Social Protection in Action: Building Social Protection Floors for All

2022

Kenya: Governance of the Kenyan social protection system

Summary

This study presents Kenya's experience in building a coherent and coordinated social protection system at the legal, policy and operational levels. Kenya has progressively developed its social protection, using a diversity of both contributory and non- contributory mechanisms to provide access to healthcare and income security across the life cycle. Coordination structures have been established at the policy and operational levels through the establishment of the Social Protection Secretariat and a single registry, among other things. However, legal and operational challenges still need to be addressed to improve good governance and strengthen the overall system.

Main Lessons Learned

- Social protection legislative frameworks should be strengthened to increase the sustainability of the system and create the necessary trust for its adequate financing.
- Institutional fragmentation across the various components of social protection leads to duplication and inconsistencies. Creating linkages across different social protection institutions with distinct responsibilities for the system's design, financing, implementation, monitoring, and evaluation is key for the success of social protection programmes in Kenya.
- Social protection administration at the national level should be aligned with the local level of administration to ensure the efficient and effective delivery of social protection programmes.
- Strengthening social protection management information systems (MISs) and accountability frameworks is vital for enhancing the efficiency and accountability of social protection programmes.
- Communication, grievance , and feedback mechanisms are crucial to create trust and good governance of social protection programmes.

Social Protection Floors Recommendation, 2012 (No. 202)

SDG 1.3 aims to implement nationally appropriate social protection systems and measures for all, including floors, and by 2030, achieve substantial coverage of the poor and the vulnerable.

Social protection floors (SPFs) guarantee access to essential health care and basic income security for children, persons of working age and older persons. 187 countries have adopted the Social Protection Floors Recommendation, 2012 (No. 202), to achieve universal social protection.

Kenya's successful experience in extending social protection is based on the guiding principles of the Social Protection Floors Recommendation, 2012 (No. 202). More specifically, it explains how some of these principles have been applied, in particular: the progressive realization, including by setting targets and time frames; coherence across institutions responsible for delivery of social protection; and transparent, accountable, and sound administration.

Context

Social protection initiatives in Kenya started soon after the country attained its independence in 1963. These initiatives mainly benefited formal economy workers and were implemented through the National Social Security Fund (NSSF) in 1965 and the National Health Insurance Fund (NHIF) in 1966. Kenya's first national development strategy, the Sessional Paper No. 10 of 1965, highlighted the importance of social protection for the country's socio-economic development. It foresaw the establishment of the NHIF, the NSSF and the Civil Service Pension Scheme, all covering workers in the formal sector.

The promulgation of the Kenya Constitution of 2010, the adoption of the National Social Protection Policy in 2011 and the development of the national blueprint – Vision 2030[1] – provided the legal and regulatory anchorage for the extension of social protection to uncovered populations. The NSSF and NHIF schemes are embedded in law.

In 2004, cash transfer programmes were initiated through donor support targeted at orphans and vulnerable children. Over time, the Government has initiated other cash transfer programmes to include the older persons cash transfer, the Hunger Safety Net Programme, the persons with severe disabilities cash transfer and the universal social pensions cash transfer programme covering all senior citizens above the age of 70 years, complementing the Inua Jamii cash transfers for poor older persons. The Government has continued to fund these programmes, including through a pilot scale-up of the orphans and vulnerable children programme to a universal child benefit.

Kenya has made significant progress in the good governance of social protection through the establishment of the Social Protection Secretariat (SPS) to coordinate social protection programmes in the country, as laid out in the National Social Protection Policy (Kenya 2011). However, there remain challenges with regard to the coordination of the system.

While the SPS was established in 2012 as the administrative body, the National Social Protection Council as envisioned in the National Social Protection Policy was never established, leaving national coordination mechanisms with inadequate legal authority (Kimecitra 2017). Coordination among other social protection actors remains a challenge as the schemes cut across different government ministries, State agencies, development partners, non-governmental organizations, civil society, the private sector and communities. There is also a lack of coordination between activities at the national and county levels. As such, social protection initiatives have been hampered by weak coordination, duplication and inadequate monitoring and evaluation and information-sharing, among other challenges (Partnership for African Social & Governance Research 2016).

Description of the social protection programmes and governance mechanisms

The national social protection system consists of both non-contributory and contributory schemes and is currently anchored on three pillars as provided in the National Social Protection Policy of 2011 – ***social assistance***, ***social security***, and ***health insurance*** – each of which is governed by different legislation.

Social assistance has the key objective of providing direct cash transfers to poor and vulnerable people over their life cycle. The Social Assistance Act was enacted in 2013 to provide the legal framework for social assistance schemes. The law provided for the establishment of a national social assistance authority and a social assistance fund, laying the groundwork for stronger governance structures and ringfencing of social assistance funds. Unfortunately, the Act has not been implemented yet and it is currently undergoing a review process to expand its scope and align it with public finance management regulations (Kenya, National Assembly 2021). As a result, the management of social assistance is assigned to a directorate with limited capacity to access full resources and execute its mandate fully.

Social security includes maternity, unemployment insurance and employment injury protection and aims to cover both formal and informal economy workers[2] and increase the range and adequacy of social security benefits.

The NSSF is a statutory institution that is managed and coordinated by a tripartite board with representation of members drawn from the Government, the Federation of

[1] The Vision 2030 is Kenya's development blueprint; see Kenya, *Kenya Vision 2030: The Popular Version*.

[2] Including self-employed workers, on a voluntary basis.

Kenya Employers (FKE) representing employers and the Central Organization of Trade Unions (COTU) representing workers.[3] The Board directs the management of the Fund through the Chief Executive, who is recruited competitively by the Board.[4] To strengthen governance mechanisms, the Board also works through various committees, such as the Audit and Risk Committee and the Investments and Social Security Committee, which oversee member contributions and the performance of the Fund.

The enactment of the NSSF Act, No. 45 of 2013, established rights and obligations for NSSF members (such as payment of contributions and access to benefits). It also introduced an old-age branch and increased workers' and employers' contributions to that effect.

Health insurance is implemented through the NHIF and aims to provide comprehensive health protection for all. The NHIF was established under the National Health Insurance Fund Act of 1998[5] as an institution under the Ministry of Health, which is managed by a Board of Directors constituted by representation from private, faith-based, public healthcare providers, the FKE and COTU. The Chief Executive Officer of the NHIF is appointed competitively by the board and is responsible for the day-to-day management of the Fund.[6] For those without contributory capacity for the health insurance system, a subsidy programme is in place, although challenges remain in reaching all those in need.

The NHIF (Amendment) Act 2022 introduces various changes, including to make it compulsory for Kenyans above the legal age of 18 years to be members and contribute to NHIF. Table 1 present the key milestones in the development of Kenya's national social protection system.

Table 1. Key milestones in the development of Kenya's national social protection system

Year	Highlight
1965	Adoption of Sessional Paper No. 10 of 1965, which was a planning tool for the country's socio-economic development, a policy paper built around equity that laid the foundation for social protection/security.
1965	Establishment of the National Social Security Fund (NSSF) as a provident fund scheme for all workers in Kenya. The Fund operated as a government department within the Ministry of Labour.
1966	The National Health Insurance Fund (NHIF) established as a department in the Ministry of Health to provide health insurance exclusively for those in formal employment.
1972	NHIF Act amended to allow membership of persons in informal employment.
1987	NSSF Act amended to transform the NSSF into an autonomous State corporation.
1988	The NSSF commences operating under a Board of Trustees, constituted by representatives of three key stakeholders: Government, employers, and workers.
1998	The NHIF transformed into a State corporation through an Act of Parliament, which established the NHIF facility for formal sector individuals to participate in a risk-pooling (social) insurance system.
2004	Introduction of cash transfer programmes.

3 Kenya, Social Assistance Act No. 24 of 2013, sect. 6.

4 Kenya, Social Assistance Act, sect. 5.

5 Kenya, National Health Insurance Fund Act, 1998.

6 Kenya, Social Assistance Act, sect. 10.

Year	Highlight
2010	Article 43 in the Constitution of Kenya 2010 provides for the right to social security, among other socio-economic rights, and article 28 provides for the right to human dignity.
2011	Adoption of the National Social Protection Policy, which sets out the direction of social protection and the goal of ensuring a life of dignity for all and giving them the opportunity to exploit their human capabilities for their own social and economic development.
2012	Recommendation No. 202 was adopted by Kenya at the International Labour Conference. It provides a globally recognized standard and framework for building and strengthening national social protection systems and has informed governance and policy changes in the social protection sector in Kenya, such as the adoption of the life-cycle approach to social protection.
2012	Expansion of the Social Protection Secretariat.
2012	The Public Service Superannuation Scheme Act passed: a compulsory contributory scheme that provides retirement benefits to persons in the public service.
2013	The Social Assistance Act of 2013 was enacted and provided for the establishment of the National Social Assistance Authority to identify and provide social assistance to persons in need of social assistance – currently under review to expand its scope.
2013	The National Social Security Fund Act 2013 proposed a variety of reforms, including new minimum and maximum earnings on which contributions are paid; giving employers the option of contracting out of tier II contributions by offering an approved retirement benefit plan with benefits equal to or better than those provided under tier I; contribution rate increased to 6 per cent of earnings, payable by employers and employees jointly.
2015	NHIF reviews its healthcare packages to respond to developing health needs, expand its services and coverage, and include hospital-based outpatient treatments, such as cancer treatment and kidney dialysis.
2016	Introduction of biometric registration in NHIF to curb incidences of fraud, ease identification of beneficiaries, promote the portability of health records and improve health information systems.
2016	Establishment of the single registry and strengthening of other delivery systems, such as the payments systems to identify beneficiaries and enhance usage of such data during emergencies. The registry is undergoing enhancements.
2016	All cash transfers under the Social Assistance Unit are consolidated and harmonized to minimize overlaps and duplication and promote efficiency in disbursements.
2016	Establishment of other social protection oversight structures such as the National Steering Committee on Social Protection.
2017	An update to the Social Protection Sector Review which noted significant progress in building a larger, more effective, nationally owned social protection system. The review was conducted to make an assessment/diagnosis of the State of social protection systems and helped to identify some of the challenges in the sector.
2017	Expansion of cash transfers to reach more than 1.2 million recipients across the country.
2018	Establishment of the State Department for Social Protection (under the Ministry of Labour and Social Protection). This reorganization led to improved resourcing and governance of the sector.

Year	Highlight
2019	The development and implementation of the monitoring and evaluation framework.
2022	The NHIF (Amendment) Act 2022 passed and introduces changes that include compulsory membership and contribution to NHIF for Kenyans above the legal age of 18 years.

▶ Source: Authors' elaboration.

Elements of social protection governance

Governance structure

Kenya has witnessed an improvement in the governance of social protection programmes in the last decade. At the national level, the Social Protection Secretariat was established in 2012, the Social Assistance Unit in 2016 and the State Department for Social Protection within the Ministry of Labour and Social Protection in 2018. The Secretariat is responsible for coordinating, integrating, and harmonizing the social protection sector, with the Social Assistance Unit in charge of the implementation of the various social assistance initiatives. Although the Social Protection Secretariat (SPS) was established to coordinate the social protection system, its mandate is limited to the programmes implemented by the Ministry of Labour and Social Protection. Figure 1 provides an overview of Kenya's current social protection institutional arrangements.

Figure 1: Kenya's current institutional arrangements

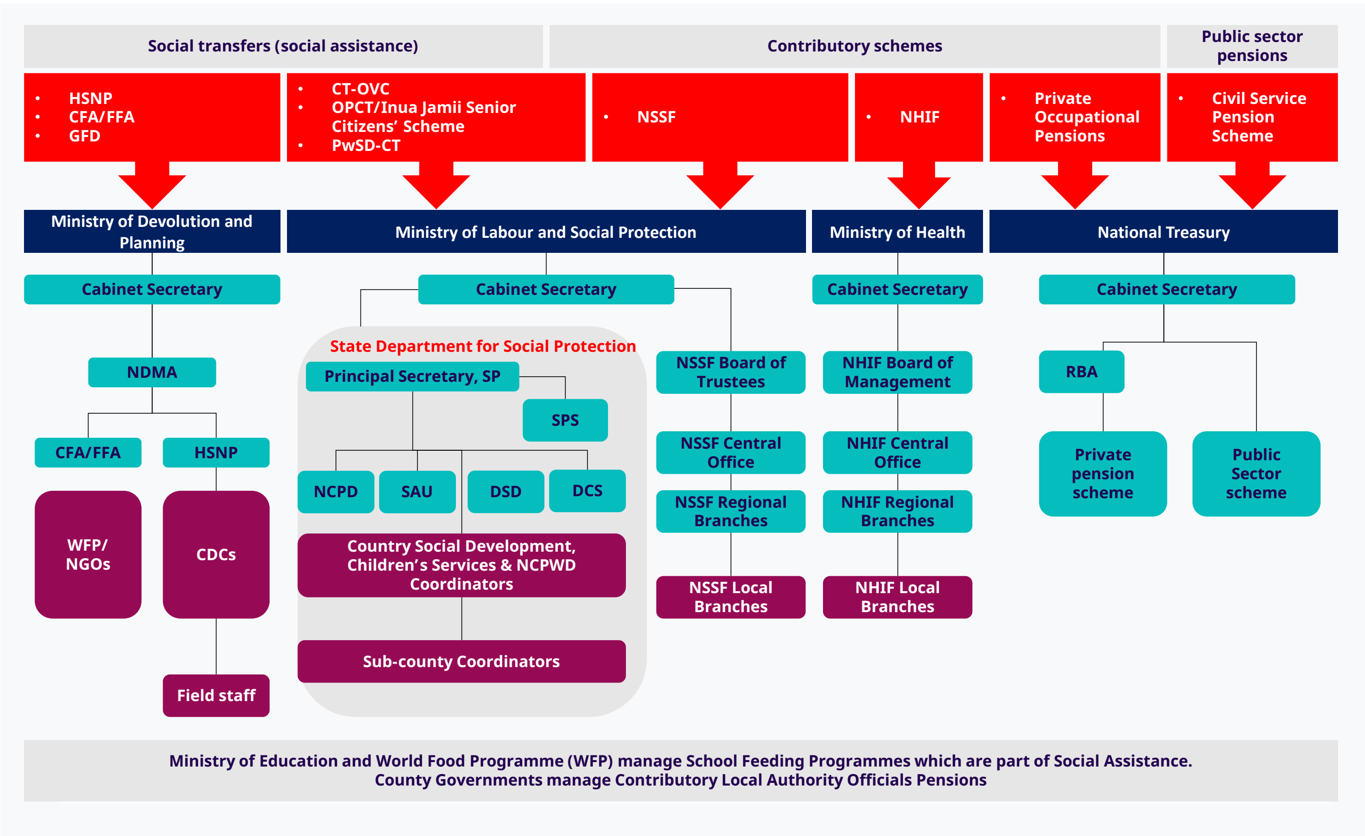


Figure 1 *(cont'd)*

Legend			
HSNP	Hunger Safety Net Programme	**SAU**	Social Assistance Unit
CFA/FFA	Cash for Assets/Food for Assets	**OPCT**	Older Persons Cash Transfer
GFD	General Food Distribution	**NSSF**	National Social Security Fund
CT-OVC	Cash Transfer-Orphans and Vulnerable Children	**NHIF**	National Health Insurance Fund
UFS-CT	Urban Food Subsidy Cash Transfer	**NDMA**	National Drought Management Authority
WFP/NGOs	World Food Programme/Non-Governmental Organizations	**RBA**	Retirement Benefits Authority
PsWD-CT	Cash Transfer for Persons with Disabilities	**NCPD**	National Council for Persons with Disabilities
CDCs	Centre for Disease Control	**DSD**	Department for Social Development
SPS	Service Protection Secretariat	**DCS**	Department for Children Services

▶ Source: Development Pathways, *Global Research on Governance and Social Protection: Kenya Case Study*, 2021.

Legislation and policy

Anchoring social protection schemes in a legal and policy framework provides a solid basis for the progressive development of the social protection system while making government and public institutions accountable for its effective implementation. The enactment of the National Social Security Fund Act and the National Health Insurance Fund Act in the late 1960s, has enabled the gradual construction and adoption of more specific laws and decrees to implement Kenya's social protection system, the implementation of which is not yet complete.

Despite progress in the regulatory environment, legal gaps remain. Some legislations have not yet been fully implemented, such as the National Social Security Fund Act of 2013 and the Social Protection Coordination Bill of 2017, while some institutions such as the National Social Protection Council were never established by law.

Upon promulgation of the new Constitution in 2010, Kenya initiated reforms to harmonize the social protection sector. Initiatives include the establishment of a single registry, government-to-persons cash transfers and the State Department of Social Protection under the Ministry of Labour and Social Protection. Other reforms to improve coordination include a mapping exercise to identify opportunities and challenges in the coordination between the national and county governments. A memorandum of understanding (MOU) was also signed between the Ministry of Labour and Social Protection and the NHIF to provide health coverage to recipients of the Inua Jamii cash transfer programme.

The significant advances made in the legal, policy and regulatory framework governing social protection have improved the coherence of the sector, providing greater efficiency and increasing fiscal space.

Integration and coordination

Key institutions in Kenya's social protection system include the NHIF and NSSF. Given the autonomous nature of these institutions and other social protection players, the Ministry of Health, the NHIF and the Social Protection Secretariat signed an agreement to improve coordination among them through the development of an integrated management information system. The Social Protection Secretariat has also established a national steering committee and technical working groups to coordinate various stakeholders, including development partners.

National and county governments' institutional arrangements

The social protection sector has witnessed significant strengthening of institutional arrangements at the national level, with the creation of the State Department for Social Protection in 2018.

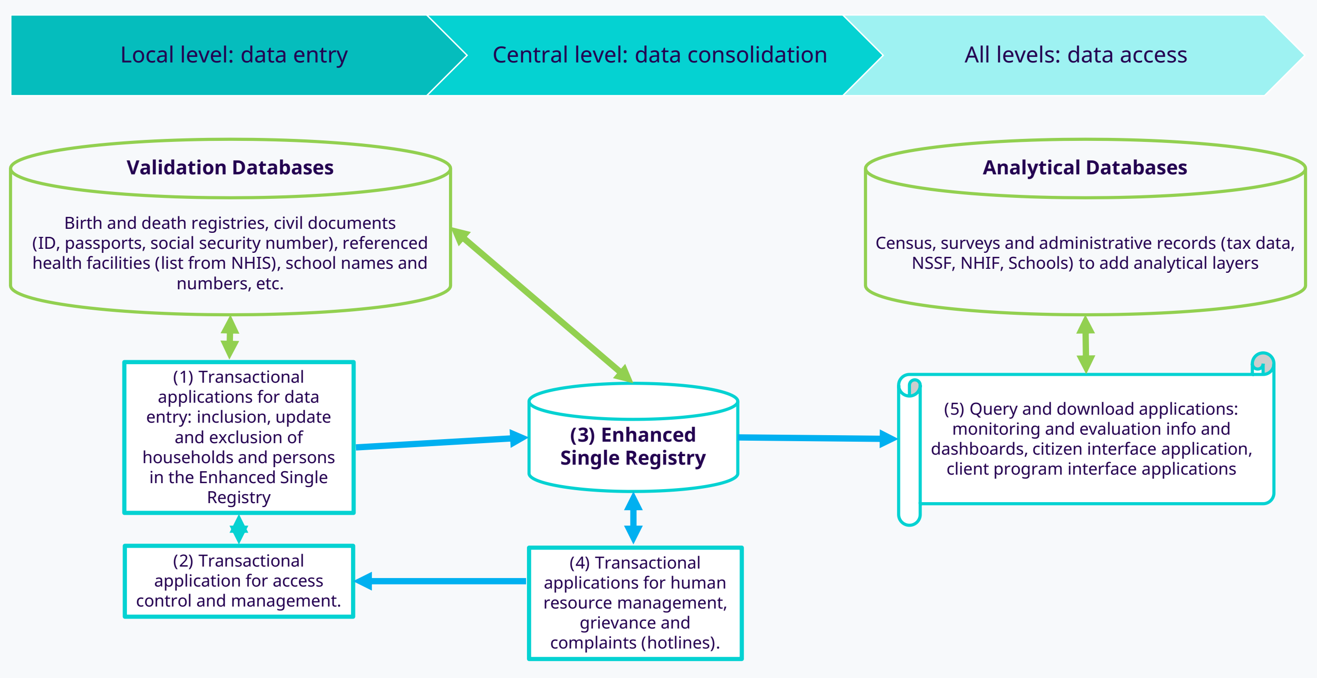
The 2010 Constitution provides for the creation of two levels of government, the national level and the county level. The counties are supposed to exercise full authority over the central functions that have been devolved or decentralized to them. However, since social protection is not a devolved function, county governments do not have control over its implementation at the decentralized level. They lack resources and implementation capacities to support the implementation of national social protection programmes on the ground.

Efforts have been made by the Social Protection Secretariat to establish MOUs and other special arrangements to coordinate the two levels of government. However, they are not backed by law and gaps in roles and responsibilities remain.

Delivery mechanisms and MISs

The provision of accurate and timely data for persons that need protection is critical to ensure that they are not "invisible" to policymakers, as this would exacerbate their vulnerability (United Nations 2019). The early stages of social protection schemes experienced manual paper-based processes that were prone to leakages and exclusion/ inclusion errors. The establishment of the enhanced single registry has improved the efficiency of the delivery of social protection programmes. The system consolidates information from various programmes' MISs, thereby providing a single platform for various processes, including identification, payments, complaints and grievances. Reforms – from manual processes to automation and use of biometrics – have increased accountability in the delivery of social protection programmes. Figure 2 illustrates the design and application of the enhanced single registry.

Figure 2: Enhanced single registry basic information technology process: modules/applications in Kenya



Source: Development Pathways, *Global Research on Governance and Social Protection: Kenya Case Study*, 2021.

Challenges facing Kenya's social protection governance system

- **Inadequate policy and legislative arrangement for the coordination of social protection development and implementation.** Social protection is managed by a Secretariat that was established by the Social Protection Policy adopted in 2012. The Policy also anticipated the establishment of the National Social Protection Council, which has not yet been operationalized.

- **Fragmentation of programming and implementation.** Despite policy and institutional reforms over the last decade, programmes are still fragmented, leading to duplication and inconsistencies. It was against this background that the National Social Protection Policy of 2011 was developed, with the aim to coordinate the different social protection interventions within an integrated sector-wide approach to data and information systems. The fragmentation was more apparent during the COVID-19 pandemic, during which the response to the pandemic was implemented by various actors, although the mandate fell under the remit of the State Department of Social Protection (Oxford Policy Management 2021).

- **Inadequate social protection institutional capacity.** Insufficient institutional capacity, coupled with weak implementation on the ground, have hampered an effective response to the emerging need for comprehensive social protection. The operations of social protection programmes often depend on volunteers and local-level structures, such as beneficiary welfare committees and chiefs (Development Pathways 2021).

- **Single registry linkages.** The establishment of a single registry is aimed at hosting data from all national social protection programmes, including complementary programmes. However, institutions such as the NHIF and NSSF have yet to link their databases with the single registry, which is still undergoing improvements. There is a need to strengthen the linkages between contributory and non-contributory schemes, improve awareness of social protection programmes and establish proper grievance and complaints mechanisms.

What's next?

Anchoring social protection schemes in a policy and legal framework ensures the long- term sustainability of social protection. Although Kenya has made significant progress in reforming the governance of social security systems, there is still room to strengthen delivery systems and capacities at both national and county levels. The following recommendations can be made to continue to strengthen social protection governance in Kenya:

- **Strengthen the legal framework of the Social Protection Secretariat** and implement the national social protection council to serve as a governing organ, with a legal mandate to coordinate and harmonize the system.

- **Expand access to reach universal social protection**, including access to healthcare and income security for all. This will require additional domestic resource mobilization efforts for social protection (ILO forthcoming).

- **The development of a single registry** should be further carried out **and** expanded to the NHIF and the NSSF in order to facilitate the extension of both non-contributory and contributory coverage.

- **There is a need for stronger interaction and linkages** between the national and county levels to effectively implement national social protection schemes.

- **Improve awareness of social protection** to facilitate access and enhance the accountability of the system.

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