research-policy engagement. *Utafiti Sera* is an intervention that provides opportunities for

new ways of thinking and collaborating to address challenges that hamper transmission of research evidence to policy action. In Kenya, this initiative is being implemented in two priority areas, that is, SP policy uptake and employment creation in agriculture and agro-industries.

Under SP, this initiative is pursuing the following three specific objectives:

- i. Sustain a vibrant research-policy community on SP in Kenya through well planned programme activities.
- ii. Generate new research evidence and synthesize existing relevant research evidence on SP and make it available to policy makers and practitioners through various forms of communication.
- iii. Engage key policy makers and practitioners through direct contact, policy advocacy and use of issue champions during meetings, policy debates and workshops.



Dr. Beatrice Muganda, PASGR, presenting on evidence-based policy uptake

Furthermore, the overarching outcome of this scheme is uptake of research evidence defined as influencing design of new national or sub-national policies, setting agenda for national or sub-national debates and changing programme design and implementation. Therefore, legislation on SP is in line with the objectives and outcomes the initiative has set to achieve.

1.3 Overview of the SP Legislation Forum

The forum that took place on 22nd August, 2016 at Panafric Hotel, Nairobi was a follow-up of the 6th July 2016 meeting organized by the MEACL&SP. The meeting dubbed, “stakeholders’ consultative forum” on the proposed National SP Bill brought together policy makers, practitioners, researchers and media to discuss SP legislation.

Purpose of the forum: The overarching aim of the forum was to share the content of “version one” of the proposed National SP Bill with key stakeholders and to solicit input for subsequent revision. The objectives of the meeting included:

- i. Share the content of the draft National Social Protection Bill;
- ii. Share experiences on SP legislation from other countries;
- iii. Make input into the current draft bill; and
- iv. Agree on the next steps.

Participants: The forum brought together various key players in the SP sector. They included representatives from Government ministries, development partners, CSOs, County Governments, researchers and media.

Format of the Forum: The discussions for the one-day forum were mainly done in plenary to allow for close interaction and deliberations on the key sections of the draft bill. Keynote speakers shared an overview of SP legislation from different countries with an aim to guide discussions and provide inputs on the development of the bill. In addition, delegates were split

into groups to discuss and agree on the coordination mechanism of SP as well as the objects and purpose of the bill.

1.4 Opening Remarks

Dr. Mary Amuyunzu-Nyamongo, Executive Director, AIHD, welcomed delegates to the meeting. She noted that stakeholders in the SP sector had invested a lot of resources, time and commitment on SP programmes but affirmed that there was no legal framework through which their efforts could be anchored. In addition, she appreciated the technical committee of ten drafting the bill.

Mrs. Cecilia Mbaka, Head, SPS, reiterated that although Kenya had made a lot of strides in implementing SP, there was no law to guide the implementation of SP programmes. She pointed out the urgency of tabling the SP bill in parliament in October before the electioneering year, 2017.

Dr. Beatrice Muganda, Director, Higher Education Programmes, PASGR, commended the MEACL&SP for its collaborative efforts in the development of the SP bill. Furthermore, she acknowledged the Ministry and the AIHD for partnering with PASGR to drive and sustain Utafiti Sera process on SP in Kenya.



Ms. Cecilia Mbaka, SPS, gives opening remarks in the forum

2.0 PRESENTATIONS AND DISCUSSIONS

This section presents a summary of the key issues discussed during the forum. It comprises presentations made by Ms. Clare Amuyunzu, Programme Officer, AIHD and Mr. Khan Naseer, Operations Manager, the Hunger Safety Net Programme (HSNP) on SP legislation in South Africa, Mozambique, Tanzania and Pakistan. This is followed by a detailed presentation by Ms. Stefanie Bitengo, Technical Committee Member, SPS, on the ‘zero draft’ National SP Bill.

2.1 Review of SP Legislation

Background: Ms. Clare Amuyunzu, Programme Officer, AIHD, in her presentation defined legal frameworks as broad systems of rules that governs and regulates decision making, agreements, laws and rules. These frameworks include documents such as the Constitution, legislation, regulations and contracts. She identified two main roles of SP legislation namely; to ensure beneficiaries can demand their entitlements and protest violations of their rights, as well as guarantee that SP programmes outlast a political cycle and is not manipulated for political purposes.

Furthermore, she highlighted the key components of SP legal frameworks to include: i) Precise eligibility requirements; ii) Mechanisms to ensure transparency and access to information about available programmes; iii) Articulation of the long-term financial requirements; iv) Accessible complaints and appeal mechanisms; and v) Participation channels for beneficiaries.

South Africa: In South Africa, SP is underpinned in the Constitution of South Africa (1996). The Constitution includes a Bill of Rights (Section 27) that confers the right to all South Africans to have access to social security, including, appropriate social assistance. Moreover, the Constitution indicates that the State should take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights. Apart from the Constitution, SP is guided by the Social Assistance Act of 2004 and the South African Social Security Agency Act of 2004.

The Social Assistance Act provides for rendering of social assistance to persons, mechanisms for rendering such assistance, establishment of an inspectorate for social assistance and matters connected therewith. The Act outlines an eligibility criteria required to access social assistance to include: i) A persons is eligible to different grants depending on his/her vulnerability for example, child grant if he/she is the primary caregiver of a child that needs support; ii) The person in need of the assistance must be a South African citizen or a member of a group or category of persons prescribed by the Minister in the gazette; iii) He/she must be a resident in the Republic and; iv) The individual must be willing to comply with additional requirements for the assistance such as: income thresh hold; means testing; procedures and processes for application; and measures to prevent fraud and abuse.

In terms of institutionalization, the Act provides for the establishment of an independent Inspectorate for Social Assistance headed by an Executive Director. The Inspectorate is responsible for conducting investigations to ensure the maintenance of the integrity of social assistance frameworks and systems, executing audits such as internal financial audits, investigating fraud, corruption as well as other forms of financial and service mismanagement and establishing a complaints system.

Furthermore, the Social Assistance Act provides for transparency in the application procedures for social assistance. First, applications must be done in a prescribed manner. Second, when considering an application, the agency may conduct an investigation and request for additional information if need be. Third, if an applicant qualifies for social assistance, the agency is obligated to render it. However, if an applicant doesn't qualify, the agency must in writing inform the applicant, the reasons why and their right of appeal.

The South African Social Security Agency Act provides for the establishment of an oversight body for social assistance and social security called the South African Social Security Agency. The Agency is responsible for: i) Administering social assistance; ii) Collecting, collating, maintaining and administering information necessary for the payment of social security as well as for the central reconciliation and management of payment of transfer funds in a national database of all applicants and beneficiaries of social assistance; and iii) establishing a compliance and fraud mechanism to ensure the integrity of the social security system is maintained.

The Act provides for the appointment of a qualified South African Citizen as the Chief Executive Officer (CEO) of the Agency. It highlights the duties of the CEO to include: management of the Agency, compilation of a business and financial plan and appointment of members of staff. Moreover, the Act recognizes the sources of funds for the Agency to consist of; funds appropriated by Parliament, grants or contributions received by the Agency with the approval of the Minister of the Social Development department and fees for services rendered to other designated institutions.

Lastly, the Act allows for reporting and audit. In particular, it states that the Agency must in each financial year submit an annual report on its activities and a statement of its income and estimated expenditure for the following financial year to the Minister of the Social Development department for approval. Moreover, the books, records of accounts and financial statements of the Agency must be audited annually by the Auditor General.

Mozambique: Mozambique has made significant progress in establishing a legal framework for the implementation of SP programmes. It has adopted Law 4/2007 that organizes the SP system at three levels, basic social security, obligatory social security and complementary social security.

The Law outlines the scope of application for the three pillars of SP. First, basic social security covers national citizens who are unable to work and are without means to meet their basic needs for example, elderly people living in absolute poverty, children in difficult situations and persons with disabilities in situations of absolute poverty. Second, mandatory social security covers employees including the self-employed, both national and foreign residents in national residents and their employers. Finally, complementary social security is intended to strengthen benefits of the mandatory social security. Therefore, it covers, on an optional basis, people enrolled in the mandatory social security system.

Law 4/2007 provides for beneficiary participation in the basic social security pillar. Under this pillar, social support benefits are provided through the provision of services, programmes and community development projects in terms of housing, shelter, food and means of compensation.

As a result, involvement of beneficiaries and their families in solving their problems is stimulated, promoting community participation and mechanisms of mutual assistance.

In terms of institutionalization, the law provides for the establishment of a Consultative Committee of Labour. The Committee functions as an organ for consultation and advice of the Government on SP matters and as a management system for the three components of SP. It comprises of members of the Government and civil society, and representatives of the employers and workers.

Notably, the three components of SP are financed separately. The revenue of basic security include: allocations by the state budget, contributions and grants from different entities such as public or private and other income obtained by any legally permitted means. Revenue for mandatory social security consists of contributions of self-employed workers and their employers enrolled in the scheme, contributions of self-employed workers, default interest due for late payment of contributions, income produced by investments; and gifts. Lastly, revenue for complementary social security comprise of contributions of workers and their employers, and other contributions provided by law.

Tanzania: The Government of Tanzania has developed the National Social Security Fund Act of 1997. The Act aims to establish the National Social Security Fund and to provide for its constitution, administration and other matters related to the fund.

The Act outlines the eligibility criteria required to access the fund to include: every person who is a member of the fund; every person who is self-employed or employed in the private sector; and every non-pensionable employee in the Government service and parastatal organization.

In the Act, provisions are made for the establishment of a Board of Trustees as an oversight body for the fund. The duties of the Board include: control and administration of the fund; investing monies available in the fund; providing technical assistance and advisory service for the purposes of promoting social security programmes; and entering into transactions as may be necessary for proper and efficient administration of the fund. According to the Act, the Board should comprise of, a chairman; representatives from the Association of Tanzania employers, the Association of Tanzania Federation of Trade Unions, the Government; and persons holding or acting in the office of the Principal Secretary. Moreover, the Act provides for the establishment of an Appeals Tribunal where an application for review may be made if a person is dissatisfied with the decision on a claim to benefit.

Lastly, the sources of financing for the National Social Security Fund constitute of existing fund vested in the board, assets of the existing fund, combined contributions of eligible employers and the insured persons, income and capital appreciated derived from the holding of assets of the fund and other sums or assets accrued or granted to the fund.

Pakistan: Mr. Khan Naseer, Operations Manager, the Hunger Safety Net Programme (HSNP), in his presentation mentioned that in the financial year 2013/2014 headcount poverty rate had declined from 64.3 percent to 29.5 percent in Pakistan. He noted that despite the decline in poverty, the number of people around the poverty line was still high resulting in significant vulnerability to poverty.

He observed that although Pakistan has not established a legal framework specific to SP, it has made strides in improving the SP sector. The Government of Pakistan has established National SP Framework and Benazir Income Support Programme (BISP).

The BISP is a statutory body under an Act of Parliament, BISP Act 2010. Core SP initiatives under this body include: unconditional cash transfers (UCT) that support livelihoods of poor families for consumption smoothening and cushioning the negative effects of slow economic growth, the food crisis and inflation; and conditional cash transfers (CCT) that contribute to human capital development of children of BISP families by increasing and retaining their enrolments in primary education.



Mr. Khan Naseer Presenting on SP Legislation in Pakistan

The organization structure of BISP is presented in the figure below.

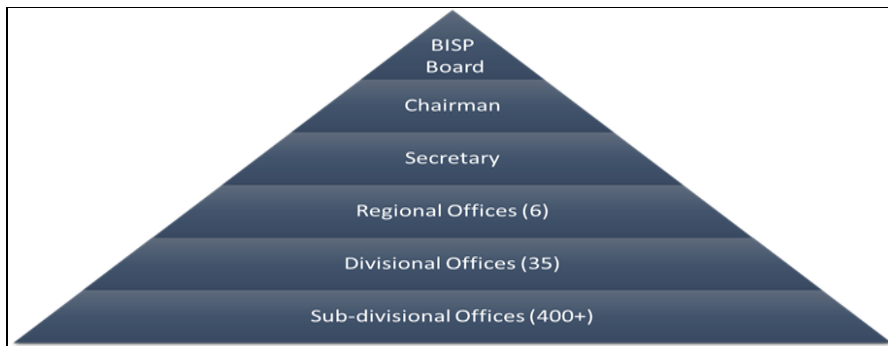


Figure 1: BISP Organization Structure

The National SP framework provides for agreed goals, targets, areas and actions for harmonizing SP policies with national priorities as laid down in the country’s Constitution and commitments under various international agreements. This framework is aligned with Pakistan’s Vision 2025 that calls for mainstreaming SP into all federal and provincial or regional government policies to ensure social equity and inclusion. The Vision envisages extending the scope of SP to employment creation or employment-related forms of SP such as social assistance, social insurance, social equity, social development and economic empowerment.

The main goal of the SP framework is to provide guidance to all stakeholders in public and private sectors involved in the funding, planning and provision of SP services in Pakistan while enhancing the coordination of SP interventions for effective implementation and greater impacts. Other goals of the framework include: i) specifying roles of various tiers of Government and creating partnership with non-governmental organizations (NGOs); ii) integrating SP initiatives to reduce fragmentation, avoid duplication, build synergies and address gaps; iii) prioritizing target groups through legislation, policy and financing; iv) establishment of institutions and where required, specify roles and areas of responsibility; v) establishment of a national unified socio-economic registry with mechanisms for validation, recertification, and data update; and vi) establishment of a monitoring and reporting system for ensuring transparency and effective implementation.

Lessons for Kenya from the review: It is evident that governments in Africa have developed various legal instruments to guide the implementation of SP interventions. As Kenya embarks on developing a comprehensive legal framework on SP, lessons drawn from the review of various SP legal frameworks can significantly inform and accelerate the development process.

Key lessons from the review include:

- i. Development of a short and precise legislation;
- ii. The legal framework should aim to integrate SP initiatives to reduce fragmentation, avoid duplication, build synergies and address gaps;
- iii. The legislation needs to specify roles of various tiers of Government and create partnership with key stakeholders in SP such as NGOs;
- iv. Institutional frameworks for SP programmes should be clearly outlined;
- v. Financing of SP programmes must be predictable and guaranteed;
- vi. The legislation should acknowledge change and make provisions for it;
- vii. The framework should establish monitoring and reporting system for ensuring transparency and effective implementation; and
- viii. The legislation must enhance sharing of information of various aspects of programmes with stakeholders in the SP sector.

2.2 Draft National Social Protection Bill

In her presentation, Ms. Stefanie Bitengo, Technical Committee Member, SPS, outlined the key steps followed in developing the draft National SP Bill to include: i) First round stakeholder consultative forum that created a platform through which stakeholders provided their views and expectations of the bill; ii) Compilation of the key recommendations on the content for the proposed bill by the Technical Committee; iii) Drafting of “zero draft” document of the proposed bill; and vi) Second round stakeholder consultative forum on structured inputs into the draft bill.

Her presentation further acknowledged that the GoK had developed various legal instruments to guide the implementation of SP interventions. Therefore, the bill aims to collate these documents into one comprehensive legal framework. She highlighted key recommendations on the content of the proposed bill as:

- i. Strengthening the social assistance component of SP by undertaking review of the Social Assistance Act of 2013 with the aim of proposing amendments or developing a new Act to repeal it;

- ii. Safeguard the broader mandates under the State Department of SP, that is, Social Development through a separate legislation;
- iii. Focus the proposed bill to the narrower sense of SP as currently defined in the Kenya National Social Protection Policy (NSPP) of 2011, its sessional paper No. 2 of 2014 and globally and mutually accepted definition of Social Protection by international bodies implementing SP such as United Nations (UN), International Labour Organization (ILO) and World Bank (WB).



Ms. Stefanie Bitengo gives a presentation on the National SP Bill

Furthermore, a few questions to be considered were posed with regards to the review of the bill. They include:

- i) Does the object and purpose of the draft Bill capture the issues of social protection “comprehensively”?
- ii) If not what are the gaps /missing content?
- iii) What additional content do we need to add?

2.3 Stakeholders’ Input on the Bill

Having deliberated on the content of the draft bill, some key issues and recommendations on the bill include the following:

- i. In accordance to its title, “the National SP Bill”, the bill should enhance focus on SP unlike its current focus on the establishment of a "Directorate".
- ii. The need to adopt the definition of SP as contained in the National SP Policy (NSPP) and its sessional paper No.2 of 2014.
- iii. Amplify the three pillars of SP namely, social assistance, social security and social health insurance in the draft bill.
- iv. Capture "Financing" as a stand-alone section in the Draft Bill as it is a key component in SP.
- v. Incorporate into the draft bill an appeal mechanism for persons who disagree with decisions made concerning SP services.
- vi. Reconsider the provision of creating a "Directorate" since such a structure has provision to be established administratively and not through a legal mechanism. Furthermore, a directorate may not have the requisite authority to effectively link all SP Actors.
- vii. The need for the draft bill to provide more clarity on the mandate of the Directorate vis-à-vis the mandate of county governments.
- viii. The need to have clear provisions in the draft bill on linkages between the National and County Governments as well as the private sector in SP.

2.4 Closing Remarks

Dr. Mary Amuyunzu-Nyamongo appreciated the participants and urged the technical team developing the bill to consult broadly on the issue of establishing a coordination mechanism for SP in Kenya. In her speech, she highlighted the need for the Ministry to look at how other countries are managing SP and borrow from their best practices. Furthermore, she advised the MEACL&SP to consider the portability of the Act within East Africa.



Dr. Mary Amuyunzu-Nyamongo gives closing remarks at the forum

3.0 CONCLUSION AND NEXT STEPS

3.1 Conclusion

The Government of Kenya has embarked on developing a comprehensive legal framework on SP with a view to promoting synergy and minimizing duplication and conflict in SP programmes. Particularly, the bill aims to harmonize and integrate the three pillars of SP, namely, social assistance, social security and social health insurance. Furthermore, it aims to link key stakeholders in the SP sector including government ministries and agencies, the private sector, communities, households and other NSAs. It is worth noting that the development of the bill so far has been a consultative process. The Government has endeavored to bring together key stakeholders in the sector to make input on the bill by organizing forums.

3.2 Next Steps

Participants in the forum deliberated on the way forward in the development of the bill. They proposed the following action points:

- i. The technical committee will undertake a second round of drafting of the bill to incorporate into the Zero Draft inputs from this forum;
- ii. The draft bill will be shared online for input from stakeholders;
- iii. Hold a third round stakeholder forum to review the draft bill;
- iv. Share the draft bill with top management of MEACL&SP and other SP line Ministries such as, the Ministry of Agriculture (MoA) and Ministry of Education (MoE), Ministry of Health, Ministry of Devolution and Planning etc;
- v. Undertake regional sensitization and validation forums for SP stakeholders;
- vi. Host sensitization meetings with the Social Welfare Committee (National Assembly, Senate) and the Council of Governors (CoG);
- vii. Hold final round drafting to incorporate inputs; and
- viii. Submit Draft National Social Protection Bill to the Attorney General.

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5.0 ANNEXES

Annex 1: Forum Agenda

REPUBLIC OF KENYA



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

DRAFT AGENDA

CONSULTATION MEETING ON SOCIAL PROTECTION LEGISLATION

TO BE HELD AT PANAFRIC HOTEL, BARAZA ROOM, AUGUST 22, 2016

08:30 – 09:00	Registration
09:00 – 09:15	Opening Remarks: Ms. Cecilia Mbaka, Head, National Social Protection Secretariat
09:15 – 09:45	Evidence-Based Policy Uptake on Social Protection Presenter: Dr. Beatrice Muganda, Director, HEP, Partnership for African Social and Governance Research (PASGR)
09:45 – 10:05	Keynote Address: Mrs. Susan Mochache, PS, Ministry of East African Community, Labour and Social Protection (MEACL&SP)
10:05-10:30	Health Break
Presentation and Discussions on Social Protection Legislation Issues	
Moderator:	Dr. Mary Amuyunzu-Nyamongo, Executive Director, AIHD
10:30 – 11:00	The Draft National Social Protection Bill Presenter: Committee Member Plenary Session
11:00-11:30	Legislation on Social Protection in Pakistan Presenter: Mr. Khan Naseer, Hunger Safety Net Programme (HSNP) Plenary Session
11:30 – 12:00	Overview of Legal Frameworks from Other Countries: Lessons for Kenya Presenter: African Institute for Health and Development (AIHD) Plenary Session
12:00-13:00	Discussions on the Main Topics of the Bill Group Work
13:00 – 14:00	Health Break
14:00 – 15:00	Discussions on the Main Topics of the Bill Continues... Group Work
15:00 – 16:30	Group Presentations
16:30 – 17:00	Closing Remarks: Dr. Beatrice Muganda, Director, HEP, Partnership for African Social and Governance Research (PASGR).
17:00	Tea and Nibble Discussions

Annex 2: The Revised National Social Protection Bill

ZERO DRAFT OF THE NATIONAL SOCIAL PROTECTION BILL 2016

Arrangement of sections

PART I — PRELIMINARIES

- 1— Short title and commencement
- 2— Interpretation
- 3 — Application of the Act
- 4 — Object and purpose of the Act
- 5 — Guiding principles

PART II — NATIONAL DIRECTORATE FOR SOCIAL PROTECTION

- 6— Establishment of National Directorate for Social Protection
- 7— Administration
- 8— Mandate
- 9— Appointment of Director- General
- 10— Responsibilities of Director- General
- 11 — Powers of the Director- General
- 12 — Delegation
- 13 — Other staff
- 14—Committees

PART III — REGISTRATION OF PERSONS ELIGIBLE FOR SOCIAL PROTECTION

- 15— Social Protection Register
- 16 — Correction of Register
- 17 — Access to Register
- 18 — Collection and maintenance of data
- 19— Access to information
- 20 — Protection of data

PART IV—MISCELLANEOUS

- 21— Financing of social protection
- 22— Reporting obligations
- 23— Complaints
- 24— Offences
- 25— General offence
- 26— Regulations
- 27 — Transitional provisions

THE NATIONAL SOCIAL PROTECTION BILL 2016

A Bill for

AN ACT of Parliament to provide for the a comprehensive framework of national social protection initiatives and for connected purposes
ENACTED by the Parliament of Kenya as follows—

PART I - PRELIMINARIES

Short title **1.** This Act may be cited as the National Social Protection Act, 2016 and shall come into operation on such date as the Cabinet Secretary may determine.

Interpretation **2.** In this Act, unless then context otherwise requires—

“**beneficiary**” means an eligible person/household who receives/benefits from social protection under this Act or other relevant Act”;

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for Social Protection;

“**Directorate**” means the Directorate responsible for Social Protection established under **section 6**;

“**eligible person**” means a person who or group which is unable to support themselves and their dependents, in particular orphans, vulnerable children, older persons, people with severe disabilities, vulnerable mothers and any other person the Government may from time to time identify;

“**National Social Protection Secretariat**” means the department known as the "Social Assistance Secretariat" in the Ministry responsible for social protection;

“**non state actors**” means non governmental agencies and institutions and includes private individuals participating in social protection initiatives;

“**Principle Secretary**” means the principle secretary in the Ministry for the time being responsible for social protection;

“**social protection**” means a set of initiatives, both formal and informal that provide social assistance to extremely poor individuals and households, social services to groups who need special care or who would otherwise be denied access to basic services, social security and health insurance to protect people against risks and consequences of livelihood and social equity to protect people against social risks such as discrimination or abuse;

Commented [A1]: Adopt the definition of social protection from the National SP Policy (2011) and sessional paper No.2 of 2014

“**state actors**” means government ministries, departments, and agencies participating in social protection initiatives;

Application of the Act (Cap 258) (Cap 255)

3. (1) This Act applies to state actors and non-state actors including the Directorate of Social protection, the National Social Security Fund (NSSF), National Hospital Insurance Fund (NHIF) and the National Social Assistance Secretariat.

Commented [A2]: Ensure this section is in tandem with section 4

(2) This Act further applies to every officer employed within the public or private sector and who performs or discharges any function or duty assigned to that officer within the social protection sector.

Commented [A3]: Include different institutions working on social protection

Object and Purpose of the Act

4. (1) The objects and purposes of the Act are, among other things, to—

Commented [A4]: Refine the objects and include a coordination strategy of the three pillars of social protection. Look at the sessional paper No.2 (pages 27/28)

(a) develop and harmonise integrated social protection programmes and activities and the guidelines for the implementation of those programmes and activities.

(b) review the status and progress of social protection programmes and activities and make recommendations to the Cabinet Secretary on

Commented [A5]: Think broadly on how Cabinet Secretaries from different departments can be brought together

areas of priority;

- (c) advise the Cabinet Secretary on social protection policies and initiatives;
- (d) co-ordinate the social protection initiatives of state and non state actors at National and County level;
- (e) establish and maintain an accessible knowledge, information and communications system and database on social protection policies, and initiatives;
- (f) undertake, facilitate and co-ordinate research in social protection. ((b) to (g) in the 2014 bill)

Commented [A6]: How do you intend to do this?

Commented [A7]: Clarify, will this be one of the functions of the Directorate or will research institutes be involved

Guiding Principles

5. In the performance of its functions under this Act, the Directorate shall be guided by the following principles–
- (a) integrity, accountability, transparency, nondiscrimination and equality
 - (b) good governance;
 - (c) evidence-based programmes;
 - (d) protection of human rights;
 - (e) gender mainstreaming;
 - (f) equity and social justice;
 - (g) standardization of activities and programmes;
 - (h) public participation;
 - (i) sustainability;
 - (j) flexibility; and
 - (k) responsiveness to changing circumstances.
- ((a) to (j) from SP Council bill)

PART II – DIRECTORATE OF SOCIAL PROTECTION

Commented [A8]: Clarify the implementation and operational aspects of the Directorate

Establishment of the Directorate for Social

6. (1) There is established, within the Ministry responsible for social protection, the National Directorate for Social Protection (in this Act referred to as the Directorate) which shall be headed by a

Protection Director General **appointed under section 9.**

(2) The Director General shall be deputized by a Deputy director-general.

Administration 7. (1) The Cabinet Secretary shall provide oversight of administration of this Act.

(2) The administration of the Directorate, the discharge of duties, the exercise of the powers and the relationship of the Directorate with other offices discharging their duties in public service shall be governed by this Act.

(Reporting by DG provided under 9(3))

Mandate 8. (1) The Directorate is responsible for—

- (a) the development of a comprehensive framework for implementation of social protection programmes;
- (b) effective coordination and implementation of social protection interventions;
- (c) the assistance of individuals and households living in poverty;
- (d) supporting individuals and households that have been socially excluded and strengthening their capacity for self sufficiency and independence;
- (e) cushioning of income earners and their dependents against the impacts of income threatening risks including poor health and work place injuries, and
- (f) promotion of cooperation among public social protection departments, agencies and

Commented [A9]: This section should inform the object of the bill. Furthermore, section 8 (1) a, b and f can form the objects of the bill

institutions and non state actors in social protection activities and programmes.

(2) The Cabinet Secretary shall provide the technical, infrastructural and administrative competence to ensure that the Directorate fulfills its mandate.

(the CS determines allocation of resources within the Ministry so only he may ensure this)

Appointment of the Director-general

9. (1) The Public Service Commission shall, through an open, transparent and competitive recruitment process, appoint suitably qualified persons to be the Director-general and Deputy directors-general.

Commented [A10]: Provide for removal of the Director General and his/her deputy

Commented [A11]: Include qualification of the Director General and his/her deputy

(2) The Director-general is responsible for the implementation of this Act and the day to day management of the affairs of the Directorate.

(4) The Director-general shall be answerable to the Principle Secretary in the execution of duties and responsibilities of office.

Responsibilities of the Director-general

10.(1) The Director-general is responsible for—

- (a) managing the budget and ensuring equitable allocation of resources in line with identified objectives;
- (b) collection preparation, dissemination and storage of data regarding eligible persons as identified in this Act;
- (c) determining and publishing eligibility criteria for assistance under social protection initiatives;
- (d) developing and executing Directorate policies for effective and efficient mechanisms on social protection;

- (e) conducting research and formulating proposals for new interventions into the existing social protection initiatives and executing the same;
- (f) preparing strategic plans to meet Directorate targets;
- (g) publishing the procedure for the identification coverage and delivery mechanisms;
- (h) informing counties and relevant government agencies on the disbursement procedures of the social protection interventions;
- (i) evaluating and monitoring the implementation of **this Act**;
- (j) enhancing co-ordination through advising, networking, collaborating, liaising and providing oversight, as appropriate;
- (k) establishing a data and communication center;
- (l) maintaining the effectiveness and discipline of the staff within the Directorate; and
- (m) any other function that may be assigned by the Permanent Secretary.

(2) The Director General shall be deputized by two Deputy directors-general.

Powers of the Director-general

11.(1) The Director-general shall—

- (a) establish such, divisions, sections or units in the Directorate as may be necessary;
- (b) **establish** such county or regional offices as may

Commented [A12]: What will happen to the County Service Board or County Assembly?

be necessary;

(c) supervise the formulation of policies and plans of the Directorate;

(d) access information from persons and institutions to whom this Act applies;

(e) perform any other action necessary to attain the objectives of the Directorate.

Delegation

12.(1) The Director-general may in writing either generally or in any particular case, delegate to any officer of the Directorate, the exercise of any of the powers or the performance of any of the functions or duties of the Director-general under this Act, other than this power of delegation.

(2) A power or function delegated under this section shall be exercised or performed by the officer in accordance with the instrument of delegation.

(3) A delegation effected under this section—

(a) does not prevent the Director-general from exercising the power or performing the duty so delegated;

(b) may be at any time be amended or revoked in writing.

Other staff

13.(1) There shall be such other officers and other members of staff of the Directorate as assigned by the Permanent Secretary for the proper and efficient functioning of the Directorate.

Multi-sectoral Committees

14.(1) The Cabinet Secretary may, through the Regulations to this Act, establish multi-sectoral advisory committees at national, county or regional

Commented [A13]: Clearly outline the prescribed form of transfer of power from Director General to another party

levels, for effective interventions relating to national social protection.

- (2) A multi-sectoral committee established under subsection (1) may in its membership include persons from county governments.
- (3) The Director-general shall convene meetings of the multi-sectoral committees as and when needed and shall serve as committee secretary.
- (4) The multi-sectoral committee shall—
 - (a) advice on the formulation of policies and programmes for the promotion of national social protection.
 - (b) co-ordinate with the national government or other agencies for functional linkage between the national and county government initiatives in various sectors and advise on any joint ventures or mutually identified interventions.

PART III - REGISTRATION FOR SOCIAL PROTECTION

Social
Protection
Register

- 15.**(1) The Director-general shall, in the prescribed form, keep and maintain a register of—
- (a) persons eligible under this Act;
 - (b) Actors in the field of social protection
- (2) The register established in terms of subsection (1) shall provide particulars—
- (a) of every eligible person including—
 - (i) name, age, gender;
 - (ii) address;
 - (iii) eligibility status;
 - (b) of every State and non-state actor including—

Commented [A14]: What do we mean by register? Why do we need it?

- (i) name, address, registration particulars;
- (ii) area of operation;
- (iii) type of service offered;
- (iv) source of funding.

(c) The register shall be open for public inspection.

Correction of register

16. (1) The Director-General may, if the Director-General decides it is necessary to do so, correct any error or omission in the register of incorporated associations.

(2) The Director-General may correct the register by—

- (a) inserting an entry;
- (b) amending an entry; or
- (c) deleting an entry.

(3) Despite subsection (2) the Director-General shall not take action unless satisfied that the whole of the entry was inserted, amended or deleted in error.

Commented [A15]: How accessible are they going to be when it comes to complaints and access to information

Access to register

17. (1) A person who desires to examine the register or obtain any information in the register shall make a request to the Director-general or such other person as the Director-general may designate for that purpose, in the prescribed form.

(2) The Director-general shall permit such access only when satisfied that the person seeking access shall not disclose information obtained from the register to the detriment of a registered person

(3) Where a person has reasonable cause to believe that the Director-general has tampered with or is

Commented [A16]: Same as section 16

involved with any tampering of the register, he or she shall report the matter to the Cabinet Secretary or Permanent Secretary.

Access to information

18.(1) Subject to Article 35 of the Constitution, the Directorate shall publish and publicize any important information within its mandate affecting the nation.

(2) The Director-general may at the request of any person or Actor and upon payment of such fee, if any, as may be prescribed, provide that person or Actor any information or report.

Provided that the person or Actor requesting the information shall undertake in writing to the satisfaction of the Director-general—

(a) to use the information only for research purposes’

(b) not to release the information to any other person except with the prior written consent of the Director-general.

(3) Any person or Actor having the custody of, or being in charge of, any public records or documents from which information sought in furtherance of the purposes of this Act can, in the opinion of the Director-General, be obtained, or which would aid in the completion or correction of information already obtained, shall grant the Director-General access to such records or documents for the purposes of obtaining the required information.

Statistics Act

Collection, maintenance of data

19.(1) The Director General may collect and receive information or statistics towards the establishment of a data base of the poor and vulnerable on—

(a) persons eligible under this Act and

(b) Actors in the social protection sector.

- (2) Where any information is being collected under this Act, an officer may require any person to supply that officer with such particulars as may be prescribed or such other particulars as may be required in relation to the collection of the information.
- (3) A person or Actor required to provide information under subsection (2) shall, to the best of their knowledge, information and belief, complete such forms, answer such questions and give such information in such manner as may be prescribed or specified by the officer.
- (4) Where any particulars are, in terms of subsection (2), required to be supplied by any person, it shall be presumed until the contrary is proved that the particulars may lawfully be required from that person in accordance with this Act.
- (5) The Director-general shall ensure periodic updating of information collected or received under this Act.

(statistics Act)

Protection of data

20.(1) A member of staff of the Directorate may not without the consent in writing given by, or on behalf of, the Director-general, publish or disclose to any person otherwise than in the course of the person's duties the contents of any document, communication, or information which relates to, and which has come to the person's knowledge in the course of the person's duties under this Act.

(2) The limitation on disclosure referred to under subsection (1) is not construed to prevent the disclosure of criminal activity by a member of staff of the Directorate.

PART IV - MISCELLANEOUS PROVISIONS

Commented [A17]: Put financing as a section on its own.

Financing of social protection **21.**(1) The National Government shall in its annual plans provide, on an incremental basis, resources from the national budget for social protection interventions.

(2) The Director-general shall develop strategies that prioritise funding of social protection interventions.

Reporting obligations **22.**(1) At the end of each financial year, the Director-general shall prepare and submit to the Cabinet Secretary an annual report containing—

(a) a description of the activities and outcomes of the functioning of the Directorate;

(b) any other information that the Director-general may consider relevant.

(2) Actors shall submit periodic reports to the Director-general in the manner prescribed in the Regulations.

Complaints **23.**A person aggrieved by failure to be registered under this Act may write to the Director-general who shall, after due investigation, in writing and within 14 days, inform the person the reasons.

Offences **24.** (1) A person who—

(a) without justification or lawful excuse, obstructs, hinders or threatens an officer acting under this Act;

(b) submits false or misleading information to the Directorate;

(c) makes a false representation to, or knowingly misleads an officer, of the Directorate acting under this Act;

(d) without authority inserts, amends or deletes an entry in the register,

commits an offence and is liable, on conviction, to a fine of not less than **five hundred thousand** shillings or to imprisonment for a term of not less than **one year**, or to both.

(2) An Actor who fails to register with the in accordance with the provisions of this Act commits an offence and on conviction shall be liable—

(a) in case of an individual, to a fine not exceeding one million shillings or imprisonment for a term not exceeding two years or both;

(b) in case of an Actor, for each member of the management, to a fine not exceeding two million shillings or imprisonment for a term not exceeding two years or both;

(3) Any person who divulges details of a beneficiary or potential beneficiary contrary to the provisions of this Act commits an offence and on conviction shall be liable to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding six months.

General
Offence

25. Any person who contravenes the provisions of this Act commits an offence and is liable on conviction, to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding six months or to both.

Regulations

26.(1) The Cabinet Secretary may make Regulations generally for the better carrying out into effect of the provisions of this Act.

(2) The CS may in particular make regulations prescribing –

- (a) the manner in which data for eligible persons may be collected maintained, stored accessed, and utilized;
- (b) modalities of graduating individuals across the life cycle, and in circumstances where they face periodic risks for both formal and informal sectors;
- (c) modalities of identifying and registering persons eligible to social protection under this Act;
- (d) guidelines on eligibility of persons for social protection;
- (e) uniform norms and standards for service delivery;
- (f) any other matter which it is necessary to prescribe for the proper and efficient administration of this Act.

S. 32 (1) South African social assistance Act

Transitional clause

27.The Directorate is the successor to the Social Protection Secretariat.

Annex 3: Participants List

