



**THE DANISH
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HUMAN RIGHTS**



ADVANCING THE RIGHT TO SOCIAL SECURITY IN AFRICA

STATE OF IMPLEMENTATION AND GUIDANCE TO NATIONAL HUMAN RIGHTS
INSTITUTIONS

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FOREWORD BY ACHPR

Social security is a human right and essential to ensuring human dignity. It is enshrined in a range of international and African human rights instruments. Despite this fact, many people in Africa remain without access to social protections measures. The situation is particularly acute for groups in vulnerable situations, including children, women, persons with disabilities and informal workers. When support is available, it is typically insufficient to ensure a life of dignity.

In times of crises, whether due to a public emergency or individual circumstances, the importance of social protection is particularly evident. We recently experienced how the effects of the Covid-19 pandemic on specific groups in Africa were exacerbated by decades of underinvestment in social protection. At the same time, we witnessed the way in which social security and protection was central in the recovery efforts and integral to strategies for building resilience against future crises.

Social security and protection are also essential components of achieving the goals and ambitions in the AU Agenda 2063: the Africa We Want and the 2030 Agenda on Sustainable Development. International and regional human rights standards provide key guidance to States on how to design the needed social protection laws, policies, and programmes to achieve these goals while adhering to their human rights obligations. States must step up measures to secure the necessary protection of this right on the continent through legislative and other measures. Social security and protection must be made available, accessible, adequate, affordable, and transparent.

An important step in building this momentum is for African States to ratify the new Protocol to the African Charter on Human and People's Rights on Social Protection and Social Security. This new African human rights instrument offers comprehensive guidance and obliges State parties to develop policies, legislation and programs that improve the standards of living for individuals and address the needs of groups in vulnerable situations.

The African Commission welcomes the focus on providing guidance to national human rights institutions in this area. They play an important role in advancing the right to social protection and social security within their national contexts and in holding States accountable to their human rights obligations and sustainable development commitments in this regard.

**Hon. Commissioner Mudford Mwandenga,
African Commission on Human and Peoples' Rights**

FOREWORD BY NANHRI

The Covid-19 Pandemic caused a lot of devastation and desolation in our continent. The shocks it caused have been escalated by climate change induced droughts and floods; and conflict-related displacement among other factors. The social protection gaps are massive which is why I would like us to recall the commitment we made as African NHRIs when we adopted the Harare Declaration and Plan of Action on “The Role of National Human Rights Institutions in offering a human rights-based approach to better and sustainable recovery” (the Harare Declaration) in 2021. We resolved to strengthen social protection initiatives for extremely vulnerable individuals in society through resource mobilization, health initiatives research, and education towards ensuring sustainable recovery. It is why this study drawing from studies on the human rights responsiveness of social protection strategies implemented by governments led by NHRIs in Gambia, Malawi, Kenya, and Uganda is important.

It is indeed concerning that only 17% of the total population in Africa receive at least one social protection benefit as compared to the global average of 47%; and that 1.2. billion Africans continue to live without any form of social protection coverage. As shown in the study, some social protection programs were implemented without consideration of the intersecting vulnerabilities of marginalized groups. To redress this, it is encouraging that in 2022 the African Union adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Citizens to Social Protection and Social Security. I call upon NHRIs to advocate for the ratification of the Protocol so that it can enter into force as soon as possible.

As recommended in the report, African NHRIs have a significant role to play in advocating for the promotion and protection of the right to social security. They can do so through leveraging on their broad mandate on research, monitoring and investigations; advisory; reporting ; complaints handling; and cooperation with regional and international human rights mechanisms. I urge African NHRIs to prioritize advocacy on the right to social security in their workplans so as to enhance the status of social protection in Africa towards broader attainment of the commitments in the Harare Declaration, the AU Agenda 2063, the UN 2030 Agenda, the African Charter on Human and Peoples Rights, and all constituent human rights instruments.

**Mr Gilbert Sebihogo,
Executive Director, NANHRI**

RECOMMENDATIONS

Social security is an inherent human right and critical for resilience-building and crises-impact mitigation. There is evidence that investment in social protection yields high returns and improves equality and opportunities among people who are poor, marginalised and in vulnerable situations.

Below are key recommendations to governments, national statistical offices and National Human Rights Institutions.

Governments:

Increase **availability** of social security by:

- Increasing investment in social protection using a maximum of available resources to extend social security coverage including through universal non-contributory schemes to all population groups including workers in the rural and informal economy and reaching marginalised groups as a matter of priority.
- Establishing universal rights-based social security systems, including floors, which provide adequate protection throughout the life cycle.
- Mobilising domestic resources and eliminating illicit financial flows.
- Making better use of existing resources by strengthening the institutional backbone of social safety nets as well as improving the administrative tools.
- Enshrining the right to social security in constitutions.
- Establishing social security systems by policy and legislative frameworks and implementing these through long-term strategies.
- Bringing social security policies and legislative frameworks in line with human rights obligations and standards, notably under the Universal Declaration of Human Rights (UDHR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of Persons with Disabilities (CRPD), Convention on the Rights of the Child (CRC), the African Charter on Human and Peoples' Rights (ACHPR), and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Citizens to Social Protection and Social Security.
- Drawing on human rights guidance including CESCR General Comment no. 19 from the UN Committee on Economic, Social and Cultural Rights and International Labour Organisation (ILO) Recommendation 202, in the conceptualisation, design and implementation of social security frameworks and related SDG commitments and Agenda 2063 aspirations. Use country-specific recommendations received by UN and regional human rights monitoring bodies and National Human Rights Institutions (NHRIs) in the conceptualisation, design, implementation and monitoring of social security frameworks.
- Ratify the ACHPR Protocol on Social Protection and Social Security and relevant ILO conventions.
- Ensure that social protection policies and legislative frameworks are comprehensive, coherent, and coordinated.

Increase **accessibility** of social security by:

- Effectively combatting corruption in social security programmes and enhance accountability.
- Ensuring inclusion and non-discrimination in social security programmes to reach disadvantaged and marginalised groups as a matter of priority, ensuring meaningful participation of rights-holders in programme conceptualisation, design, implementation, monitoring and reporting and ensuring that eligibility criteria are objective, reasonable, and transparent.
- Ensuring that direct and indirect costs and charges are affordable for all.
- Applying a gender perspective that addresses life-cycle risks, burden of care, differences in access to services, work and productive activities.
- Ensuring transparency and access to information about social security programmes through proactive outreach to inform rights holders of their rights and entitlements.
- Refraining from imposing co-responsibilities or conditionalities on receipt of social security. Where conditionalities are imposed, they must be accompanied by measures to protect against abuses by those monitoring compliance with conditionalities, and by measures to ensure the capacity of the health and education services to meet increased demand. Failure to satisfy imposed conditions should never result in the automatic exclusion of an individual or household from social security programmes.

Ensure **adequacy** of social security by:

- Legally establishing and periodically reviewing minimum amounts of benefits, in cash and in kind, to ensure they are sufficient for an adequate standard of living for recipients and their families.
- Designing and using cost-of-living indices to be able to meaningfully monitor whether benefits are adequate.

National Statistical Offices:

- Develop and adopt comprehensive data collection tools considering various categories of the population including the marginalised and disadvantaged groups and pay attention to intersecting forms of marginalisation.
- Collecting and disseminate disaggregated data on enjoyment of the right to social security using a human rights-based approach to data collection in collaboration with National Human Rights Institutions.
- Use this data to monitor progress in relation to related Sustainable Development Goal (SDG) targets (SDG targets 1.a, 1.3, 3.8, 5.4, 10.4) and related indicators and 2063 Agenda (Aspiration 1, Goal 1).
- Collaborate with National Human Rights Institutions and civil society to incorporate expert and citizen generated data.

National Human Rights Institutions:

- Providing advice and the capacity building for duty bearers and rights holders on how to implement a human rights-based approach to social security in practice.

- Reviewing policies and legislative frameworks and advise on how to bring them in line with human rights standards on the right to social security.
- Monitoring and reporting on the right to social security, with a particular focus on marginalised and disadvantaged groups and pay attention to intersecting forms of marginalisation.
- Working in close collaboration with duty bearers, civil society and rights-holders on awareness raising, data collection, regional and international human rights reporting.
- Working in close collaboration with National Statistical Offices, National Social Protection Agencies, research institutes and UN agencies to ensure a human rights-based approach to data collection including SDG data collection.
- Lobbying governments to ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Citizens to Social Protection and Social Security as well as advocate for the implementation of all the relevant regional and international instruments that have provisions on the rights to social security.
- Investigating and providing redress for established human rights violations in relation to social security.

INTRODUCTION

PURPOSE

The report serves the dual purpose of providing an overview of the state of implementation of the right to social security in Africa based on available data, and guidance to National Human Rights Institutions (NHRIs) on how to use their mandate to advance the right to social security.

It responds to a call for enhancing the capacity of African NHRIs to undertake research, data collection and analysis, including on the Sustainable Development Goals (SDGs), and strengthening the role of NHRIs in social protection initiatives for individuals in vulnerable situations.

WHAT IS IN THE REPORT?

The report consists of three parts:

Part 1 introduces the right to social security. It unpacks the State obligations to respect, protect and fulfil the right based on authoritative guidance and recommendations provided by UN treaty bodies, UN mandate holders and African regional human rights bodies. It also points to the integration of the right in the 2030 Agenda on Sustainable Development and Agenda 2063: The Africa We Want.

Part 2 examines the implementation of the right to social security in Africa before and after the outbreak of the COVID-19 pandemic. It presents data on the recent developments and trends on the continent, drawing on a range of available data on social security from the International Labour Organisation (ILO), World Bank, other UN Agencies, and reports by independent researchers.

Part 2 concludes with an analysis of key challenges to ensuring availability, adequacy and accessibility of social protection benefits drawing on an analysis of human rights recommendations from international and regional human rights monitoring bodies from 2015 to 2022. Furthermore, it draws on findings from primary research undertaken by the NHRIs in The Gambia, Uganda, Malawi and Kenya 2022-2023.

Part 3 provides guidance for NHRIs on how to advance the right to social security and monitor implementation of State obligations drawing on the different functions and mandate areas of NHRIs. Specific examples from the work of the Malawi Human Rights Commission (MHRC), the Kenya National Commission on Human Rights (KNCHR), The Gambia National Human Rights Commission (NHRC), and the Uganda Human Rights Commission (UHRC) illustrate the points made.

WHAT IS NOT COVERED?

The right to social security has a broad scope and is intimately linked with several other human rights, including for example the right to the highest attainable standard of health, the right to education and to work. These rights are not covered in any depth in this report.

1 PART 1: UNPACKING THE RIGHT TO SOCIAL SECURITY

This part of the report introduces the right to social security and unpacks the State obligations to implement the right based on human rights standards and guidance from international and regional human rights bodies. It concludes by outlining the key elements of a human rights-based approach to the implementation of the right to social security based on these norms.

1.1 THE RIGHT TO SOCIAL SECURITY IN HUMAN RIGHTS AND DEVELOPMENT FRAMEWORKS

The right to social security is well established in international and regional human rights law and is reflected in the 2030 Agenda on Sustainable Development and Agenda 2063: the Africa We Want.

Social protection or social security?

The terms are often used interchangeably to cover the same concept. The ACHPR understands social security to be included in the “social protection” concept, which refers to a broad range of measures designed to protect individuals against risks. ICESCR Art. 9 and General Comment 19 refers to the “right to social security”, and hence this term is used when referring to the right in this report.

The right is enshrined in several international human rights instruments including the International Covenant on Economic, Social and Cultural Rights (ICESCR). It is also included in specific instruments on the rights of children, women, persons with disabilities, migrants, indigenous peoples and international labour conventions. The right to social security can also be derived from provisions in the African Charter on Human and People’s Rights (ACHPR) and is articulated in the African Charter on the Rights and Welfare of the Child (ACRWC), and the Protocol to the ACHPR on the Rights of Women in Africa. The new Protocol to the ACHPR on Social Protection and Social Security further elaborates on the right but is yet to enter into force as of 2023. Several of the instruments impose binding obligations on States to implement the right to social security, and these instruments enjoy near universal ratification in Africa: 50 African States have ratified the ICESCR¹ and 51 States the ACHPR, the ACRWC, and the Protocol to the ACHPR on the Rights of Women in Africa.

The 2030 Agenda contains several Sustainable Development Goal (SDG) targets on social security and protection. Social security and protection are also a priority area under Agenda 2063 Aspiration 1, Goal 1: “A high standard of living, quality of life and well-being for all citizens.”

TABLE 1: OVERVIEW OF THE RIGHT TO SOCIAL SECURITY IN HUMAN RIGHTS AND DEVELOPMENT FRAMEWORKS

Human rights instruments

Provisions on social security in:

- Universal Declaration of Human Rights (UDHR), Article 25.1
- International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 9 (elaborated in CESCR General Comment 19)
- Convention on the Rights of the Child (CRC), Articles 19, 26, 27
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Articles 11, 13, 14
- Convention on the Rights of Persons with Disabilities (CRPD), Article 28
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), Articles 27, 43, 45
- United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Articles 21
- ILO 102, 118, 157, and ILO Recommendation 202
- African Charter on Human and People's Rights (ACHPR), (certain aspects of the right can be derived from Article 16 and Article 18 (4))
- African Charter on the Rights and Welfare of the Child (ACRWC), Article 20
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 13, 24 (a)
- New Protocol to the ACHPR on the Rights of Citizens to Social Protection and Social Security

2030 Agenda

SDG targets:

- **1.3:** Implement nationally appropriate social protection systems [...]
- **3.8:** Achieve universal health coverage [...]
- **5.4** Recognize and value unpaid care and domestic work through the provision of [...] social protection policies [...]
- **10.4** Adopt policies, especially fiscal, wage and social protection policies, and progressively achieve greater equality

Agenda 2063

Priority area 3: "Social security and protection including persons with disabilities" under Aspiration 1. **Goal 1:** "A high standard of living, quality of life and well-being for all citizens"

1.2 THE NORMATIVE CONTENT OF THE RIGHT TO SOCIAL SECURITY

International and African regional human rights instruments and their supervisory bodies are increasingly providing guidance on how States should interpret and implement their legal obligations to respect, protect and fulfil the right to social security.

The below elaboration draws mainly on Article 9 of ICESCR and its related General Comment 19 from the UN treaty body monitoring its implementation: the Committee on Economic, Social and Cultural Rights (CESCR). General Comment 19 is considered an authoritative interpretation of the normative content of the right to social security, as enshrined in ICESCR. In addition, the elaboration will draw on ILO standards. A primary focus will be the guidance provided in R202 - Social Protection Floors Recommendation, 2012 (No. 202) due to its important policy guidance for supporting the implementation of the core obligations of States under Article 9. The CESCR commonly invokes ILO standards when interpreting Article 9 and assessing States' compliance of their obligations under Article 9 due to the ILO's widely recognised expertise in this area. Furthermore, references will be made, as appropriate, to the important new Protocol to the ACHPR on the Rights of Citizens to Social Protection and Social Security, although this instrument is yet to come into force.

The right to social security is intimately linked to other human rights. This includes, among others, the right to work and to just and favourable conditions of work (Articles 6 and 7, ICESCR); to the right to an adequate standard of living (Article 11, ICESCR), the right to health (Article 12, ICESCR) and the right to education (Article 13). There are other international and regional instruments, as mentioned above, that include the right to social security and other General Comments, for example on health and education, that could also be used in specific cases of implementation. However, the above have been selected to provide a broad overview of the normative content of the right to social security.

Protection from what?

The right to social security encompasses the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection from circumstances such as lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; unaffordable access to health care; and insufficient family support, particularly for children and adult dependents.

(CESCR General Comment 19, paragraph 2).

Broad scope

General Comment 19 defines the broad scope of the right to social security and emphasises its important role in poverty reduction due to its redistributive character. Hence, measures to provide social security benefits cannot be defined narrowly and must guarantee all peoples a minimum enjoyment of this human right.

Equal enjoyment

The right to social security includes a right to equal enjoyment of adequate protection from social risks and contingencies. States must guarantee the right to social security is exercised without discrimination of any kind (Article 2 (2), ICESCR).

Inclusivity and flexibility of social security systems is essential to ensure that they cater to groups that are at risk of falling outside of these systems. These often include workers in the informal economy, including rural workers, and unpaid care workers, many of which are women. Social security systems must be responsive to the diversity of personal circumstances, needs and barriers that persons, including persons with disabilities face.

Three types of obligations

States have three types of obligations related to the right to social security:

Obligation to respect: States must not interfere directly or indirectly in the enjoyment of the right to social security. It must not for example deny or limit equal access to adequate social security.

Obligation to protect: States must also prevent third parties from interfering in the enjoyment of the right to social security. Third parties could for example be private sector actors providing insurance, health or education services. The State must adopt the necessary legislative and other measures to prevent third parties from denying equal access to social security. This should include an effective regulatory system, including, for example, framework legislation, independent monitoring, genuine public participation and imposition of penalties for non-compliance.

Obligation to fulfil: The obligation to fulfil can be subdivided into the obligations to facilitate, promote and provide.

The **obligation to facilitate** requires State parties to take positive measures to assist individuals and communities to enjoy the right to social security including by recognising the right within their national political and legal systems and adopting a national social security strategy and plan.

The **obligation to promote** obliges the State to take steps to ensure that there is appropriate education and public awareness concerning access to social security schemes, particularly among groups in vulnerable situations.

The **obligation to provide** obliges States to provide the right to social security when individuals or a group are unable, due to grounds reasonably considered to be beyond their control, to realise that right themselves, within the existing social security system with the means at their disposal. This in practice means that governments will need to establish non-contributory schemes or other social assistance measures to provide support to those individuals and groups who are unable to make sufficient contributions for their own protection.

Requirement to take steps and invest a maximum of available resources

Article 2(1) of the ICESCR require governments to take steps to the “maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”.

This also implies that States must not take ‘deliberately retrogressive’ actions that allow the existing protection of human rights to deteriorate. Hence, austerity measures and significant cuts to social protection benefits are not compliant with human rights obligations to avoid retrogressive actions².

States have the obligation to begin immediately to take steps to fulfil their obligations under the Covenant. These steps must “be deliberate, concrete and targeted towards the full realisation of the right to social security”. (GC 19, para. 40). This involves the obligation to adopt a national strategy and plan of action to realise the right to social security.

Obligations of immediate effect and core obligations

Although the ICESCR provides for progressive realisation of the right, States have minimum core obligations of immediate effect “to ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education” (GC 19, para 59 a³). These immediate core obligations are also reflected in the new Protocol to the ACHPR on the Rights of Citizens to Social Protection and Social Security which calls for States to “Provide a minimum package of essential social protection, which should at least cover the basic needs of all” (Article 3). Hence, States must ensure, at the very least, minimum essential levels of non-contributory social security – not as a policy option, but rather as a legal obligation under international human rights law. Special attention should be given to ensuring that the social security system can respond in times of emergency (GC 19 para. 50).

“Triple A” framework

General Comment 19 outlines the essential elements of the right to social security which apply in all circumstances – a framework referred in this report as the “Triple A” as an abbreviation for Availability, Adequacy and Accessibility.

It should be noted that additional elements such as “Acceptability” and “Quality” are relevant to add if the social protection benefits are provided in kind for example as goods and services and not in cash.

Availability

The right to social security requires for its implementation, that a system is available and in place and established under domestic law. Public authorities must take

responsibility for the effective administration or supervision of the system. The schemes should also be sustainable in order to ensure that the right can be realised for present and future generations. It should also cover nine branches of social security: health care, sickness, old age, unemployment, employment injury, family and child support, maternity, disability, and survivors and orphans.

Adequacy

Benefits, whether in cash or in kind, must be adequate in amount and duration in order that everyone may realise their rights to family protection and assistance, an adequate standard of living and adequate access to health care. States' parties must also pay full respect to the principle of human dignity contained in the preamble of the Covenant, and the principle of non-discrimination.

Accessibility

This element comprises several criteria:

Coverage: all persons should be covered by the social security system, especially individuals belonging to the most disadvantaged and marginalised groups.

Eligibility: qualifying conditions for benefits must be reasonable, proportionate and transparent. The withdrawal, reduction or suspension of benefits should be circumscribed, based on grounds that are reasonable, subject to due process, and provided for in national law.

Affordability: if a social security scheme requires contributions, those contributions should be stipulated in advance. The direct and indirect costs and charges must be affordable for all.

Participation and Information: beneficiaries of social security schemes must be able to participate in the administration of the social security system. The system should ensure the right of individuals and organisations to seek, receive and impart information on all social security entitlements in a clear and transparent manner.

Physical Access: benefits should be provided in a timely manner and beneficiaries should have physical access to the social security services. Particular attention should be paid to persons with disabilities, migrants, and persons living in remote or disaster-prone areas, as well as areas experiencing armed conflict.

The Social Protection Floors Recommendation (ILO Recommendation 202),

which was unanimously adopted at the general conference of the International Labour Organization in 2012, provides important policy guidance to support the implementation of related human rights standards. It outlines 18 principles that governments must apply in their implementation of social protection floors. Principles include ensuring universality of protection; adequacy and predictability of benefits; non-discrimination; gender equality; responsiveness to special needs; transparent, accountable and sound financial management; coherence across institutions responsible for the delivery of social protection; and progressive realisation which includes setting targets and time frames.

The recommendation specifies “social protection floors” consisting of basic social security guarantees, which go beyond benefits in cash and in kind to also include access to essential health care. Rights-based social protection floors have been proposed as a way forward to meeting the minimum core obligation of the right to social security⁴. The Agenda 2063 refers to the UN Social Protection Floor Initiative, ILO social protection norms, and the UN Convention on the Rights of Persons with Disabilities as implementation strategies for Aspiration 1, Goal 1, Priority Area 3 on social protection and security.

What are “social protection floors”?

The recommendation specifies that the social protection floors should comprise at least the following basic social security guarantees:

1. Access to a nationally defined set of goods and services, constituting essential health care, including maternity care, which meets the criteria of availability, accessibility, acceptability and quality⁵;
2. Basic income security for children, at least at a nationally defined minimum level, providing access to nutrition, education, care and any other necessary goods and services;
3. Basic income security, at least at a nationally defined minimum level, for persons in active age who are unable to earn sufficient income, in particular in cases of sickness, unemployment, maternity and disability; and
4. Basic income security, at least at a nationally defined minimum level, for older persons.

As per the recommendation, national strategies should:

- a. prioritise the implementation of social protection floors as a starting point for countries that do not have a minimum level of social security guarantees, and as a fundamental element of their national social security systems; and
- b. seek to provide higher levels of protection to as many people as possible, reflecting economic and fiscal capacities of Members, and as soon as possible.

The new Protocol to the ACHPR on the Rights of Citizens to Social Protection and Social Security⁶ elaborates on the right to social security in an African context and commits State parties to ensuring that social protection is human rights-based, participatory, transformative, integrative and intersectional in nature, follows a lifecycle approach, address vulnerability and inequality, and be inclusive (leaving no one behind).

The protocol is detailed and elaborates on how to regulate and provide sufficient social protection to the following groups:

- Rural workers and their families, particularly women, in the informal and rural sectors
- Migrants, refugees, displaced persons and stateless persons
- Women and girls
- Older persons
- Children, adolescents and youth
- Persons with disabilities
- Parents (maternity and paternity coverage)

Specific articles cover unemployment and underemployment measures and benefits, healthcare and sickness benefits, occupational health safety and employment injury, death and survivor benefits, education, food and nutrition, water and sanitation and hygiene, housing, shelter and property, and mitigating the effects of climate change and environmental degradation through social protection schemes. Additional articles elaborate on the governance and administration of national social protection schemes, the need for financing through domestic sources, collection of disaggregated data, ensuring complaints and appeal mechanisms, implementation and monitoring. Even if not ratified or in force, the Protocol provides a good framework for policy development and review due to its level of detail.

The ACHPR General Comment 7: State Obligations Under the African Charter on Human and Peoples' Rights in the Context of Private Provision of Social Services

offers a progressive interpretation of existing human rights law related to the provision of social services and underlines the obligations of States to provide and fund public services directly and to regulate, monitor and enforce standards on private providers. Social services include for example healthcare and education services, which are part of the basic social security guarantees/protection floors. The African Commission has noticed with concern⁷ the increasing commercialisation of social services, which leads to increasing inequalities and discrimination especially on the grounds of income. Unaffordable basic services erode other social protection measures. For example, cash transfers cannot be used to cover basic nutritional or medical needs if required to cover high fees for education.

1.3 A HUMAN RIGHTS-BASED APPROACH TO SOCIAL PROTECTION

The former UN Special Rapporteur on Extreme Poverty elaborated on the content of relevant general comments and recommendations on social protection and outlined “A human rights-based framework for social protection” in a 2012 publication⁸. This publication provides important guidance for implementing a human rights-based approach to social protection in practice.

Below is a summary of the key elements in a human rights-based approach to social protection, as presented in the publication. For further details, please consult the publication itself.

1. Ensuring an adequate legal and institutional framework and adopting long-term strategies

The rights to social security should be incorporated into domestic law, and where possible enshrined in the constitution, with a definition that corresponds to the broad scope of the right outlined in the General Comment.

Social Security systems should be established and defined by law and be supported by long-term strategy and sustainable funding including through domestic resource mobilisation.

Furthermore, the legal institutional framework should define precise eligibility requirements, mechanisms to ensure transparency and access to information

about available programmes, define roles and responsibilities of all those involved in implementing the programmes, establish accessible complaints and appeal mechanisms and set the foundations for participation channels for beneficiaries.

2. Adopting comprehensive, coherent and coordinated policies

In order for social security systems to comply with international human rights obligations, the social protection strategy must be coherent and integrated. This means addressing fragmentation and lack of coordination across programmes, actors and levels.

3. Respecting the principles of equality and non-discrimination

- The principles and rights of equality and non-discrimination require that States eliminate discrimination in law, policy and practice, and take special measures to protect the most vulnerable segments of society as a matter of priority.
- These obligations require that social protection systems mainstream inclusion in their design, implementation and evaluation, ensuring that they are accessible by all those who suffer from structural discrimination such as women, children, older persons, persons with disabilities, ethnic minorities, indigenous peoples, and people living with HIV/AIDs. Social protection systems should not stigmatise beneficiaries.
- In operationalising these cross-cutting rights and principles, the State is obliged to:
 - **Incorporate a gender perspective**, which implies not only channelling benefits directly to women but more comprehensively addressing different life-cycle risks, the burden of care, differences in access to services, work and productive activities informed by a gender analysis.
 - **Ensure equality and non-discrimination** in the selection of beneficiaries. Universal coverage must be the ultimate goal and be realised progressively. When providing targeted protection, for example to marginalised groups, it is essential that eligibility criteria are objective, reasonable, and transparent and an obligation to give priority to the poorest of the poor and to avoid stigmatising beneficiaries. Targeting processes must be supported by appropriate outreach programmes and accessible mechanisms for redress in case of exclusion errors.
 - **Comply with the standards of accessibility, adaptability, acceptability and adequacy.** It is essential for human rights compliance that social protection programmes are accessible, meaning that they overcome the administrative and physical obstacles which prevent the poorest and most marginalised people from benefitting. Requirements must be simple and easy for the poorest of the poor and the most marginalised to understand and comply with. Benefits must be physically accessible, also for persons with disabilities in a convenient nearby place that does not require considerable travel time or cost or put people at risk. Where digital solutions are applied these must not exclude individuals who experience greater difficulty adapting to or using such technologies.
 - The additional principles of 'adaptability' and 'acceptability' imply that social protection programmes must be adapted to the needs of the population in the local context and be culturally acceptable, which is best ensured through consultation with the respective communities in the design phase. An important point on adequacy is that benefits must be complemented by free or affordable quality public services so that for example cash transfer benefits are not nullified by high healthcare or education costs.

4. Ensuring that the implementation of conditionalities (“co-responsibilities”) does not undermine the human rights of beneficiaries

The right to social security is an inherent right and not something to be “earned” or “deserved”. Failure to satisfy imposed conditions should never result in the automatic exclusion of an individual or household from social protection programmes. Where conditionalities are imposed, they must be accompanied by measures to protect against abuses by those monitoring compliance with conditionalities, and by measures to ensure the capacity of the health and education services to meet increased demand. Protections must be put in place to ensure that conditionalities do not create an unnecessary burden on women, expose them to abuse, or perpetuate traditional gender stereotypes within recipient households.

5. Ensuring transparency and access to information (including pro-active sharing of information on services and provisions in ways that rights-holders can understand)

Social protection programmes must be transparent and provide comprehensive, culturally appropriate access to information and communication. Those responsible for implementing social protection programmes must proactively share information about all core components of the programme – including targeting mechanisms, eligibility criteria, benefit levels, complaints and redress mechanisms in ways that can easily be understood and received by the most marginalised. This is underpinned by the right to information and human rights principles of transparency and accountability.

6. Ensuring meaningful and effective participation

In line with State obligations related to the right to participation and General Comment 19 on the right to social security, they must set up effective participation channels so that rights holders and their organisations can participate meaningfully in the design, implementation and evaluation of social protection programmes in a way that takes into account existing asymmetries of power.

7. Ensuring access to complaint mechanisms and effective remedies

In line with State obligations related to the right to remedy, States must set up effective accountability and complaints mechanisms in social protection programmes. It is essential that complaints procedures are independent, accessible, simple, fair and effective. Ensuring multiple channels for presenting complaints and provision for anonymous complaints, protection of confidentiality, and provisions for low levels of literacy or alternative languages is important.

2 PART 2: THE STATE OF SOCIAL PROTECTION IN AFRICA

This part of the report provides an overview of the availability, accessibility, and adequacy of social security systems in Africa in line with the Triple A framework (see Part 1 section 1.2) based on available data and research. It then examines social protection responses to the Covid-19 pandemic and concludes with an analysis of the challenges to advancing the right to social security in Africa drawing on observations from the international and regional human rights bodies and mandate holders, UN agencies (including the ILO) and monitoring by National Human Rights Institutions in Uganda, The Gambia, Kenya and Malawi.

It should be noted that while social protection/security is a broad term covering both social assistance (non-contributory) and social insurance (contributory), the focus of the data analysis is mainly on social assistance, which accounts for around 75% of social security programmes in Africa (UNECA 2021). Typically, social insurance systems in Africa cover workers in the public sector and in larger private companies and hence not workers in the informal economy, where most people make their living. This means that most Africans do not have access to this type of insurance (ILO 2021b; Devereux 2022).

2.1 THE AVAILABILITY OF SOCIAL PROTECTION BENEFITS

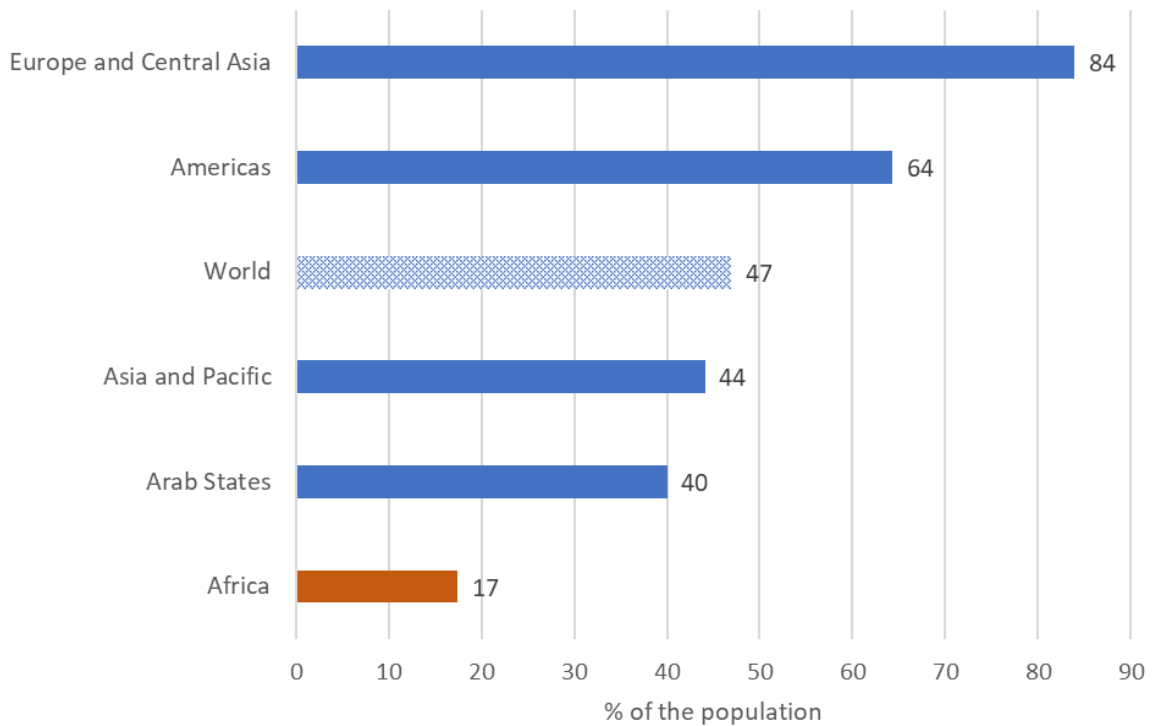
Low overall coverage rates

The African region falls far behind the rest of the world when it comes to social protection coverage. Effective coverage in Africa is on average 17.4% of the total population, which is far below the ILO target of 40% (ILO 2021b) and the world average of 47%. Africa is the region with the lowest effective coverage rate (see figure 1) in the world, and around 83% of the population in Africa is currently not covered by any social security benefit.

This section draws on official data on **SDG indicator 1.3.1**. “Proportion of population covered by social protection floors/systems”. The ILO is the custodian for the data on effective social protection coverage⁹. Most of the data is based on their questionnaire on administrative records (Social Security Inquiry), which they regularly submit to national governments. This data is also complemented by other international and regional data sources, such as the International Social Security Association’s (ISSA), and by additional national administrative data as well as household survey data. The data is not without limitations because few countries have the full range of statistical data available. This also makes it challenging to compare data over time, as even fewer countries have full data sets from multiple years. Nevertheless, partial information is available for many countries.

The low coverage rates reflect decades of underinvestment in social protection. African countries spend on average 3.8% of GDP on social protection (excluding health) compared to a global average of 12.9% (ILO 2021).

FIGURE 1: EFFECTIVE SOCIAL PROTECTION COVERAGE, GLOBAL AND REGIONAL ESTIMATES, 2020 OR LATEST AVAILABLE YEAR

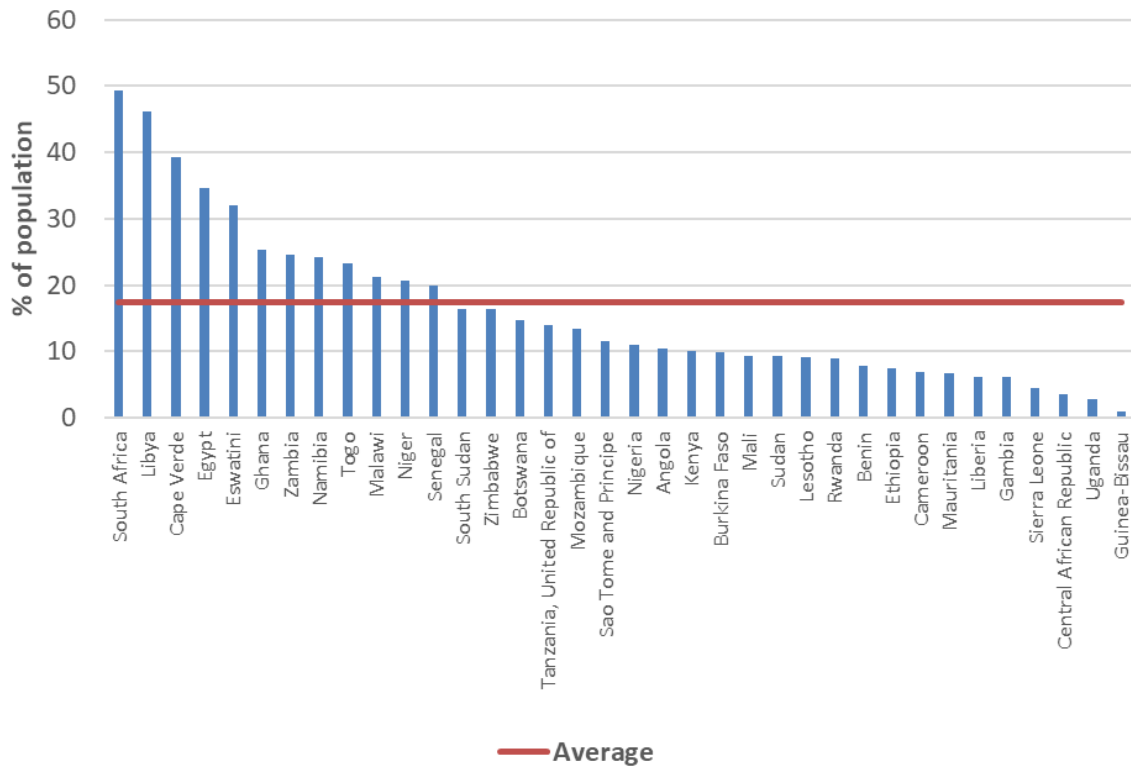


Source: International Labour Organization (ILO), Statistics on social protection

Large regional variations

The effective coverage rates vary substantially across the countries in Africa (see Figure 2). Most of the countries have coverage rates below the overall average and only two countries have rates above the ILO target of 40%. South Africa has the highest average coverage of 49% of the population and Guinea-Bissau has the lowest coverage of 0.9% of the population. It is important to note that data is missing for several African countries.

FIGURE 2: EFFECTIVE SOCIAL PROTECTION COVERAGE BY COUNTRIES OF AFRICA, 2020 OR LATEST YEAR AVAILABLE



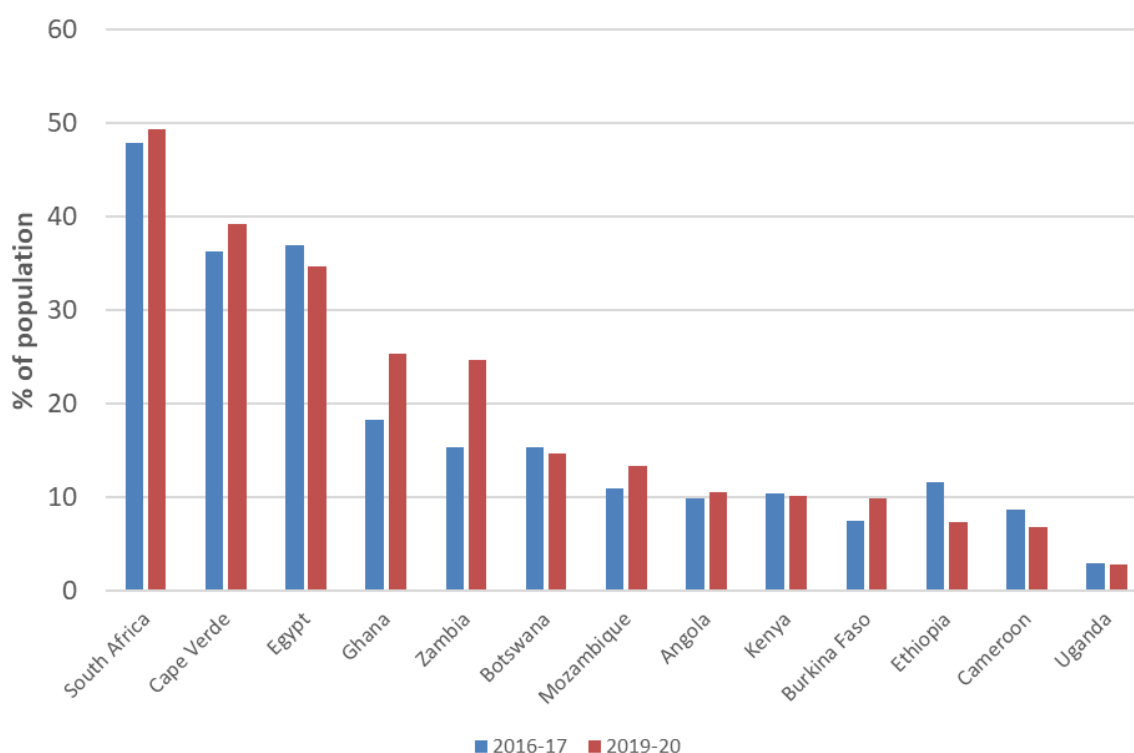
Source: International Labour Organization (ILO), Statistics on social protection

Developments over time

From a human rights perspective, it is relevant to investigate whether countries are progressively realising the right to social security by expanding coverage over time. Figure 3 shows the comparison of coverage rates in 2016 and 2020 for the 13 African countries which have data.

Overall, no significant change can be detected in the period except for Ghana and Zambia who have increased coverage through the flagship programmes “LEAP” and “Social Cash Transfer”. The smaller changes seen in other countries can be due to methodological differences and should be interpreted with caution.

FIGURE 3: EFFECTIVE SOCIAL PROTECTION COVERAGE BY SELECTED COUNTRIES OF AFRICA, 2016 AND 2020



Note: Only countries with multiple data points available are included.

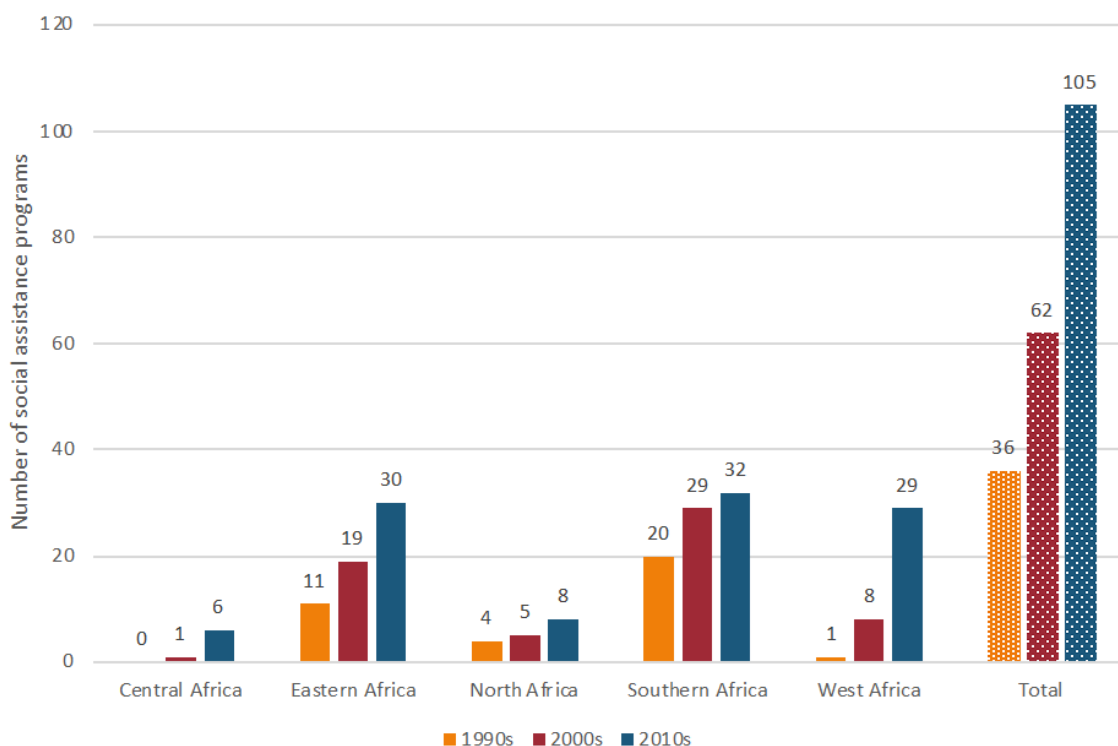
Source: International Labour Organization (ILO), Statistics on social protection

There has been a rapid expansion in the number of cash transfer programmes since the early 2000s (Niño-Zarazúa et al. 2012; Beegle et al. 2018; UNDP 2019; Devereux 2022). The total number of programmes in the region rose from 62 in the 2000s to 105 in the 2010s, cf. Figure 1. Until the 1990s, almost all social assistance programmes (that are still operating today) were found in Southern Africa and Eastern Africa¹⁰. The first programme in Northern Africa was launched in the 1980s, the first in Western Africa came in the 1990s, and there were no programmes in Central Africa before the 2000s (UNDP 2019). Most of the increase since the 1990s has happened in Eastern and Western Africa, while the number of programmes in Southern Africa has remained relatively high in the period. Progress is still slow in Central Africa (see figure 3).

Cash transfer is the leading type of social assistance programme and account for most of the expansion in the past decades with some variation in the composition across the countries (Beegle et al. 2018). Social pensions and cash transfers are more prevalent in the upper middle-income countries in Southern Africa, while emergency and food-based programmes are more prevalent in the low-income and fragile countries in Central and Eastern Africa (Niño-Zarazúa et al. 2012; Beegle et al. 2018).

The expansion is ascribed to an evolving social contract between governments and citizens, international influence, various crises, and reforms, as well as an increased focus on poverty reduction (Beegle et al. 2018; UNDP 2019; World Bank 2021).

FIGURE 4: SOCIAL ASSISTANCE PROGRAMMES AVAILABLE IN AFRICA 2010–2015, CUMULATIVE BY START DATE AND REGION



Note: These figures reflect social assistance programmes that were operational in 2015, clustered by the decade of their first introduction. Social assistance programmes include cash transfers (both unconditional and conditional), food transfers (but not school feeding schemes or emergency food aid) and public works projects. Source: UNDP (2019).

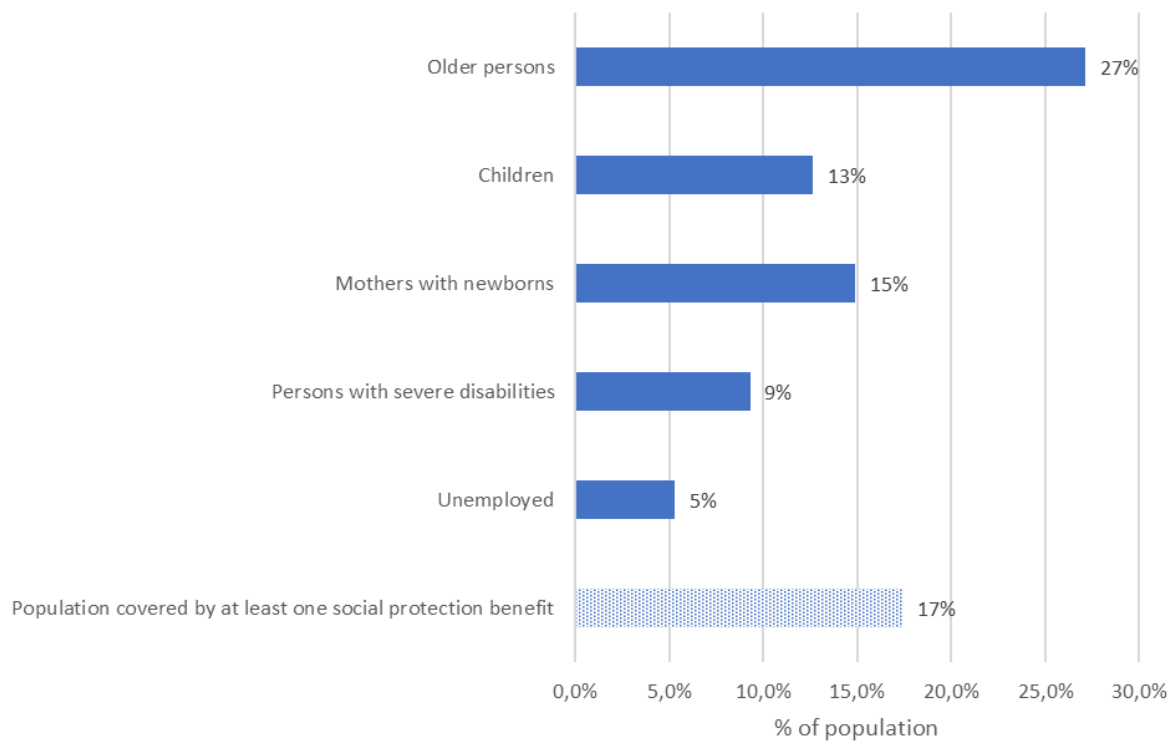
2.2 THE ACCESSIBILITY OF SOCIAL SECURITY SYSTEMS

Groups left behind

From a human rights perspective, it is essential to look at gaps in coverage not just in overall figures but also who is left behind, why and whether marginalised groups are reached as a matter of priority in line with State human rights obligations and SDG commitments.

The SDG indicator 1.3.1 data shows that the coverage gaps are especially large for persons who are unemployed, persons with disabilities, children, and mothers with new-borns. For these groups, the protection rates are well below the average of 17% (see Figure 5).

FIGURE 5: EFFECTIVE SOCIAL PROTECTION COVERAGE OF SELECTED GROUPS BY COUNTRIES OF AFRICA, 2020 OR LATEST YEAR AVAILABLE

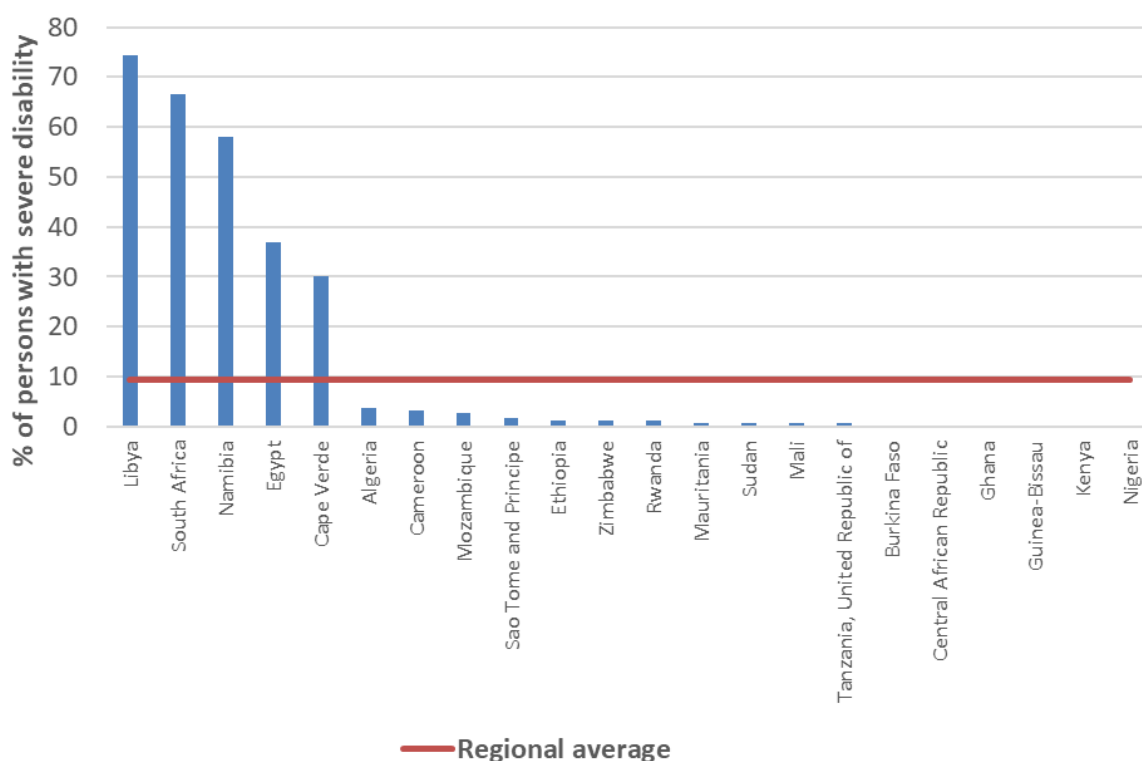


Source: International Labour Organization (ILO), Statistics on social protection.

27% of persons above retirement age in Africa receive some sort of pension. This average figure is pulled up by high performance in a few countries, especially in Southern¹¹ and Northern Africa, which are approaching universal coverage. For example, South Africa has 84% coverage of older persons¹².

More than 90% of persons with severe disabilities on the continent have no access to social protection benefits. The 9% average coverage figure for persons with severe disabilities covers large variations within countries – from 74% in Libya and 67% in South Africa to 0.1% in Nigeria (see Figure 6)¹³. For most African countries, there is no data available on coverage for persons with severe disabilities.

FIGURE 6: EFFECTIVE SOCIAL PROTECTION COVERAGE OF PERSONS WITH SEVERE DISABILITIES BY COUNTRIES OF AFRICA, 2020 OR LATEST YEAR AVAILABLE



Note: This figure shows countries where disability data is available. For a majority of African countries there is no data available.

Source: International Labour Organization (ILO), Statistics on social protection.

2.3 THE ADEQUACY OF SOCIAL SECURITY SYSTEMS

Even if covered by social security, the available support for instance in the form of cash transfers, are typically not adequate to ensure the right to an adequate standard of living. Most of the programmes provide benefits that are far below the national poverty lines and high inflation further lowers the purchasing power significantly, as few programmes index benefits to price indices (Beegle et al. 2018). This has become increasingly problematic in recent years because of the rising inflation rates in the region (IMF 2022).

In The Gambia, social transfers generally have very limited reach, and the size of transfers are inadequate for the attainment of basic needs. Several families interviewed by The Gambia National Human Rights Commission highlighted that the monetary support did not commensurate with the price of basic commodities such as rice.

Average benefits from cash transfer programmes vary a lot by programme and country. In low-income African countries, where poverty rates are high, cash transfer programmes targeting the poor provide an average of around \$30 in 2011 PPP¹⁴ U.S. dollars per month, equivalent to 10% of the national poverty line in these countries (Beegle et al. 2018).

The upper middle-income countries, mainly in Southern Africa, provide an average of \$196 in 2011 PPP per month, equivalent to 29% of the national poverty lines (Beegle et al. 2018). The South Africa child support grant programme is among the most generous of the larger cash transfer programmes, supplying an average of \$84 in 2011 PPP U.S. dollars a month, cf. Table 2.

Benefits offered through social pensions and public works are generally higher. Public works require beneficiaries to work before they become eligible to receive a transfer, such as in the large-scale Productive Safety Net Program (PSNP) in Ethiopia. The PSNP in Ethiopia provided on average \$342 in 2011 PPP a month and, the urban component, an average of \$155 in 2011 PPP – equivalent to 110% and 50%, respectively, of the national poverty line.

“}The table below shows selected flagship programmes in Sub-Saharan Africa, including World Bank estimated coverage and benefit level in relation to the national poverty line. Note that countries in Northern Africa are not included as these are not part of the World Bank report.

TABLE 2: SELECTED FLAGSHIP PROGRAMMES, SUB-SAHARAN AFRICA, BY PROGRAMME TYPE, COVERAGE, AND BENEFIT LEVEL

	Country	Programme	Year	Coverage (% of relevant population group)	Benefit monthly, \$PPP	% National poverty line
Cash transfer	South Africa	Child Support Grant	2008	50.6	84	-
	Namibia	Provision of Social Assistance	2014	31.8	98	28
	Senegal	National Conditional Cash Transfer Programme (PNBSF)	2015	16	36	4
	Seychelles	Social Welfare Assistance	2015	11.6	211	
	Tanzania	Productive Social Safety Net (PSSN)— Conditional Cash Transfer	2012	9.6	21	8
Public works	Malawi	MASAF Public works program	2016	17.7	73	38
	Botswana	Ipelegeng (self-reliance)	2015	10.9	151	62
	Ethiopia	Productive Safety Net Programme (PSNP)—public works	2011	8	342	110
Social pension	Lesotho	Old age pension	2015	100	101	73
	Botswana	The Old-Age Pension (OAP)	2016	100	53	22
	Namibia	Provision of Social Assistance—Old Age Grant	2014	100	98	28

Source: World Bank ASPIRE, Beegle et al. (2018)

2.4 THE COVID-19 PANDEMIC RESPONSE

The increased need for social protection

The Covid-19 pandemic further increased the already high demand for expanding social security in Africa. Additional 55 million people in Africa were pushed into extreme poverty in 2021 due to the pandemic – reversing more than two decades of progress (UNCTAD 2021; UNECA 2021, World Bank 2021; ILO 2021). The pandemic further magnified economic and social inequality and has been referred to as the “inequality virus” (Berkhout et al. 2021).

Like the rest of the world, most African countries-imposed restrictions to contain the spread of COVID-19, such as constraints on business activity and travel, school closures and stay-at-home lockdowns with large consequences for millions of people (Devereux 2021; Gerard et al. 2020). Especially, low-income informal workers in urban areas (e.g., street traders), who were unable to work from home, were hit hard by the restrictions (De Schutter 2020; Devereux 2021; ILO 2021; Berkhout et al. 2021; Devereux and Cuesta 2021). As informal workers are generally excluded from social security, they were at much higher risk of facing hunger and serious disease (Berkhout et al. 2021). The pandemic exposed the systemic gaps in social protection systems in Africa and increased human suffering.

Expansion of benefits during Covid-19

The Covid-19 pandemic resulted in an unprecedented enhanced, yet uneven social security protection response world-wide. In responding to the crisis, governments used social protection policies to protect public health, jobs, and incomes (ILO 2021). Social assistance programmes, especially cash transfer programmes, were the most prevalent measure. Most cash transfer programmes were expanded horizontally (reaching more people, altogether 727 programmes), while benefit levels were increased in 146 programmes (vertical expansion) world-wide. Most extensions were temporary in nature and globally, the initial average duration was 4.5 months¹⁵.

Several African countries expanded cash transfer programmes by increasing benefit levels during the pandemic, such as in Zimbabwe, Niger, Uganda, South Africa, and Sierra Leone, in which the amounts of existing benefits grew by more than 100% compared to the pre-Covid levels. For example, benefits of the Child Support Grant in South Africa temporarily increased by 111% compared to pre-Covid levels. In Egypt, Algeria, Angola, Cameroon, Tunisia, Ghana, Ethiopia, and Tanzania, the increase tallied from 20% to 75% compared to pre-Covid levels¹⁶.

Similarly, several African countries expanded cash transfer programmes by increasing coverage. In 2018, the World Bank estimated that cash transfers in Sub-Saharan Africa reached 6% of the total population (Beegle et al. 2018). During the pandemic, this increased to 10% of the population of 27 Sub-Saharan African countries, for which information is available. This indicates an increase in coverage while overall coverage remains low. It should be noted that the numbers are not directly comparable as they are based on different sets of Sub-Saharan African countries, so these interpretations should be taken with caution. The coverage rates also differed across countries from

78% reached in Morocco to 9% in Kenya and Nigeria (see table 3)¹⁷. The government of Morocco implemented the “Tadamon” cash transfer programme as a response to the pandemic, which aimed to cover informal workers that were not covered by social insurance programmes.

TABLE 3. COVERAGE OF CASH TRANSFERS DURING THE PANDEMIC BY SELECTED AFRICAN COUNTRIES, 2020-21

Country and programme	Beneficiaries as % of the total population
Morocco: Tadamon	78%
Mauritania: Covid 19 Safety Net Support	31%
The Sudan: Family Support Project	30%
The Gambia: Nafa Quick Programme	27%
Congo Rep.: Emergency Cash Transfer	17%
Tunisia: Aide exceptionnelle de 200 dinars	13%
South Africa: Covid 19 Social Relief of Distress Grants	10%
Nigeria: National Social Safety Net Programme	9%
Kenya: National Safety Net Programme	9%
Uganda: Child-Sensitive Social Protection	0.12%

Source: World Bank, Social Protection and Job Response to COVID-19: A Real Time Review of Country Measures. Feb. 2022.

2.5 CONCLUSION BASED ON DATA ANALYSIS

The analysis of data on **availability** of social protection systems shows that despite an increase in the number of programmes, the coverage rates remain low in Africa with around 83% of the population left without any social protection benefit. While the large data gaps make it difficult to draw conclusions, the available data on developments in coverage over time shows no sign that African countries are on a fast track to realising the right to social security and achieving the related development targets in the 2030 Agenda and the Agenda 2063. The data revealed significant variations between countries. No countries come close to universal protection.

In terms of **accessibility**, the data showed that certain groups are left very far behind. These include for example persons with disabilities. Except for South Africa, persons with severe disabilities are generally not covered (coverage rates are 0.1-0.6% in countries with data). Availability of disaggregated data remains a huge challenge. In terms of **adequacy**, the overall picture is that even when social protection benefits are made available, these are not sufficient to ensure the right to an adequate standard of living.

The COVID pandemic led to an expansion of social protection benefits with programmes reaching more people and with higher amounts. However, coverage

remains low, and most programmes were temporary in nature, and it is yet to be seen whether the pandemic became a driver for more systemic and sustainable progress on advancing the right to social protection in Africa.

The analysis also clearly showed that overall coverage rates and number of available programmes alone do not tell whether the benefits are accessible to those who need the support the most or adequate in terms of enabling an adequate standard of living. They also do not reveal anything about the rights-based nature of these programmes in broader terms. Hence, a human rights-based perspective that takes into account aspects of accessibility, adequacy from the perspective of different groups of rights-holders and the sustainability of the programmes is essential.

South Africa has the most extensive social protection system on the continent, combining social assistance, subsidised prices on commodities and free services. Social assistance payments, mostly in the form of cash transfers, constitute the biggest part of the social protection, with more than 17 million people receiving a cash transfer from the state in 2019: nearly one in three people. Cash transfers are funded through general taxation and are distributed by government agencies while the national treasury allocates the budget for social protection and determines the value of increases¹⁸.

Despite high coverage rates, the UN human rights mechanisms have pinpointed challenges regarding accessibility. It has been pointed out that the informal sector is insufficiently covered and that non-contributory schemes are still too scarce. Persistent accessibility challenges are also identified when it comes to those facing intersecting types of discrimination such as women migrant workers or women with disabilities. Moreover, the international mechanisms note the lack of a cost-of-living index used as a benchmark based on which social benefits can be better targeted. This example shows why a human rights-based lens is essential to analysing social protection coverage in all contexts.

2.6 CHALLENGES TO ADVANCING THE RIGHT TO SOCIAL SECURITY

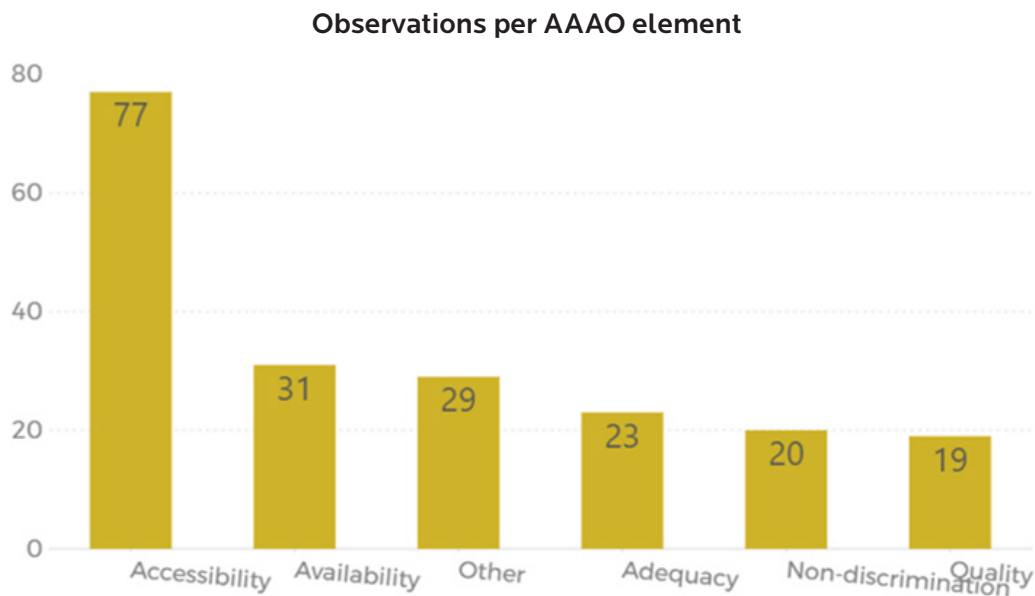
There are numerous challenges to advancing the right to social security in Africa. Below is a summary of some of the key challenges along the lines of the Triple A framework drawing on observations from the international and regional human rights bodies tasked with overseeing State implementation of their human rights obligations, analysis by UN agencies (including the ILO) and examples from monitoring by National Human Rights Institutions in Uganda, The Gambia, Kenya and Malawi.

What have human rights monitoring mechanisms noticed?

International and regional human rights bodies responsible for monitoring State compliance with their human rights obligations have issued in total 513 recommendations and observations on social protection to African States from 2015 to 2022.

The Danish Institute for Human Rights analysed the recommendations and observations from UN treaty bodies, UN special procedures, the Universal Periodic Review (UPR), the African Commission on Human and Peoples' Rights (ACHPR), the ILO supervisory bodies on ILO Conventions No. 102 (Minimum Standards for Social Security), 118 (Equality for Treatment in Social Security), and 157 (Maintenance of Social Security Rights). The observations were categorised using the AAAQ framework along with the cross-cutting issue of non-discrimination. The results of this categorisation are the following:

FIGURE 7: CLUSTERING OF HUMAN RIGHTS OBSERVATIONS BY AAAQ ELEMENT



Issues related to the accessibility of social protection programmes account for 77 out of 203 observations by international mechanisms. Issues mostly referred to limited coverage of social protection schemes for specific groups. Challenges in ensuring accessibility was also the most frequently identified by the regional mechanism, ACHPR. This shows how human rights monitoring mechanisms can provide important qualitative insights and complement global data collection efforts such as those on SDG indicator 1.3.1 on coverage which focuses on a narrow aspect of availability of social protection.

The ILO supervisory bodies called out the lack of good governance of social security systems due to corruption, fraud, tax evasion, lack of data, the inability to transfer social benefits abroad which leads to discrimination between nationals and non-nationals, and the consideration of residency in the State as a prerequisite for granting social security benefits and others. The ACHPR also addresses the issue of privatisation of social services in three countries (Lesotho, Niger, and Uganda) in relation to healthcare and education.

2.6.1 Availability

Financing

Fiscal constraints are often cited as a key explanation to the low availability and adequacy of social protection systems in African countries (Devereux 2022; ILO 2021). The level of public expenditure allocated to social security in Sub-Saharan Africa is among the lowest in the world. Prior to Covid-19, African countries spend on average 3.8% of GDP on social protection (excluding health), compared to a global average of 12.9% of GDP (ILO 2021). This varies across the region, Northern Africa spend 7.7% of GDP, while Sub-Saharan Africa spend 2.1%. Southern Africa spend on average three times as much as Central Africa (Beegle et al. 2018; UNDP 2019).

The ILO (2021b) estimates that Africa has an annual finance gap of 8.5% of GDP to achieve SDG targets of social protection for all and universal healthcare (SDG target 1.3 and 3.8). Africa's domestic revenue generation and performance continues to lag behind other regions. Furthermore, Africa lost about US\$89 billion (6% of GDP) annually to illicit financial outflows, undermining countries' domestic resource mobilisation (UNCTAD).

In The Gambia, in 2017, the Ministry of Finance and Economic Affairs conducted a survey of all Ministries and Departments, and Agencies that implement social protection in The Gambia and found that The Gambia Government spent GMD 96 million (0.18% of GDP) directly towards social protection programmes. This is below the average trend of the World Bank's low-income countries as well as the sub-Saharan African average. Donors contribute 136 million GMD towards social protection in The Gambia which reveals that social protection in The Gambia is significantly donor-based.

National ownership and funding for sustainability

Financial sustainability and predictability of social protection benefits is a huge challenge linked to the issue of financing. According to the World Bank, around half of the social assistance programmes are still managed by development partners, such as NGOs. Development assistance plays a crucial role in around half of the programmes (Beegle et al. 2018). It should be noted that data on the organisation of social security is unavailable in several African countries.

The share of development partner financed and administered programmes is higher in low-income and so-called "fragile" African countries. Although Western Africa has experienced a significant increase in the number of programmes in recent decades, these are still not deeply embedded in national policy – many of the programmes are externally designed and financed pilot projects (UNDP 2019). Where such programmes are in place, they are typically not sufficiently rights-based and provide sporadic coverage to some but not all those in need.

The Gambia National Human Rights Commission notes that social assistance schemes are generally short-term and emergency-oriented and that predictable, long-term cash transfers targeting the extreme poor are lacking.

The programmes in Southern and Eastern Africa, on the other hand, have been running for many years and are much larger in scale. Many of the programmes are nationally owned and often financed by domestic fiscal resources (UNDP 2019). The programmes are to a larger degree rights-based and are embedded in the social contract between the state and citizens – and could not be closed without popular protest (UNDP 2019). Importantly, the right to social security has found its way into many constitutions in African countries and is increasingly being translated into laws and policies with legal entitlements. The right to social security is specified in at least 19 African constitutions¹⁹, while social security and related terms²⁰ are mentioned in about 35 constitutions (UNDP 2019). These developments are essential to forming the social contract between the State duty-bearers and the rights-holders.

The continued high share of donor support and NGO administration of social protection schemes indicate the challenges to the sustainability and the need for stronger national ownership and mobilisation of domestic resources to finance the schemes going forward.

The expansion of social security benefits depends on **political commitment** for social policies, which is often linked to preferences for redistribution as well as political incentives and priorities (Niño-Zarazúa et al. 2012; Devereux 2022). It is usually a slow process to change political preferences and incentives, but crises and shocks have often provided momentum for a rapid change in the political buy-in for expanding social protection (Beegle et al 2018; World Bank 2021; ILO 2021). Periods of rapid economic and social change have provided incumbent governments with incentives to strengthen social protection, because they want to assist the affected vulnerable households, but also because they want to ensure broad support and reduce the risk of political unrest (Beegle et al. 2018). Furthermore, major health crises, such as the spread of HIV/AIDS and the Ebola outbreak, have previously played a significant role in improving social assistance in several African countries (Beegle et al. 2018). Likewise, the Covid-19 pandemic similarly led to efforts to strengthen social assistance in the African region (ILO 2021). Whether the positive impacts in terms of expansion of benefits are long lasting remain to be seen.

An important argument for increased financing, beyond the reference to State human rights obligations, is the fact that **investment in social protection comes with a high return**. They should thus be seen as an investment and not an expense. A meta-analysis from 2018 of programmes in African countries shows that social assistance boosts consumption by an average of 0.74\$ for each 1.00\$ transferred. The remaining 0.26\$ boosts productive investments and savings (Beegle et al. 2018). Additionally, the effect on consumption can lead local economy multiplier effects of up to 1.84 – in other words, each dollar transferred is estimated to add more than a dollar to the local economy (Taylor et al. 2014; Taylor et al. 2013,2014; Thome et al. 2014a, 2014b; Beegle et al. 2018). Social assistance also makes households more resilient to shocks as they are more likely to save up money and further ensure livelihoods during crisis (Beegle et al. 2018).

2.6.2 Adequacy

The issue of adequacy is closely linked to that of financing as it requires a significantly bigger investment to ensure that social security schemes provide at least a minimum essential level of benefits to enable an adequate standard of living.

2.6.3 Accessibility

There are numerous challenges to the accessibility of social protection services as also analysed by the UN Special Rapporteur on Extreme Poverty and Human Rights²¹.

Lack of administrative capacity and social registries

The ability of governments to administer social protection schemes and to maintain comprehensive and updated social registries to target the support to people in need effectively is a big challenge in most African countries. Social registries are a common tool used to identify and record households eligible for social protection. Applying for social protection benefits is often conditional upon being included in such registries (De Schutter, Olivier 2022). Households and individuals that are difficult to access because they live in remote areas or in precarious or temporary housing may be left out and enumerators can never succeed in reaching all households when they collect data to populate the social registry. Also, social registries provide a static picture of potential beneficiaries and are infrequently updated because of the high costs associated with such updates. This leads to a high risk of inclusion and exclusion errors (ibid).

Absence of disaggregated data on recipients of services

The lack of data, including disaggregated data, and monitoring of social protection schemes and programmes makes it difficult to evaluate accessibility. This was also observed in the global data analysis where, for example, disability specific data was only available for a handful of African countries.

African NHRIs who have been proactively seeking disaggregated data to inform their analysis of social protection coverage have similarly found that such data was not available. For example, data on recipients of the large-scale government “Affordable Inputs Programme” in Malawi was not disaggregated by disability making it difficult to assess accessibility for persons with disabilities. Similarly, in The Gambia, the paucity of comprehensive and reliable national statistics on the scope and availability of social protection within the country makes it difficult to coordinate and evaluate social assistance schemes.

Lack of official identification documents

Lack of citizenship and problems with birth registration prevent many individuals from benefitting from social protection benefits. Only 45 per cent of children are registered at birth in sub-Saharan Africa (De Schutter, Olivier 2022). When formal ID is a prerequisite for obtaining social services, this will automatically exclude large parts of the population. Also, people who are homeless, ethnic minorities, stateless persons, refugees and migrants are other groups of potential beneficiaries who may not have the required identification documents and are at risk of exclusion.

Digitalisation of IDs, while promising to alleviate some of the problems, can lead to further challenges and risks of exclusion. In Uganda, for example, despite efforts to roll out a digital ID, between 23 and 33 per cent of the country's adult population have not received a national identity card (ibid).

Reaching Target 16.9 of the Sustainable Development Goals which calls on States to provide legal identity for all, including birth registration by 2030, is hence essential to avoiding exclusion from social protection systems. Where digital identity systems are in the process of being rolled out, a digital ID should not be a prerequisite for benefitting from social protection schemes. Alternative forms of identification, including passports, driving licences, voter identities or birth certificates should be accepted until all individuals receive digital identity cards (ibid).

In The Gambia, the study by The Gambia National Human Rights Commission (NHRC) revealed that one of the major barriers faced by beneficiaries is the issue of national documents that were required for the disbursement of funds to the beneficiaries. Many of the respondents noted that even though they met all the eligibility requirements of the support, they experienced challenges due to a lack of national documents.

Legal exclusion

Large population groups in African countries are excluded from social protection policies and programmes. Especially workers in the informal economy, which make up the majority of the population in Africa, including rural workers, domestic workers, caregivers, and others providing unpaid work are typically not included in social insurance schemes.

In The Gambia, the NHRC found that the legislative framework has notable gaps including justiciable constitutional provisions. Social security coverage is contribution-based and employees in the formal sector can benefit from the scheme based on their contribution to the provident fund. Yet, most of the population works in the informal sectors, with only a small proportion working within the formal sectors. Social security is hence only accessible to a tiny minority of formal sector employees.

Support is inadequate in peri-urban locations where the extreme poor and migrant families reside. Migrants, refugee families, single parents, widows, and child-headed households rarely feature in social protection programming. The coverage and level of support to particularly vulnerable groups (the elderly, PWD, PLHIV) is inadequate and sporadic. Projects rarely consider the social risks and vulnerabilities, lifecycle vulnerabilities and/or needs of specific excluded groups.

Unclear criteria for inclusion

When schemes are put in place, targeting, for example, persons with disabilities or people who are poor, the criteria for the identification of beneficiaries including criteria

for the assessment of poverty or disability are often unclear. This lack of clarity can lead to exclusion by those administering the programmes and the non-take up of rights by rights-holders who have not been informed about and are not aware of their entitlements. Excessive targeting can increase the complexity of procedures and transform social workers and administrators into gatekeepers of the system, tasked with avoiding fraud (De Schutter, Olivier 2022).

In Malawi, there were no clear guidelines on the inclusion of persons with disabilities in the Affordable Inputs Programme (AIP) investigated by the Malawi Human Rights Commission. In Mzimba South, a disability rights advocate stated that he resolved a case where a name of a person with disability was removed from the beneficiaries list for no apparent reason. It took the intervention of the Districts' Disability Forum to have his name reinstated. In Zomba, some persons with disabilities stated that the criteria used in identifying programme beneficiaries is that one is a practising farmer. They observed that as some persons with disabilities cannot farm due to the nature of their disabilities, they are not listed as AIP beneficiaries. This lack of clarity brings confusion and a high risk of exclusion of those most in need of support.

Physical barriers to accessing services

In some contexts, physical barriers such as long distance to benefit collection points or inaccessibility of collection points pose challenges to rights-holders, including persons with disabilities. Technological barriers such as registration using fingerprints pose a challenge to those who do not have fingerprints after a life of hard manual labour. Cumbersome application processes, literacy and language barriers can further contribute to exclusion.

In Malawi, the Affordable Inputs Programme (AIP) investigated by the Malawi Human Rights Commission does not have specific guidelines or measures in place to ensure that persons with disabilities can easily access commodities at the distribution points. The Covid-19 pandemic further hindered the accessibility due to some of the Covid-19 prevention and containment measures which were difficult to comply with for some persons with disabilities.

In Uganda, most of the Universal Primary Education schools are not fully accessible as per accessibility standards. Very few schools have worked on reasonable accommodation because of lack of funds.

In The Gambia, the study by the NHRC showed that although efforts were made by project officials to make the interventions easy for people to reach through the establishment of cash collection points and channelling transfers via help centres, some beneficiaries had difficulties accessing the support, owing to a lack of proper documents and remoteness of cash collection points. They also reported that the

processes were bureaucratic and slow and that they also encountered long queues at payment centres after travelling long distances. In some situations, there were no possibilities of authorised third-party payments on behalf of the direct beneficiaries.

Mismanagement of resources or arbitrary targeting

Inefficient use of resources or straight up corruption and fraud also lead to exclusion either through unavailability of resources or direct exclusion of those who do not cannot or will not pay a bribe and do not have the right personal connections to obtain services faster. Studies show that persons living in poverty are much more likely than rich people to have a bribe demanded of them in return for a delivery of a service (De Schutter, Olivier 2022).

The use of community leaders for targeting can have the potential to reinforce power structures, patron-client relations, and local gender norms, creating tensions and further stigmatising and alienating some groups in the community. Geographical targeting of social protection schemes creates opportunities for strategic political manipulation by policy makers and politicians and can hence also be problematic (Sepúlveda, Magdalena, Carly Nyst 2012).

Lack of awareness leading to non-take up of rights

Lack of awareness about the existence of social protection schemes is the most frequent reason for non-take up of rights based on the results of the worldwide survey presented in the report of the UN special operator in extreme poverty (De Schutter, Olivier 2022). The failure of government authorities or programme implementers to communicate about provisions available and how to claim these through appropriate channels and in languages and formats that people can understand can result in non-take up of rights.

In Kenya, the NHRI identified the inadequate information and low public awareness of existing social protection mechanisms as a key challenge. Similarly, the NHRI of The Gambia identified lack of awareness as a reason why they as a Commission has not received complaints related to violations of the right to social security.

Discrimination and conditionalities that exclude

Discrimination can be intentional or unintentional depending on the context. Discrimination is sometimes an unintentional effect of programme designs that are not sufficiently human rights based.

The use of conditionalities designed with the intention to encourage certain behavioural changes can have a discriminatory or stigmatising flip side. For example, conditions imposed to encourage health-seeking behaviour (e.g., visits to a health clinic) can further stigmatise those who cannot access such services because of physical, financial or language barriers. Some conditionalities can create an unnecessary burden on

women and persons with disabilities, expose them to abuse, or perpetuate traditional gender stereotypes within recipient households. Failure to satisfy imposed conditions can sometimes result in the exclusion of an individual or household from social protection programmes.

In The Gambia, the criteria for enrolment into the social security scheme investigated by The Gambia National Human Rights Commission (NHRC) was based on women who gave birth at a health centre or registered within 5 weeks at the health centre identified by the project. This enrolment strategy was geared towards encouraging women to utilise health care facilities during pregnancy, childbirth, and breastfeeding and to increase uptake of health care services. Yet this approach implied a risk of excluding the women who lacked information or means of access to the identified project health centres. Interviews with women leaders in the local communities showed that very few of the poorest women benefitted from the income transfers because of this enrolment strategy. Accessing health care facilities pose a major challenge for women experiencing multidimensional poverty and residing in very remote communities. Hence, the programme inadvertently excluded the most marginalised women who needed the support the most.

Affordability

Schemes requiring contributions pose a challenge to those who cannot afford to make such contributions. If basic public health and education services are not free or affordable for all, cash payments received through Social Security schemes can easily be absorbed by such costs undermining other key aspects required for an adequate standard of living including food.

The African Commission on Human and People's Rights (ACHPR) has noted that the increased role of private sector actors in health and education services often happens "without the consideration of human rights resulting in growing discrimination in access to these services, a decrease in transparency and accountability, which negatively impact the enjoyment of the rights to health and education" (Res 420 ACHPR).

In General Comment 7, the ACHPR notes that "the pandemic highlighted that instead of broadening access to social services, many commercial actors have pursued profit-seeking strategies that make these services more inaccessible to large segments of the population" and that "increasingly commercial interests in Africa are transforming social services into private commodities" which undermines the object and purpose of the African Charter.

The Uganda Human Rights Commission notes that the current policy delegates the responsibility of provision of pre-primary education to the private sector which aims at making profit and there is no regulatory framework for the charges. Urban and richer community members are more able to access pre-school services as compared to the rural poor. The high cost of schooling is one of the major reasons that children are excluded especially at secondary education level.

3 PART 3: GUIDANCE TO NHRIS

This part of the report provides guidance to National Human Rights Institutions (NHRIs) on how they can use their mandate to advance the right to social security. It draws on case examples from the work of the NHRIs of The Gambia, Kenya, Malawi and Uganda.

The first section outlines the different NHRI functions and their possible application in relation to advancing the right to social security. The subsequent sections go further in depth with each of these functions to give guidance on research, monitoring and investigations, reporting, complaints handling, promotion, cooperation and the advisory role of NHRIs.

Relatively more weight is given to aspects related to data collection and analysis under the section 'monitoring, research and investigations' in response to the identified need for capacity enhancement in this area as articulated in the NANHRI Harare Declaration and Plan of Action 2021.

3.1 THE ROLE OF NHRIS IN PROMOTING AND PROTECTING THE RIGHT TO SOCIAL SECURITY

NHRIs play an important role when it comes to promoting and protecting human rights, including the right to social security. They are independent State bodies with a broad mandate to investigate, monitor and report on human rights implementation and to advise governments and other parties on how to bring legislation and initiatives in line with human rights standards. Many NHRIs also have a mandate to receive and handle complaints from individuals or organisations.

Due to their broad mandate and the intimate link between fulfilment of human rights and the achievement of sustainable development, NHRIs also have a role to play in contributing to the implementation and monitoring of development goals set out in key global and regional frameworks, including the 2030 Agenda on Sustainable Development and Agenda 2063: The Africa We Want and ensuring a human rights-based approach to development more generally.

With inspiration from NHRI declarations, including the Merida Declaration²² and the Kigali declaration²³ on the role of NHRIs in implementing and monitoring the 2030 Agenda, and the Paris Principles outlining the mandate of National Human Rights Institutions, the below table summarises the roles that NHRIs can play in promoting and protecting the rights to social security in line with their mandates. These roles will be further unpacked with concrete examples and guidance below.

NHRI function	Possible application in relation to advancing the right to social security
Monitoring & research	Research and monitor the situation for particular groups of rights-holders or the implementation of particular social protection schemes. Develop and use human rights indicators to monitor the commitments, efforts and results of government implementation of social protection rights. Monitor the implementation of concluding observation and recommendations on social protection.
Advisory	Advise the government, parliament or any other competent body on how to take a human rights-based approach to implementing the right to social security for all and how to follow up on human rights recommendations on the topic. Examine legislation, administrative provisions, bills and proposals and make recommendations or propose new legislation or amendments to ensure that policies conform with human rights standards (including as elaborated in treaty body general comments), are coherent, and that social protection schemes and programming are rights-based. Advise statistical offices, government agencies, donors, or research organisations on how to ensure a human rights-based approach to data collection, including the need for disaggregated data generated through censuses and surveys.
Reporting	Prepare reports on the national situation with regards to the right to social security and draw attention to any situation of violations of rights in any part of the country. Submit reports to international and regional human rights bodies, including treaty bodies, responsible for overseeing the implementation of the right to social security. Feed analysis into reporting on national or international development frameworks including the Voluntary National Review of progress on the 2030 Agenda (particularly SDG 1,3,5,10).
Complaints Handling	Receive and investigate complaints related to violations of the rights to social security - for example cases of discrimination and exclusion in social protection programmes. Mediate, refer the case to the courts, assist complainant in taking the case to court, or report unresolved complaints to the government with recommendations for action.
Promotion	Promote the right to social security, including through human rights education and training, public events, moot court competitions. Encourage ratification of relevant human rights instruments, including the new Protocol to the African Charter on the right to Social Protection and Social Security.
Cooperation	Bridge sustainable development and human rights actors to foster alliances and to promote and protect human rights, including in connection with monitoring and reporting on human rights and the sustainable development goals, as well as in promotion and awareness raising efforts. Engage with UN mandate holders, including the UN Special Rapporteur on Extreme Poverty and Human Rights, the African Commission, and national SDG coordination mechanisms.

In exercising their mandate, NHRIs can use the normative content of the right to social security as a framework (see Part 1) along with the country specific recommendations from human rights mechanisms as detailed guidance for policy development, review and amendment, programme design, implementation and monitoring (see Part 1).

3.2 RESEARCH, MONITORING AND INVESTIGATIONS

NHRIs can generate important evidence and insights by applying a systematic approach to monitoring the right to social security and using a human rights-based approach to data collection when undertaking investigations of individual complaints, qualitative research or bigger surveys that allow for quantification and analysis of trends. The below sub-sections unpack what a systematic and human rights-based approach to research, monitoring and investigations of the right to social security by NHRIs can entail.

Aligning research design with an HRBA to social protection: list of questions

An important first step is to align the research design to the normative content of the right to social security including the Triple A framework with its dimensions on Availability, Accessibility, and Adequacy (see Part 1). It is also useful to draw on the questions from State reporting guidelines on social protection (see below and section 3.4). This will ensure a human rights lens to the analysis and make it easier to use the data collected for human rights reporting and to identify trends, for example on barriers to accessibility, across multiple investigations and research.

Below is a list of questions which draw attention to different aspects of the right to social security including the Triple A dimensions²⁴ and include questions from official guidelines for State reporting on the right. The list can be used as inspiration for developing questionnaires and be adapted to the context when planning social protection research and monitoring.

Checklist: inspiration questions for developing questionnaires

Legal review:

- Is the right to social security incorporated into domestic law (including the constitution)? (availability)
- Does the legal definition correspond to the broad scope of the right and are the following branches of social security covered: health care, sickness, old age, unemployment, employment injury, family and child support, maternity, disability, and survivors and orphans? (accessibility)
- Is there equal enjoyment by men and women of pension rights as regards the age of access, qualifying periods and amounts? Are there provisions for non-nationals to benefit from non-contributory schemes for income support, access to health care and family support? (accessibility)
- Do legal frameworks and policies reflect the obligation to put in place social protection floors and progressively realise universal coverage? (availability)
- Does the social security system also guarantee non-contributory social assistance allowances for disadvantaged and marginalised individuals and families who are not covered by the contributory schemes? (accessibility)

- Are social security systems established and defined by law? (availability)
- Is there a coherent and integrated social protection strategy and policy? (availability)
- Are there established channels for participation of beneficiaries at all stages of design, implementation and monitoring? (accessibility)
- Have the roles and responsibilities of all those involved in implementing the schemes/programmes been defined? (availability)
- Are there legally established and periodically reviewed minimum amounts of benefits, including pensions, and are they sufficient to ensure an adequate standard of living for recipients and their families? (adequacy)
- Are eligibility requirements defined? Are they objective, reasonable, and transparent and reflect an obligation to give priority to the poorest of the poor and to avoid stigmatising beneficiaries? (accessibility)
- Are there mechanisms to ensure transparency and access to information about available schemes/programmes? (accessibility)
- Are there accessible complaints and appeal mechanisms? (accessibility)

Budget review:

- Are social security systems supported by long-term strategy and sustainable funding? (availability)
- Does the trend in allocation of government budgets to social protection over time reflect the obligation to spend the maximum of available resources and progressively implement the right? (availability)
- Are there signs of retrogression (budget cuts, austerity)? (availability)
- Is the share of donor funding compared to domestic resources allocated to social protection going up or going down indicating greater or smaller investment by the government? (availability)

Data review:

- Is data available on social protection coverage? (availability)
- Sources can include the ILO on SDG indicator 1.3.1 on percentage of total population with at least one benefit (for which disaggregated data is available for quite a large number of African countries) and the WHO on SDG 3.8.1. on essential health coverage, data from relevant ministries and social protection programmes as well as from national statistical offices.
- Is the data disaggregated? (availability/accessibility)
- The SDG indicator 1.3.1. requires disaggregation by gender, distinguishing children, unemployed persons, older persons, persons with disabilities, pregnant women, new-borns, work injury victims, and the poor and the vulnerable. Additional characteristics based on prohibited grounds of discrimination may be relevant in the context and can be proposed to the government, UN agencies, donors and national statistical offices by NHRIs.
- What does the data tell us overall and about groups “left behind”? (availability/accessibility)

Interviews with key informants in agencies responsible for social protection programmes:

- Has a gender analysis been conducted to inform the strategy/programme design? (accessibility)
- How is the policy/programme addressing different life-cycle risks, the burden of care, differences in access to services, work and productive activities? (accessibility)
- How is the policy/programme giving priority to the poorest of the poor while avoiding stigmatising beneficiaries? (accessibility)
- Are eligibility criteria objective, reasonable and transparent? (accessibility)
- What measures are taken to proactively share information about all core components of the programme – including targeting mechanisms, eligibility criteria, benefit levels, complaints and redress mechanisms in ways that can easily be understood and received by the most marginalised? (accessibility)
- Is the communication shared in local languages and in ways other than writing? (accessibility)
- How is the accessibility of the benefits to the most marginalised ensured? (what are the strategies to overcome administrative and physical obstacles which could prevent the poorest and most marginalised people from benefitting?) (accessibility)
- If conditionalities/co-responsibilities apply, does failure to comply with these lead to exclusion? (accessibility)
- Are conditionalities accompanied by measures to protect against abuses by those monitoring compliance with conditionalities, and by measures to ensure the capacity of the health and education services to meet increased demand? (accessibility)
- Are protections put in place to ensure that conditionalities do not create an unnecessary burden on women, expose them to abuse, or perpetuate traditional gender stereotypes within recipient households? (accessibility)
- How have rights-holders been consulted in the design, implementation and monitoring of the social protection programme? What measures were put in place to ensure meaningful participation including by women and marginalised groups considering power imbalances? (accessibility)
- Are channels for presenting complaints available? Can rights-holders submit complaints through multiple channels, anonymously and with protection of confidentiality? Are there provisions for low levels of literacy or alternative languages? (accessibility)

Interviews with rights-holders (disaggregated):

- Have you been informed about your rights and entitlements to benefits - including criteria and benefits levels, how to apply, where to apply? Was information shared in a language and in a manner that you could easily understand? (accessibility)
- Are benefits accessible to you? Have you faced any challenges in obtaining benefits (related to for example the application process, requirements for documentation, distance to be travelled, cost, languages, attitudes of staff, accessibility of buildings, safety, and other issues)? (accessibility)
- Are the benefits provided adequate to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education? Are primary education and healthcare services free or affordable? (adequacy)

- If benefits are provided in kind for example goods, are the items provided of satisfactory quality? Are they culturally acceptable? (acceptability, quality²⁵)
- Is access to social protection benefits made dependent on you living up to certain requirements and conditions (for example using public services, food for work or similar)? Do you know if failure to comply with these conditions will lead to you being excluded from receiving the benefits? (accessibility)
- Has anyone informed you how to submit a complaint if you are excluded from receiving services or have any other complaints related to the programme? Are there multiple ways that you can submit a complaint? Are these options feasible/easy to use? (accessibility)
- Have you been offered opportunities to give input to the design of the programme or how it is rolled out in practice, or to discuss its results? If yes, were you consulted in a way that enabled you to share your ideas and concerns, and were your concerns and views considered/accepted? (accessibility)

Examples of NHRI research

The National Human Rights Commission in The Gambia undertook research focusing on two social protection programmes, Nafa Quick and BReST, which target poor and marginalised groups in the Gambia. The research consisted of a legal review, 15 key informant interviews with government focal points, and interviews with 184 rights-holders (107 women, 77 men) in three regions: North Bank Region, Central River Region and Upper River Region of The Gambia. The questionnaires for rights-holders and key informants covered aspects of availability, accessibility and acceptability, non-discrimination, inclusion of vulnerable groups, adequacy of benefits and sustainability.

The analysis based on the findings was structured under these headings and provide insights into gaps from a human rights perspective. In terms of availability, 30% of the rights holders interviewed said that services were not available for deprived households, and the urban poor were largely excluded from the programmes. It was found that the lack of identification documents and remoteness of cash collection points constituted barriers to accessibility, which were not overcome in the programmes. Also, processes to obtain benefits were bureaucratic, slow and rights-holders encountered long queues at payment centres after travelling long distances. In terms of adequacy, rights-holders generally reported that the cash transferred allowed them to cover basic dietary needs, yet several families highlighted that the monetary support did not match the price of basic commodities and that in some cases the money only lasted a few days.

An important point related to the inclusion of marginalised groups was that the targeting strategy and eligibility criteria excluded women who did not register at or give birth at health centres identified by the project. The strategy was intended to incentivise health-seeking behaviour but led to exclusion of the most poor and marginalised women who lacked information or access to health centres.

The Malawi Human Rights Commission conducted research focusing on the Affordable Inputs Programme (AIP) a government programme and a specific group of rights-holders – namely persons with disabilities. At national level, key informant interviews were conducted with relevant authorities. The Commission also engaged the National Statistics Office (NSO) on possible reports produced in the recent past related to the research. Additionally, the MHRC interviewed a total of 77 individuals who were small holder farmers and AIP beneficiaries (44 with a disability), government agricultural extension workers at local level, officials of disability persons’ organizations and NGOs in the agriculture sector working at local level in three districts: Zomba, Salima, and Mzimba.

The Commission found among other things that there were challenges related to accessibility of the services for persons with disabilities, which were worsened during the COVID-19 pandemic. The Commission also found that the targeting strategy and eligibility criteria were unclear. This sometimes resulted in exclusion or under-inclusion of persons with disabilities. More women with a disability reported under-inclusion, pointing to a gender dimension to discrimination in access.

The Kenya National Commission on Human Rights (KNCHR) conducted research in all (former) provinces of Kenya with a focus on elderly people to inform the report “Growing Old in Kenya: Making it a Positive Experience”. The 2009 report underlined the need for protection of the rights of older persons and proposed viable options on how old age can be made a better experience for all Kenyans. Social protection came out as critical and central in determining the quality of life of elderly persons. The sustained advocacy by KNCHR led to several positive actions from both the State and non-State actors, including recognition of older persons’ rights in the Constitution, enactment of an expansive policy for old age, new legislation, establishment and resourcing of institutions, and targeted programmatic interventions.

KNCHR also conducted research (in 2023) on SDG Target 3.8 on universal health coverage with a focus on marginalised groups. The Commission set up a multi-sectoral team drawn from various Commission Departments and civil society and mapped locations for the research and stakeholders in a participatory way. Data collection tools and a template for a model county Facility Improvement Plan were designed and validated with a range of stakeholders. The tools borrow from the Kenya Universal Health Coverage Policy, Kenya National Social Protection Policy, and the HRBA principles (AAAQ) among other frameworks. It focuses on six themes:

1. Legislative and Policy Frameworks
2. Access to quality healthcare services and emergencies: Using a Human Rights Based Approach on service delivery with the anchorage on Accessibility, Availability, Affordability and Quality Principles
3. Public participation and access to information on social healthcare protection
4. Financing Social Healthcare Protection Mechanisms for marginalised and vulnerable groups
5. Sustainability and adaptability
6. Systemic issues

The data collection tools were used in 4 counties and involved high level policy dialogues with stakeholders including the national government local representatives, health facility and county health management teams, Focus Group Discussions and Key Informant Interviews with health care workers, duty bearers and right holders. Health Facility Improvement Plans were drafted and presented to the health facility and county health management teams and shared with county teams for further input and validation. In all four counties, the health facility and county health management teams and local government representatives committed to including actions in the county annual plan based on the findings of the research.

The key findings included: low awareness of social protection and health-care policies and guidelines by duty bearers including healthcare workers, Community Health Volunteers as well as rights-holders; gaps in coverage of vulnerable and marginalised groups by the existing programmes including the National Health Insurance Fund; inadequate capacity to provide healthcare services due to high staff attrition rate, erratic medical supplies and equipment; inadequate participation of marginalised groups in the conceptualisation, design and implementation of social protection interventions; inadequate resourcing of social healthcare protection policies.

The Uganda Human Rights Commission (UHRC) undertook research focusing on children living with learning and developmental disabilities. The research included a review of legal and policy frameworks and primary research in three districts focusing on duty bearers and rights holders (parents of children with disabilities). The research questions and analysis focus on availability, accessibility and adaptability of educational institutions and programmes in line with the AAAQ framework for the right to education. The research also gathers best practices from interventions for children living with learning and developmental disabilities.

The research revealed many gaps in the implementation of State obligations, including related to affordability, awareness and information sharing about support measures, curriculum and training of teachers to assist children with different disabilities, and significant funding gaps. These gaps prevented the realisation of the right to education for children with disabilities. It also uncovered significant data gaps in terms of disaggregated data to enable comprehensive analysis.

Human rights indicators

Indicators can be helpful in establishing baselines and tracking progress in rights realisation over time. It is easier to present and visualise data collected against indicators to shed a light on progress or gaps and to enhance accountability. The drawback is that indicators can be reductive and sometimes focus on 'what can be counted' instead of 'what counts'.

Both the CESCR General Comment 19 and the African Charter on Human and Peoples' Rights call on States to put in place mechanisms to monitor progress, including through identification of indicators and related national benchmarks in relation to each

right (see CESCR General Comment 19 para. 74-76 and the State Party Reporting Guidelines for Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights also known as Tunis Reporting Guidelines paragraph 2b). NHRIs can contribute to the development of indicators that measure social protection from a human rights perspective for use in their own monitoring or as contributions to monitoring frameworks used by national statistical offices, and government agencies designing, implementing and monitoring social protection programmes.

Human rights indicators are indicators that are developed based on human rights norms and include:

- **Structural indicators:** measure States' acceptance and commitment to the realisation of human rights through adoption of legislation, policies, and regulatory frameworks.
- **Process indicators:** measure States' ongoing efforts to transform the legal and policy commitments into results through design, implementation, and monitoring programmes.
- **Outcome indicators:** measure the actual level of realisation of human rights from the perspective of the rights holders.

See OHCHR [manual on the development of human rights indicators](#)²⁶.

There are already global indicators on social protection in the 2030 Agenda monitoring framework (see below sub-section) and there might be relevant national indicators in, for example, the monitoring framework of the national development plan or social protection policies. Often, official indicators are **outcome** indicators (for example % of population covered), so it will frequently be relevant to identify additional **process** indicators to monitor government efforts to implement laws, policies, programmes etc. This also enables more dynamic monitoring, as efforts (as monitored through for example budget allocations, initiatives, etc.) can be monitored more frequently, whereas outcome indicators can take longer to change and be more challenging to monitor.

NHRIs can help propose additional/new indicators to be incorporated into the monitoring frameworks of the national social protection policy, relevant social protection programmes, the national development plan, a human rights action plan or the 2030 Agenda or 2063 action plans. Indicators which require larger-scale representative surveys would typically need to be taken up by national statistical offices. NHRIs may wish to design certain indicators for which they can collect data and use this in their human rights reporting, advisories and engagement with duty bearers in government and among private service providers and donors.





A framework for monitoring the right to social security in a country could be developed based on existing indicators and be complemented by new indicators as needed.

TABLE: EXAMPLE HUMAN RIGHTS INDICATORS ON SOCIAL SECURITY

International HR standard	Structural indicator	Process indicator	Outcome indicator
Coverage (Aspect under "Accessibility")	<p>Example new indicator:</p> <p>The social security system guarantees non-contributory social assistance allowances for disadvantaged and marginalised individuals and families who are not covered by contributory schemes</p>	<p>Example new indicator:</p> <p>% of national budget allocated to non-contributory social assistance allowances</p>	<p>Existing indicator:</p> <p>SDG indicator 1.3.1. % Proportion of population covered by social protection floors/systems, by sex, distinguishing children, unemployed persons, older persons, persons with disabilities, pregnant women, new-borns, work injury victims, and the poor and the vulnerable</p>
Participation/ Information (Aspect under "Accessibility")	<p>Example new indicator:</p> <p>Policies on social protection provide for information sharing/ dissemination regarding benefit levels, criteria, complaints mechanisms</p>	<p>Example new indicator:</p> <p>Information about benefit levels, criteria, complaints mechanisms is being disseminated through different channels (including websites) and in different formats and languages</p>	<p>Example new indicator:</p> <p>% of target groups that have received information about rights and entitlements in a way that they can understand (disaggregated)</p>

The 2030 Agenda: SDG targets and indicators on social protection

There are several targets related to social protection in the 2030 Agenda, although the related indicators are not always relevant for monitoring a human rights-based approach to social protection. Nevertheless, official data on some of the indicators can be used as a source of monitoring the implementation of the right to social security.

<p>TARGET 1-3</p>  <p>IMPLEMENT SOCIAL PROTECTION SYSTEMS</p>	<p>SDG target 1.3: Implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable.</p> <p>Indicator 1.3.1: Proportion of population covered by social protection floors/systems, by sex, distinguishing children, unemployed persons, older persons, persons with disabilities, pregnant women, new-borns, work injury victims, and the poor and the vulnerable.</p> <p>Custodian: ILO (visit the 'ILO STAT Explorer' to find country data).</p>
<p>TARGET 3-8</p>  <p>ACHIEVE UNIVERSAL HEALTH COVERAGE</p>	<p>SDG target 3.8: Achieve universal health coverage, including financial risk protection, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all.</p> <p>Indicator 3.8.1: Coverage of essential health services.</p> <p>Custodian: World Health Organisation (WHO) (visit the 'WHO UHC Service Coverage Index' to find country data).</p>
<p>TARGET 5-4</p>  <p>VALUE UNPAID CARE AND PROMOTE SHARED DOMESTIC RESPONSIBILITIES</p>	<p>SDG target 5.4: Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate.</p> <p>(The indicator under this target is not directly relevant to social protection as it only measures proportion of time spent on unpaid domestic and care work)</p>
<p>TARGET 10-4</p>  <p>ADOPT FISCAL AND SOCIAL POLICIES THAT PROMOTES EQUALITY</p>	<p>SDG target 10.4: Adopt policies, especially fiscal, wage and social protection policies, and progressively achieve greater equality.</p> <p>(The indicator under this target is not directly relevant to social protection as it only measures labour share of GDP)</p>

The targets under SDG 5 and 10 have no specific indicators that measure social protection, but the targets can still be referenced when recalling 2030 Agenda commitments on social protection.

A human rights-based approach to data collection

NHRIs can advocate for a human rights-based approach to data collection and disaggregation and put the principles into practice in their own work when monitoring and researching the right to social security.

The below table outlines the key principles from the OHCHR guidance note on a human rights-based approach to data collection and disaggregation²⁷ with examples of how these can be put into practice in social protection research.

Principle	How to put these in practice in social protection monitoring and research
Data disaggregation	<p>When conducting interviews or surveys, it is important to capture the different perspectives of rights-holders in different situations to allow for an analysis of how intersecting forms of marginalisation affect access to social protection benefits. A woman living in poverty who is also a member of a marginalised minority and has a disability is likely to experience accessibility of services differently from a relatively well-off woman who speaks the national language and does not have a disability.</p> <p>This requires keeping track of the different responses of respondents with different identities. In surveys this can be ensured by giving multiple options for respondents to select/tick off identities and maintaining these in the aggregated analysis afterwards. E.g., “8 out of 10 women with a disability mentioned challenges related to ...”. In interviews this can be ensured by interviewing people individually or at least women separately from men and not combining experience together in the write up/analysis afterwards – e.g., “an elderly woman with a physical disability mentioned issues related to...” is better than “the interviewees mentioned”.</p>
Self-identification	<p>Personal identities should be assigned through self-identification, especially the most sensitive (e.g., religious beliefs, sexual orientation, gender identity and ethnicity). Categories can take inspiration from the prohibited grounds of discrimination recognised in international human rights law adapted to the context (including gender, age, ethnicity, migration or displacement status, disability, religion, civil status, income, sexual orientation).</p> <p>Data collectors should only include characteristics that relate to personal identity in data collection exercises where it is necessary and appropriate to do so.</p> <p>Questions about personal identity characteristics should be voluntary and a non-response option should be provided; this is especially important where personal characteristics may be sensitive. The human rights principle to “do no harm” must always be respected. It is important that for example enumerators are sensitised as to how to facilitate self-identification in practice.</p>

Principle	How to put these in practice in social protection monitoring and research
Participation	<p>The data collection exercise should allow for informed and meaningful participation by the target population groups including the most marginalised. This involves for example, calling for interviews in locations that are easily accessible and safe, at times convenient for women, in languages understood and spoken comfortably by the target groups, and with appropriate privacy measures if sensitive issues are to be discussed.</p> <p>NHRIs should consider how the identity of the interviewer may affect the answers given. For example, it may be preferable that a woman NHR staff interviews women instead of a man, especially in contexts where women hesitate to speak up in the presence of men.</p>
Transparency	<p>Data collectors should provide clear information about the exercise, including research design and data collection methodology and use of the data.</p>
Privacy	<p>Information about how the data will be used must be communicated and consent obtained to use it for these purposes. Data that relates to personal characteristics, and in particular sensitive personal characteristics (such as sexual religious beliefs, sexual orientation, gender identity and ethnicity) or issues (for example corruption allegations), should be handled with care and only with permission and attention to the safety and well-being of the individual data providers. The necessity of granular disaggregated data to reveal inequalities in access must be balanced with data privacy and security concerns.</p>
Accountability	<p>Data can, and should, be used to hold duty bearers to account for example through advocacy and reporting to UN human rights monitoring mechanisms. NHRIs can directly or in collaboration with NGOs also ensure that the collected data is put back in the hands of disadvantaged population groups and strengthen their capacity to use the data for their own advocacy.</p>

3.3 ADVISORY ROLE

NHRIs can advise government and other actors on a human rights-based approach to social protection in multiple ways. Often the advice will be based on legal analysis, monitoring, investigations, and research (see above sections).

NHRIs can proactively target their advice to different actors. For example, NHRIs can advise and develop partnerships with National Statistical Offices (NSOs) to improve official data collection to evaluate progress in human rights realisation and also improve availability of disaggregated data and adherence to human rights principles in data collection.

In the 2030 Agenda, data disaggregation is key to monitoring unequal progress for different population groups. Yet there is still a massive gap when it comes to availability of disaggregated data on social protection. For example, less than half of the African countries had information on access to social protection by persons with disabilities (see Part 2).

In their reporting on the rights under the African Charter, for example, States are supposed to provide statistics on the enjoyment of the rights, disaggregated by age, gender, ethnic origin, urban/rural population and other relevant status, particularly with reference to groups identified as vulnerable or marginalised on an annual comparative basis over the past five years. National Statistical Offices hence face a big challenge in generating and compiling data on the enjoyment of social and economic rights for regular State reporting to treaty bodies and on the many indicators in the 2030 Agenda monitoring framework, including those on social protection.

NHRIs can help identify “groups left behind” or “groups in vulnerable situations” to concretise the otherwise quite vague terms used. They can advise on human rights compliant approaches to collecting data to assess the situation for these groups. Importantly, NHRIs can help shine a light on the particular challenges faced by these groups and propose solutions for how to address these in a way that meets the human rights obligations of States in practice.

The Kenya National Commission on Human Rights (KNCHR) in partnership with OHCHR and the Kenya National Bureau of Statistics (KNBS) convened a workshop where close to 26 groups in Kenya were identified “at risk of being left behind” in the implementation of the 2030 Agenda. Subsequently, KNCHR and KNBS have worked closely to generate disaggregated data to measure the situation of specific groups at risk of being left behind in SDG implementation. As the country was in the process of conducting its national census, the partnership offered a timely opportunity to capture data, particularly for intersex children, children from indigenous communities, and those who were stateless. The partnership resulted in KNBS including a third sex marker in the census tool. KNCHR also worked with KNBS to ensure that the Washington Group Short Set of Questions on Disability and persons with albinism were captured in the census. To effectively ensure data for these categories was captured in the census, KNCHR participated in the training of data collectors. The sustained engagement led to KNCHR being appointed as a member of the National Committee on The Census.

NHRIs can advise ministries and departments in charge of social protection programming to help translate human rights commitments into policies, procedures and monitoring frameworks. In some countries, the structures set up to oversee implementation of the 2030 Agenda constitute new targets for NHRI advice. Given the close convergence between the 2030 Agenda and human rights, NHRIs have a lot to offer when it comes to how to achieve a particular development goal – including those that include a focus on social protection (SDG 1, 3, 5,10). The general comments from treaty bodies, country specific recommendations from human rights monitoring mechanisms, and data and information collected by the NHRI provide a good operational starting point for unpacking and devising a path for achieving a particular SDG. There is sometimes a misconception that NHRIs should focus solely on SDG 16 (peace justice and strong institutions) but given their broad mandate, the SDGs that reflect social and economic rights are not less relevant.

NHRIs also have an important role to play in monitoring the follow up on the human rights recommendations received by States and advising on how to implement the recommendations in a way that is compliant with human rights obligations.

3.4 REPORTING

Regular reporting including to regional and UN human rights monitoring mechanisms present an important opportunity for NHRIs to highlight gaps in the implementation of the State's human rights obligations with regard to the right to social security. The international and regional treaties which include the right to social security all require States to report on the right. In terms of structure, NHRI contributions should follow State reporting guidelines to provide an alternative assessment of the situation in the country. The reports submitted by State parties rarely follow the guidelines to the level of detail required. This leaves room for NHRIs to supplement the information with their own analysis based on available data, own data, and data from other legitimate data providers.

Human rights reporting on the right to social security

Reporting on the implementation of the right to social security is particularly relevant when reporting to international human rights treaty bodies especially on ICESCR Art. 9; CEDAW Art. 11, 13, 14; CRC Art. 19, 26, 27; CRPD Art. 28. All these treaties are ratified by most countries in Africa²⁸. In addition, ICRMW Art. 27, 43, 45 is relevant to the countries²⁹, which have ratified this instrument. The Universal Periodic Review presents another important opportunity to report on the implementation of the right to social security.

For the countries³⁰ that have ratified the relevant ILO conventions on social security, the reporting requirement is annual (relevant conventions include 102, 118, 157, and ILO Recommendation 202).

In reporting to regional human rights mechanisms, it is relevant to report on the right to social security to the African Commission on the ACHPR (every two years) and the Protocol to the ACHPR on the Rights of Women in Africa (Article 13) and the Protocol to the ACHPR on the Rights of Citizens to Social Protection and Social Security, when it enters into force. Similarly, it is relevant to report on the right to social security to the ACRWC (Article 20) to the African Committee of Experts on the Rights and Welfare of the Child (every 3 years after the initial report). Both the ACHPR and the ACRWC are close to being ratified by all countries on the continent³¹.

If NHRIs draw on the State reporting guidelines when undertaking legal and data review and qualitative or quantitative research, this enables them to report more comprehensively to international and regional human rights monitoring bodies. This, in turn, can improve the specificity and increase the number of recommendations by these bodies on the topic of social protection. The recommendations can then be used in advocacy for implementation by the NHRI and civil society in the country. In summary, the more specific observations and recommendations NHRIs can make, the more specific and relevant recommendations are likely to come out of the monitoring mechanisms.

There are different guidelines for reporting to different human rights instruments. The specific reporting requirements on social protection from two of the widely applied guidelines are summarised below.

State reporting requirements under the International Covenant on Economic, Social and Cultural Rights Article 9

States should:

- ✓ Indicate whether there is **universal social security coverage** in the State party. Also indicate which of the following branches of social security are covered: health care, sickness, old age, unemployment, employment injury, family and child support, maternity, disability, and survivors and orphans.
- ✓ Indicate whether there are **legally established and periodically reviewed minimum amounts of benefits**, including pensions, and whether they are **sufficient** to ensure an adequate standard of living for recipients and their families.
- ✓ Indicate whether the social security system also guarantees **non-contributory social assistance allowances** for disadvantaged and marginalised individuals and families who are not covered by the contributory schemes.
- ✓ Indicate whether the public social security schemes described above are supplemented by any private schemes or informal arrangements. If so, describe these schemes and arrangements and their **inter-relationship with the public schemes**.
- ✓ Indicate if there is **equal enjoyment by men and women** of pension rights as regards the age of access, qualifying periods and amounts.
- ✓ Provide information on social security programmes, including **informal schemes, to protect workers in the informal economy**, in particular in relation to health care, maternity and old age.
- ✓ Indicate to what extent **non-nationals benefit** from non-contributory schemes for income support, access to health care and family support.

State reporting requirements under the African Charter on Human and Peoples' Rights

Every two years, States are supposed to:

- “ Provide information on legislative and other measures taken to ensure access to a social security system which provides for minimum coverage of health and retirement benefits to individuals and their families.

As for all social and economic rights, State parties should:

- ✓ Provide **statistics** on the enjoyment of the right, **disaggregated** by age, gender, ethnic origin, urban/rural population and other relevant status, particularly with **reference to groups identified as vulnerable or marginalised** on an annual comparative basis over the past five years.
- ✓ Report on whether the State party has adopted a **national framework law, policies and strategies for the implementation of the right**, identifying the **resources** available for that purpose and the most cost-effective ways of using such resources.
- ✓ The judicial and other appropriate **remedies** in place enabling victims to obtain **redress** in cases where their rights have been violated.

- ✓ Any **mechanisms** in place **to monitor** progress towards the full realisation of the rights, including identification of indicators and related national benchmarks in relation to each right.
- ✓ Provide information on **legislative and practical steps** taken to ensure enjoyment of the rights on a **non-discriminatory basis by members of vulnerable or marginalised groups** as defined in the Principles and Guidelines. Reports should particularly indicate what steps have been taken to ensure gender equality.

For more details, see the State Party Reporting Guidelines for Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights also known as Tunis Reporting Guidelines (section G). Guidelines on the right to health and education are also relevant to social protection reporting (section C and D).

The Malawi Human Rights Commission (MHRC) reported on the right to social security in its contribution to the list of prior issues to the United Nations Committee on Economic, Social and Cultural Rights (CESCR) ahead of the review of Malawi in March 2023. The report points out the absence of specific legislation on social security and the unsustainable nature of available social security schemes. It calls on the government of Malawi to enact social security laws which are responsive to the needs of marginalised people.

The report refers to the findings of qualitative research carried out by the MHRC among persons with disabilities with a focus on the Affordable Input Programme, which is a major social protection programme in Malawi. Key findings highlighted in the CESCR report include that the Affordable Inputs Programme does not follow a human rights-based approach in its design, implementation and evaluation to ensure that vulnerable groups, including persons with disabilities are targeted and incorporated into the programme.

Inputting human rights data in the Voluntary National Review on SDG progress

The close convergence between the 2030 Agenda and the Sustainable Development Goals, the Agenda 2063 and human rights means that NHRIs also play an important role in monitoring fulfilment of relevant development goals and targets from a human rights perspective. Hence, when NHRIs advise on or monitor the right to social security, they are also contributing to the implementation and monitoring of the Sustainable Development Goals (SDG 1,3,5 and 10 (see section 3.2 for overview of targets)).

Therefore, analysis, recommendations and information collected by NHRIs would be highly relevant to feed into the Voluntary National Review (VNR) of progress on the 2030 Agenda under the respective chapters on SDG 1,3,5, and 10 in particular, and in cross cutting sections on “leaving no one behind”.

There is no fixed reporting schedule for these voluntary reviews, but NHRIs can request a reporting schedule from the responsible government focal points, lobby to get invited to the planning group, contribute to consultations and advise on how to organise consultations, contribute relevant data to be reflected in the report or publish a shadow report with an alternative assessment.

While VNRs are country-led and initiated by governments, they are intended to be “open, inclusive, participatory and transparent for all people and will support reporting by all relevant stakeholders” (2030 Agenda para. 74 d). NHRIs are explicitly recognised to be among the participating stakeholders in the VNRs. The UNDESA VNR Handbook and the UN Secretary General Voluntary Guidelines suggest that VNR countries report on whether national human rights institutions contributed and are continuously involved in the implementation and review of the 2030 Agenda, including its Goals and targets.

See details in this guide for NHRIs on how to engage in the VNR process: <https://www.humanrights.dk/publications/guide-nhris-engaging-voluntary-national-review-2030-agenda>

3.5 COMPLAINTS HANDLING

Many NHRIs have a mandate to receive and investigate complaints. The number of complaints received by NHRIs on economic, social and cultural rights related issues in general and related to social protection in particular varies greatly. Factors influencing the number of complaints include the level of rights awareness in the population and the perception of and awareness of the role of the NHRI in the country. Hence, the number of social protection related complaints cannot be used to make comparisons across countries or to conclude whether there are gaps related to rights realisation. The nature and focus of the complaints provide, however, important insights into gaps in rights realisation and is a valuable data source for NHRIs to draw on in their analysis and human rights reporting. On-going and systematic analysis of complaints (what gaps in human rights realisation do they reveal and for which groups?) can help turn the complaints into valuable data for human rights analysis and reporting. Where the quantities of complaints are sufficiently large, NHRIs can start to analyse and visualise trends and patterns as regards human rights gaps for particular groups in reporting and advisories to substantiate the analysis.

The questions in the checklist (section 3.2.) can also be useful in investigations and be tailored to the specific situation.

The Kenya National Commission on Human Rights (KNCHR) has received and processed a total of four hundred and sixty-three (463) complaints with regards to social protection programmes offered by the government of Kenya from the year 2007 to early 2023. The KNCHR ascribes this relatively high number of complaints on the topic to outreach and awareness interventions by State institutions especially the local representatives of the national government. More than half of the complaints concern the availability and accessibility of retirement funds from the National Social Security Fund. Close to half of the complaints relate to the National Health Insurance fund and concern limited availability of and access to health services and facilities, affordability, and discrimination in access and coverage of services.

The National Human Rights Commission of The Gambia has received very few complaints related to economic, social and cultural rights in general and none related to social protection. Most complaints relate to civil political rights. The Commission ascribes this to the fact that the right to social security is not constitutionally

guaranteed and has not been litigated in courts in the same way as civil and political rights. Also, there is generally a lack of awareness of the right to social security in The Gambia and the role that the Commission can play. For the same reasons, the Commission has started engaging stakeholders on this subject pressing for better protection as well as raising awareness.

In some situations, NHRIs may refer a case to the courts or assist the complainant to take the case to court (national, regional or international). In some countries, cases related to violations of economic, social and cultural rights are still relatively untried and national frameworks and protections may be weak.

There is a growing body of case law which is proving the justiciability of social and economic rights including the right to social security. A legal depository with cases related to the right to social security based on national, regional and international law can be found on the socialprotection-humanrights.org website run by a number of UN agencies. While court cases can be time-consuming and risky, they can also help establish important precedents for courts and other tribunals to lean on in similar cases.

Provision of social security for permanent residents in South Africa

Country: South Africa

Body: Constitutional Courts

Case: Louis Khosa and Others versus Minister of Social Development and Others

Case number: CCT 12/03

Year of judgement: 2004

Summary: The case was brought before the Constitutional Court of South Africa by Mozambican citizens living in South Africa as permanent residents. The applicants challenged the validity of certain provisions of the Social Assistance Act 59 of 1992 that denied social assistance to foreign nationals. They cited the infringement of the right to equality and social security, and the rights of children and requested the striking down of the requirement of citizenship for social security entitlements. The case was heard by the Pretoria High Court, which struck down the discriminatory provisions and ordered the Director-General of Social Development and the MEC for Health and Welfare in the Northern Province to pay the applicants the required amounts including arrears. The Constitutional Court upheld the decision and reiterated that the Constitution guaranteed the right to social security to everyone, including all permanent residents. The Court observed that exclusion of permanent residents amounted to the infringement of the right to equality and thus violated the Constitutional guarantees.

Source: <https://socialprotection-humanrights.org/legaldep/provision-of-social-security-for-permanent-residents-in-south-africa/>

3.6 PROMOTION

NHRIs can promote the right to social protection in various ways including through public awareness events, media engagement, and information and education campaigns with relevant partners. NHRIs may also wish to engage with the African Commission in promoting the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Citizens to Social Protection and Social Security and lobby for its ratification or promote relevant General Comments, including General Comment 7 on regulation of private social service providers.

An innovative example of human rights promotion is the role of The **Gambia National Human Rights Commission (NHRC)**, in organizing the Sir Dawda Jawara International Moot Court Competition with a focus on the protection of economic, social and cultural rights including the right to social security in 2023. The competition constitutes a flagship programme of the NHRC and targets undergraduate law students to argue human rights issues before a regional human rights court, using African human rights mechanisms and norms. Such competitions can help prepare future litigators with the knowledge and arguments they need to take up real life cases. The NHRC expects this to start a wider conversation and engagement with stakeholders on the topic of social protection in the country.

3.7 COOPERATION

As independent actors with a mandate to promote and protect human rights, NHRIs can play an important bridging role bringing together actors in a country - NGOs, human rights defenders, national statistical offices, research institutions/universities, private sector actors and government institutions at all levels to mainstream human rights and human rights-based approaches. NHRIs can also serve as “elevators”, bringing issues from the very local level to the national, regional and international level and vice versa.

For example, NHRIs are well placed to facilitate data partnerships, drawing on official data, NGO data, research data and own data in connection with, for example, the development of shadow reports to regional and international human rights monitoring mechanisms.

The collaboration between the **Kenya National Commission on Human Rights** and the Kenya National Bureau of Statistics, the Danish Institute for Human Rights, and the Office of the High Commissioner for Human Rights in Kenya to improve data collection and data disaggregation to capture the situation for specific marginalised groups constitutes an example of such a partnership.

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ENDNOTES

- 1 Out of all African countries, only South Sudan, Mozambique, Botswana have not ratified the ICESCR. Comoros has signed but not ratified.
- 2 This OHCHR webpage links to reports on the impacts of austerity of social protection and provides many details on the topic of retrogressive measures: <https://www.ohchr.org/en/social-security>
- 3 However, the GC also states that if States are unable to meet this minimum core within its maximum available resources, it may select a core group of social risks and contingencies. For a more detailed overview of the State's core obligations, see GC 19 para. 59 (a)-(f).
- 4 See United Nations, General Assembly, Human Rights Council. 2014. Report of the Secretary-General on the question of the realisation in all countries of economic, social and cultural rights. A/HRC/28/35, 22 December 2014.
- 5 Noting here the addition of “acceptability” and “quality” when assessing health services.
- 6 This will enter into force when ratified by 15 member States.
- 7 See also African Commission Resolution 420 on States' Obligation to Regulate Private Actors Involved in the Provision of Health and Education Services, and Resolution 434 on the Need to Develop Norms on States' Obligations to Regulate Private Actors Involved in the Provision of Social Services.
- 8 The Human Rights Approach to Social Protection by Dr Magdalena Sepúlveda and Ms. Carly Nyst, published by the Ministry of Foreign Affairs of Finland, 2012.
- 9 Effective coverage is the proportion of the total population that receives at least one social protection cash benefit (including child, family and maternity benefits; support for people without jobs, people with disabilities, victims of work injuries and older people, but excluding access to healthcare). In contrast to legal coverage, effective coverage reflect how the legal provisions are implemented in reality. Global and regional aggregates are weighted by relevant population groups (ILO 2021).
- 10 First programmes were launched in 1920s and 1940s, respectively.
- 11 In Southern Africa, mainly South Africa, Botswana, Namibia and Eswatini pull the average up.
- 12 <https://www.social-protection.org/gimi/WSPDB.action?id=13>
- 13 <https://www.social-protection.org/gimi/WSPDB.action?id=13>
- 14 PPP refers to purchasing power parities and the purpose is to measure relative prices in different countries. The PPPs are used for international comparisons in real values, which accounts for purchasing power across countries of the world.
- 15 World Bank, Social Protection and Job Response to COVID-19: A Real Time Review of Country Measures. Feb. 2022.
- 16 Ibid.
- 17 Ibid.
- 18 From Bertelmann's Transformation Index South Africa 2022 p. 25. [BTI 2022 \(bti-project.org\)](https://bti-project.org).
- 19 Examples include South Africa (1996) (“Everyone has the right to have access to social security, including, if they are unable to support themselves and their dependents, appropriate social assistance”), Kenya (2010) (“The State

- shall provide appropriate social security to persons who are unable to support themselves and their dependents”), Tunisia (2014) (“The state ... shall guarantee the right to social assistance in accordance with the law”) and Comoros (2009) (the revised Constitution contains a general guarantee of the “right to social security and social protection”).
- 20 Social security, social protection, social welfare and/or social assistance.
 - 21 Many of the challenges have been analysed in the report of the UN Special Rapporteur on Extreme Poverty and Human Rights, Olivier De Schutter to the human rights council on “Non-take-up of rights in the context of social protection” 2022, A/HRC/50/38 which is informed by a comparative survey of 36 countries (Africa: Cameroon, DRC, Ethiopia, Kenya, Nigeria, South Africa, Togo, Tunisia, Ghana).
 - 22 The Global Alliance of National Human Rights Institutions (GANHRI) adopted the Merida declaration in 2015 on the role of NHRIs in implementing the 2030 Agenda.
 - 23 In 2017 the Network of African National Human Rights Institutions (NANHRI) adopted the Kigali Declaration and Plan of Action which sets out roles that African NHRIs can play in ensuring a human rights-based approach to development and to achieving the SDGs as well as to ensuring that no one is left behind.
 - 24 Note that there is not necessarily a clearcut distinction between what falls under the Triple A dimension of “availability” and “accessibility” as regards the issue of coverage. Suggestions have been made as to which dimension the question falls in italics and brackets. Also, some of the question concern the integration of the human rights principles (participation, accountability, non-discrimination) and hence go beyond the Triple A’s.
 - 25 “Acceptability” and “Quality” should be added if the social protection benefits are provided in kind for example as goods and services and not in cash. See for example the CESCR General Comments on the right to food and to health.
 - 26 Using this guidance, the Danish Institute for Human Rights has developed multiple human rights indicator-based frameworks and tools for the monitoring of human rights. The [AAAQ Framework and the Right to Water](#), the [Indigenous Navigator](#), the [SDG 4.7. human rights education tool](#), the [Human Rights 4 Land tools](#), and the [Right to Defend Rights tool](#).
 - 27 <https://www.ohchr.org/sites/default/files/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf>
 - 28 ICESCR 50 ratifications, CEDAW 52 ratifications, CRC 54 ratifications, CPRD 51 ratifications as of 2022.
 - 29 26 ratifications as of 2022.
 - 30 Only 12 African States have ratified ILO 102 and Recommendation 202 as of 2022.
 - 31 Only Morocco have taken no action on ACRWC and ACHPR. South Sudan has not ratified ACRWC, and Côte d'Ivoire has not ratified ACHPR.



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