



Social protection legislative frameworks in South Asia from a children's rights perspective

Luca Lazzarini, International Policy Centre for Inclusive Growth (IPC-IG)



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Social protection legislative frameworks in South Asia from a children's rights perspective

By Luca Lazzarini

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Research Coordinators

Fábio Veras Soares (Ipea and IPC-IG)

Luca Lazzarini (IPC-IG)

Pedro Arruda (IPC-IG)

Rafael Guerreiro Osorio (Ipea and IPC-IG)

Researchers

Anna Carolina Machado (IPC-IG)

Beatriz Burattini (IPC-IG)

Carolina Bloch (IPC-IG)

Fabianna Ferreira (IPC-IG)

Isabela Franciscon (IPC-IG)

Krista Alvarenga (IPC-IG)

Lea Smidt (IPC-IG, Fellow of Carlo Schmid Programme)

Lucas Sato (IPC-IG)

Marcela Ramirez (IPC-IG)

Nicolò Bird (IPC-IG)

Sergei Soares (Ipea and IPC-IG)

Wesley Silva (IPC-IG)

Yannick Markhof (IPC-IG)

Research Assistants

João Pedro Dytz (IPC-IG, intern)

Juliana Bernardino (IPC-IG, intern)

United Nations Online Volunteer

Ifham Adam Ibrahim

Designed by the IPC-IG Publications team

Roberto Astorino, Flávia Amaral, Priscilla Minari and Manoel Salles

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**SOCIAL PROTECTION LEGISLATIVE
FRAMEWORKS IN SOUTH ASIA FROM A
CHILDREN'S RIGHTS PERSPECTIVE**

This study is part of a series of papers developed as a partnership between the UNICEF Regional Office for South Asia and the IPC-IG, to assess different aspects of social protection in the region.

1. Social spending in South Asia: an overview of government expenditure on health, education and social assistance.
2. Overview of non-contributory social protection programmes in South Asia from a child and equity lens.
3. Gender and social protection in South Asia: an assessment of the design of non-contributory programmes.
4. Social protection legislative frameworks in South Asia from a children's rights perspective
5. Evidence linking social protection programmes in South Asia with child poverty, economic growth and improvement in human development.

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We travelled to five countries in South Asia: Afghanistan, India, Nepal, Sri Lanka and Maldives, which has given us the opportunity to learn more about social protection in different contexts. This work would not have been possible without the collaboration of our counterparts from UNICEF, governments and non-governmental organisations.

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FOREWORD

This report is part of a series on social protection programmes in South Asia and aims to assess the state of children's right to social protection through an analysis of the legal frameworks supporting national social protection systems. The regulatory frameworks of non-contributory social protection programmes are assessed in terms of their compliance with international legal standards and the human rights-based approach to social protection.

The firm commitment of South Asian countries to providing social protection and welfare can be inferred from their almost universal ratification of the International Covenant on Economic, Social and Cultural Rights and because each constitution contains at least one provision dedicated to social protection or assistance for vulnerable groups. Further, all countries are bound by the Convention on the Rights of the Child to achieve the full realisation of children's right to social protection and to provide assistance and support to assist parents (or other responsible adults) in securing children's right to development and to an adequate standard of living.

The analysis of statutory legislation, however, reveals a rather fragmented situation in terms of the approach adopted to provide social protection. While some countries have opted to regulate single aspects of social protection, others such as Maldives and Nepal have enacted legislation serving as a general framework for the sector. In terms of child-focused legislation, South Asian countries tend to regulate single matters through single pieces of legislation. This has generated a significant amount of legislation over time, sometimes resulting in conflicting provisions. Afghanistan, Maldives and Nepal have enacted child-focused legislation which explicitly includes children's right to social protection and further provisions to fulfil this right. Further, these sets of laws are particularly commendable for their attempts to systematise national legislation setting children's rights.

At the programme level the report indicates that 33 programmes, out of a total of 51, are alarmingly not supported by regulatory frameworks. Within this context though, there are significant differences across countries in the region: for example, Maldives has notably enacted regulations for almost all of the schemes mapped, whereas no supportive regulatory framework was found for the programmes in Bangladesh and Bhutan considered in this analysis. Perhaps the most worrisome finding from the assessment of social protection regulatory frameworks is the substantial lack of accessible appeal mechanisms. Against this background it should be recalled that the right to file a complaint (and eventually to appeal) is the most basic way to guarantee accountability and transparency. It also represents a necessary step in shifting towards a human-rights based approach to social protection, where the institutions as duty-bearers can be held accountable by rights-holders.

Overall, the analysis finds that the full implementation of a human-rights based approach to social protection is yet to be achieved by South Asian countries—although some are closer than others to achieving this goal. Nevertheless, the path taken seems to be in the right direction, particularly when the time dimension is considered. Almost all the social protection legislation analysed was enacted within the last 10 years: for example, the above-mentioned child-focused legislation in Afghanistan, Maldives and Nepal was adopted in 2018 and 2019, and almost every regulatory framework in support of the programmes was introduced after 2005.

Enjoy your reading!

Jean Gough
UNICEF Regional Director for South Asia

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ACRONYMS AND ABBREVIATIONS

| | |
|----------------|--|
| BISP | Benazir Income Support Programme |
| CEDAW | Convention on the Elimination of All Forms of Discrimination Against Women |
| CESCR | Committee for Economic, Social and Cultural Rights |
| CRC | Convention on the Rights of the Child |
| CRPL | Child Rights Protection Law |
| HRBA | Human rights-based approach |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ICRMW | International Convention on the Protection of the Rights of All Migrant Workers and Their Families |
| ILO | International Labour Organization |
| MGNREGA | Mahatma Gandhi National Rural Employment Guarantee Act |
| NFSA | National Food Security Act |
| NGO | Non-governmental organisation |
| NHRI | National Human Rights Institution |
| NSAP | National Social Protection Agency |
| SAARC | South Asian Association for Regional Cooperation |
| TPDS | Targeted Public Distribution System |
| UDHR | Universal Declaration of Human Rights |

EXECUTIVE SUMMARY

International-level conclusions

- Human rights instruments play a key role in determining the scope and content of social protection legislation at national level, given their binding nature on States parties and the fact that their normative standards can be used as reference points for domestic social protection systems by States that are not parties to the given human right instrument.
- Given the interdependence and interrelatedness of human rights, the realisation of the right to social protection can significantly contribute to the achievement of other economic, social and cultural rights, such as the rights to an adequate standard of living, to health and to education, among others.
- Each country in the region is a State party to the United Nations Convention on the Rights of the Child (CRC). As a consequence, they are obliged to recognise the right of every child to an adequate standard of living, and to take the necessary measures to achieve the full realisation of children's right to benefit from social security.
- With the notable exception of Bhutan, every country in South Asia is a State party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and, as such, is bound to respect, protect and fulfil the rights to social protection and to an adequate standard of living in the terms described in Section 1.4.
- Given that all countries in South Asia either belong to the dualist tradition or, on the basis of their constitutional settings, adopt a mixed approach, the translation of international human rights instruments—including the CRC—into domestic law is a mandatory step to guarantee their application.

Regional-level conclusions

- South Asia is the only region in the world without a human rights system of its own. The presence of such a system would contribute significantly to respect for and protection and fulfilment of human rights, including social protection, in at least two ways. First, countries would be bound on an equal footing by regional treaties and associated implementing procedures. Second, the presence of a regional monitoring body—political or jurisdictional—coupled with regular follow-up procedures would further strengthen the fulfilment, monitoring and enforcement of human rights.
- The South Asian Association for Regional Cooperation (SAARC) includes several objectives relevant for social protection, such as the promotion of welfare, social progress and cultural development in the region and the provision to all individuals of the opportunity to live in dignity and to realise their full potential. Further, 'social development' figures among the areas of cooperation.
- Despite the presence of relevant instruments such as the SAARC's Social Charter and the Convention on Regional Arrangements for the Promotion of Child Welfare, very few initiatives have been adopted as a result of these instruments.

National-level conclusions: constitutions

- All constitutions commit to protecting and promoting economic, social and cultural rights. Each constitution, excluding Afghanistan's, contains a provision related to social protection. The Afghan, Indian, Maldivian and Nepalese constitutions include specific provisions related to children's assistance.

- In the great majority of the countries, economic, social and cultural rights—including the right to social protection itself—figure in the non-justiciable sections of the constitution. Notable exceptions are the constitutions of Maldives and Nepal. The former establishes a set of specific rights, including economic, social and cultural rights (e.g. right to food, to clothing and housing, good standards of health care etc.), that the State must offer in line with its ability and resources following the concept of progressive realisation. Similarly, Nepal's Constitution individuates and commits to a series of basic social rights, including, for example, the rights to food and to social justice.
- The Nepalese Constitution is the only fundamental law in the region that directly sets out children's rights (in Art. 39).

National-level conclusions: statutory frameworks for social protection

- Statutory frameworks for social protection have been adopted in each country in the region, except for Bhutan and Pakistan.
- Significant differences exist between the sets of laws analysed, which were divided into two main groups. The first group includes legislation providing a general regulatory framework for social protection (i.e. the Maldivian Social Protection Act or specific economic, social and cultural rights (i.e. the Indian National Food Security Act and the Nepalese Social Security Act). The second group encompasses legislation regulating single aspects of social protection. The Afghan Social Protection Law, despite its name, mainly deals with the country's institutional framework for social protection. Similarly, in Bangladesh the sets of law regulate, respectively, non-governmental organisations operating in social welfare and foreign-funded non-governmental organisations. The Indian *Aadhaar* Act provides a unique identification number to residents that serves as a proof of identity and residence. Finally, Sri Lanka's Welfare Benefit Act arranges a single framework for the payment of all welfare benefits and related matters.
- The Indian National Food Security Act demonstrates the impact that legislation regulating economic, social and cultural rights can have on social protection, since it has direct implications for the operation of all food distribution programmes in the country, as well as for the very criteria adopted by most poverty reduction programmes to determine eligibility.
- General legal frameworks for social protection are lacking in Bangladesh, Bhutan, India, Pakistan and Sri Lanka, although a Social Protection Act is currently being discussed in Bangladesh.
- Four countries—Afghanistan, Maldives, Nepal and Sri Lanka—have enacted social protection laws within the last 6 years. This trend can be interpreted as an important step towards building social protection systems anchored in a rights-based approach.
- A number of economic, social and cultural rights have been recently enshrined at the statutory level in India and Nepal, with a view to implement constitutional provisions. The introduction of this legislation in both contexts represents a significant step towards a rights-based approach.

National-level conclusions: statutory child-focused legislation

- The most typical approach in the region is the regulation of single matters (e.g. child protection, education etc.) through single pieces of legislation. This approach has generated a considerable amount of legislation at the national level over time. While this does not necessarily constitute a problem, it is important to point out that a comprehensive children's rights act, ensuring full implementation of the CRC, is preferable, as it avoids

possible conflicts among the different sets of laws, especially when a considerable amount of time passes between the enactment of one law and the subsequent enactment of another.

- The latest Concluding Observations provided by the Committee on the Rights of the Child for each country unequivocally recommend full implementation of the CRC at the national level. Most of the legislation analysed focuses on child protection rather than social protection.
- In compliance with the above-mentioned Concluding Observations, Afghanistan, Maldives and Nepal have enacted child-focused legislation that explicitly includes children's right to social protection, and further provisions to fulfil this right. Such laws are particularly commendable for their attempts to systematise national legislation establishing children's rights. All laws were enacted in 2018 and 2019.

National-level conclusions: National Human Rights Institutions

- National Human Rights Institutions (NHRIs) represent a fundamental guarantee to monitor the effective implementation of the fundamental rights of the child at the national level, as well as the right to social protection and other human rights. The need for functioning NHRIs appears even more fundamental, considering that no country in the region is a State party to the ICESCR Optional Protocol and that a regional human rights system is lacking.
- NHRIs have been set up in each country except Bhutan.

Programme-level conclusions

- At the programme level the analysis revealed that only 18 programmes are embedded in regulatory frameworks: as a consequence, the remaining 33 programmes—10 of which are at least supported by a legal basis—are worryingly not governed by any set of enforceable rules.
- A number of significant differences exist across countries in South Asia. In Maldives, there is notably a regulatory framework for each of the schemes mapped, except for the Medical Welfare programme, for which only a legal basis was found. In Nepal exactly half of the programmes (i.e. 5 out of 10) have regulatory frameworks, whereas for the remaining half there is at least a legal basis. Also in Pakistan half of the programmes mapped (i.e. 2 out of 4) are regulated, whereas the other half do not have any regulation. Slightly fewer than half of the social protection programmes in India are characterised by regulatory frameworks. For Afghanistan and Sri Lanka only one regulatory framework in support of the programmes mapped was found. In Bangladesh and Bhutan none of the programmes are supported by regulatory frameworks: this finding is particularly significant for Bangladesh, since it is the country with the most programmes mapped.
- From a temporal perspective, each regulatory framework—except for that for *Bait-ul-Mal* in Pakistan—has been enacted since the beginning of the new millennium.
- In terms of compliance with international standards, the analysis revealed that the only criterion integrally complied with by each regulatory framework relates to the definition of roles and responsibilities. The remaining criteria presented the following compliance rates: eligibility 78 per cent; long-term financial requirements 68 per cent; mechanisms for transparency 67 per cent; predictability of benefits 58 per cent; accessible complaints and appeals mechanisms 41 per cent; and participatory channels 26 per cent. It needs to be emphasised that the lack of compliance in relation to complaints and appeals mechanisms poses an almost insurmountable obstacle to the implementation of a human rights-based approach to social protection, given that institutions cannot be held accountable while rights-holders are not in a position to enforce their rights.

1. INTRODUCTION

1.1 Background and objectives

In recent decades, considerable progress has been achieved in the reduction of poverty worldwide. The global rate of extreme poverty dropped from 35.9 per cent in 1990 to 10 per cent in 2015—an average decline of 1 percentage point per year (World Bank 2018). Progress in South Asia has been even more significant: the poverty rate dropped by 35 percentage points during the same period. Further, the number of extremely poor people living in the region fell from 510 million in 2005 to 216 million in 2015 and is projected to further fall to 96 million in 2019 (Sánchez-Páramo 2020). However, the region's share of poor people has increased and remains the second highest globally (Deysappriya 2018). Around 619 million children live in South Asia, representing approximately 34 per cent of the total population (World Bank 2019). Slightly fewer than 140 million are living in extreme poverty (on less than USD1.90 a day—monetary poverty), representing around a third of the world's extremely poor children (ILO and UNICEF 2019). The situation is no better when multidimensional poverty is considered. For example, Alkire et al. (2018) report that in Afghanistan, Bangladesh and Pakistan more than half of children aged 0–9 years old are multidimensionally poor, which significantly hinders the realisation of several fundamental rights.

Social protection, widely recognised as an effective way to reduce poverty, vulnerability and exclusion, fundamentally addresses the most common risks that a person might typically face over the life cycle. An ever-growing body of research has documented the positive effects of social protection on preventing and reducing both monetary and multidimensional child poverty—see, for example, Bastagli et al. (2016).

Further, social protection is a human right enshrined in several fundamental treaties, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR). The analysis of whether and how the right to social protection is incorporated into domestic law is an important starting point for advancing children's rights.

Against this background, the main objective of this study is to present an assessment of the state of children's right to social protection in South Asia, by providing an analysis of the existing legal and regulatory frameworks of the region's social protection systems. In addition, the degree of compliance of the existing legislation regulating national non-contributory social protection programmes will be analysed *vis-à-vis* what is prescribed by international legal standards and the human rights-based approach (HRBA) to social protection. These assessments can help identify potential regulatory gaps and shortcomings and, ultimately, strengthen national social protection legal frameworks by bringing them in line with international human rights standards.

1.2 Methodology and limitations

This research is based on a desk review of the legal frameworks that support and regulate social protection, covering the eight countries of South Asia: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. The selection of programmes is derived from a previous mapping of non-contributory social protection programmes in the Asia and Pacific region (IPC-IG and UNICEF 2019).¹ A total of 51 non-contributory programmes were analysed (see Annex I), belonging to the following categories of social protection measures:

- Unconditional cash transfer
- Conditional cash transfer

1. The latest version of the mapping actually has 52 programmes. For our legal study, however, we consider a previous sample comprising only 51 programmes. This difference is because the IPC-IG and UNICEF (2019) mapping included additional Afghani programmes close to its publication. Because legal analysis takes longer than taxonomical analysis such as that provided by IPC-IG and UNICEF (2019), we decided to leave these additional programmes to a future study.

- School feeding programmes
- Cash for work
- Food for work
- Educational fee waiver
- Food subsidy
- Housing subsidies
- Non-contributory health insurance
- Unconditional in-kind transfer
- Sustainable livelihoods programmes
- Institutional purchase that benefits smallholder farmers
- Training
- Health fee waiver
- Social support services

For definitions of programme types used in this study, please refer to Annex II.

In this study, 'legal framework' is defined as "all national laws and other decrees or secondary legislations and regulations" (Transform 2017). The analysis encompasses the following sources:

- international human rights law and relevant conventions and recommendations of the International Labour Organization (ILO);
- national constitutions;
- statutory law;
- executive decrees and regulations; and
- where applicable, court rulings.

The main resources used to search for information were:

- the United Nations Treaty Body Database (OHCHR 2019a), which in addition to international human rights instruments relevant to the study also includes reports of States parties to treaty-based bodies on the implementation of the core human rights treaties and observations of independent expert committees on the application of such treaties at the national level;

- the ILO's NORMLEX,² gathering information on international labour standards;
- websites of South Asian Association for Regional Cooperation (SAARC) bodies, encompassing relevant agreements at the regional level;
- the ILO's NATLEX,³ a database of national, labour, social security and related human rights legislation; and
- websites of relevant national ministries, with particular emphasis on the national ministries of law and justice, those responsible for social protection and law commissions.

Several limitations to the study must be considered. One of the main challenges is the lack of updated and publicly available information, especially regarding legal frameworks associated with the programmes. Moreover, there are significant differences in the amount of information available for different countries in the region.

Most of the key sources of information, such as national legislation, decrees, statutes, policy reports etc., are often only available in the country's official language. This barrier has been overcome through the use of translators and UN Volunteers; however, the risk of having missed relevant information remains and must be presented as a possible limitation.

Perhaps the most significant limitation is that subnational legislation (e.g. at the state/provincial level) falls outside the scope of the present study: this is particularly relevant for federal and quasi-federal countries.

A final, significant limitation, is that the study focuses exclusively on legal coverage—the presence (or absence) of regulatory frameworks (and their content) relevant to social protection. A further, crucial step would be to understand how such legal provisions are implemented in practice—i.e. their effective coverage.

1.3 Structure of the study

The study is organised as follows. Section 1 illustrates the conceptual framework of the study, including the rationale for child-sensitive social protection, the role of legal frameworks in social protection systems, and the concept and implications of an HRBA to social protection. The final part of Section 1 puts into context social protection in international, regional and national law.

Section 2 is the analytical framework. The analysis starts with the ratification of the nine core human rights treaties by South Asian countries, highlighting the associated implications. Then the study shifts to the regional level, focusing on the role of the SAARC and the associated relevant regional agreements. In a third step, the national level is considered. Within this context, the study follows the hierarchy of the sources of law: in the first place, constitutional settings are assessed. Statutory social protection and child-focused legislation are subsequently analysed, touching on aspects that shape social protection. The actual social protection landscapes are then assessed in terms of applicable policy and legal frameworks. Finally, the last subsection is divided into two parts. The first provides an overview of the legal frameworks regulating and supporting the programmes mapped, including their evolution over time. The second part is an assessment of the compliance of the existing legislation regulating the schemes with what is prescribed by international human rights law and an HRBA to social protection. The questions that the second part aims to answer are:

2. See <[3. See <\[>.\]\(https://www.ilo.org/dyn/natlex/natlex4.home?p_lang=en\)](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0::NO::>>.</p>
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- Does the legislation define precise eligibility requirements?
- Does the law provide mechanisms to ensure transparency and access to information?
- Are the various roles and responsibilities of those involved in the implementation of the schemes clearly defined in the legislation?
- Does the legal framework articulate long-term financial requirements and ensure the adequacy and predictability of benefits?
- Are complaints and appeals mechanisms available?
- Are there any participation channels for citizens?

2. CONCEPTUAL FRAMEWORK

2.1 The rationale for child-sensitive social protection

This report uses the UNICEF (2012, 23) definition of social protection: “the set of public and private policies and programmes aimed at preventing, reducing and eliminating economic and social vulnerabilities to poverty and deprivation.” UNICEF’s work on social protection mainly focuses on four components: social transfers; programmes to ensure economic and social access to services; social support and care services; and legislation and policies to ensure equity and non-discrimination in children’s and families’ access to services, employment and livelihoods (UNICEF 2012).

The Global Coalition to End Child Poverty (2017, 3) describes child-sensitive social protection as “a well-proven approach within social protection to help realise the rights of children. Child-sensitive social protection helps families to cope with chronic poverty, stresses and shocks and enables them to invest on an adequate and continuing basis in their children’s well-being”

The core message is that child-sensitive social protection can, on the one hand, help children realise their rights and develop their full potential and, on the other hand, generate long-term returns for society as a whole, both in economic terms and from a human development perspective. In line with an HRBA to development, child-sensitive social protection can significantly contribute to realising children’s rights and expanding their opportunities. Moreover, the literature⁴ indicates that social protection is an effective tool with which to address the aforementioned disadvantages, risks and vulnerabilities, and external shocks, with the goal of improving child nutrition, health, education and protection (Global Coalition to End Child Poverty 2017).

In addition to these important immediate impacts on children, child-sensitive social protection can also have long-term societal returns, as it fundamentally contributes to building human capital. The first 1,000 days of a child’s life, specifically, and early childhood in general are critical periods for physical, cognitive and psychological growth. Investing in children means ensuring their full development while building the future human capital of nations. Heckman (2006) concludes that investing in disadvantaged children promotes fairness and social justice while promoting productivity in the economy and society at large. Conversely, failure to fully develop individuals’ physical, cognitive and psychological abilities

4. See, for example, UNICEF (2012), for case studies on child-sensitive social protection programmes that have proven particularly beneficial and effective.

entails negative, often permanent, consequences, which might generate significant costs for society—for example, in terms of health and social care. Furthermore, by often targeting households and caregivers, social protection produces various positive economic impacts, such as asset and consumption protection against shocks, increased investment in economic activities and increased engagement in the labour market. Social protection can also have a multiplier effect on the economy, by stimulating demand and injecting cash into local economies.

Yet, to achieve these results, social protection interventions need to effectively consider children's specific needs and vulnerabilities. To that end, the principles of child-sensitive social protection have been defined as a result of a UNICEF-managed inter-agency effort. The 'Joint Statement on Advancing Child-Sensitive Social Protection' (DFID et al. 2009) contains the principles reported in Box 1.

Box 1. Principles of child-sensitive social protection

- Avoid adverse impacts on children and reduce or mitigate social and economic risks that directly affect children's lives.
- Intervene as early as possible where children are at risk, in order to prevent irreversible impairment or harm.
- Consider the age- and gender-specific risks and vulnerabilities of children throughout the lifecycle.
- Mitigate the effects of shocks, exclusion and poverty on families, recognising that families raising children need support to ensure equal opportunity.
- Make special provision to reach children who are particularly vulnerable and excluded, including children without parental care, and those who are marginalised within their families or communities due to their gender, disability, ethnicity, HIV and AIDS or other factors.
- Consider the mechanisms and intra-household dynamics that may affect how children are reached, with particular attention paid to the balance of power between men and women within the household and broader community.
- Include the voices and opinions of children, their caregivers and youth in the understanding and design of social protection systems and programmes.

Source: (DFID et al. 2009).

Importantly, one principle refers explicitly to the enactment of 'special provisions' to support vulnerable and marginalised children—i.e. refugee and internally displaced children, migrant children, children with disabilities and orphans.⁵ This principle is even more pressing in the context of South Asia, as the region is particularly exposed to disasters such as flooding, droughts, earthquakes, refugee flows and climate change (UNICEF ROSA 2017), which entails an even greater need for social protection, including child-sensitive social protection.

Finally, it is important to keep in mind that social protection policies do not necessarily have to target children to benefit them. For instance, policies providing income security to households can decrease financial barriers to the well-being of children and ensure their access to basic services (UNICEF 2012).

2.2 The role of social protection legal frameworks

Wide consensus exists among stakeholders regarding the role of social protection systems in addressing poverty, shocks, structural and social vulnerabilities, both *ex ante* and *ex post* (ibid.). A key element of sustainable and

5. Children might belong to more than one of these groups.

effective social protection is effective coordination of action and (public and private) stakeholders: fragmentation of social protection results in inefficient allocation of resources, high costs, lack of economies of scale and scattered coverage. Further, when poorly coordinated social protection programmes fail to deliver the expected outcomes, there is considerable risk of eroding political commitment and public support for poverty and vulnerability reduction, which are central to building long-lasting and sustainable social protection systems (International Conference on Resilient Social Protection for an Inclusive Development 2019).

In addition to policies, budget, programmes and their corresponding implementation mechanisms, social protection systems rely on regulatory frameworks for social protection (Samson 2015), the object of the present study.

The absence of a statutory basis for social protection, besides contributing to fragmentation of provision, entails the following negative consequences (Transform 2017):

- there is no statutory compulsion on the part of governments to take action in this area, and an inability on the part of courts to monitor government action in the absence of clear legal objectives, standards and provisions;
- individuals and communities in need of protection are exposed to arbitrary and discretionary selection, decision-making and changes of rules, particularly in times of crisis when the risks to vulnerable people and the need for assistance are greatest; and
- there is less incentive and pressure to effectively implement assistance to vulnerable groups in need of protection, as prioritised nationally by broad national social dialogue.

Moreover, the absence of a legal framework entails inefficiencies, higher costs and a lack of transparency deriving from fragmentation and, ultimately, translates into narrower and more difficult access for beneficiaries to programmes (Samson 2015).

Conversely, there are multiple reasons supporting the establishment of a strong statutory basis for social protection, including:

- recognising social protection as a right and defining its normative content, with a view to guaranteeing effective and adequate protection from certain social risks and contingencies;
- determining the rights and obligations of concerned parties, providing potential programme beneficiaries with clear information on benefits available, qualifying criteria etc.;
- providing rules to guarantee a uniform application of the schemes and their correct functioning;
- legal frameworks for social protection contribute to greater predictability of the guaranteed benefits, which is particularly relevant for the effectiveness of social protection in reducing vulnerability and poverty (Bastagli 2016);
- mechanisms that enable beneficiaries to claim their rights, thus reducing the possibility of arbitrary discrimination by authorities, create legal awareness—a fundamental element for the legal empowerment of the most vulnerable populations (Commission on Legal Empowerment of the Poor 2008);
- enacting social protection statutory legislation offers an opportunity to set long-term objectives and establish a common understanding of social protection, coherence between programmes, financing and administration modalities; and

- incorporating social protection systems/programmes into law is a fundamental guarantee against political change in governments (Kaltenborn 2017).

Further, the law-making process, which culminates in legislation, is a fundamental guarantee of transparency and accountability. When this process is participatory or preceded by participatory consultations, it allows the law to be tailored on the basis of the specific needs and priorities brought up by the subjects involved (individuals, civil society sector etc.).

Finally, it must be highlighted that the adoption of social protection legislation does not automatically translate into positive change: there is a fundamental need to implement both constitutional (where existent) and statutory provisions, and often it is at this stage when most problems occur. Therefore, it is often useful to make a distinction between legal and effective coverage: the first measures the number of social protection provisions which—according to national legislation—cover a population (or specific groups); the latter assesses how legal provisions are implemented in practice (ILO 2014). While this report focuses exclusively on legal coverage, a further study concerning the effective coverage of the existing legal frameworks would allow an understanding of how they are actually implemented. This would be particularly important considering that effective coverage might lag behind for several reasons, including, for example, implementation and enforcement problems, lack of coordination and weak institutional capacity.

2.3 Human rights-based approach to social protection

The HRBA can be generally described as a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed at promoting and protecting human rights (Human Rights Based Approach Portal 2019). In accordance with the HRBA, development plans, policies and processes are anchored in a system of rights and corresponding obligations established by international law. Importantly, the HRBA is a programming principle for United Nations agencies and requires that all development cooperation programmes, policies and technical assistance further contribute to the realisation of human rights, as laid down in the Universal Declaration of Human Rights and other international human rights instruments (UNDG 2003).

As discussed in detail in the next subsection, social protection is enshrined as a human right in several core human rights treaties. According to the HRBA to social protection, countries—as duty-bearers—are obliged to provide at least a minimum, essential level of non-contributory social protection and are accountable for related acts and omissions; conversely, rights-holders—individuals—are entitled to making legitimate claims. Piron (2004) identifies the following key contributions of the HRBA to social protection:

- it considers social protection a right and not a matter of ‘charity’;
- it places clear obligations on countries to guarantee the fulfilment of that right;
- it uses a range of international human rights standards to justify social protection, starting with those related to social security but fanning out to encompass all human rights;
- it highlights the core obligations and minimum standards that can be expected, as well as the specific demands of vulnerable groups;
- it influences the development of social protection schemes;
- it places citizenship and the importance of understanding social and political contexts at the centre of the justification and delivery of social protection;

- it consequently requires a focus on the ability of citizens to claim entitlements, and, in parallel, on accountability mechanisms and institutional capacity to guarantee the appropriate design and delivery of social protection; and thus
- it links demand-side with supply-side considerations.

Table 1 illustrates the principles of the HRBA applied to social protection.

Table 1. Principles of a human rights-based approach to social protection

| Principle | Application |
|--|---|
| Universality of protection | Social protection guarantees must ensure at a minimum that, over the life cycle, all in need of protection have access to essential health care and basic income security. |
| Dignity and autonomy | By responding to the particular needs of disadvantaged individuals and groups, social protection shall also promote dignity and minimise any form of stigmatisation. |
| Equality and non-discrimination | All forms of discrimination must be eliminated by States, including those directed at nullifying or impairing the equal enjoyment or exercise of the right to social protection. |
| Inclusion | Special provisions, within and outside the social protection context, shall be adopted for vulnerable groups, with a view to foster their inclusion in society. |
| Gender | Substantive equality requires States to transform unequal power relations between women and men, |
| Accessibility, adaptability, acceptability and adequacy of the schemes | Social protection schemes must be accessible, adapted to the specific needs of the population and to local contexts and deprivations, culturally acceptable and adequate as to the benefits accorded, including the time dimension. |

Source: Author's elaboration based on UNICEF (2014), Sepúlveda (2012) and Transform (2017).

As mentioned previously, the HRBA has significant implications for situation analysis, programming and budgeting.

- **Situation analysis:** Human rights analysis provides insights into the distribution of power in societies. By identifying groups lacking effective rights—and groups that may be denying rights to others—it can help understand the dynamics of poverty and vulnerability. As such, the HRBA provides a way of examining the operation of institutions and political and social processes that influence the livelihoods of poor and vulnerable people. Critically, the HRBA seeks a deeper understanding of the relationships between rights-holders and duty-bearers to help bridge the gaps between them.
- **Programming:** Human rights help establish boundaries by requiring a core minimum threshold of entitlements for all and by highlighting key issues that must be addressed through programming: for example, according priority to groups suffering discrimination. Even if not all groups can be reached at once, efforts should be made to identify these groups at the outset and include them immediately in planning.
- **Budgeting:** National budgets have a significant and direct impact on which human rights are realised and for whom. Budget analysis is a critical tool for monitoring gaps between policies and action, for ensuring the progressive realisation of human rights, for advocating for alternative policy choices and prioritisation, and, ultimately, for strengthening the accountability of duty-bearers in the fulfilment of their obligations. The budget can be understood as the outcome of systems and relationships through which the varying needs and desires of a nation are heard, prioritised and funded. The choices made by governments as to how resources are collected and distributed—and which rights are realised and for whom—are not value-free or politically neutral. A rights-based approach to the budget demands that such choices be made based on transparency, accountability, non-discrimination and participation.

Finally, it is worth highlighting that the HRBA, in addition to offering normative standards, principles and operational guidance in designing, implementing and evaluating social protection, also enhances effectiveness and contains costs (Piron 2004). A study by the Organisation for Economic Co-operation and Development (OECD 2013, 78) on the countries that have achieved the Millennium Development Goals reports that “rights-based approaches reach poor households more effectively while minimising administrative, social, political and particularly economic costs, enabling social protection to generate maximum growth and development impacts”

2.4 Contextualisation of social protection in international, regional and national legislation

The international level

The first part of this section is dedicated to examining the right to social protection and to an adequate standard of living in the context of the human rights system, whereas the second part discusses the role of the ILO's conventions and recommendations on social protection, with particular reference to the establishment and development of national social protection floors.

Social protection within the context of human rights instruments

Human rights instruments⁶ play a crucial role in determining the scope and content of social protection systems, as they provide binding standards for States parties and often serve as reference points for the development or improvement of national systems.

The International Bill of Human Rights comprises the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Given the non-binding nature of the UDHR, the ICCPR and the ICESCR were adopted to create legally binding obligations regarding the civil, political, economic, social and cultural rights enshrined in the UDHR for the States that have agreed to be bound by such covenants.

Central to this report are the human rights to social security⁷ and to an adequate standard of living, found, respectively, in Articles 22 and 25 of the UDHR and mirrored in Articles 9 and 11 of the ICESCR. The right to social security fundamentally responds to the need for protection against essential risks, such as: the 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 (OHCHR 2019b). The right to an adequate standard of living fundamentally implies the provision of basic human needs (e.g. food and nutrition, clothing, housing etc.): based on this right, international bodies, have sought to introduce certain levels of financial and other benefits which aim to provide a basic standard of living for persons in need (Oliver et al. 2003). Further, the two rights are complementary, considering that the right to social security creates an entitlement to adequate income support, whereas the right to an adequate standard of living aims to guarantee access to adequate food, clothing and housing, and the continuous improvement of living conditions.

6. There are nine core international human rights instruments—some complemented by optional protocols—each establishing a committee of experts to monitor implementation of the treaty provisions by States parties; these are: the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the Rights of Persons with Disabilities.

7. It is important to point out that human rights instruments refer to the right to social security, which also includes social insurance, rather than using the term ‘social protection’. This led the Committee on Economic, Social and Cultural Rights, in 2008, to clarify the normative content of the right to social security as also encompassing non-contributory schemes, in addition to contributory social security and insurance-based schemes.

Box 2. The right to identity

The UDHR, among other sources,⁸ affirms that “everyone shall have the right to recognition everywhere as a person before the law”. Thus, the State shall provide formal, legal recognition of the identity of citizens (including poor people) that corresponds to their civic and economic agency as citizens, asset holders, workers and businessmen/women. Without such legal identity and its proof—for example, an identification card, a birth certificate—poor people are likely to be excluded from the formal protections of the State’s legal system and as beneficiaries of public goods and services.

Relevant to our context, civil registration, establishing the legal identity of a person, is the first formal recognition by the State of a child’s existence: without a birth certificate, access to a number of fundamental services, including social protection, health and education, can be denied. In this sense, UNICEF ROSA (2018) reports that only 60 per cent of South Asian children under 5 years of age are registered and have a birth certificate; in many countries in the region there is even less registration of deaths, marriages and other vital events. The registration of such events is a fundamental prerequisite for providing effective protection and for informing States’ planning and policymaking.

Source: Author’s elaboration.

Given the interdependence and interrelatedness of human rights, the realisation of the right to social security can contribute to the achievement of other economic, social and cultural rights. In this regard, the literature indicates that social protection schemes can substantially contribute to the enjoyment of minimum essential levels of economic, social and cultural rights by the poorest people (Barrientos 2010).

Both rights, like any human right, impose three types of obligations on States parties (International Commission of Jurists 1997):

- The obligation to **respect** requires that States refrain from interfering directly or indirectly with the enjoyment of the right to social security and adequate standards of living.
- The obligation to **protect** requires that States prevent third parties from interfering in any way with the enjoyment of the right to social security and adequate standards of living. The term ‘third parties’ encompasses individuals, groups, corporations and other entities, as well as agents acting under their authority. For example, when a social protection scheme is operated or controlled by a third party, the State is responsible for ensuring that this private actor does not compromise equal, adequate, affordable and accessible social security.
- The obligation to **fulfil** requires States to take positive measures to assist individuals and communities to enjoy the rights mentioned above.

General Comment No. 19 of the Committee for Economic, Social and Cultural Rights (CESCR) defines the content of the right to social security and further enumerates the State’s obligations inherent to such a right, as illustrated in Table 2.

8. See, for example, Article 8 of the Convention on the Rights of the Child; Article 16 of the International Covenant on Civil and Political Rights; Article 24 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and Article 12 of the Convention on the Rights of Persons with Disabilities.

Table 2. The human right to social security, as interpreted by the Committee for Economic, Social and Cultural Rights

| General Comment No. 19 para. | Content |
|------------------------------|---|
| Para. 4 | The right to social security encompasses contributory or insurance-based schemes, such as social insurance, and non-contributory schemes, such as universal or targeted social assistance. |
| Para. 31 | States party to the ICESCR must progressively ⁹ ensure the right to social security to all individuals, providing specific protection for disadvantaged and marginalised individuals and groups. |
| Paras 11 and 22 | In realising the right to social security, States parties should: establish social protection systems by national law and guarantee their sustainability to ensure that the right can be realised for both present and future generations (para. 11); and assure the compliance of the benefits, in terms of level and form, with the principles of human dignity and non-discrimination. ¹⁰ |
| Paras 23–27 | States must ensure the equal availability of the right to social security, guaranteeing universal coverage as well as reasonable, proportionate and transparent eligibility criteria, affordability and physical accessibility for beneficiaries, as well as their participation, and provide information about the provision of benefits. |
| Para. 42 | There is a strong presumption that States cannot adopt deliberately retrogressive measures—i.e. steps that diminish people's current enjoyment of their rights—in relation to the right to social security. Such presumption ceases when the State party proves that: 1) all other possible alternatives to the measure were duly considered; and 2) the measures implemented are justified by reference to the totality of the rights provided for in the Covenant, in the context of the full use of the maximum available resources of the State party (para. 42): given that the full use of the maximum available resources does not allow the contextual implementation of all rights enshrined in the ICESCR, the retrogressive measure inherent to social protection must be the result of the fulfilment of the other rights enshrined in the ICESCR. This is a typical case where the situation analysis and programming process prescribed by the HRBA, ¹¹ can be fruitfully implemented. |
| Para. 41 | Despite the significant financial implications of realising the right to social security, appropriate priority in law and policy should be afforded to such right. According to interpretation provided, 'appropriate priority' entails the development of a national strategy for full implementation and the adequate allocation of fiscal and other resources. Further, where necessary for the progressive realisation of the right, States parties should avail themselves of international cooperation and technical assistance, in line with ICESCR's first para. of Art. 2. ¹² |
| Para. 59 | States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels ¹³ of each right enunciated in the ICESCR. With reference to the right to social security, States, as duty-bearers need to ensure access to social security schemes providing, at a minimum, access to essential health care, basic shelter and housing, water and sanitation, foodstuffs and basic education. When a State is not in a position to provide this minimum level for all risks and contingencies within its maximum available resources, it should, after a wide consultation process, select a core group of social risks and contingencies. |
| Para. 60 | To legitimately substantiate its non-compliance resulting from a lack of available resources, a State party must demonstrate that every effort has been made to use all resources available to provide the minimum essential benefit levels. |

Source: Author's elaboration.

9. The international human rights system recognises that economic, social and cultural rights will be realised progressively and are subject to the availability of resources. Accordingly, the precise obligations arising from some human rights vary over time in relation to the same State—progressive realisation—and from one State to another—because of different availability of resources. This leads to two major implications. First, it allows for a time dimension in the strategy for the fulfilment of human rights. Second, it allows different rights to be prioritised at any point in time, since the resource constraints may not permit a strategy to pursue all rights simultaneously with equal vigour.

10. The principle of non-discrimination is one of the fundamental elements of international human rights law. The universality of human rights means that they apply to all people without any condition or limitation based on race, colour, sex, language, religion, birth or any other social condition.

11. See the previous section.

12. It is incumbent on all of those in a position to assist (for example, developed countries and international organisations) to provide international assistance and cooperation to enable developing countries to fulfil their core obligations and reach the international minimum threshold.

13. Despite the concepts of 'progressive realisation' and 'resource availability', international human rights law specifies core obligations that require States to ensure—with immediate effect—certain minimum levels of enjoyment of civil, political, economic, social and cultural rights. When grouped together, the core obligations of human rights establish an international minimum threshold.

As already mentioned, the right to an adequate standard of living requires States parties to ensure, at a minimum, the provision of ‘subsistence rights’, which enable people to enjoy their basic needs in dignity. The content of this right has been interpreted by the CESCR through several general comments. The components of the right to an adequate standard of living include the right to adequate housing (General Comments 4 and 7), the right to food (General Comment 12), the right to water (General Comment 15) and the right to social security (General Comment 19).

One of the goals of human rights instruments is to protect vulnerable individuals and groups, often by establishing additional guarantees for these groups (Sepulveda 2004). This is the case of the United Nations Convention on the Rights of the Child (CRC), which fundamentally recognises the child as a recipient of specific rights other than those of adults. Art. 26 imposes on States parties the recognition of the child’s right to benefit from social security and calls for the adoption of the necessary measures to achieve the full realisation of such right in accordance with national law. Further, Art. 27 clarifies that the parent(s) and other people responsible for the child are, within their abilities and financial capacities, primarily responsible for securing the conditions of living necessary for the child’s development (para. 2). Yet the following paragraph entails two obligations on States parties: one calls for the adoption of measures, in accordance with national conditions and within their means, to assist parents and others responsible for the child to implement this right; the second requires, in case of need, the provision of material assistance and support programmes, with particular reference to nutrition, clothing and housing. From a more general perspective, a number of international human rights instruments covering specific population groups explicitly refer to the right to social protection and to the right to an adequate standard of living, hence reinforcing the provisions of the ICESCR, as illustrated in Table 3.

Table 3. International legal instruments covering specific population groups reinforcing the right to social protection and to an adequate standard of living

| International legal instruments covering specific population groups | Right to social protection | Right to an adequate standard of living |
|--|----------------------------|---|
| Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) | Art. 11(1)(e), 11(2)(b) | Art. 14 (2) ¹⁴ |
| Convention on the Rights of the Child (CRC) | Art. 26(1) | Art. 27 |
| Convention on the Rights of Persons with Disabilities (CRPD) | Art. 28(1) | Art. 28(2) |
| Convention on the Elimination of All Forms of Racial Discrimination (ICERD) | Art. 5(e) | Art. 5(e) |
| International Convention on the Protection of the Rights of All Migrant Workers and Their Families (ICRMW) | Art. 27 | |

Source: Author’s elaboration.

ILO convention and recommendations

The UDHR also provided the basis for the ILO’s landmark Convention No. 102 on social security, setting out minimum standards for the nine main branches of social security and covering both contributory and non-contributory schemes—i.e. medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors’ benefits. It should be stated that no country in the region has ratified Convention No. 102; however, all are members of the ILO, except for Bhutan.

The rise of social protection programmes in the global South in the late 1990s and the 2008 financial and economic crisis have paved the way for government-funded minimum social protection floors. The ILO’s Recommendation No. 202 on national social protection floors is a soft-law, non-binding instrument (see Box 3) adopted in 2012, aiming to contribute to the realisation of the human right to social security and essential services at the national level.

14. The provision refers to rural women.

Para. 4 foresees that ILO Member States are called on to maintain or establish social protection floors in accordance with national circumstances and as quickly as possible. As such, this recommendation applies to all ILO member countries, although it does not require ratification.

Box 3. Soft-law instruments

Soft-law instruments do not create any legal obligation, yet they are not merely descriptive, as they provide indications of what States and non-state actors should do. In light of their non-binding nature, the subsequent question arising is why, in recent years, we have witnessed the growing use of soft-law instruments in the international context. As clearly stated by Cotula (2017, 123), “in politically sensitive arenas that involve polarised positions and have traditionally fallen in the exclusive preserve of national jurisdiction, opting for a soft-law instrument can present significant process-related advantages to incrementally develop consensus-based normativity. Over time, the international consensus embodied in soft-law instruments can also provide the foundations for the development of legally binding norms—as has been and is being done in relation to international instruments in the human rights field.”

The authoritative value and legitimacy of these instruments fundamentally relies on building political consensus and social legitimacy based on best practices rather than constituting binding obligations. The ‘political consensus’ and ‘social legitimacy’ are, in turn, strictly interlinked with the broader participatory process instrumental in the development of soft-law instruments, which generally involves not only the participation of state representatives but also of the private sector and of civil society. Therefore, soft-law instruments, although not legally binding, can entail significant public pressure and reputational risks to those, either public or private actors, whose conduct differs from that prescribed.

Recommendation No. 202 is based on a two-dimensional strategy: while the horizontal dimension addresses the need to ensure minimum levels of income security and access to essential health care, the vertical dimension is directed towards the progressive achievement of higher levels of social protection as defined by the ILO’s social security standards—particularly Convention No. 102. The Recommendation is grounded in a rights-based approach and highlights the need to adopt at national level legal frameworks that clearly identify entitlements, rights and obligations (paragraphs 3b and 7). In the Recommendation, social protection floors are defined as “nationally defined sets of basic social security guarantees which secure protection aimed at preventing or alleviating poverty, vulnerability and social exclusion” (para. 2). Moreover, national social protection floors should comprise at least four basic social security guarantees (para. 5):

- access to a nationally defined set of goods and services, constituting essential health care, including maternity care, that meet the criteria of availability, accessibility, acceptability and quality;
- 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;
- basic income security, at least at a nationally defined minimum level for persons of active age who are unable to earn sufficient income, in particular in cases of sickness, unemployment, maternity and disability; and
- basic income security, at least at a nationally defined minimum level for elderly people.

The guarantees should ensure at a minimum that, over the life cycle, all people in need have access to essential health care and to basic income security, which together secure effective access at the national level to goods and services defined as necessary (para. 4).

The regional level

Considering that social protection is a human right, the role of regional human rights systems must be considered. As reported by the International Justice Resource Center (2017), “regional human rights bodies monitor, promote and protect human rights in several geographical regions around the world. In Africa, the Americas, and Europe, the regional human rights systems play a significant role in protecting human rights among their Member States, including by deciding States’ responsibility for violations alleged in complaints submitted by individuals. [...] Under the regional systems, only States may be held accountable for human rights violations. These systems do not prosecute individuals or decide individuals’ responsibility for human rights violations. By creating and joining regional human rights treaties, States have agreed to respect, protect, and guarantee the enjoyment of specific freedoms for all people within their territories. States may be held accountable for violations of these freedoms that are caused by the State’s laws or policies or by the actions of State agents, as well as for violations that the State or its agents allowed to occur or failed to prevent.

In the Americas, Africa and Europe, the key feature of each system is a complaints mechanism through which individuals can seek justice and reparation for human rights violations committed by a State party. The regional human rights commissions and courts determine whether the State is responsible for the alleged violation and, if so, what the government should do to repair the damage. These bodies can also ask States to take action, or refrain from taking action, to avoid irreparable harm to the complainant; these orders or requests are often referred to as ‘interim measures’ or ‘provisional measures’.

However, human rights systems are not meant to take the place of national courts. Rather, individuals alleging human rights violations before a regional human rights body must generally first try to resolve the problem using any appropriate remedies that are available at the local or national level. States will only be considered internationally responsible for human rights violations that the government failed to remedy, in a suitable and timely manner, when it had the opportunity to do so.

In addition to deciding individual complaints, the regional human rights systems engage in a range of human rights **monitoring and promotion** activities.”

Finally, it has to be taken into account that various regional instruments (charters, conventions, agreements, protocols, codes etc.) which fall outside the scope of regional human rights systems—for example, those adopted by regional organisations for cooperation—can have an impact on the regulation of social protection at regional and national levels.

The national level

The different sources of law—constitutions, statutory and sub-statutory legislation—can play different roles in regulating social protection. The analysis will follow the hierarchy of the sources of law—i.e. starting with the constitution, which represents the legal, institutional and political foundation of a country, to then consider statutory and sub-statutory legislation.

In the constitution are defined several fundamental elements of legal systems that are relevant to social protection in different ways (Kaltenborn 2017), including:

- legislative procedures and government competencies providing legal regulations below the statutory level;
- jurisdiction and competence of constitutional courts and supreme courts in controlling laws and regulations;

- institutions responsible for developing and implementing social protections systems. It is worth noting that in countries organised around federative models, the competence for social protection might be attributed to the central government, single states or both; likewise, in decentralised systems different roles and responsibilities might be allocated between central government and local authorities. In both settings coordination and fiscal equality are key issues; and
- bills of rights and other constitutional provisions that might further establish conditions that must be respected in the design and implementation of social protection measures.

Constitutions

The right to social protection itself might be explicitly incorporated in constitutions—although often with different formulas. In constitutions where social protection can be classified as a justiciable right, individuals can use legal mechanisms to enforce it, such as in the case of Nepal and Maldives. Social protection can also be classified in a country’s constitution as a ‘directive’ or ‘policy principle’, which are guiding principles for the State to frame policies and laws (for example, in Bangladesh, Bhutan, India, Pakistan and Sri Lanka). In these instances, social protection is not conceived as a right; thus legal enforcement mechanisms do not apply.

The realisation of social protection—either conceived of as a right or as a responsibility of the State—might be subject to the availability of financial resources.

Supreme courts and constitutional bodies can play an important role in interpreting and enforcing the rights enshrined in constitutions, as in the case of India. Likewise, National Human Rights Institutions (NHRIs) promote and monitor the implementation of human rights at the national level.

Moreover, the constitution might create entitlements for specific categories (e.g. children, women, families, persons with disabilities etc.) or protect against specific social risks.

Finally, an obligation to fulfil the right to social protection might exist even when it is not explicitly mentioned in the constitution but when it refers to human rights obligations deriving from the ratification of treaties that include the right to social protection. For example, Argentina’s Constitution states, in Art. 75(22) that human rights treaties “stand on the same level as the Constitution... and must be understood as complementary of the rights and guarantees recognised therein”

Statutory legislation

An important component of a national legal framework for social protection is **statutory-level legislation**. A social protection law can be a **general legal framework** or, conversely, **regulate single aspects** of social protection (e.g. Sri Lanka adopted legislation providing for the payment of all social welfare benefits) or a **given social protection programme**. The benefits of introducing a general legal framework (see last subsection proposing a model) are interlinked with the provision of a common set of rules that applies uniformly to the whole social protection sector. These rules can be further integrated through more detailed legislation—for example, laying down *ad hoc* rules for specific social protection programmes. This approach was implemented in Maldives: the Social Protection Act, a national general legal framework for social protection, is further complemented by implementing regulations for each benefit afforded by the Act.

It is useful to clarify that also legislation regulating economic, social and cultural rights (e.g. the right to food, health, education etc.), other than social protection, can have significant impacts on the sector: such a feature

highlights the interdependence and interrelatedness of human rights and demonstrates that the realisation of one economic, social and cultural right can significantly contribute to the achievement of other rights. This is quite evident in the Indian case, in which social protection policies are well rooted in the history of the country even though they have never been formally classed under the ambit of social protection (Chopra 2014): for instance, the National Food Security Act (NFSA) has direct implications for the operation of all food distribution programmes in the country, as well as for the very criteria adopted by most poverty reduction programmes to mediate eligibility on those grounds.

In a similar vein, statutes protecting specific vulnerable groups (e.g. persons with disabilities, elderly people, women, children etc.) can recognise their right to one or more forms of social protection, as well as other economic, social and cultural rights whose implementation also ends up influencing social protection. This kind of legislation can also serve as a regulatory framework for a given social protection programme: for example, in Afghanistan the Law on Rights and Benefits/Privileges of Survivors of Martyrs and Missing Persons and the Law on Rights and Benefits/Privileges of People with Disabilities regulate the Martyrs and Disabled Pension Programme.

Sub-statutory legislation

Following the hierarchy of the sources of law, the subsequent level, particularly relevant at the administrative and programme levels, is sub-statutory legislation. Created by the executive branch, it is used to implement and regulate in detail norms and principles set at the statutory level. It includes, for example, ministerial and administrative decrees, regulations and circulars: they are generally characterised by a simpler adoption process than statutory legislation and are also easier to modify and update. Nevertheless, it is crucial to point out that, as a rule of thumb, these acts are legally enforceable (and are consequently subject to judicial review) exclusively when they give effect to statutory provisions; in all other instances these measures are merely administrative guidelines (Law 2018).

Minimum elements of a statutory general framework for social protection

To conclude this chapter, a model of legislation on the basis of Morlachetti (2015), intended to serve as a statutory general framework for social protection, is proposed below with the intention of highlighting the minimum elements, identified in the previous sections, that need to be included in such legislation. Such a model should be further adapted to the specific country context and features.

Scope, purposes and objectives of the law

- Define the scope of the law.
- Define the purposes and objectives of the law.
- Recognise social protection as a human right and maintain this view also in the other substantive provisions of the law.

Definitions

- In this section key terms (and concepts) that appear in the law are defined, fundamentally guaranteeing an agreed, specific meaning of certain terms throughout the text of the law.
- Using accepted international human rights standards and definitions as provided by treaties and treaty monitoring bodies is recommended for human rights and principles.

Responsible institutions (duty-bearers)

- Define obligations of public bodies and agencies (i.e. duty-bearers) responsible for the implementation of both social protection systems and programmes.
- Identify the roles and responsibilities of all government institutions, at both the central and the local level; in federal settings, the roles and responsibilities of federal and state governments should be clearly defined, in accordance with the constitution.
- Establish which public and private institutions are responsible for fulfilling the rights enshrined in the law; define which obligations, functions and mandates are within the competence of each institution.
- Designate the competent public authorities competent for laying down further rules and criteria for social protection.
- Establish/identify a ministry or institution responsible for coordinating the implementation of the provisions of the law.

Beneficiaries (rights-holders)

- Define the criteria for the scope and application of the law regarding rights-holders, taking into account that they must be non-discriminatory, objective, reasonable and transparent; such criteria can be integrated by further regulations and implementing decrees.
- Establish targeting mechanisms which are open to scrutiny and assessed regularly.
- Application procedures should be fair, simple, accessible and accompanied by appropriate safeguards.
- Causes of loss of benefits should be clearly identified and accompanied by appropriate safeguards.
- Safeguards should guarantee that social protection benefits are provided without any stigmatisation or harm to human dignity.

Non-discrimination clauses and special measures

- The right of beneficiaries not to be discriminated against should be explicitly included in the legislation.
- Taking into account provisions on the topic in human rights instruments, specify prohibited grounds of discrimination; add as a residual clause the phrase 'based on any other status'; to guarantee the possibility of including further hypotheses of discrimination not explicitly foreseen in the law.
- Mandate the obligation to take special measures to achieve formal and substantive equality and to enable access to social protection by those who suffer structural discrimination; it is important to emphasise within this context that constitutions might already explicitly allow positive discrimination in favour of vulnerable groups and individuals.
- Acknowledge children's rights and ensure full implementation of the principles contained in international human rights law, in particular non-discrimination, the best interest of the child, and the right to life, survival and development.

- Acknowledge the multiple forms of discrimination that women experience, and their specific needs throughout their life cycle.
- Acknowledge the special situation (and needs) of asylum seekers, refugees, migrant workers and their families.

Transparency and the right to be informed

- Recognise the right of individuals and organisations to seek, receive and impart information about social protection programmes, application procedures and eligibility criteria.
- Recognise that rights-holders must be provided with information about decision-making processes, who is accountable for implementing the law and available administrative, quasi-judicial and judicial remedies in case of violation.
- Provide for outreach and communication activities to increase the awareness of rights-holders about entitlements through media and other means.

Right to privacy and confidentiality of information

- Ensure privacy and confidentiality of all information belonging to beneficiaries that is collected and processed by the authorities for social protection purposes.
- Mandate that information must not be disseminated to other authorities or private institutions and used for other purposes without the consent of beneficiaries.
- Contain provisions about how this should be ensured in the context of unified registries.

Administrative and judicial reviews

- Establish substantive provisions on remedies in case of violation of the provisions of the law.
- Establish or designate administrative, quasi-judicial and judicial mechanisms.
- Include monitoring of the provisions of the law and the right to social protection in the mandate of NHRIs, where they exist.
- Recognise the right to remedy in case of violation of the provisions of the law, and preferably specify the types of remedies available.
- Identify the authority to which administrative complaints can be directed.
- Mandate that administrative decisions regarding entitlements should be subject to judicial review before the competent courts.
- Grant access to justice for anyone whose rights are violated, and guarantee due process in all legal proceedings.

Participation

- Establish mechanisms that allow for the participation of communities in the design, implementation and monitoring of programmes.
- Provide for the participation of civil society organisations in oversight mechanisms.

Budget provisions

- Establish provisions on financing arrangements for the implementation of the law; in federal settings both financing and allocation of funds between central and local government should be clearly declined.

Progressivity and non-retrogressive principle

- Where possible, it is recommended to clearly provide for the progressive realisation of the right to social protection and to prohibit the adoption of retrogressive measures.

Monitoring system

- Provide for appropriate monitoring and evaluation mechanisms and for the duty of competent authorities to report to other national authorities; such reports should also be open to public scrutiny.
- Provide for participatory monitoring systems that may include civil society representation and consultation with beneficiaries; it is also advisable to create a focal point within the relevant ministry to facilitate such processes.

3. ANALYTICAL FRAMEWORK

3.1 The international level

South Asia's adherence to core international human rights instruments

After having discussed the rights to social protection and to an adequate standard of living, it is necessary to understand whether countries in South Asia are bound by the instruments enshrining such rights. Table 4 and Figure 1 indicate where they stand in terms of ratification of core international human rights instruments.

Table 4 and Figure 1 show that, commendably, most countries in the region are States parties to agreements, with the exceptions of the International Convention on the Protection of the Rights of All Migrant Workers and Their Families (ICRMW) and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). Historically, half or more of South Asian countries take more than a decade to accede to these human rights instruments. Exceptions to the pattern of late accession are the CRC and the Convention on the Rights of Persons with Disabilities, which obtained the accession of all South Asian countries within their first decade of existence.

With the notable exception of Bhutan, all countries are parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and, therefore, have to ensure, in the terms detailed in Section 1.4, that they are complying with the subsequent obligations, including those related to social security and adequate standard of living. It is worth noting incidentally that none of the countries in South Asia is a State party to the Optional Protocol to the ICESCR, and only Maldives is a signatory. The Optional Protocol emphasises that all

rights violations must have a remedy mechanism, foremost in their own country, but at the international level if necessary; to that end, it fundamentally allows victims of violations of economic, social and cultural rights to present complaints before the CESCR.

Table 4. Dates of ratification of/accession to fundamental human rights instruments in South Asia

| Contry | Nine core human rights instruments | | | | | | | | |
|-------------|------------------------------------|--------------|---------------|--------------|--------------|------------|--------------|-------------|---------------|
| | ICERD [1965] | ICCPR [1966] | ICESCR [1966] | CEDAW [1979] | UNCAT [1984] | CRC [1989] | ICRMW [1990] | CRPD [2006] | ICPPED [2006] |
| Afghanistan | 1983 | 1983 | 1983 | 2003 | 1987 | 1994 | NA | 2012 | NA |
| Bangladesh | 1979 | 2000 | 1998 | 1984 | 1998 | 1990 | 2011 | 2007 | NA |
| Bhutan | 1973 | NA | NA | 1981 | NA | 1990 | NA | 2010 | NA |
| India | 1968 | 1979 | 1979 | 1993 | 1977 | 1992 | NA | 2007 | 2007 |
| Maldives | 1984 | 2006 | 2006 | 1993 | 2004 | 1991 | NA | 2010 | 2007 |
| Nepal | 1971 | 1991 | 1991 | 1991 | 1987 | 1990 | NA | 2010 | NA |
| Pakistan | 1966 | 2010 | 2008 | 1996 | 2010 | 1990 | NA | 2011 | NA |
| Sri Lanka | 1982 | 1980 | 1980 | 1981 | 1994 | 1991 | 1996 | 2016 | 2016 |

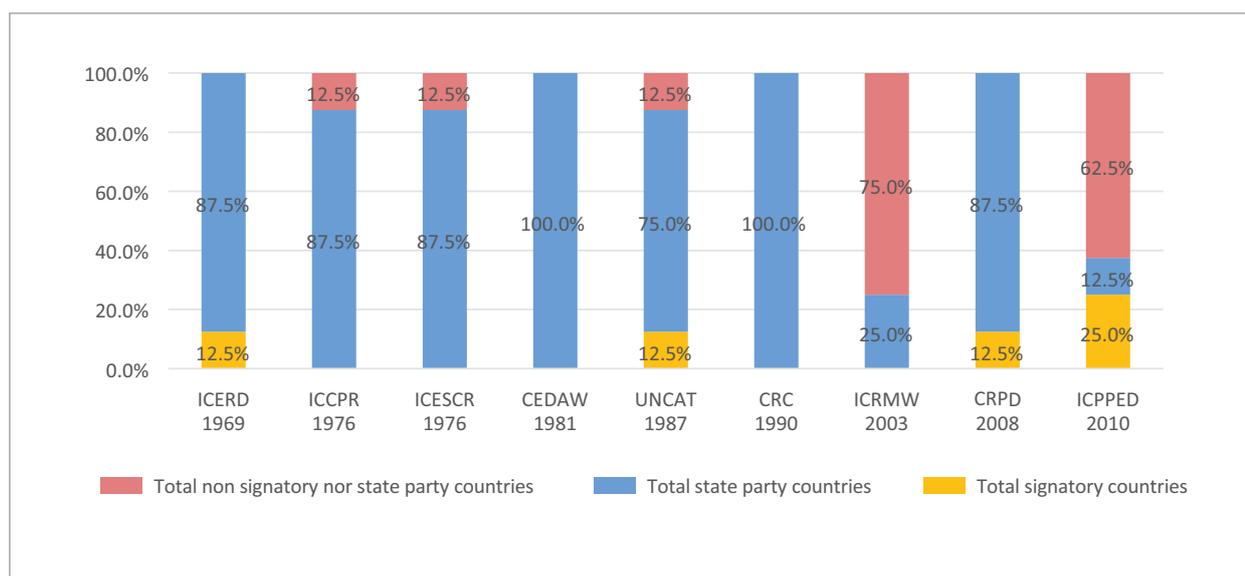
No action Signatory State party

Note: 'Signatory' refers to a State that is in political support of the treaty and willing to continue its engagement. This intent is codified as a 'signature' submitted to the qualifying international body, with oversight of the treaty or the authoritative body defined by it. Essentially, the treaty has not yet entered into force in that particular State. States may sign a treaty in advance of their domestic processes required for ratification.

Legend: ICERD: Convention on the Elimination of All Forms of Racial Discrimination; ICCPR: International Covenant on Civil and Political Rights; ICESCR: International Covenant on Economic, Social and Cultural Rights; CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women; UNCAT: United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; CRC: Convention on the Rights of the Child; ICRMW: International Convention on the Protection of the Rights of All Migrant Workers and Their Families; CRPD: Convention on the Rights of Persons with Disabilities; ICPPED: International Convention for the Protection of All Persons from Enforced Disappearance.

Source: Author's elaboration.

Figure 1. Ratification of fundamental human rights instruments in South Asia (percentage)



Source: Author's elaboration.

Further, each country in the region is a State party to the CRC. As a consequence, they are obliged to recognise the right of every child to an adequate standard of living, and to take the necessary measures to achieve the full realisation of children's right to benefit from social security.

Likewise, CEDAW has been ratified by all countries in South Asia. As a result, they are bound to adopt the measures outlined in the Convention to eliminate discrimination suffered by women, including taking positive measures to ensure the realisation of women's human rights on the basis of equality with men, particularly in the political, social, economic and cultural fields. Further, States parties are required to enshrine the principle of gender equality in national constitutions, enact legislation prohibiting discrimination against women, and ensure effective legal protection for the right to be free from discrimination.

Further, the Convention on the Rights of Persons with Disabilities—ratified by all countries except Bhutan, which is a signatory—requires States parties to ensure access of persons with disabilities to social protection and poverty reduction programmes, and the right of those living in poverty and their families to have access to assistance from the State for disability-related expenses. It is noteworthy that the CESCR's General Comment No. 5 (1994), concerning persons with disabilities, has noted that States should ensure adequate income support to persons with disabilities who, owing to disability or disability-related factors, have lost their income or seen it reduced or have been denied employment opportunities. Further, the CESCR also clarified that such income support should reflect the special needs for assistance associated with disability and should also cover individuals, often women, who provide care for persons with disabilities.

Conversely, only Bangladesh and Sri Lanka have ratified the ICRMW and are, therefore, subject to the application of Art. 27, which states that migrant workers and members of their families have the right to the same treatment in (contributory and non-contributory) social security granted to nationals of the country of employment, insofar as they fulfil the requirements provided for by the applicable state legislation and the applicable bilateral and multilateral treaties.

Within this context, General Comment No. 2 (2013) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families has clarified that Part III—including Art. 27—of the ICRMW protects the rights of all migrant workers and members of their families, including those in an irregular situation (para. 4). Therefore, when a State party enacts legislation providing for the payment of a (contributory or non-contributory) social benefit and the concerned migrant fulfils the requirements, he/she cannot be excluded arbitrarily from this benefit due to the application of the prohibition of discrimination to the right to social security (para. 67).

Against this background, the CESCR's General Comment No. 19 also addresses the question of the applicability of non-contributory schemes to non-nationals: para. 37, referring to non-nationals in general terms, clarifies that they should be able to access non-contributory schemes for income support, affordable access to health care and family support. Any restrictions, including a qualification period, must be proportionate and reasonable, yet all persons are entitled to primary and emergency medical care. The subsequent paragraph states that refugees, stateless persons, asylum seekers and other disadvantaged and marginalised individuals and groups should enjoy equal treatment in access to non-contributory social security schemes, including reasonable access to health care and family support.

[The direct applicability of human rights law in the domestic legal systems of South Asia](#)

The theories of monism and dualism provide different answers to the question of whether international and domestic law are distinct legal systems or parts of the same system. According to monism, international and national law are components of an overarching system: a treaty is binding from the moment of its ratification and can be directly invoked in national courts. Conversely, the dualist theory conceives international and domestic law as separate legal systems, and only the latter is internally binding within a given country. Accordingly, for international law to be binding and enforceable, it must be incorporated into the domestic legal system, either through formal parliamentary approval or through substantive implementing legislation. The monist system typically belongs to the civil law tradition, whereas

dualist legal orders are prevalent in common law settings. It is, therefore, useful to recall that most legal systems in South Asia have been significantly influenced by the common law tradition under British colonial rule and, as such, tend to have dualist features. Thus, at least in the past, judicial courts tended to refuse to grant legal effect to treaties that had not been legislatively incorporated into domestic law (Waters 2007).

Countries belonging to the dualist tradition are Bhutan¹⁵ and Maldives.¹⁶ The constitutional settings of Afghanistan,¹⁷ Bangladesh¹⁸ and Nepal¹⁹ do not provide a clear answer to the direct applicability of international law in their domestic systems. Thus, in such countries the direct domestic applicability of international treaties is subject to judicial interpretation and debated among scholars. Finally, although the constitutions of India, Pakistan and Sri Lanka adopt a dualist approach, court decisions have expressed monist tendencies, such as the application of non-domesticated international legal obligations interpreted as principles of customary international law (Seneviratne n.d.).

Hence, from a practical perspective, the translation of human rights instruments into domestic law (including the CRC) appears to be fundamental step to be taken by all countries in South Asia to guarantee their applicability.

3.2 The regional level

South Asia is the only region in the world that does not have a regional human rights system of its own or a regional mechanism to address human rights violations. As a consequence, there is no regional mechanism for determining state accountability on alleged human rights violations, nor engagement in human rights monitoring and promotion activities: this adds to the impossibility of filing a complaint before the CESCR stemming from the non-ratification of the ICESCR's Optional Protocol.

Conversely, the presence of a regional human rights protection system would positively contribute to the protection, respect and fulfilment of human rights—including the right to social protection and to an adequate standard of living—for at least two reasons. The first is linked to the fact that all countries in South Asia would be bound by legal commitments on an equal footing with regional human rights treaties and the associated implementing procedures. The second is related to the existence of an organ in charge of human rights protection, as a jurisdictional body issuing binding rulings or as a political commission delivering recommendations, coupled with regular follow-up procedures, would ensure that adequate remedies to stop or compensate human rights violations would be effectively taken.

Despite the absence of a regional human rights system, several instruments that are relevant to social protection and to child welfare have been adopted at the regional level, within the context of the SAARC, established in 1985. Table 5 indicates SAARC members and observers.

15. According to Section 25 of Article 10 of Bhutan's Constitution, international treaties need to be ratified by Parliament to be deemed law. The primacy of the Constitution is affirmed by this same article. The Chairman of the Drafting Committee of the Constitution has written that the treaties under the section are not self-executing (Togbye 2008); this implies that implementation of international treaties through domestic law is mandatory.

16. Article 93 of the Constitution of Maldives requires international agreements to be approved by Parliament and implemented through national law.

17. Although Article 7 of the Constitution requires compliance with the international treaties to which Afghanistan is a party and the UDHR, it and subsequent articles fail to present any incorporation mechanism through which international law will become effective in the domestic legal order (Schoiswohl 2006). Houlihan and Spencer (2016, 35) suggest that human rights treaties need to be incorporated in domestic law. This is corroborated by the Committee on the Rights of the Child (2011), which noted during its 56th session that Afghanistan does not consider the CRC a legally binding instrument in its internal order and has not systematically incorporated it into its domestic legal system to make it applicable.

18. Article 145A of Bangladesh's Constitution requires all treaties to be put before Parliament before their approval. This requirement is hardly maintained in practice (Rahman Karzon 1999), which raises doubts about whether it is a monist or dualist country. Some scholars consider that human rights treaties are directly applicable, even though the Supreme Court of Bangladesh has stated that if a treaty affects the rights of citizens, it requires legislative implementation (Kazi mukhlesur Rahman vs. Bangladesh).

19. In the absence of specific provisions regarding the implementation or legal effectiveness of international treaties, the Supreme Court of Nepal has made contradicting decisions, both demanding the transformation of treaties into domestic law for them to be applied and considering that a treaty that is merely ratified by Parliament can supersede Nepalese law and annul it (Pokhrel 2019).

Table 5. SAARC members and observers

| South Asian Association for Regional Cooperation Charter (1985) | |
|---|--|
| Founding countries | Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka |
| New member | Afghanistan (2007) |
| Observers | Australia, China, European Union, Iran, Japan, Mauritius, Myanmar, South Korea and USA |

Source: Author's elaboration.

In the first place, it should be noted that the SAARC Charter (1985) which founded the Association sets various objectives that are relevant to social protection, including Art. 1: the promotion of the welfare of the peoples of South Asia and the improvement of their quality of life (let. a), the acceleration of social progress and the provision for all individuals of a dignified life and the fullest realisation of their potential (let. b).

Further relevant instruments were adopted within the context of social development, explicitly identified as one of the Association's areas of cooperation.

The first is the SAARC's Convention on Regional Arrangements for the Promotion of Child Welfare (2002), which entered into force in 2005. This instrument aims to build regional consensus on priorities, strategies and approaches to meet the changing needs of children inherent in numerous economic, social and cultural rights and contains important commitments, substantially linked to social protection, such as poverty eradication, improved health services and more accessible education. Further, it clarifies that, for the purposes of the Convention, children's rights are those set out in the CRC.

The Convention demands States parties to pursue a policy focusing on accelerating the progressive universalisation of children's access to basic services, which can be interpreted as an important step towards attaining universal child-sensitive social protection. Moreover, the Charter compels States parties to adopt a multi-pronged strategy that includes the provision of supportive social safety nets for families with child labourers (para. 3b), with a view to discouraging hazardous and harmful child labour.

If the main purpose of the Convention is to establish appropriate regional arrangements to assist the parties in facilitating, fulfilling and protecting children's rights, it has to be emphasised that its implementation has proven challenging and that no regional initiatives have been undertaken (Caruso 2011, 189).

Further, in 2004 the SAARC's Social Charter was signed. In addition to affirming that poverty alleviation will be afforded the highest priority by countries in the region, it recognises the agreement of States parties to take appropriate measures to create income-generating activities for poor people. The Social Charter recommends, with a view to ensuring an adequate standard of living, that access to basic education, adequate housing, safe drinking water and sanitation, and primary health care should be guaranteed in legislation, executive and administrative provisions—key aspects of a rights-based approach. However, it is crucial to point out that the language used in these passages suggests that the provisions do not lead to any legal obligations on States parties; rather, they express a form of political commitment.

Conversely, Art. 7, concerning the promotion of children's rights and well-being, contains relevant provisions that entail several obligations on States parties. The first is related to the provision of special treatment, education and care for physically, mentally, emotionally or socially disadvantaged children. The second obliges States parties to take necessary actions to ensure the effective implementation of the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare.

Finally, although Art. 1 foresees that the enforcement of the obligations contained in the Social Charter “shall be continuously reviewed through agreed regional arrangements and mechanisms”, it is important to note that there is no SAARC body or institution overseeing the implementation of the Social Charter, significantly limiting its efficacy.

3.3 The national level

Constitutions

This section provides an overview of the constitutional settings of South Asian countries by illustrating the presence or absence of rights linked to social protection, including:

- the right to social protection;
- the right to an adequate standard of living;
- provisions related to assistance for children;
- provisions explicitly related to assistance for vulnerable individuals and groups;
- provisions allowing positive discrimination as an exception to the general principle of non-discrimination; and
- the right to information.

Table 6 highlights whether the countries’ constitutions contain these rights and provisions.

Table 6. Constitutional provisions in South Asia

| | Afghanistan | Bangladesh | Bhutan | India | Maldives | Nepal | Pakistan | Sri Lanka |
|---|-------------|------------|--------|-------|----------|-------|----------|-----------|
| Social protection | | X | X | X | X | X | X | X |
| Adequate standard of living | | X | X | X | | | | X |
| Assistance to children | X | | | X | X | X | | |
| Assistance to vulnerable individuals and groups | X | | | | X | X | | |
| Positive discrimination | | X | | X | X | X | X | X |
| Right to information | X | X | X | X | X | X | X | X |

Source: Author’s elaboration.

Table 7 indicates whether constitutional provisions for the right to social protection can be categorised as justiciable rights or policy principles in each country in the region.

A first observation drawn from Table 7 is that the right to social protection is included in each of the countries’ constitutions, except for Afghanistan’s. The Constitution of Nepal enshrines the right to social protection as an enforceable entitlement reserved for vulnerable individuals and groups—including children—identified therein (Art. 43). The same discourse applies to Art. 35 of the Maldivian Constitution, focusing on children, youth, elderly and

disadvantaged persons. Conversely, Bangladesh (Art. 15), Bhutan (Art. 9), India (Art. 41), Pakistan (Art. 38) and Sri Lanka (Art. 27) feature social protection as a policy principle; therefore, social protection is not set as an enforceable right. Interestingly, in the Indian Constitution, the responsibility of the State is subject to the limit of ‘economic capacity and development’, whereas Pakistan’s Constitution specifies the means—i.e. planned economic growth—through which the duty must be fulfilled. Finally, no mention of the right is found in the Constitution of Afghanistan. However, it is important to point out that it does include provisions related to assistance for vulnerable groups and individuals, as will be discussed further.

Table 7. The right to social protection in South Asian constitutions

| Country | Article | Justiciable right | Policy principle |
|-------------|---------|-------------------|------------------|
| Afghanistan | - | - | - |
| Bangladesh | 15 | | X |
| Bhutan | 9 | | X |
| India | 41 | | X |
| Maldives | 35 | X | |
| Nepal | 43 | X | |
| Pakistan | 38 | | X |
| Sri Lanka | 27 | | X |

Source: Author’s elaboration.

Table 8. The right to an adequate standard of living in South Asian constitutions

| Country | Article | Enforceable right | Policy principle |
|-------------|---------|-------------------|------------------|
| Afghanistan | - | - | - |
| Bangladesh | 15 | | X |
| Bhutan | 9 | | X |
| India | 39 | | X |
| Maldives | - | - | - |
| Nepal | - | - | - |
| Pakistan | - | - | - |
| Sri Lanka | 27 | | X |

Source: Author’s elaboration.

As indicated in Table 8, four of the eight constitutions of South Asian countries refer to the right to an adequate standard of living. This is the case for Bangladesh (Art. 15), Bhutan (Art. 9), India (Art. 39) and Sri Lanka (Art. 27). In each of these countries, the related provisions are placed within the principles of state policies. Bhutan further includes free access to basic public health services as a policy principle. Similarly, a different provision in the Indian Constitution sets out the duty of the State to raise the level of nutrition and the standard of living and to improve public health. Bangladesh’s fundamental law, rather than referring to the right to an adequate standard of living, defines as a responsibility of the State the provision of the basic necessities of life, including food, clothing, shelter, education and medical care. A further provision sets out the duty of the State to raise the level of nutrition and to improve public health. In the case of Sri Lanka, an adequate standard of living is referred to as an objective to be fulfilled for the “establishment of a just and free society”. In the Pakistani Constitution, the provision of adequate livelihoods for all citizens is subject to the availability of the necessary resources.

The Constitution of Nepal goes one step further and enshrines as individual, fundamental rights the right to food (and to food sovereignty), housing and medical care, which are all components of the right to an adequate standard of living. Likewise, Art. 23 of the Maldivian Constitution defines adequate and nutritious food and clean water; clothing and housing; and good standards of physical and mental health care as economic and social rights of citizens. Art. 23 is located within the second chapter dedicated to “Fundamental Rights and Freedoms”; yet it explicitly refers to the progressive realisation of the rights contained therein and within the limits of the State’s capacity and resources.

Table 9. Provisions related to assistance for children in South Asian constitutions

| Country | Article | Enforceable right | Policy principle |
|-------------|---------|-------------------|------------------|
| Afghanistan | 54 | - | X |
| Bangladesh | - | - | - |
| Bhutan | - | - | - |
| India | 39 | | X |
| Maldives | 35 | X | |
| Nepal | 39 | X | |
| Pakistan | - | - | - |
| Sri Lanka | - | - | - |

Source: Author’s elaboration.

As can be inferred from Table 9, half of the constitutions of South Asian countries—i.e. those of Afghanistan (Art. 54), India (Art. 39), Maldives (Art. 35) and Nepal (Art. 39)—contain provisions explicitly related to assistance for children. The constitutions of Maldives and Nepal locate children’s right to assistance within the sections dedicated to fundamental rights: while the wording of the Maldivian provision is generally related to “children and young people,” the Nepalese Constitution refers specifically to “children who are helpless, orphaned, physically impaired, victims of conflict and vulnerable.” Notably, these rights are enforceable. The Afghan Constitution, in recognising the family as the fundamental unit of society, places a duty on the State to adopt necessary measures to ensure physical and psychological well-being of children and mothers. Likewise, the Indian Constitution sets out the duty of the State to provide children with opportunities and facilities to ensure their healthy development in conditions of freedom and dignity.

Table 10. Provisions related to assistance for vulnerable individuals and groups in South Asian constitutions

| Country | Article | Enforceable right | Policy principle |
|-------------|-------------------|-------------------|------------------|
| Afghanistan | 53 | - | X |
| Bangladesh | - | - | - |
| Bhutan | - | - | - |
| India | - | - | - |
| Maldives | 35 | X | |
| Nepal | 38, 40, 41 and 42 | X | |
| Pakistan | - | - | - |
| Sri Lanka | - | - | - |

Source: Author’s elaboration.

Table 10 shows that provisions related to assistance for vulnerable individuals and groups can be found in the constitutions of Afghanistan (Art. 53), Maldives (Art. 35) and Nepal (Art. 38, 40, 41 and 42). The Constitution of Afghanistan includes as a duty of the State the regulation of medical services and financial support for the descendants of martyrs, and assistance for needy elderly people, unsupported women, persons with disabilities and orphans. The Constitution of Maldives sets out the right of elderly and disadvantaged people to protection and special assistance from the family, the community and the State. The Constitution of Nepal contains various provisions related to assistance for specific groups, such as women, children, economically poor people, families of martyrs, *Dalits, Adibasi, Janajati, Adibasi Janajati, Madhesi, Tharu*, minority groups, persons with disabilities, marginalised groups, Muslims, backward classes, gender and sexual minority groups, youth, peasants, labourers, the oppressed, citizens of backward regions and economically poor *Khas Arya*. Social security is granted for economically poor, physically incapacitated and helpless persons, helpless single women, physically impaired persons, children, persons who cannot look after themselves and citizens who belong to communities that are on the verge of extinction. Finally, it is also worth pointing out that the Indian Constitution contains numerous provisions to support scheduled castes and tribes.

Table 11. Positive discrimination in South Asian constitutions

| Country | Positive discrimination is allowed for |
|------------|---|
| Bangladesh | Women, children and backward citizens |
| India | Socially and educationally backward classes, scheduled castes and tribes, women and children |
| Maldives | Disadvantaged individuals and groups, and groups requiring special assistance |
| Nepal | Women lagging behind socially and culturally, <i>Dalits, Adibasi, Madhesi, Tharus</i> , Muslims, oppressed classes, backward communities, minorities, marginalised groups, peasants, labourers, youth, children, senior citizens, sexual minorities, persons with disabilities, pregnant women, incapacitated and helpless persons, citizens who belong to backward regions and financially deprived citizens, including the <i>Khas Arya</i> |
| Pakistan | Women and children |
| Sri Lanka | Women, children, and persons with disabilities |

Source: Author’s elaboration.

Table 11 shows that positive discrimination is allowed by the constitutions of Bangladesh (Art. 28), India (Art. 15), Maldives (Art. 17), Nepal (Art. 18), Pakistan (Art. 25) and Sri Lanka (Art. 12). In some settings, it explicitly targets children. Interestingly, Pakistan seems to allow for positive discrimination in favour of women and children exclusively for protection purposes.

The analysis revealed that each of the countries’ constitutions contains provisions on the right to information. Such a right importantly underpins most social protection interventions and responds to the need to ensure the transparency and accountability of States’ actions.

Finally on this issue it is worth briefly outlining the role that Supreme and Constitutional Courts can play in promoting rights-based approaches, using India as an example. The Supreme Court of India has issued several far-reaching decisions that have ultimately contributed to implementing a rights-based approach by interpreting the pivotal ‘right to life’ enshrined in Art. 21 of the Constitution and linking its content with the obligations placed on the State by the Directive Principles of State Policy. As noted by Birchfield and Corsi (2010, 718) “what is significant about the Indian example, is that the Supreme Court has taken these general obligations and given them teeth by specifically explicating the right in concrete policy terms and by establishing oversight mechanisms for the enforcement of this specific content.” The instrument through which this shift has happened is Public Interest Litigation. This instrument fundamentally allows, in addition to the ‘ordinary’ possibility of any party (besides the aggrieved) to file a petition, for the courts to proceed *proprio motu* given that the litigation is directed towards the protection of a public interest. The following cases can be cited as examples:

- ***Bandhua Mukti Morcha vs. Union of India and Others 21***: The Supreme Court held that ‘right to life’ includes the right to live with human dignity, free from exploitation and to have equal opportunity.
- ***Olga Tellis vs. Bombay Municipal Corporation 10***: The Supreme Court recognised, contrary to previous interpretations, that the right to life encompassed the right to livelihood, based on the reasoning that no person can live without the means of living: this represents an important link between the right to social security and the right to life.
- ***Paschim Banga Khet Mazdoor Samity and Others vs. State of West Bengal and Another***: The establishment of a welfare state and its core duty of providing adequate medical facilities and health care was affirmed by the Supreme Court in this case.
- ***Miss Mohini Jain vs. State of Karnataka and Others***: The right to education was also established as a component of Art. 21, enshrining the right to life.
- Finally, the right to food was recognised as part of Art. 21, as a result of the landmark writ petition of April 2001 by the People’s Union for Civil Liberties and the contextual interim order of the Supreme Court, which required all state governments to provide every child with a prepared school meal containing 300 calories and 8–12 grams of protein for a minimum of 200 days a year.

Constitutional allocation of competences in federal and quasi-federal settings

Constitutional allocation of competences for social protection. India. India can be categorised as a union of states on the basis that its Constitution contains both federal and unitary features. The constitutional allocation of competences among central and state governments has a significant influence on the Indian social protection system. Social security and social insurance are located within the concurrent list, fundamentally allowing both central and state governments to design and implement social protection programmes. As an overarching framework is lacking, the range and nature of policies and programmes adopted can vary greatly. Moreover, the role of single states in designing, financing and implementing social protection programmes varies considerably. As a result, India has a very high number of diverse social protection schemes at the central, state and local levels.

Other relevant competences are distributed as follows by the Indian Constitution. Schedule 7’s List 1 contains items that are the exclusive competence of the central government. Perhaps the most relevant item for social protection is interstate migration. This topic is particularly relevant for the portability of social protection benefits for internally displaced people. Conversely, List 2 contains items that are the exclusive competence of individual states, including (from a social protection perspective) public health, sanitation, hospitals and dispensaries, as well as relief for unemployed people and those with disabilities. Finally, List 3 is the concurrent list and as such encompasses items that fall under the purview of both the central government and individual states. Particularly relevant for social protection are: vagrancy, nomadic and migratory tribes; economic and social planning; employment and unemployment; welfare of labour, including conditions of work, provident funds, employers’ liability, workers’ compensation, invalidity and old-age pensions and maternity benefits; and education.

Schedule 11 attributes competences to rural local bodies regarding relevant matters such as rural housing and poverty alleviation programmes, health and sanitation, family welfare, social welfare and the public distribution system. Schedule 12-related urban local bodies encompass social protection elements such as planning for economic and social development, public health, improvement of slums and alleviation of urban poverty.

Constitutional allocation of competences for social protection. Nepal. The transition in Nepal from a unitary to a federal State was mandated by the new Constitution of 2015. The three levels of government are national, provincial (with 7 provinces) and local (with 753 urban and rural municipalities). The Constitution assigns larger functional, semi-judicial and fiscal authority to elected governments, entailing greater responsibility and accountability for effective service delivery. A crucial aspect of a successful shift towards a federal State is how the constitutional provisions are made operational through the various implementing laws, including the central Local Governance Act.

The Constitution distributes exclusive or concurrent competences in social protection among central, provincial and local levels of government. Social security and poverty alleviation are included both as exclusive powers under the central government and as concurrent powers in the List of Concurrent Powers/Jurisdiction for Federation, Province and Local Level. The provincial level has exclusive power regarding the management of senior citizens and persons with disabilities. Considering that the institution of provinces and the capacity-building of local and provincial governments inevitably require time and resources, the central government should exercise the powers included in the concurrent lists and gradually hand over responsibility to subnational governments as their capacity increases (ILO and Government of Nepal Ministry of Labour and Employment 2017).

Constitutional allocation of competences for social protection. Pakistan. The country is divided into four provinces—Balochistan, Khyber Pakhtunkhwa, Punjab and Sindh—two autonomous territories—Azad Jammu and Kashmir, and Gilgit-Baltistan—and the federal Islamabad Capital Territory. The 18th amendment to the Constitution implied the devolution of competences and powers from the central State to provincial governments through the abolishment of the concurrent list in Schedule 4, thus granting the provincial assemblies with exclusive powers to enact laws regarding any matter that does not appear on the Federal Legislative List. Contextually, 18 ministries were also abolished, with most of their functions devolved to the provinces, including the Ministry of Population Welfare and the Ministry for Social Welfare and Special Education. The implicit devolution of social protection and related functions resulting from the amendment generated uncertainty and confusion about the roles of federal and provincial governments in providing social protection to the population (Matsuda 2017).

Furthermore, in 2018 the Federally Administered Tribal Areas (FATA) were incorporated into the Khyber Pakhtunkhwa province, as a result of the 25th constitutional amendment. As reported by the FATA Secretariat (2015), these areas have experienced high levels of instability and insecurity since the former Soviet Union's invasion of Afghanistan. As a result, the territory is one of the most underdeveloped in the country, due to limited access to basic services and productive livelihood opportunities. In addition, clashes and military interventions have produced a significant number of temporarily displaced people—estimated at around 2 million in March 2015, of whom around 70 per cent are women and children (FATA Secretariat 2015). Thus, given the considerable need for social protection in the FATA territories, strengthening the technical sectoral capacity of Khyber Pakhtunkhwa appears even more imperative.

The constitutional allocation of competences for child-related law-making. India. In India the survival, development and protection of children falls either in the concurrent list (central and state governments) or in the state list, whereas Panchayati Raj Institutions also have administrative and financial authority in a number of subjects which have a direct bearing on children (Indian National Human Rights Commission 2006). In this respect the Committee on the Rights of the Child expressed concern in its latest Concluding Observations (2014) in relation to the different levels of authority and competencies within the State party's quasi-federal structure, resulting in a differentiated application of the legislation on children's rights and fragmentation and inconsistencies in the implementation of children's rights.

The constitutional allocation of competences for child-related law-making. Nepal. The country's Constitution does not mention children in the list of powers of the federation (Schedule 5), provinces (Schedule 6) or the local level (Schedule 8), nor in the concurrent/shared powers of the federation and provinces (Schedule 7). As a consequence, in accordance with Art. 58, the subject should rest with the federation as residual power.

The constitutional allocation of competences for child-related law-making. Pakistan. In Pakistan the 18th amendment attributed legislative, administrative competences and financial authority to the provinces on child-related issues, including social welfare. As a consequence, the federal government can make child-focused legislation exclusively in relation to federal territories and those areas not forming part of a province (Office of the National Commissioner for Children 2015).

Statutory social protection legislation

The countries in South Asia adopt a variety of approaches to respond to the social protection needs of their citizens: several sets of laws have been adopted to that end. As illustrated in Section 1.4, a law can serve as a general regulatory framework for the sector and/or regulate single aspects of social protection and/or a given social protection programme. Further, depending on the specific content and features, the legislation might well incorporate two or more of the above-mentioned functions. Table 12 indicates for each country the legislation considered in this subsection and highlights the scope and purpose of each set of legislation.

Table 12. Statutory social protection legislation in South Asia

| Country | Legislation | Scope/purpose |
|-------------|---|---|
| Afghanistan | Social Protection Law (2018) | Art. 1: Implement Art. 53 (2) of the Constitution—i.e. guarantee the rights and privileges of pensioners and persons with disabilities, and provide assistance to needy elderly people, unsupported women and needy orphans |
| Bangladesh | Voluntary Social Welfare Agencies (Registration and Control) Ordinance (1961), as amended in 1973 | Legislation preamble: To provide for the registration and control of voluntary social welfare agencies |
| | Foreign Donations (Voluntary Activities) Regulation Act (2016) | Legislation preamble: To promulgate a new law which repeals the Foreign Donations (Voluntary Activities) Regulation Ordinance (1978) and Foreign Contributions Ordinance (1982) |
| India | National Food Security Act (2013) | Legislation preamble: An Act to provide for food and nutritional security over the human life cycle by ensuring access to an adequate quantity of quality food at affordable prices for people to live a life with dignity and for matters connected therewith or incidental thereto |
| | <i>Aadhaar</i> Act (2016) | Legislation preamble: An Act to provide for, as good governance, efficient, transparent and targeted delivery of subsidies, benefits and services, the expenditure for which is incurred from the Consolidated Fund of India, to individuals residing in India by assigning unique identity numbers to such individuals and for matters connected therewith or incidental thereto |
| Maldives | Social Protection Act (2014) | Art. 1: Regulating government assistance in Maldives for social protection purposes |
| Nepal | Social Security Act (2018) | Legislation preamble: Make necessary provisions on the protection of the right to social security of the indigent citizens, incapacitated and helpless citizens, helpless single women, citizens with disabilities, children, citizens who are unable to take care of themselves and citizens belonging to tribes on the verge of extinction, in accordance with the Constitution |
| Sri Lanka | Welfare Benefit Act (2002) | Legislation preamble: An Act to provide the necessary legal framework for the payment of all welfare relief benefits; to set out a transparent selection process by which the recipients of such benefits can be identified; to provide for the termination of such benefits; and to provide for matters connected therewith or incidental thereto |

Source: Author's elaboration on the basis of the legislation.

Prior to proceeding to the analysis, it is necessary to clarify why Bhutan and Pakistan are not considered in this subsection. In Bhutan's case, no relevant legislation was found during the desk review. As regards Pakistan, as already mentioned, the competence for social protection lies with the provinces: as a consequence, it is extremely important to take the provincial level into account to fully comprehend the legal framework for social protection; however, the provincial level falls outside the scope of the present study.

As can be observed in Table 12, the sets of legislation considered are particularly diverse in nature. Nevertheless, they can be divided, on the basis of their purpose and scope, into two main groups:

- **Group 1**—legislation providing a general regulatory framework for social protection or specific economic, social and cultural rights: This category includes the Maldivian Social Protection Act (integrated with the implementing Social Protection Regulation, R-22/2016), which is the only set of laws among those mapped serving as a general statutory basis for social protection. Also present in this group are the Indian NFSA, laying down norms and principles for the right to food security, and the Nepalese Social Security Act, regulating the right to social security.
- **Group 2**—legislation regulating single aspects of social protection: This group contains regulations covering a wide range of different subjects. The Afghan legislation mainly deals with the country's institutional framework for social protection. Similarly, in Bangladesh's case the sets of laws regulate, respectively, non-governmental organisations (NGOs) operating in social welfare and foreign-funded NGOs. The Indian *Aadhaar Act* provides residents with a unique identification number that serves as a proof of identity and residence. Finally, Sri Lanka's Welfare Benefit Act sets out a single framework for the payment of all welfare benefits and related matters.

The legislation pertaining to Group 1 can be compared against the model legal framework for social protection proposed in Section 1.4, considering that each set of laws should ideally contain all the elements identified therein, even though the purpose of the Maldivian Act is the implementation of a general framework for social protection, whereas the Indian and Nepalese legislation aims to regulate, respectively, the rights to food security and social security and contextually enshrine a number of entitlements stemming from these rights.

Conversely, the approach proposed for Group 1 cannot be adopted for Group 2, since the sets of legislation belonging to Group 2 regulate single aspects of social protection which are particularly heterogeneous. As a consequence, it is not suitable to compare them against the model proposed in Section 1.4—or against each other—given the diversity of the matters they regulate. A brief analysis of each set of legislation is provided though, underlining the associated positive features and shortcomings.

Group 1 analysis

Scope and purpose of the law. All sets of legislation clearly define their respective scope and purpose. Yet none of them explicitly refer to the recognition of social protection as a human right or mention the ratification of human rights instruments. Against this background it is worth recalling that India, Maldives and Nepal are States parties to the core human rights instruments, except for the ICRMW and the ICCPED. This fact entails significant implications for social protection, as discussed in Sections 1.4 and 2.1, and thus should be appropriately recognised in the law.

Definitions. All legal frameworks contain a catalogue of definitions outlining key concepts enshrined therein: this is particularly commendable to avoid arbitrary and potentially discriminatory interpretations. Yet none of them incorporate definitions from accepted international human rights standards, except for Nepal: the Social Security Act defines 'citizens with disabilities' on the basis of Art. 1 of the Convention on the Rights of Persons with Disabilities.

Duty-bearers. In all instances the legal frameworks define obligations, functions and mandates of public (and, where applicable, private) institutions. A particularly commendable feature of the Maldivian setting is that it contains a mechanism aiming to reduce institutional fragmentation: the National Social Protection Agency (NSAP) is the institution responsible for coordinating and implementing almost all social protection programmes²⁰ in the country.

20. Including those falling outside the scope of the Social Protection Act.

All legal frameworks identify the various bodies/subjects responsible for their implementation. Further, in the cases of Nepal and India there is a clear allocation of obligations and responsibilities among central and state (or provincial in Nepal's case) governments and local authorities. Yet in no instance is a coordinating ministry/institution identified that serves as a focal point for the various executive bodies.

Finally, all sets of laws unequivocally individuate the competent authorities responsible for enacting implementing regulations. In India's case the faculty to frame implementing regulations is attributed both to central and state governments. In Nepal only the central government is allowed to enact implementing regulations, whereas the Ministry for Federal Affairs can frame directives and procedures which have to be consistent with the Act and the implementing regulations. Against this background it is worth highlighting that the dispositions of the Act require several implementing regulations to set the procedures for the various allowances afforded therein, among other purposes: yet no implementing regulation was found on the websites of Nepal's Law Commission or the relevant ministries. In the Maldivian case, the prerogative of enacting implementing regulation is attributed solely to the NSAP.

Rights-holders. Each Act identifies rights-holders through non-discriminatory, objective, reasonable and transparent criteria. Referring to the Helpless Single Women Allowance (previously known as the Widows Allowance) afforded by the Nepalese Social Security Act, in 2010 the Supreme Court ruled that widows of any age (not only those over 60 years of age) shall be eligible for the benefit, thus expanding the programme's coverage (Palacios 2016). With the notable exception of the Indian legislation, the remaining laws analysed refer explicitly to citizens, thus excluding the application of social protection schemes to vulnerable categories such as migrants. Within this context, it should be noted that although India, Maldives and Nepal are not States parties to the ICRMW, they acceded to the ICESCR and, as a consequence, should observe the CESCR's General Comment No. 19, which stipulates that non-nationals should be able to access non-contributory schemes for income support, affordable access to health care and family support, whereas refugees, stateless persons and asylum seekers, among others, should enjoy equal treatment in access to non-contributory social security schemes. Yet the existence of a bilateral treaty between India and Nepal should be recalled: as a consequence, Nepalese and Indian citizens may travel and work across the border and are to be treated on a par with native citizens.

All legal frameworks set fair, simple, accessible **application procedures**. Against this background some observations concerning particular features of the sets of legislation are necessary. The Nepalese Act stipulates that the Child Nutrition Allowance requires an application to be filed before the competent local level and must include evidence of birth registration. This requirement is a notable incentive for child registration set directly by law, yet it could also operate as a barrier if such registration is missing.

Both the Maldivian and Nepalese settings include a time-frame within which the body receiving the application has to make a decision: in the Maldives it is 15 days from the receipt of the application, whereas in Nepal it is 7 days. Yet only the former legislation includes an obligation to inform the applicant if any necessary documents are missing, thus enabling the individual to rectify the application.

The Maldivian Act allows the accumulation of benefits afforded therein, yet its implementing regulation determines the (monthly and yearly) maximum amount a person may receive for each scheme. Conversely, the Nepalese law limits the provision of only one allowance, even in situations when the citizens are potentially entitled to more than one benefit, but explicitly allows the provision of the Child Nutrition Allowance even if the child is a beneficiary of other allowances.

In the Maldivian Social Protection Act programme fragmentation is reduced through the obligation to file an application before the NSAP within 12 months from the enactment of the legislation for those subjects who were receiving assistance prior to that time: this mechanism allows the NSAP to determine whether the assistance should be discontinued or, on the contrary, whether the individual is entitled to receive assistance in accordance with the law. If the beneficiary does not respect this requirement, the provision of assistance will be interrupted.

The Nepalese Act also aims to diminish programme fragmentation by prohibiting provincial and local governments from distributing allowances that overlap with or duplicate the allowances included under the umbrella 'social security allowance'. Further, the Act also includes the possibility (and not an obligation) for Nepal's government to adopt a unified system for the provision of the social security allowance and other social security schemes afforded by other legislation.

Finally, reasons for the termination of benefits are clearly set by each legislation.

Non-discrimination clause and special measures. None of the legislation analysed contains a non-discrimination clause. Nevertheless, each of the constitutions contains an article providing for non-discrimination; as a result, despite the absence of an explicit provision in the legislation analysed, the constitutional principle of non-discrimination applies.

Special measures (other than the entitlements created by the legislation and the corresponding programmes) are almost entirely absent in each setting. None of the legislation contains a provision acknowledging children's or women's rights, as determined by human rights instruments, even though each country in the region is a party to the CRC and CEDAW. Against this background the presence of a provision aiming to foster women's empowerment in the Indian NFSA must be highlighted: when a woman of 18 years of age or older is present in a household that is eligible for ration cards (under the Targeted Public Distribution System—TPDS), she shall be regarded as the head of the household. A further special measure contained in the Indian Act is the obligation, incumbent on central and state governments, to focus particularly on the needs of vulnerable groups in remote, hard-to-reach and tribal areas, to ensure their food security.

A special measure intended for the whole population (and not for specific vulnerable groups) is present in the Maldivian legislation: the Act specifically affords protection in emergency situations—an umbrella term that, according to the definition provided in the law, comprises "all life-threatening situations." The scope of this provision, as determined by its wording, is particularly broad and can be fruitfully used to respond to the social protection needs of citizens in a wide-ranging set of emergency situations, including natural and human-induced disasters, among others.

Transparency and the right to be informed. All legal frameworks contain provisions guaranteeing the right to seek, receive and impart information about social protection programmes, application procedures and eligibility criteria. This happens through diverse mechanisms: in the Maldivian and Nepalese legislation the implementing bodies (respectively, the NSAP and the local level concerned) have the obligation to inform the applicant or beneficiary in several scenarios (for example, if the application requires further supporting information, the outcome of the application is negative or the benefit is terminated for any reason). Only the Maldivian legislation entails an obligation for the beneficiary to inform the NSAP whenever there is a change in their living conditions: this communication must take place within a year from when the change occurred, and failure to do so is a crime. Likewise, the Act sets out the duty of government agencies to communicate any possible change in an applicant's status to the National Social Protection Agency.

Moreover, the Indian NFSA dedicates its 11th chapter to transparency and accountability. The Act requires that all records related to the TPDS be kept in the public domain and remain accessible to everyone for inspection. Further, the law compels local authorities to undertake periodic social audits for the TPDS and other welfare schemes and publicise the findings. Vigilance committees set up at the state, district, block and fair price shop levels, which implement all schemes under the NFSA, are also responsible for guaranteeing transparency.

Finally, none of the legislation contains provisions aiming to promote outreach and communication activities to increase awareness among beneficiaries/rights-holders.

Right to privacy and confidentiality of information. Only the Maldivian Social Protection Act includes provisions aiming to ensure privacy and confidentiality of information: the law also individuates the instances in which the information can be legitimately shared with other public institutions. From a more general perspective it is worth noting that the legal systems of South Asian countries, besides recognising at constitutional level the right to information of their citizens, have adopted (with the exception of Bhutan) statutory legislation regulating the subject.

Administrative and judicial review. A rather fragmented situation exists in terms of provisions guaranteeing administrative and judicial review. The Maldivian Act does not contain any provision in this respect. Conversely, Nepal's Social Security Act provides for the possibility to file a claim before the Judicial Committee (first instance) and eventually to appeal before the District Court the decision of the former. Yet it is important to highlight that the Act exclusively admits claims on the grounds of the offences established therein; hence, it does not seem to allow the possibility of making a complaint about the quantity/quality of the benefit or in the case of a refused application.

The Indian NFSA provides that every state government shall put in place an internal grievance redressal mechanism, which may include call centres, help lines, designation of nodal officers or such other mechanisms as may be prescribed. The District Grievance Redressal Officer present in each district is responsible for receiving first-stage complaints, whereas State Commissions receive eventual appeals. The Act specifies that the State Commission has all the powers of a civil court to inquire and explicitly provides for the possibility of forwarding the case to a magistrate.

Participatory mechanisms. Participatory mechanisms are lacking in each setting, with the notable exception of India. India's legislation includes two different participatory channels for citizens. The first is social audit, defined as the process through which people collectively monitor and evaluate the planning and implementation of a programme or scheme. Furthermore, the Act reserves participation quotas in key institutional bodies associated with the programmes.

Budget. Each statute contains financing arrangements for their implementation, yet the degree of detail varies considerably. The Maldivian Act exclusively requires the amount of funding for social protection services to be included in the national budget every fiscal year. The Nepalese Social Security Act simply attributes the obligation to manage the budget of the social security allowance to the central government.

The NFSA entails a general obligation for state governments to implement the schemes covering the entitlements afforded by the Act according to the guidelines—including cost-sharing between central and state governments—prescribed by the central government. Chapter 8 of the Act is dedicated to laying down the obligations of the central government regarding food security. It can be observed that such provisions are generally directed at ensuring the regular supply of food grains, but there are also some norms that regulate funding: in case of a short supply of food grains from the central pool to a state, the central government must provide funds to state governments. Likewise, the Act attributes an obligation to the central government to assist state governments in meeting the expenditures in terms of intra-state migration, handling of food grains and margins paid to fair price shop dealers.

Monitoring. Monitoring and evaluation duties are present in each Act, although expressed in a quite generic way: the Indian legislation is the only one providing for participatory monitoring mechanisms (i.e. social audits).

Group 2 analysis

Afghanistan's Social Protection Law. From a governance perspective, the law provides for the creation of the Social Protection High Commission to which are assigned substantial functions, including: adopting measures to identify poor and needy persons; studying and evaluating drivers of poverty and developing measures to prevent it; ensuring the coordination of activities of governmental and non-governmental organisations; and collecting statistics related to poor and needy persons. However, overall responsibility for the implementation of the Act is attributed to the ministries responsible for social protection and health and not to the Commission.

A peculiar feature of the Afghan legal framework is that it does not establish any entitlement to social protection; rather, it places obligations on various ministries and bodies to set up various centres providing different kind of assistance. This structure hinders the application of a rights-based approach simply because it does not create any right. The Act foresees two types of protection: the establishment of centres to provide primary necessities for elderly people, persons with disabilities, women without guardians, poor people and orphans, and the creation of hospitals for persons affected by psychic diseases and rehabilitation centres for addicts.

Finally, the law also articulates the sources of funding for the associated social protection expenses resulting from the Act; these encompass revenues from endowments, *Zakat*, charities, the government budget, inheritances, and voluntary and other financial donations from domestic and foreign natural and legal persons.

Bangladesh's Voluntary Social Welfare Agencies (Registration and Control) Ordinance. The ordinance stipulates quite strict regulations for the activities of NGOs operating in welfare. The Act forbids welfare agencies from establishing or continuing operations without applying to the Registration Authority for registration. The ordinance assigns significant powers to the Registration Authority, such as the approval of any amendments to the constitution of registered agencies, or the power to suspend or dissolve an agency's governing body in cases of irregularities related to financial or administrative misconduct. The ordinance also foresees the entitlement of the government to dissolve any agency that acts in contravention of its constitution, the ordinance or in a manner prejudicial to the interests of the public.

In 2019 a draft of the Volunteer Social Welfare Organisations (Registration and Control) Act was prepared with a view to substituting the above ordinance. Yet besides allowing government authorities to dissolve an NGO on the basis of the best interests of the public, the draft complicates the procedures for the registration of NGOs even further.

The Foreign Donations (Voluntary Activities) Regulation Act requires all foreign-funded NGOs to submit virtually all activities for approval to a bureau under the Prime Minister's Office, without clear criteria for grounds for rejection or a time-frame in which decisions should be made. Registration is similarly at the discretion of the bureau.

It is worth noting that during the past two decades or so, the number and coverage of NGOs in Bangladesh have grown significantly, with a massive scale-up of their programmes covering virtually the entire range of social development activities and compensating for an inefficient public service (Mahmud 2014).

India's Aadhaar Act. A recent important addition to the Indian social protection system is the introduction of the *Aadhaar* system through law No. 18/2016, which also established the Unique Identification Authority of India (UIDAI). The *Aadhaar* is a unique identification number based on demographic and biometric information that can be requested by all residents: one of the desired outcomes of *Aadhaar* is the elimination of duplicate and fake identities. This, in turn, would improve the efficiency and efficacy of the public service delivery network. According to the Act, the UIDAI is responsible for beneficiary enrolment and authentication, overall *Aadhaar* management and the security of individuals' identity information and authentication records. It is also noteworthy that the Act places an obligation on the UIDAI to undertake special measures to issue the *Aadhaar* number to certain (vulnerable) categories of persons, including children, women, senior citizens and persons with disabilities. The introduction of the system has been vehemently debated in India, in particular in relation to its compatibility with the right to privacy, set as a fundamental right by the Supreme Court in 2017. The same court ruled in 2018 on the subject (*Justice Puttaswamy (Retd.) and Another vs. Union of India and Others*): the mandatory nature of *Aadhaar* numbers for receiving subsidies, benefits and services from the government for which expenditure is deducted from the Consolidated Fund of India was held to be constitutionally valid; nevertheless, also relying on Art. 27 of the CRC, the Court clarified that no child shall be denied membership of any welfare scheme due to his/her inability to produce the *Aadhaar* number. Further, also as a result of this ruling, the *Aadhaar Act* was amended by the *Aadhaar and Other Laws (Amendment) Bill*, which was passed by the *Rajya Sabha* on 8 July 2019. The Bill specifies that it is necessary for the enrolling agency to seek the consent of the child's parents (or guardian) to obtain the *Aadhaar* number.

Sri Lanka's Welfare Benefits Act. The Act entered into force only on 15 February 2016, after a 14-year delay (Auditor General, National Audit Office 2020). The legislation provides for the establishment of a Welfare Benefits Board in the form of a corporate body responsible for the implementation of the Act, among other functions. The Board is established under the Ministry of Finance, and its members are appointed by that Minister. It is noteworthy that the term of the first Chairperson expired in August 2019, following which a new Chairperson was appointed but resigned in November 2019, and the position has been vacant since then (World Bank 2020). Further, other key personnel, including deputy commissioners, accountants and software engineers, had not been recruited (as of 26 May 2020), and, as a consequence, Board meetings have not been conducted as expected (Auditor General, National Audit Office 2020).

The main mandate of the Board is to manage the registration, selection and payment of beneficiaries of cash transfer programmes. It must operate in a non-discriminatory manner and in accordance with the prescribed selection criteria. To avoid programme fragmentation, the law obliges beneficiaries, within 3 months of the date of the entry into operation of the Act, to inform the Board Commissioner about any stipend or payment they receive. Such communication must include all particulars relating to the income, assets and liabilities of the beneficiary, his spouse, dependent children or other dependents as the case may be. Beneficiaries are also required to communicate to the Commissioner any material change in such particulars within 2 months from the moment such a change occurs. The Board will consequently determine the eligibility or ineligibility of the person concerned. If the subject is deemed eligible, he/she will be entitled for an initial period of 12 months to receive welfare benefit payments afforded by the Act, whereas all other payments/benefits received under any public assistance scheme or in terms of the provision of any law will cease with immediate effect. After 12 months, the subject may reapply and, if eligible, will be added to the list of names of eligible persons. The Act does not clearly state what happens when the applicant is considered ineligible.

The Act also aims to foster a shift towards a rights-based approach, since it requires all payments of welfare benefits to be made on the basis of the Welfare Benefit Payment Scheme. Further, each scheme shall specify the criteria for eligibility to receive assistance, the date of commencement, the financial or other benefits to be granted, the period for which persons are entitled to receive benefits and the total number of eligible beneficiaries. Every scheme shall be published in the *Gazette* and shall be placed before Parliament for approval. Here it is important to stress that the Welfare Benefits Board's regulations and the selection criteria for the schemes were published in the *Gazette* in 2019. However, they were not approved by Parliament and have since then lapsed (World Bank 2020).

A final relevant aspect of the legislation is that whenever a natural or human-induced disaster occurs and, in the opinion of the Commissioner and with the approval of the Board, temporary emergency relief should be made available, welfare benefit payments can be extended to the people affected. This provision is particularly important, as it fundamentally allows for some flexibility in responding to natural (or human-induced) disasters.

Child-focused statutory legislation

All eight countries in the region have enacted child-focused statutory legislation, with significant differences in the scope and level of regulation. The adoption of such legislation can be linked to the need to implement human rights instruments (e.g. the CRC), to give effect to a constitutional provision and/or to a deliberate choice of a country to strengthen children's rights.

The most commonly used approach in the region is the regulation of specific aspects of children's rights (e.g. child protection, the right to education etc.) through single pieces of legislation. This approach has generated a considerable amount of legislation over time—for example, in India more than 20 laws regulate children's rights—which might occasionally result in conflicting provisions.

Against this background it is worth assessing whether the various sets of laws setting out children's rights at national level effectively implement the provisions of the CRC, according to the latest Concluding Observations of the Committee on the Rights of the Child. Table 13 provides an overview of the compliance of each country's national legislation with the CRC, together with the most relevant concerns and recommendations.

Table 13. Compliance of national statutory legislation in South Asia with the CRC

| Country and year of Concluding Observations | Does the legislation effectively implement the CRC? | Concerns | Recommendations |
|---|---|--|---|
| Afghanistan (2011) | No | CRC is not incorporated into the domestic system Existing legislation contradicts CRC provisions Low implementation of legislation due to weak enforcement and limited legal awareness of existing rights | Enactment of a comprehensive Child Act superseding all legislation that does not conform to the CRC |
| Bangladesh (2015) | No | Despite the enactment of the Children Act (2013), several important bills still need to be adopted Limited implementation of child-related laws | Expedite the adoption of child-related laws, ensuring their full compatibility with the provisions of the CRC |
| Bhutan (2017) | No | Areas in which measures must be taken: violence against children; harmful practices, especially in relation to child marriage; children with disabilities; education; children of ethnic Nepalese origin; and economic exploitation, including child labour and sexual exploitation | Review the Child Care and Protection Act to include all rights enshrined in the CRC Review existing legislation to harmonise provisions related to children's rights |
| India (2014) | No | Despite the adoption and amendment of union laws, the legislation does not fully cover the scope of the CRC Quasi-federal structure results in fragmentation and inconsistencies in implementation of children's rights | Review existing legislation to ensure coherent and consistent harmonisation of the legislative framework for children's rights at union and state levels |
| Maldives (2016) | No | Need to incorporate the CRC into domestic law and continue to review/strengthen domestic laws to ensure their conformity with the CRC | Adoption of the draft Child Rights Bills, ensuring its full compliance with the CRC |
| Nepal (2016) | No | Draft Children's Bill does not provide a comprehensive, integrated and rights-based approach | Review Children's Bill with a view to adopting a comprehensive, integrated and rights-based legislative framework for implementation of the CRC |
| Pakistan (2016) | No | Delay in the adoption of a number of bills which are crucial for the implementation of the State party's obligations under the CRC Insufficient steps undertaken to harmonise the national legislative framework with the CRC Federal laws not retained by provincial governments as a result of the 18th constitutional amendment | Promptly adopt pending bills Take measures to harmonise its legislation and regulations with the CRC at federal, provincial and territorial levels |
| Sri Lanka (2018) | No | Areas in which measures must be taken: violence, including corporal punishment, sexual exploitation and abuse; economic exploitation, including child labour; and administration of juvenile justice and reconciliation, truth and justice | Transpose the CRC into national legislation Ensure that domestic legislation, including any local or customary law, is brought into compliance with the CRC |

Source: Author's elaboration on the basis of Committee on the Rights of the Child (2011; 2014; 2015; 2016a; 2016b; 2016c; 2017; 2018).

It is useful to clarify that the statutory child-focused laws analysed do not enshrine children's right to social protection; rather, they tend to focus on child protection and child-friendly justice. While poverty contributes to violence, and violence potentially blocks the pathways out of poverty (UNICEF Office of Research – Innocenti 2019), from a rights-based perspective it is important that both child protection and social protection are embedded in legislation.

It is worth recalling that the constitutions of Afghanistan, India, Maldives and Nepal contain provisions explicitly related to children's assistance: in the two former cases the provision can be categorised as a principle of state policy, whereas in the latter cases it is an enforceable right.

Against this background, the recent enactment of child-focused legislation in Afghanistan, Maldives and Nepal should be highlighted: in May 2019 the Government of Afghanistan launched, in accordance with the recommendation of the Committee on the Rights of the Child, the first-ever Child Rights Protection Law (CRPL), otherwise known as the Child Rights Act; Maldives passed a new Child Rights Protection Act (No. 19/2019) in 2019; and in Nepal more than 40 laws and by-laws touch on children's rights. To amend and codify prevailing laws concerning children, in September 2018 the Act Relating to Children (No. 23/2075 B.S. [2018]) was promulgated.

Such pieces of law are particularly commendable because, besides establishing children's right to social protection and a number of related rights at a statutory level, they aim to systematise children's rights.

The Afghan law aims to systematise children's rights in the country mainly by determining the prevalence of the provisions of the CRPL in case of contradiction with norms contained in other sets of laws and allowing for the application of other legislation in case the CPRL does not regulate a given child-related issue (Articles 104 and 105).

The Maldivian Act aims to systematise children's rights by explicitly repealing the Child Rights Protection Act (1991) and amending Art. 44 (a) and Section 44 (e) (1) of the Maldivian Penal Code, in accordance with the recommendation of the Committee on the Rights of the Child in its 2016 Concluding Observations (Committee on the Rights of the Child 2016).

In Nepal, the mechanism through which children's rights are systematised is the repeal of the previous Act relating to Children (1992) and the amendment of the Birth, Death and Other Personal Events (Registration) Act (1976). The legislation also explicitly states that any act carried out pursuant to the 1992 Act shall be deemed to have been executed under the 2018 Act. In addition, it determines the prevalence of dispositions from the 2018 Act concerning what is contained therein, and the application of other legislation for matters that are not covered by the 2018 law.

In terms of children's rights relevant to this study, among the basic children's rights set forth in Art. 12, the Afghan legislation includes birth registration, health, education, vaccination, social protection and child protection (UNICEF 2019). The CPRL also contains provisions for gender equality within the context of free and mandatory education up to secondary school. Within the scope of social protection, particularly relevant are the following provisions:

- Right to identity (Art. 15) and birth registration (Art. 17): These rights are fundamental preconditions to access the social protection measures provided by the State.
- The improvement of the life standard of the child: The CPRL explicitly attributes to ministries and governmental organisations the obligation to undertake measures to assist the legal representatives of the child, considering financial resources, in a manner that they can provide the child with appropriate food, clothes and housing, and improve the life standard of the child (Art. 21).
- Social protection for children with disabilities: Relevant ministries and governmental organisations are obliged to provide special social protection to children with physical or mental disabilities, in a way that enables them to improve their self-confidence, have a dignified life and actively participate in society (Art. 36, para. 3). This provision is mirrored in Art. 40, which encourages the active participation of children with disabilities in society.
- Orphanages: The Ministry of Labour and Social Affairs is obliged to establish orphanages to ensure the growth, nurturing and livelihoods of indigent orphans and those without a guardian (Art 44).

- Social insurance: Based on the financial resources of the child or her/his legal representative, ministries and governmental organisations are obliged to provide and expand social insurance for children (Art. 45).

The Maldivian legislation sets out in its second part a number of children's rights, including: the right to an adequate quality of life (Art. 20, let. a), the right to food, clean water, access to an adequate sewerage system, shelter, clothing and the right to be raised in a healthy environment (Art. 20, let. b). The same article also attributes to the State, within its ability and resources, the responsibility to provide social protection for children in need and their parents (Art. 20, let. d). In addition, the Act enshrines children's right to birth registration, name and nationality (Art. 14) and the right to identity (Art. 15), both representing fundamental preconditions for receiving social protection.

Besides ascribing to the State the responsibility to take the necessary legal and administrative measures to ensure the rights stipulated therein to children (Art. 46, let. a), the Act also clearly refers to the need to fulfil the obligations of the State under the CRC (Art. 46, let. b). Further, Art. 47 includes within the responsibilities of the State the provision of adequate resources to parents to facilitate their responsibilities in raising and nurturing children (let. a), yet it stipulates that when parents are negligent in providing children with protection and safeguarding their rights, the State shall hold such parents accountable and provide care and protection to the child (let. b).

The Nepalese act builds on the CRC and the Constitution to implement the fundamental rights of children enshrined therein. Thus, it foresees the need to respect, protect and fulfil children's rights, and the basic principle of the best interest of the child is introduced. The fourth paragraph of Art. 7 sets out the right to 'special protection' from the State for children with disabilities, war victims, displaced children and those living in vulnerable conditions or on the streets. This provision fundamentally enshrines at the statutory level the right contained in Art. 39 of the Constitution.

If any of the rights enshrined in the Act is violated, including the right to social protection, an application can be filed before the local-level judicial committee where the child is resident (Art. 64) or directly before the territorial High Court concerned (Art. 65). It is also worth highlighting that the Act criminalises corporal punishment of children, making Nepal the first country in South Asia and the 54th in the world to do so.

From an institutional perspective, obligations incumbent on ministries and governmental institutions to effectively ensure children's rights are clearly defined. Further, all sets of laws provide for the creation of various bodies. The Afghan legislation provides for the establishment of a National Commission for Children (Art. 9), which includes ensuring coordination among governmental and non-governmental organisations as one of its functions. Moreover, the CPRL also foresees the creation of a Technical Committee on Protection of Child Rights under the presidency of the Minister of Labour and Social Affairs whose functions include technical legal recommendations to the Commission, monitoring and evaluation, and the collection of statistics on vulnerable children. Technical Committees should also be established at provincial level to oversee the implementation of the CPRL and to ensure coordination among governmental and non-governmental organisations and relevant specialised social service organisations.

The Maldivian Act provides for the establishment of a Council for Protecting the Rights of the Child, comprising representatives of different ministries (Gender, Family and Social Services; Health; and Education) and parties nominated by the police service, the Prosecutor General's Office and civil society organisations working on children's rights. The Council's functions can be fundamentally divided into counselling duties in a number of areas for the Ministry of Gender, Family and Social Services, and monitoring and evaluation responsibilities. The appointment of an impartial and independent Children's Ombudsperson is foreseen to monitor the extent of enforcement of the Act.

Finally, the Nepalese law prescribes the establishment of a National Child Rights Council, chaired by the Minister for Women, Children and Senior Citizens, to protect and promote the rights and interests of the child (Art. 59). In addition, provision is made for the establishment of Provincial Child Rights Committees, chaired by the Minister of the Province,

overseeing matters relating to children (Art. 60), and Local-Level Child Rights Committees, chaired by a Member of the Rural Municipality or Municipality designated by the Vice-Chairperson or Deputy-Mayor of the Rural Municipal Executive or Municipal Executive, respectively (Art. 60, para. 2).

National Human Rights Institutions

The presence of independent monitoring institutions for children's rights in South Asia should be discussed, as a fundamental guarantee in monitoring the effective implementation of children's fundamental rights at the national level as well as the right to social protection and other human rights. The need for functioning National Human Rights Institutions appears fundamental, given that no country in the region is a State party to the ICESCR Optional Protocol and there is no regional human rights system.

In Afghanistan, in accordance with Article 58 of the Constitution and with the 2005 Law on the Structure, Duties and Mandate of the Afghanistan Independent Human Rights Commission (AIHRC), the AIHRC was established in 2002 with a Child Rights Desk. Within this context the National Commission for Children and the Technical Committee on Protection of Child Rights foreseen in the CPRL should also be taken into account.

In Bangladesh, after considerable effort, the National Human Rights Commission was established in 2009 through a law of the same name. It includes a Child Rights Commission, consisting of seven members representing national and international NGOs, United Nations bodies and eminent human rights and children's rights personalities, which meets every 2 months. Members of the Human Rights Commission are appointed by the President on the recommendation of a government-led selection committee (Save the Children et al. 2013).

Bhutan is still lacking an independent mechanism for monitoring human rights. As a consequence, the Committee on the Rights of the Child (2017) recommended the establishment of an independent mechanism for monitoring human rights, with a specific mechanism for monitoring children's rights.

India has both a National Human Rights Commission and, since 2007, a National Commission for the Protection of Child Rights. The latter should entail the establishment of commissions in states and union territories with the mandate to receive complaints for violations of children's rights. Referring to the National Commission, the Committee on the Rights of the Child expressed concern in relation to its non-compliance with the Paris Principles, which set out six main criteria that National Human Rights Institutions are required to meet to promote and protect human rights. A recommendation was made so to ensure the independence of the Commission in terms of its procedures for selection of members, budget allocation, mandate and immunities.

Maldives has a Human Rights Commission as foreseen in Art. 189 of its Constitution, governed by the Human Rights Commission Act (No. 06/2006), which includes a Child's Right Unit. The Human Rights Committee, within the context of the ICCPR, recommended in its Concluding Observations (2012, 3) considering expanding its mandate to promote all human rights and freedoms, in full compliance with the Paris Principles. In addition to the Commission, a Child and Family Protection Service was established in the capital and dedicated centres on 19 atolls, to address children's rights violations. The Council for Protecting the Rights of the Child, as foreseen in the 2019 Child Rights Protection Act, was also established.

Nepal established its National Human Rights Commission in 2000. The actual legal framework for the Commission is represented by, respectively, Articles 248 and 249 of the 2015 Constitution and the 2012 National Human Rights Commission Act. In relation to the latter, the Committee on the Rights of the Child (2016) expressed concern about staff appointments and the Commission's expenses being subject to government approval and the establishment of a six-month deadline by which human rights violations must be filed; on a more general level, the Committee expressed concern in relation to the lack of a dedicated body with a mandate to receive complaints of violations of children's

rights. The 2018 legislation also requires the establishment of a National Child Rights Council as well as Child Rights Committees at provincial and local levels.

In Pakistan the National Commission for Human Rights was established in 2015. Within the context of the ICCPR, the Human Rights Committee (2017) recommended the State party to adopt all legislative, policy and institutional measures necessary to ensure that the Commission is able to carry out its mandate fully, effectively, independently and in line with the Paris Principles. Moreover, in line with Pakistan's system of governance, Ombudspersons exist both at federal and provincial level, and a National Commission for Children and a Children's Complaints Office were established by the Ombudsman's Secretariat, housed within the same institution since 2009 (Pulla 2018).

Finally, the Human Rights Commission of Sri Lanka was established through the 1996 Human Rights Commission Act. The Committee on the Rights of the Child (2018) recommended ensuring the independence of the Commission as foreseen by the Paris Principles, and establishing a specific mechanism within the Commission to monitor children's rights.

3.4 The programme level

Overview of the social protection programmes mapped

A social protection programme might be regulated or not. From a rights-based perspective, the absence of a regulatory framework for a programme is the worst possible situation, given that there are no legal grounds on which to make a complaint about the programme. Conversely, the presence of a regulatory framework in principle allows aspects of the programme regulated therein to be challenged.

Despite the existence of a regulatory framework for a programme, there might be legislation (other than social protection)²¹ protecting vulnerable groups or regulating economic, social and cultural rights that contains provisions that are relevant to a social protection programme without actually regulating it. Table 14 reports legislation which forms the legal basis for a given programme and explains the link between the two.

While these provisions cannot be used before courts to challenge specific aspects of a programme (e.g. regarding eligibility or to complain about the quantity/quality of the benefit), they can nevertheless be used to advocate for the adoption of a regulatory framework for a given programme on the basis of the existing link between the programme and the legislation. This can be done primarily by using representative collective institutions—set up as government and/or NGO initiatives or established by local communities themselves—which can engage with the administrative body responsible for social protection as well as with parliamentary committees, ministerial committees and constitutional institutions such as supreme audit institutions.

The analysis revealed that only 18 programmes are embedded in regulatory frameworks; thus, the remaining 33 programmes (10 of which are at least supported by a legal basis, which, for the reasons stated above cannot be considered a regulatory framework) are worryingly not governed by any set of enforceable rules. This situation goes against the HRBA to social protection, since rights and obligations are not established (and, consequently, there are no rights-holders or duty-bearers), and is contrary to the CESCR's General Comment No. 19 and the ILO's Social Protection Floors Recommendation (No. 202).

21. In that case, at a minimum, eligible people, the nature and level of benefits, funding arrangements and implementing institutions should be defined.

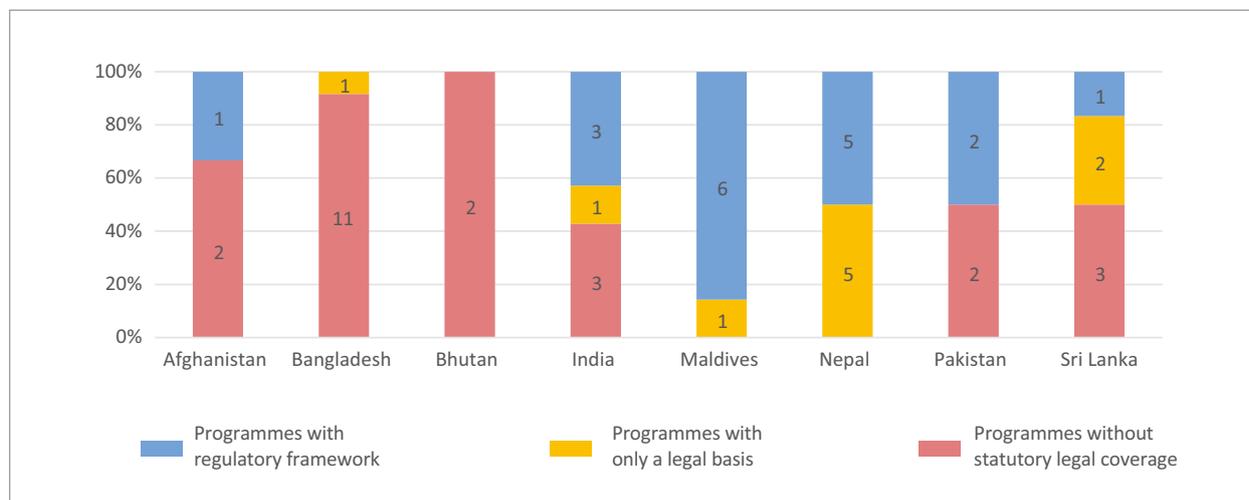
Table 14. Legislation serving as legal basis for the programmes mapped

| Country | Statutory legislation | Programme | Link |
|------------|---|---|--|
| Bangladesh | Rights and Protection of Persons with Disabilities Act (2013) | Allowance for Financially Insolvent Persons with Disabilities | One of the government's responsibilities resulting from the Act is to ensure step-by-step inclusion of persons with disabilities on a priority basis, especially poor people, children, women and elderly people with disabilities, in the existing social safety net programme and poverty alleviation programmes. |
| India | National Food Security Act (2013) | Pradhan Mantri Matritva Vandana Yojana | Art. 4 of the Act provides that, under such schemes as framed by the central government, every pregnant woman and lactating mother is entitled to a maternity benefit corresponding to that provided by the scheme. |
| Maldives | Health Services Act (2015) | Medical Welfare | One of the purposes of the Act is to ensure accessibility of health services for all citizens. The programme aims to achieve this objective by providing: a) health services abroad; b) medicines and medical equipment not covered by the <i>Aasandha</i> ; and c) medical care at private hospitals that is not offered by government hospitals. |
| Nepal | Safe Motherhood and Reproductive Health Right Act (2018) | <i>Aama</i> (Safe Motherhood) Programme | The Act enshrines in general terms the rights to antenatal, obstetric and post-natal care, among others. It determines the provision of free health care services: as a general rule, for public health institutions and those receiving grants from the government; as an exception for private health institutions for persons unable to pay the service charge. Finally, the Act already includes a provision concerning economic support for woman who give birth, as prescribed in a further regulation. |
| | The Right to Employment Act (2018) | <i>Karnali</i> Employment Programme Rural Community Infrastructure Work (RCIW) | The Act refers to a minimum period of employment (at least 100 days in a fiscal year) to be provided by the Government of Nepal. When such employment cannot be provided, a livelihood allowance is foreseen. |
| | Education Rules (2002) and Act relating to free and compulsory education (2018) | National School Meals Programme and Food for Education | The Education Rules explicitly refer to the programme (without regulating it) by attributing its implementation to the District Education Officer. The Act relating to free and compulsory education includes a norm concerning the provision of daily meals or cash (in lieu of the former) for prescribed communities, economically destitute citizens and persons with disabilities. |
| | Education Act (1971) and Act relating to free and compulsory education (2018) | Scholarships | The Education Act provides for the possibility of arranging scholarships up to secondary education. The Act relating to free and compulsory education integrates such provision by attributing to the local level the faculty to provide scholarships to be spent on educational materials and other material supporting students' learning. This applies to prescribed communities, economically destitute citizens and persons with disabilities. |
| Sri Lanka | Protection of the Rights of the Elders Act (2000, 2011 amended) | Financial Support to Elderly or Elderly Assistance Programme | The Act deals with the establishment of the public body responsible for implementing the scheme. One objective of the National Council for Elders is the provision of care to elderly people who need assistance, and one of the associated strategies is the delivery of a monthly allowance for elderly people with a low income. |
| | Protection of the Rights of Persons with Disabilities Act (1996, 2003 amended) | National Secretariat for Persons with Disabilities Programmes | Similarly to the case above, the Act provides for the establishment and governance of the National Council for Persons with Disabilities, responsible for initiating and implementing schemes for, the promotion of the welfare of, and protection of the rights of, persons with disabilities. The Act also provides for the creation of the National Secretariat for Persons with Disabilities under the aegis of the Council. |

Source: Author's elaboration.

Figure 2 expands on the above by outlining for each country in the region the number of programmes without regulatory frameworks, those characterised by a legal basis, and those embedded in regulatory frameworks.

Figure 2. Programmes with and without regulatory frameworks and programmes supported by a legal basis, by country



Source: Author's elaboration.

A number of relevant differences can be observed across countries in South Asia. Maldives notably has regulatory frameworks for each of the schemes mapped, except for the Medical Welfare programme, for which only a legal basis was found. The Disability Allowance Programme and the Old Age Basic Pension are regulated by specific legislation protecting, respectively, the rights of persons with disabilities and elderly people, whereas the remaining programmes fall under the scope of the general Social Protection Act, with a further specific regulation for each one.

In Nepal exactly half of the programmes (i.e. 5 out of 10) have regulatory frameworks, whereas the others have at least a legal basis. It is the only country in which all programmes are regulated by a single Act—the Social Security Act—which includes various social protection schemes under the umbrella term ‘Social Security Allowance.’ Nepal is also the country in which most legislation serving as a legal basis was found; this can be partially explained by the enactment of several acts²² implementing economic, social and cultural rights as enshrined in the 2015 Constitution. The legislation, in addition to being strictly interlinked with the social protection sector, also represents a significant step towards a rights-based approach and the fulfilment of economic, social and cultural rights.

In Pakistan also half of the programmes mapped (i.e. two out of four) are regulated, whereas the others do not have any regulation.

Slightly fewer than half of the social protection programmes in India are characterised by regulatory frameworks. India also has one same statutory law to cover multiple programmes: the NFSA, which is not only the regulatory framework for food distribution programmes such as the TPDS and the Mid Day Meal but also creates a general entitlement—standing thus as the legal basis—for the *Pradhan Mantri Matritva Vandana Yojana*. The three schemes without a regulatory framework are all health related; this is linked to the fact that there is no statutory legislation which provides for and regulates free and universal access to health care services. Such a norm was present in the 2009 National Health Bill, which was never enacted.

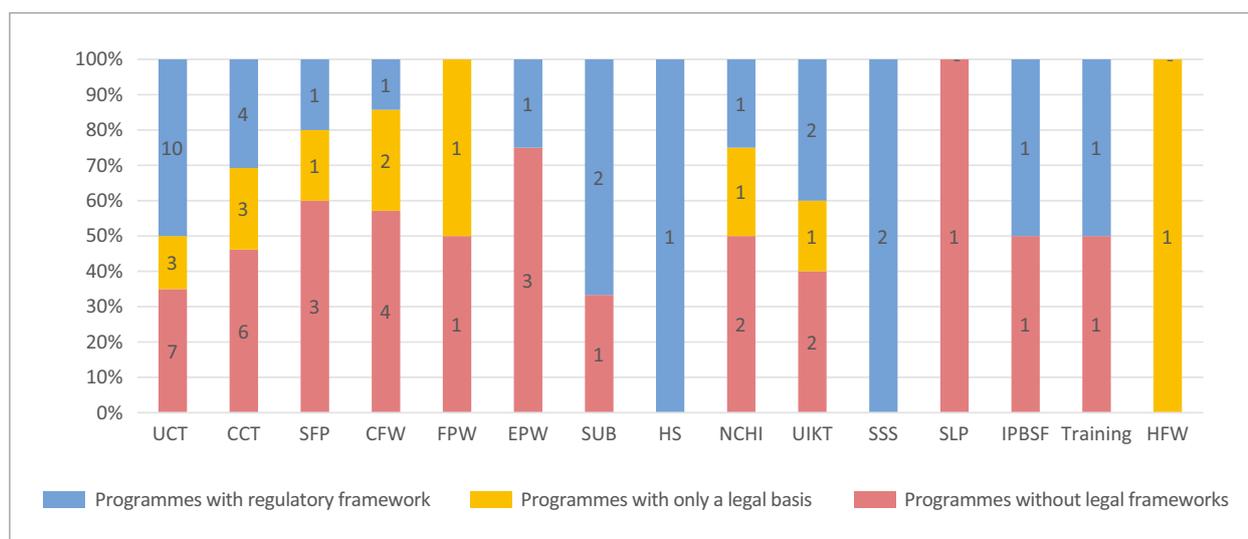
22. The Right to Food and Food Sovereignty Act (No. 13/2018), the Right to Housing Act (No. 12/2018), the Act Relating to Compulsory and Free Education (No. 16/2018) and the Right to Employment Act (No. 17/2018).

For Afghanistan and Sri Lanka only one regulation laying down programme rules was found. Yet both countries have enacted statutory social protection legislation, although with significant differences: while the Afghan law focuses mainly on the institutional structure and governance of the social protection sector, Sri Lanka's Act provides a legal framework applicable to all payments of welfare benefits and establishes to that end a uniform set of rules for the selection process.

In Bangladesh and Bhutan none of the programmes are supported by regulatory frameworks. This finding is particularly significant for Bangladesh, since it is the country with the most programmes mapped.

The 51 programmes in our sample can be classified as belonging to one or more of the programme types described in Annex II. Figure 3 indicates on its Y axis the percentage of programmes classified under each programme type according to their statutory legal coverage (i.e. not covered by any statutory law, with a legal basis only, and covered by a regulatory framework). The data labels in the bars indicate the absolute number of programmes that can be classified under each programme type, disaggregated by their respective statutory legal coverage. Naturally, the total number of programmes adds up to much more than the 51 programmes that make up our sample, since one programme can be classified as belonging to more than one programme type; indeed, this is usually the case.

Figure 3. Programme types with and without regulatory frameworks and supported by a legal basis



Legend: UCT: Unconditional cash transfer; CCT: Conditional cash transfer; SFP: School feeding programme; CFW: Cash for work; FPW: Food for work; EPW: Educational fee waiver; SUB: Food subsidy; HS: Housing subsidy; NCHI: Non-contributory health insurance; UIKT: Unconditional in-kind transfer; SSS: Social support (or care) service; SLP: Sustainable livelihoods programme; IPBSF: Institutional purchase benefitting smallholder farmers; HFW: Health fee waiver.

Source: Author's elaboration.

The analysis reveals that unconditional cash transfers are the most prevalent programme type mapped in South Asia, followed by conditional cash transfers. The least frequent programme types are housing subsidies, sustainable livelihoods programmes and health fee waivers.

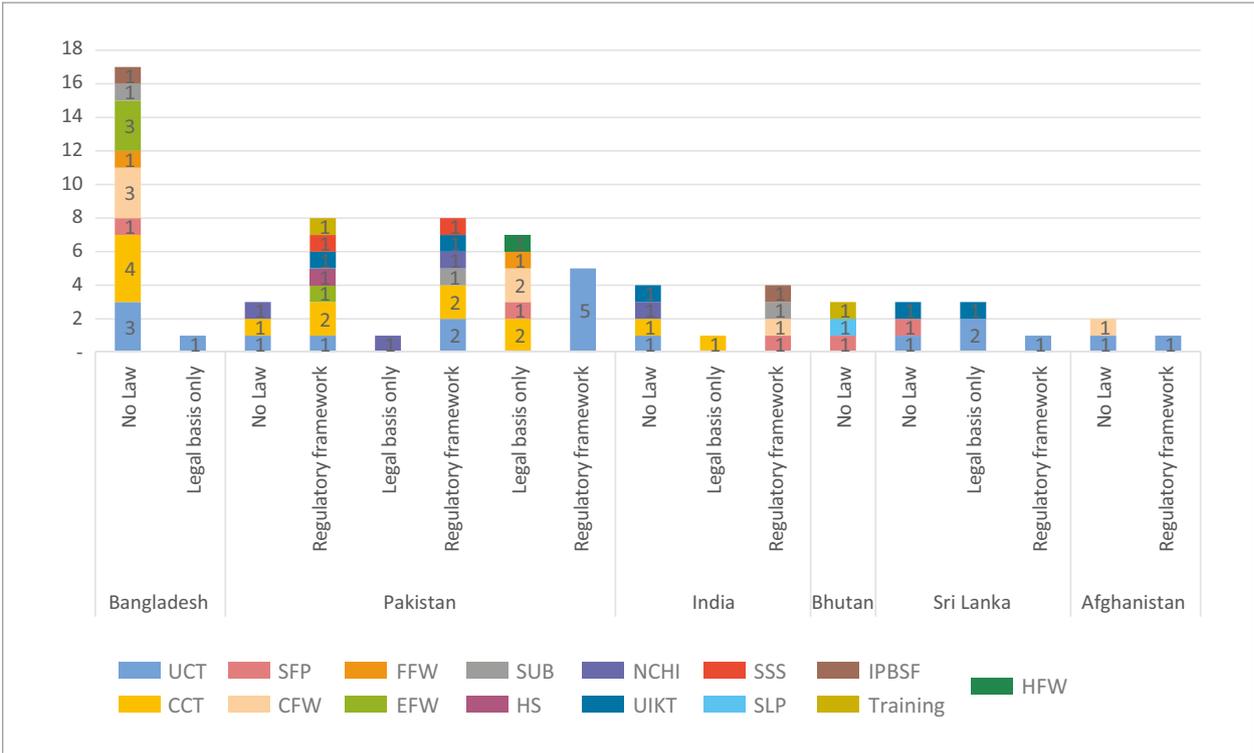
In terms of regulatory frameworks, Figure 3 indicates that housing subsidies and social support services are the only programme types that are supported by regulatory frameworks in each instance. Two thirds (67 per cent) of food subsidy programmes, half of the unconditional cash transfers, institutional purchases benefitting smallholder farmers and training programmes, and 40 per cent of unconditional in-kind transfers are covered by a regulatory

framework. Worryingly, only 30 per cent of the second most frequent programme type, conditional cash transfers, are embedded in legal regulations. Finally, non-contributory health insurance, educational fee waivers, school feeding programmes and cash for work programme types were found to be supported by a regulatory framework in at least one instance.

In contrast, the one programme in our sample classified as a sustainable livelihoods programme has no statutory legal coverage. Neither do the food for work and health fee waiver programmes. Only one of the four educational fee waiver programmes has a regulatory framework, as do two of the five school feeding programmes and three of the seven cash for work programmes.

Figure 4 presents the absolute number of programmes classified under each programme type in columns disaggregated by legal coverage, clustered by country. This shows, for instance, that Afghanistan has two programmes classified as unconditional cash transfers (the Afghanistan Social Protection Programme and the Martyrs and Disabled Pension Programme) and one classified as cash for work (the National Rural Access Programme), of which only one (the Martyrs and Disabled Pension Programme’s unconditional cash transfer) has a regulatory framework.

Figure 4. Programme types with and without regulatory frameworks and supported by a legal basis, by country



Legend: UCT: Unconditional cash transfer; CCT: Conditional cash transfer; SFP: School feeding programme; CFW: Cash for work; FFW: Food for work; EFW: Educational fee waiver; SUB: Food subsidy; HS: Housing subsidy; NCHI: Non-contributory health insurance; UIKT: Unconditional in-kind transfer; SSS: Social support (or care) service; SLP: Sustainable livelihoods programme; IPBSF: Institutional purchase benefiting smallholder farmers; HFW: Health fee waiver.

Source: Author’s elaboration.

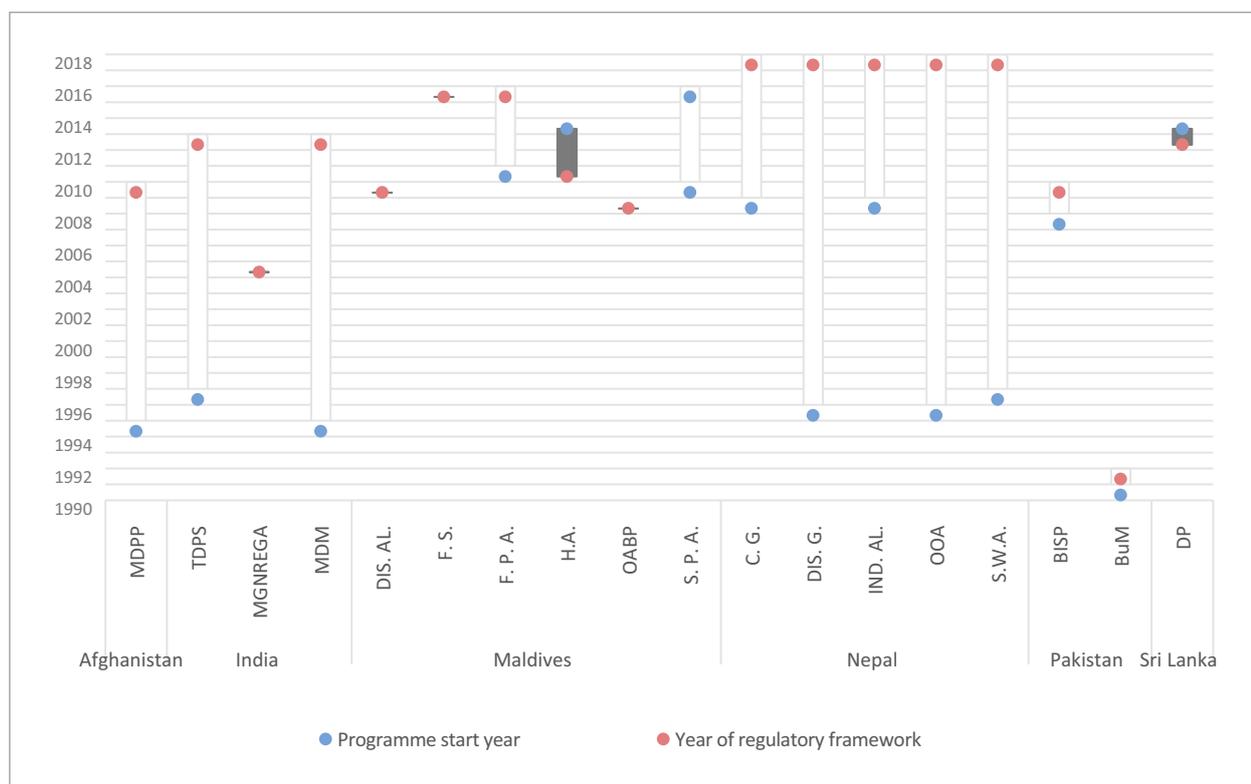
The graph shows that Bangladesh has the most programmes in our sample, covering the widest range of types of intervention. However, only one of its programmes—the Allowance for Financially Insolvent Persons with Disabilities—is supported by a legal basis.

In Pakistan, the majority of programme types found are covered by regulations. This is because the two schemes with a regulatory framework—*Bait-ul-Mal* and the Benazir Income Support Programme—have multiple components, characterised by six (conditional cash transfer, educational fee waiver, housing subsidies, unconditional in-kind transfers, social support services and training) and two (unconditional and conditional cash transfers) programme types, respectively. The Pakistan FATA Temporarily Displaced Persons Emergency Recovery Project is also a multi-component programme (unconditional and conditional cash transfers) but is not regulated. The other non-regulated scheme, the Prime Minister National Health Programme, has a single component (non-contributory health insurance).

For Maldives the only programme supported by a legal basis is the Medical Welfare scheme (non-contributory health insurance), which provides goods and services not covered in the general non-contributory health insurance scheme, *Husnuvaa Aasandha*, which is regulated.

In Nepal all unconditional cash transfer programmes are supported by regulatory frameworks, whereas the country's other programme types have only a legal basis. Nepal is the country in which unconditional cash transfer programmes are most frequently found, closely followed by Bangladesh and Sri Lanka. However, a substantial difference is that no regulatory frameworks were found for unconditional cash transfers in Bangladesh, and in Sri Lanka only one regulation was found. Unconditional cash transfers are by far the most predominant programme type in Sri Lanka; therefore, the lack of regulatory frameworks is particularly noteworthy.

Figure 5. Relation between programmes' start year and year of enactment of the associated regulatory framework



Legend: MDPP: Martyrs and Disabled Pension Programme; TDPS: Targeted Public Distribution System; MDM: Mid Day Meal; DA: Disability Allowance; FS: Food Subsidy; FPA: Foster Parent Allowance; OABP: Old Age Basic Pension; SPA: Single Parent Allowance; CG: Child Grant; DG: Disability Grant; EIPA: Endangered Indigenous Peoples Allowance; OOA: Old Age Allowance; SWA: Single Women's Allowance; BISP: Benazir Income Support Programme; BuM: *Bait-ul-Mal*; DP: *Divinenguma* Programme.

Source: Author's elaboration.

A rather fragmented situation can be found in India. This can partially be explained by the fact that the programmes are particularly heterogeneous, given that the only programme type present in more than one scheme is a conditional cash transfer (present in the unregulated *Janani Suraksha Yojana* and in the *Pradhan Mantri Matritva Vandana Yojana*, characterised by a legal basis). This indicates that there is no overlap of interventions among the programmes mapped.

India is the only country with a cash for work programme (the Mahatma Gandhi National Rural Employment Guarantee) covered by a regulatory framework. On the other hand, the most common programme type (unconditional cash transfers) in India's social protection system is not characterised by any regulatory framework. The same applies to Bangladesh.

Finally, the temporal relation between the programmes' start year (in their current format) and the year in which regulatory frameworks were enacted (and not when they were eventually amended) is shown in Figure 5 for all programmes covered by a regulatory framework.

From a general perspective, each regulatory framework—except for that for *Bait-ul-Mal* in Pakistan—has been enacted since the beginning of the new millennium. This is coherent with the analysis presented by Koehler (2014), which indicates that since the early 2000s a significant expansion of commitments by South Asian countries has taken place in relation to welfare development and a consequent orientation towards a rights-based approach. Based on the programmes mapped in this analysis, this finding applies to India, Maldives and Nepal and, to a lesser extent, to Afghanistan, Pakistan and Sri Lanka. In contrast, it does not apply to Bangladesh or Bhutan.

The fact that in some cases—i.e. the Maldivian *Husnuvaa Aasandha* and Sri Lanka's *Divineguma*—the year of the regulatory framework precedes the year in which the programme started should be explained. In both these instances, the programmes were implemented under different names (and with different features in certain cases): *Aasandha* was introduced in 2012, replacing *Madhana* and *Madhana Plus*, and expanded in 2014 with its current name, while the *Divineguma* programme started in 1995 under the name *Samurdhi*.

The graph also indicates that, in several instances, the roll-out of the programme and the year of enactment of the associated regulatory framework coincide. This represents the ideal situation, because a normative basis that can be used by right-holders exists from the beginning of the programme. Such an approach has been followed predominantly in Maldives, with the Disability Allowance, the Old Age Basic Pension and the Food Subsidy Programme. The same applies to the Indian Mahatma Gandhi National Rural Employment Guarantee.

For the remaining programmes, the time between the programme's start year and the enactment of the relevant regulatory framework varies considerably. In Pakistan, regulations in support of *Bait-ul-Mal* and the Benazir Income Support Programme (BISP) were introduced, respectively, 1 and 2 years after the commencement of the schemes.

In India it should be noted that the NFSA serves as a regulatory framework for the TPDS and the Mid Day Meal. Likewise, in Nepal, as already mentioned, all schemes fall within the scope of the Social Security Act of 2018. Prior to the introduction of the Act, each of the programmes had at least a legal basis.

Compliance of regulatory frameworks with the HRBA to social protection

Table 15 reports for each country the programme and the associated regulatory framework analysed.

Table 15. Programmes with regulatory frameworks

| Country | Programme | Regulatory framework |
|-------------|---|--|
| Afghanistan | Martyrs and Disabled Pension Programme | Law on Rights and Benefits/Privileges of Survivor of Martyrs and Missing Persons + Law on Rights and Benefits/Privileges of People with Disabilities |
| India | Targeted Public Distribution System | National Food Security Act |
| | Mid Day Meal | National Food Security Act + Mid Day Meal Rules |
| | Mahatma Gandhi National Rural Employment Guarantee Act | National Rural Employment Guarantee Act |
| Maldives | Disability Allowance Programme | Protection and Financial Assistance to Persons with Disabilities Act + Social Protection Act and Regulation |
| | Food Subsidy Programme | Social Protection Act and Regulation + Reg. 23 |
| | Foster Parent Allowance | Social Protection Act and Regulation + Reg. 38 |
| | Husnuvaa Aasandha | National Social Health Insurance Act |
| | Old Age Basic Pension | Maldives Pension Act + Social Protection Act and Regulation |
| | Single Parent Allowance | Social Protection Act and Regulation + Reg. 39 |
| Nepal | Child Grant | Social Security Act |
| | Disability Grant | The Act Relating to Rights of Persons with Disabilities + Social Security Act |
| | Endangered Indigenous Peoples Allowance or Endangered Ethnicity Grant | National Foundation for Development of Indigenous Nationalities Act + Social Security Act |
| | Old Age Allowance or Senior Citizen's Allowance | Senior Citizens Act and Rules + Social Security Act |
| | Single Women's Allowance | Senior Citizens Act and Rules + Social Security Act |
| Pakistan | Benazir Income Support Programme | BISP Act |
| | <i>Bait-ul-Mal</i> | <i>Bait-ul-Mal Act</i> |
| Sri Lanka | <i>Divineguma</i> Programme | <i>Divineguma Act</i> |

Source: Author's elaboration.

Applying an HRBA to social protection **implies that the regulatory frameworks of programmes should comply with a number of minimum criteria** (Sepúlveda 2012; Transform 2017; and UNICEF 2014). Each regulatory framework has been assessed in terms of compliance against the following set of criteria:

- it sets out precise eligibility requirements;
- it provides for mechanisms to ensure transparency and access to information (the latter will be analysed separately from the former);
- it defines roles and responsibilities for those involved in the schemes;
- it articulates the long-term financial requirements and ensures the adequacy and predictability of benefits. The analysis distinguishes between financial requirements ('HRBA 4a') and the predictability of benefits ('HRBA 4b'). Regarding the adequacy of benefits, refer to IPC-IG (2020);

- it establishes accessible complaints and appeals mechanisms; and
- it establishes foundations for citizens' participation.

As a result of the assessment, the regulatory framework is classified for each criterion in one of the following ways:

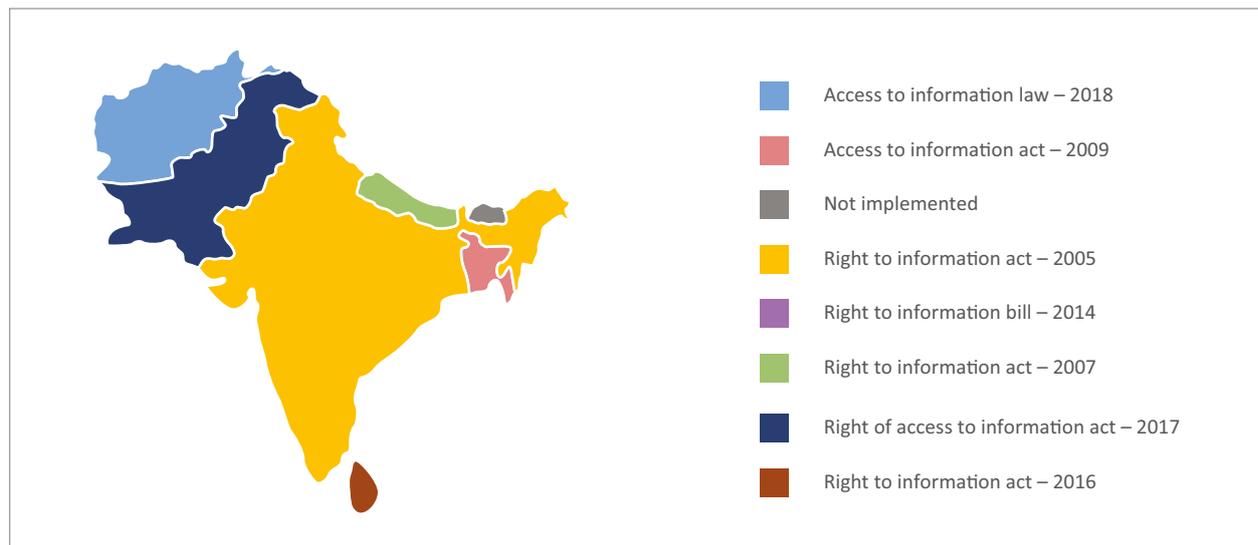
| No provision | Non-compliant | Weak on compliance, with significant gaps or inconsistencies | Moderately compliant, with only small gaps or inconsistencies | Compliant |
|--------------|---------------|--|---|-----------|
| ◆ | ◆ | ◆ | ◆ | ◆ |

To reduce the margin of discretion in the analysis as much as possible, Annex III reports for each regulatory framework the associated scorecard, which identifies the relevant provision assessed and presents a brief rationale for the classification assigned.

Access to information

This topic is treated separately because very few legal frameworks contain provisions that regulate beneficiaries' access to information. The few that do, such as the Maldivian Social Protection Act and Regulation, focus more on the protection of beneficiaries' privacy rather than their access to information. Yet, as already mentioned in the section dedicated to constitutional analysis, each constitution notably contains a provision guaranteeing citizens' access to information. Further, the legal systems of South Asia have adopted (with the exception of Bhutan) statutory legislation regulating the subject, as illustrated in Figure 6.

Figure 6. Right to information acts and bills in South Asia



Source: Author's elaboration.

Since the recognition at constitutional level of the right to information and its consequent implementation at statutory level guarantees transparency in public institutions to a certain extent, the awareness of citizens in regard to the existence of the legislation and the specific rights granted therein should be raised.

HRBA 1: Set out precise eligibility requirements

The ILO's Recommendation No. 202 on social protection floors explicitly states that national laws and regulations should specify the qualifying conditions of the social protection schemes established therein (para. 7). Further, human rights standards and the principle of non-discrimination imply that eligibility criteria must be objective, reasonable and transparent (Social Protection Human Rights Platform 2019). Table 16 outlines the extent to which each regulatory framework sets out precise eligibility requirements.

Table 16. Compliance of regulatory frameworks with HRBA 1

| Country | Regulatory framework | Programme | HRBA 1 |
|-------------|--|-----------|--------|
| Afghanistan | Law on Rights and Benefits/Privileges of Survivor of Martyrs and Missing Persons + Law on Rights and Benefits/Privileges of People with Disabilities | MDPP | ◆ |
| | National Food Security Act | TDPS | ◆ |
| India | National Food Security Act + Mid Day Meal Rules | MDM | ◆ |
| | Mahatma Gandhi National Rural Employment Guarantee Act | MGNREGA | ◆ |
| Maldives | Maldives Pension Act + Social Protection Act and Regulation | OABP | ◆ |
| | National Social Health Insurance Act | HA | ◆ |
| | Social Protection Act and Regulation + Reg. 23 | FS | ◆ |
| | Social Protection Act and Regulation + Reg. 39 | SPA | ◆ |
| | Social Protection Act and Regulation + Reg. 38 | FPA | ◆ |
| Nepal | Protection and Financial Assistance to Persons with Disabilities Act + Social Protection Act and Regulation | DA | ◆ |
| | The Act Relating to Rights of Persons with Disabilities + Social Security Act | DG | ◆ |
| | Social Security Act | CG | ◆ |
| | National Foundation for Development of Indigenous Nationalities Act, 2002 + Social Security Act | EIPA | ◆ |
| | Senior Citizens Act and Rules + Social Security Act | OAA | ◆ |
| Pakistan | Senior Citizens Act and Rules + Social Security Act | SWA | ◆ |
| | Benazir Income Support Programme Act | BISP | ◆ |
| | <i>Bait-ul-Mal</i> Act | BuM | ◆ |
| Sri Lanka | <i>Divineguma</i> Act | DP | ◆ |

Legend: MDPP: Martyrs and Disabled Pension Programme; TDPS: Targeted Public Distribution System; MDM: Mid Day Meal; MGNREGA: Mahatma Gandhi National Rural Employment Guarantee Act; OABP: Old Age Basic Pension; HA: *Husnuvaa Aasandha*; FS: Food Subsidy; SPA: Single Parent Allowance; FPA: Foster Parent Allowance; DA: Disability Allowance; DG: Disability Grant; CG: Child Grant; EIPA: Endangered Indigenous Peoples Allowance; OOA: Old Age Allowance; SWA: Single Women's Allowance; BISP: Benazir Income Support Programme; BuM: *Bait-ul-Mal*; DP: *Divineguma* Programme.

Source: Author's elaboration.

Most regulatory frameworks set precise eligibility criteria, thereby enhancing programme transparency. Further, this fact fundamentally allows individuals to exercise their rights in case of undue exclusion on the grounds of eligibility, when this possibility is included in the legislation. It is also noteworthy that the Indian Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) operates on the basis of self-targeting, while the Maldivian *Husnuvaa Aasandha* is universal in nature.

Several regulatory frameworks are characterised by flaws in terms of their compliance with this first criterion. For example, the Pakistani and Sri Lankan legislation identifies the beneficiaries of the social protection measures afforded but remits the determination of eligibility criteria to further regulations, and no regulation was found in this respect. In Pakistan's case eligibility criteria are instead listed on the government's websites dedicated to the

programmes (Government of Pakistan 2019). However, in these instances (and when specified in guidelines or operational manuals) eligibility criteria have no legal value and are, therefore, not enforceable.

The failure to set out eligibility criteria in a programme's regulatory framework diminishes the effectiveness of virtuous targeting mechanisms; for example, the BISP, besides aiming to reduce poverty also empowers women by directly transferring the benefits to female heads of households. Yet this rule is not enshrined in legislation, hence frustrating the possibility of rights-holders to legally enforce their entitlement and to hold the duty-bearer accountable.

The Afghan Law on Rights and Benefits/Privileges of People with Disabilities provides a wide definition of disability but limits the provision of the benefit to individuals disabled during the *Jihad*, in armed conflict, defending the territorial integrity of the country and the rule of law or by anti-government acts.

In Nepal the Social Security Act determines that citizens with total disability are entitled to the Social Security Allowance, yet it does not provide a definition of total disability. Further, the Act relating to Rights of Persons with Disability only distinguishes between profound and severe disability; thus, it is unclear what the term 'total disability' refers to.

The Maldivian Single Parent Allowance requires the applicant to be either unmarried or divorced to receive the benefit. Being divorced excludes those individuals who are formally married but in a substantial situation of crisis with their spouse. This requirement can be also interpreted as conflicting with Art. 17 of the Constitution, which explicitly prohibits discrimination including on the grounds of 'status'.

Finally, with the notable exception of the Indian legislation, the regulatory frameworks analysed refer explicitly to citizens.

HRBA 2: Provide for mechanisms to ensure transparency

General Comment No. 19 of the United Nations CESCR states that the right of individuals and organisations to seek, receive and impart information on all social security entitlements in a clear and transparent manner should be guaranteed (para. 26). It is important to clarify that the application of the two concepts goes well beyond the administrative and financial aspects of programmes: all social protection measures implemented in a given country must ensure transparency and access to information "with respect to all core components of the programme – including targeting mechanisms, eligibility criteria, benefit levels complaints and redress mechanisms" (Sepúlveda 2012, 54).

Table 17 outlines the extent to which each regulatory framework provides mechanisms to ensure transparency.

A rather fragmented situation can be observed regarding the presence of mechanisms to ensure transparency in the regulatory frameworks analysed.

The Indian legislation stands out as containing a set of diverse mechanisms to ensure transparency. For example, the MGNREGA includes mechanisms ranging from the proper use of funds, to payment and implementation modalities of the scheme as responsibilities of the District Programme Coordinator and all implementing agencies. Further, states are enabled to establish rules to ensure transparency and accountability at all levels. Likewise, the NFSA calls for the establishment of vigilance committees at the state, district, block and fair price shop levels, which are responsible for the implementation of all schemes under the NFSA and for guaranteeing transparency. Finally, both Acts include an obligation to periodically undertake social audits, intended as processes in which people collectively monitor and evaluate the planning and implementation of a programme or scheme.

Pakistan's regulatory frameworks contain several provisions aiming to ensure financial transparency, such as norms regulating auditing procedures, whereas administrative transparency is guaranteed for both programmes by their respective Employees Services Regulations.

Table 17. Compliance of regulatory frameworks with HRBA 2

| Country | Regulatory framework | Programme | HRBA 2 |
|-------------|--|-----------|--------|
| Afghanistan | Law on Rights and Benefits/Privileges of Survivor of Martyrs and Missing Persons + Law on Rights and Benefits/Privileges of People with Disabilities | MDPP | ◆ |
| | National Food Security Act | TDPS | ◆ |
| India | National Food Security Act + Mid Day Meal Rules | MDM | ◆ |
| | Mahatma Gandhi National Rural Employment Guarantee Act | MGNREGA | ◆ |
| Maldives | Maldives Pension Act + Social Protection Act and Regulation | OABP | ◆ |
| | National Social Health Insurance Act | HA | ◆ |
| | Social Protection Act and Regulation + Reg. 23 | FS | ◆ |
| | Social Protection Act and Regulation + Reg. 39 | SPA | ◆ |
| | Social Protection Act and Regulation + Reg. 38 | FPA | ◆ |
| | Protection and Financial Assistance to Persons with Disabilities Act + Social Protection Act and Regulation | DA | ◆ |
| Nepal | The Act Relating to Rights of Persons with Disabilities + Social Security Act | DG | ◆ |
| | Social Security Act | CG | ◆ |
| | National Foundation for Development of Indigenous Nationalities Act, 2002 + Social Security Act | EIPA | ◆ |
| | Senior Citizens Act and Rules + Social Security Act | OAA | ◆ |
| | Senior Citizens Act and Rules + Social Security Act | SWA | ◆ |
| Pakistan | Benazir Income Support Programme Act | BISP | ◆ |
| | <i>Bait-ul-Mal</i> Act | BuM | ◆ |
| Sri Lanka | <i>Divineguma</i> Act | DP | ◆ |

Legend: MDPP: Martyrs and Disabled Pension Programme; TDPS: Targeted Public Distribution System; MDM: Mid Day Meal; MGNREGA: Mahatma Gandhi National Rural Employment Guarantee Act; OABP: Old Age Basic Pension; HA: *Husnuvaa Aasandha*; FS: Food Subsidy; SPA: Single Parent Allowance; FPA: Foster Parent Allowance; DA: Disability Allowance; DG: Disability Grant; CG: Child Grant; EIPA: Endangered Indigenous Peoples Allowance; OAA: Old Age Allowance; SWA: Single Women's Allowance; BISP: Benazir Income Support Programme; BuM: *Bait-ul-Mal*; DP: *Divineguma* Programme.

Source: Author's elaboration.

The regulatory frameworks in Maldives and Nepal contain very few provisions concerning transparency. The few that do exist set out an obligation for the body responsible for evaluating applications for a programme (the NSAP in the Maldives, and the local level in Nepal) to inform the applicant of their decision within a given period of time, indicating the reasons if the application is denied. The Maldivian legislation goes one step further, as it also includes the obligation to inform the beneficiary whenever social protection services are suspended or terminated, in addition to setting a general obligation for the NSAP to continuously monitor the value of social protection benefits.

Finally, in Afghanistan, no relevant provision was found in the legislation analysed.

HRBA 3: Define roles and responsibilities for those involved in the implementation of the schemes

Programmes' regulatory frameworks should be characterised by a clear definition of the various roles and responsibilities for social protection, to ensure the effective implementation of the schemes and, ultimately, to hold the institutions accountable. The elements that need to be regulated by law to ensure effective management and implementation of social protection schemes include: the composition of the institutional structure overseeing the delivery of social assistance; the powers and functions of the institutions and subjects responsible for the overall management, as well

as responsibilities, obligations and eventual sanctions in case of infringement; the procedures to appoint staff members; and standards of ethical conduct applicable to staff members (e.g. a code of good conduct) (Transform 2017).

Table 18 outlines the extent to which each regulatory framework defines roles and responsibilities for those involved in the implementation of the schemes.

It is noteworthy that all the regulatory frameworks analysed define with sufficient clarity the roles and responsibilities of institutions and subjects involved in the implementation of the schemes.

In Maldives, the National Social Health Insurance Act identifies the NSAP as the institutional body responsible for the coordination and implementation of all social protection schemes in the country, except for some health-related services that can be provided directly by health institutions. This arrangement avoids institutional fragmentation.

A notable feature of Pakistan's BISP Act is that it foresees that the Chief and Executive Patrons of the Council are, respectively, the President and the Prime Minister of Pakistan, connecting some aspects of programme management to the highest institutional and political figures.

Table 18. Compliance of regulatory frameworks with HRBA 3

| Country | Regulatory framework | Programme | HRBA 3 |
|-------------|--|-----------|--------|
| Afghanistan | Law on Rights and Benefits/Privileges of Survivor of Martyrs and Missing Persons + Law on Rights and Benefits/Privileges of People with Disabilities | MDPP | ◆ |
| | National Food Security Act | TDPS | ◆ |
| India | National Food Security Act + Mid Day Meal Rules | MDM | ◆ |
| | Mahatma Gandhi National Rural Employment Guarantee Act | MGNREGA | ◆ |
| Maldives | Maldives Pension Act + Social Protection Act and Regulation | OABP | ◆ |
| | National Social Health Insurance Act | HA | ◆ |
| | Social Protection Act and Regulation + Reg. 23 | FS | ◆ |
| | Social Protection Act and Regulation + Reg. 39 | SPA | ◆ |
| | Social Protection Act and Regulation + Reg. 38 | FPA | ◆ |
| | Protection and Financial Assistance to Persons with Disabilities Act + Social Protection Act and Regulation | DA | ◆ |
| Nepal | The Act Relating to Rights of Persons with Disabilities + Social Security Act | DG | ◆ |
| | Social Security Act | CG | ◆ |
| | National Foundation for Development of Indigenous Nationalities Act, 2002 + Social Security Act | EIPA | ◆ |
| | Senior Citizens Act and Rules + Social Security Act | OAA | ◆ |
| Pakistan | Senior Citizens Act and Rules + Social Security Act | SWA | ◆ |
| | Benazir Income Support Programme Act | BISP | ◆ |
| Sri Lanka | <i>Bait-ul-Mal</i> Act | BuM | ◆ |
| | <i>Divineguma</i> Act | DP | ◆ |

Legend: MDPP: Martyrs and Disabled Pension Programme; TDPS: Targeted Public Distribution System; MDM: Mid Day Meal; MGNREGA: Mahatma Gandhi National Rural Employment Guarantee Act; OABP: Old Age Basic Pension; HA: *Husnuvaa Aasandha*; FS: Food Subsidy; SPA: Single Parent Allowance; FPA: Foster Parent Allowance; DA: Disability Allowance; DG: Disability Grant; CG: Child Grant; EIPA: Endangered Indigenous Peoples Allowance; OAA: Old Age Allowance; SWA: Single Women's Allowance; BISP: Benazir Income Support Programme; BuM: *Bait-ul-Mal*; DP: *Divineguma* Programme.

Source: Author's elaboration.

Finally, all regulatory frameworks include procedures for appointing staff members/personnel to programme bodies and also contain a set of sanctions for offences identified therein. The only element that seems to be missing in the sets of laws analysed are standards of ethical conduct for staff members, with the exception of the Pakistani Employees Service Regulations. However, in some instances, oaths take the place of codes of conduct when staff are appointed, as is the case for vigilance committees in India.

HRBA 4a: Articulate long-term financial requirements

Long-term financial requirements are key to ensure the overall sustainability of social protection programmes and to guarantee the adequacy and predictability of benefits. The ILO's Recommendation No. 202 foresees that national social protection floors should be generally financed by national resources, but in case of insufficient economic and fiscal capacity the implementation of the guarantees can be complemented through international cooperation and support (para. 12). Further, Recommendation No. 202 suggests that members should consider using different methods to mobilise the necessary resources, including, individually or in combination, the effective enforcement of tax and contribution obligations, reprioritising expenditures or creating a broader and sufficiently progressive revenue base (para. 11).

Table 19 outlines the extent to which each regulatory framework articulates long-term financial requirements.

Table 19. Compliance of regulatory frameworks with HRBA 4a

| Country | Regulatory framework | Programme | HRBA 4a |
|-------------|--|-----------|---------|
| Afghanistan | Law on Rights and Benefits/Privileges of Survivor of Martyrs and Missing Persons + Law on Rights and Benefits/Privileges of People with Disabilities | MDPP | ◆ |
| India | National Food Security Act | TDPS | ◆ |
| | National Food Security Act + Mid Day Meal Rules | MDM | ◆ |
| | Mahatma Gandhi National Rural Employment Guarantee Act | MGNREGA | ◆ |
| Maldives | Maldives Pension Act + Social Protection Act and Regulation | OABP | ◆ |
| | National Social Health Insurance Act | HA | ◆ |
| | Social Protection Act and Regulation + Reg. 23 | FS | ◆ |
| | Social Protection Act and Regulation + Reg. 39 | SPA | ◆ |
| | Social Protection Act and Regulation + Reg. 38 | FPA | ◆ |
| | Protection and Financial Assistance to Persons with Disabilities Act + Social Protection Act and Regulation | DA | ◆ |
| Nepal | The Act Relating to Rights of Persons with Disabilities + Social Security Act | DG | ◆ |
| | Social Security Act | CG | ◆ |
| | National Foundation for Development of Indigenous Nationalities Act, 2002 + Social Security Act | EIPA | ◆ |
| | Senior Citizens Act and Rules + Social Security Act | OAA | ◆ |
| | Senior Citizens Act and Rules + Social Security Act | SWA | ◆ |
| Pakistan | Benazir Income Support Programme Act | BISP | ◆ |
| | <i>Bait-ul-Mal</i> Act | BuM | ◆ |
| Sri Lanka | <i>Divineguma</i> Act | DP | ◆ |

Legend: MDPP: Martyrs and Disabled Pension Programme; TDPS: Targeted Public Distribution System; MDM: Mid Day Meal; MGNREGA: Mahatma Gandhi National Rural Employment Guarantee Act; OABP: Old Age Basic Pension; HA: *Husnuvaa Aasandha*; FS: Food Subsidy; SPA: Single Parent Allowance; FPA: Foster Parent Allowance; DA: Disability Allowance; DG: Disability Grant; CG: Child Grant; EIPA: Endangered Indigenous Peoples Allowance; OAA: Old Age Allowance; SWA: Single Women's Allowance; BISP: Benazir Income Support Programme; BuM: *Bait-ul-Mal*; DP: *Divineguma* Programme.

Source: Author's elaboration.

The analysis reveals that all regulatory frameworks—except for Afghanistan’s—include a provision related to long-term financial requirements, although the degree of detail is highly variable, as can be seen in Table 19.

India’s and Pakistan’s legislation stand out as positive examples within this context, together with the regulatory framework of the Maldivian Old Age Basic Pension. The MGNREGA’s fifth chapter provides for the establishment of national and state employment guarantee funds and audit procedures. Further, sources of funding are clearly identified, and the costs to be borne by the central and state governments are clearly separated. The rules concerning auditing procedures are further elaborated by the 2011 Mahatma Gandhi National Rural Employment Guarantee Audit of Schemes Rules. The chapters of the NFSA dedicated to setting out the obligations of central and state governments generally address the regular supply of food grains rather than funds. Nevertheless, the Act also includes norms regulating funding: these provisions are further elaborated by the Provisioning of Funds to State Governments for Short Supply of Food Grains Rules of 2014. There are also some norms which identify nominally the instances in which the central government has to assist state governments in meeting expenditures. Further relevant regulations for financial requirements are the 2015 Cash Transfer of Food Subsidy Rules.

Pakistan’s *Bait-ul-Mal* Act provides for the establishment of a specific programme fund and specifies the sources of funding. Voluntary donations are notably deductible from donors’ taxable income. The legislation also establishes rules related to the administration of the programme and its funds, by linking them to the purposes of the programme. A number of rules are also dedicated to the maintenance of accounts and auditing procedures. These provisions are also contained in the BISP Act and regulate financial matters in the Financial Regulation of 2018.

A similar set of detailed provisions complying with this criterion can be found in the Maldivian Pension Act, which individuates sources of funding and regulates in detail the various financial procedures to be followed by programme bodies and government institutions. In particular, the budget for the Old Age Basic Pension, which must include costs and administrative expenses, is to be submitted to the Ministry of Finance and Treasury and subsequently incorporated into the annual government budget.

The *Divineguma* Act in Sri Lanka also provides for the creation of a fund of the same name and individuates sources of funding. These, interestingly, include a percentage of the profit made by the *Divineguma* community banks and banking societies.

The Social Protection Act in Maldives, which serves as a regulatory framework for all the schemes mapped in the country, solely requires the amount of finances for social protection services to be outlined in general terms in the national budget every fiscal year.

Similarly, the Nepalese Social Security Act simply attributes the obligation to meet the expenditures associated with the Act to the Government of Nepal. For the Old Age and Single Women’s Allowances this provision is further elaborated by the Senior Citizens Act, which calls for the establishment of a Welfare Fund, to be used for the protection and social security of citizens, and individuates the associated sources of funding.

HRBA 4b: Ensure the predictability of benefits

The predictability of benefits contributes not only to reducing poverty among the direct beneficiaries of the schemes and improving wealth distribution but also generates economic growth within local communities and conserves fiscal resources (RHVP, IDS, and EPRI n.d.).

Table 20 outlines the extent to which each regulatory framework ensures the predictability of benefits.

Table 20. Compliance of regulatory framework with HRBA 4b

| Country | Regulatory framework | Programme | HRBA 4b |
|-------------|--|-----------|---------|
| Afghanistan | Law on Rights and Benefits/Privileges of Survivor of Martyrs and Missing Persons + Law on Rights and Benefits/Privileges of People with Disabilities | MDPP | ◆ |
| | National Food Security Act | TDPS | ◆ |
| India | National Food Security Act + Mid Day Meal Rules | MDM | ◆ |
| | Mahatma Gandhi National Rural Employment Guarantee Act | MGNREGA | ◆ |
| | Maldives Pension Act + Social Protection Act and Regulation | OABP | ◆ |
| | National Social Health Insurance Act | HA | ◆ |
| Maldives | Social Protection Act and Regulation + Reg. 23 | FS | ◆ |
| | Social Protection Act and Regulation + Reg. 39 | SPA | ◆ |
| | Social Protection Act and Regulation + Reg. 38 | FPA | ◆ |
| | Protection and Financial Assistance to Persons with Disabilities Act + Social Protection Act and Regulation | DA | ◆ |
| | The Act Relating to Rights of Persons with Disabilities + Social Security Act | DG | ◆ |
| | Social Security Act | CG | ◆ |
| Nepal | National Foundation for Development of Indigenous Nationalities Act, 2002 + Social Security Act | EIPA | ◆ |
| | Senior Citizens Act and Rules + Social Security Act | OAA | ◆ |
| | Senior Citizens Act and Rules + Social Security Act | SWA | ◆ |
| Pakistan | Benazir Income Support Programme Act | BISP | ◆ |
| | Bait-ul-Mal Act | BuM | ◆ |
| Sri Lanka | <i>Divineguma Act</i> | DP | ◆ |

Legend: MDPP: Martyrs and Disabled Pension Programme; TDPS: Targeted Public Distribution System; MDM: Mid Day Meal; MGNREGA: Mahatma Gandhi National Rural Employment Guarantee Act; OABP: Old Age Basic Pension; HA: *Husnuvaa Aasandha*; FS: Food Subsidy; SPA: Single Parent Allowance; FPA: Foster Parent Allowance; DA: Disability Allowance; DG: Disability Grant; CG: Child Grant; EIPA: Endangered Indigenous Peoples Allowance; OOA: Old Age Allowance; SWA: Single Women's Allowance; BISP: Benazir Income Support Programme; BuM: *Bait-ul-Mal*; DP: *Divineguma* Programme.

Source: Author's elaboration.

The Indian legislation is the only instance in which the provision of a cash allowance is foreseen if the in-kind benefits afforded cannot be provided. This feature provides significant additional security for programme beneficiaries. The rules contained in the NFSA on the matter are further elaborated by the Cash Transfer of Food Subsidy Rules.

The Maldivian Social Protection Regulation (applicable to all the social protection schemes mapped) provides that when an application is accepted, the beneficiary will receive financial aid before the 10th day of the following month (Art. 8, let. c). It also determines that the benefit will be distributed monthly for a period of 2 years, after which the beneficiary needs to reapply for it.

Nepal's Social Security Act, as already mentioned, generally provides that the local level shall make a decision on applications within 7 days. This makes benefits more predictable but does not provide the same security as the Indian and Maldivian settings.

Finally, no relevant provision on the topic was found in Pakistan's or Sri Lanka's regulatory frameworks.

HRBA 5: Establish accessible complaints mechanisms

Grievance mechanisms are key to ensure accountability and transparency; they can also contribute to a greater uniformity in the implementation of the scheme and fight corruption, therefore improving a programme's overall effectiveness. Para. 7 of the ILO's Recommendation No. 202 states that national laws and regulations should specify impartial, transparent, effective, simple, rapid, accessible and free of charge complaints and appeals mechanisms and procedures.

Supportive legal frameworks should provide for every claimant to have the right to:

- request the provision of a benefit that is due according to the law;
- complain about the quality or quantity of the benefit due;
- appeal in case of its refusal;
- hold those responsible for the design, administration and implementation of the social assistance scheme accountable (Transform 2017).

Finally, there should be a clear institutional and structural separation between the two stages of resolution—i.e. complaint and eventual appeal—of social assistance disputes: the claimant should first be able to file a complaint before the same social protection institution that decided on the issue; if the issue remains unsolved and/or the claimant disagrees with the decision, they should have the right to appeal before a higher-level independent appeal body.

Table 21 outlines the extent to which each regulatory framework establishes accessible complaints mechanisms.

A rather fragmented situation can be found in relation to the extent to which regulatory frameworks set accessible complaints and appeals mechanisms, not only between countries but also within the same country. For instance, in Pakistan the *Bait-ul-Mal* Act does not include any relevant provision on the topic, whereas the BISP Act provides that any person or family aggrieved by a decision which determines their ineligibility may, within 30 days from the decision, file a complaint in the form and to the authority prescribed by regulations, while no reference is made to appeals mechanisms. Although no implementing regulation was found, an online interface has been made available on the dedicated BISP website for filing complaints. Such a mechanism should be enshrined in (statutory or sub-statutory) legislation to fully guarantee accountability.

Similarly, in India the MGNREGA includes channels for resolving disputes and complaints but does not make any reference to the possibility of appeal. In contrast, the NFSA deals with both complaints and appeals. Both Acts attribute to states the faculty to adopt their own grievance redressal mechanisms, which might result in differences in protection across states.

Worryingly, the Nepalese Disability Grant is the only programme found to be totally compliant with this criterion. The Act relating to the Rights of Persons with Disabilities provides that in case of violation of a right or responsibility afforded by the Act, the person concerned can make a claim before the Chief District Officer. In case of dissatisfaction with the Officer's decision, the individual may appeal before the competent High Court. Finally, there is also the possibility for the interested party to file an application—for the enforcement of a right or the fulfilment of a responsibility—directly before the District Court.

Table 21. Compliance of regulatory frameworks with HRBA 5

| Country | Regulatory framework | Programme | HRBA5 |
|-------------|---|-----------|-------|
| Afghanistan | Law on Rights and Benefits/Privileges of Survivor of Martyrs and Missing Persons + Law on Rights and Benefits/Privileges of People with Disabilities | MDPP | ◆ |
| | National Food Security Act | TDPS | ◆ |
| India | National Food Security Act + Mid Day Meal Rules | MDM | ◆ |
| | Mahatma Gandhi National Rural Employment Guarantee Act | MGNREGA | ◆ |
| | Maldives Pension Act + Social Protection Act and Regulation | OABP | ◆ |
| | National Social Health Insurance Act | HA | ◆ |
| Maldives | Social Protection Act and Regulation + Reg. 23 | FS | ◆ |
| | Social Protection Act and Regulation + Reg. 39 | SPA | ◆ |
| | Social Protection Act and Regulation + Reg. 38 | FPA | ◆ |
| | Protection and Financial Assistance to Persons with Disabilities Act + Social Protection Act and Regulation | DA | ◆ |
| | The Act Relating to Rights of Persons with Disabilities + Social Security Act | DG | ◆ |
| | Social Security Act | CG | ◆ |
| Nepal | National Foundation for Development of Indigenous Nationalities Act, 2002 + Social Security Act | EIPA | ◆ |
| | Senior Citizens Act and Rules + Social Security Act | OAA | ◆ |
| | Senior Citizens Act and Rules + Social Security Act | SWA | ◆ |
| Pakistan | Benazir Income Support Programme Act | BISP | ◆ |
| | <i>Bait-ul-Mal</i> Act | BuM | ◆ |
| Sri Lanka | <i>Divineguma</i> Act | DP | ◆ |

Legend: MDPP: Martyrs and Disabled Pension Programme; TDPS: Targeted Public Distribution System; MDM: Mid Day Meal; MGNREGA: Mahatma Gandhi National Rural Employment Guarantee Act; OABP: Old Age Basic Pension; HA: *Husnuvaa Aasandha*; FS: Food Subsidy; SPA: Single Parent Allowance; FPA: Foster Parent Allowance; DA: Disability Allowance; DG: Disability Grant; CG: Child Grant; EIPA: Endangered Indigenous Peoples Allowance; OOA: Old Age Allowance; SWA: Single Women's Allowance; BISP: Benazir Income Support Programme; BuM: *Bait-ul-Mal*; DP: *Divineguma* Programme.

Source: Author's elaboration.

Conversely, the Nepalese Social Security Act provides the possibility to file a complaint before the Judicial Committee and to eventually appeal before the District Court. However, the faculty to make a complaint is allowed exclusively for offences foreseen by the Act, which, for example, do not include complaints about the quantity or quality of the benefit or the refusal of applications.

The Maldivian Social Protection Act does not include any provision on the matter, whereas the National Social Health Insurance Act entails an obligation on the Board of the National Social Protection Agency (NSPA) to establish a mechanism that allows complaints to be filed and received easily, reviewed and resolved as soon as possible. It is unclear whether this provision applies to each scheme implemented by the NSPA or exclusively to those afforded by the National Social Health Insurance Act. Therefore, if the former is the case, each scheme mapped for Maldives would be covered at least in terms of complaints, given that no reference is made to appeals mechanisms.

No relevant provision was found in the Afghan legislation analysed.

HRBA 6: Set the foundations for participatory channels

General Comment No. 19 of the UN Committee on Economic, Social and Cultural Rights explicitly stipulates that beneficiaries of social security schemes must be able to participate in the administration of the social security system. The same concept is contained in Articles 71 and 72 of ILO Convention No. 102 (1952) on social security (minimum standards).

Table 22 outlines the extent to which each regulatory framework establishes participatory channels.

Table 22. Compliance of regulatory frameworks with HRBA 6

| Country | Regulatory framework | Programme | HRBA6 |
|-------------|--|-----------|-------|
| Afghanistan | Law on Rights and Benefits/Privileges of Survivor of Martyrs and Missing Persons + Law on Rights and Benefits/Privileges of People with Disabilities | MDPP | ◆ |
| India | National Food Security Act | TDPS | ◆ |
| | National Food Security Act + Mid Day Meal Rules | MDM | ◆ |
| | Mahatma Gandhi National Rural Employment Guarantee Act | MGNREGA | ◆ |
| Maldives | Maldives Pension Act + Social Protection Act and Regulation | OABP | ◆ |
| | National Social Health Insurance Act | HA | ◆ |
| | Social Protection Act and Regulation + Reg. 23 | FS | ◆ |
| | Social Protection Act and Regulation + Reg. 39 | SPA | ◆ |
| | Social Protection Act and Regulation + Reg. 38 | FPA | ◆ |
| | Protection and Financial Assistance to Persons with Disabilities Act + Social Protection Act and Regulation | DA | ◆ |
| Nepal | The Act Relating to Rights of Persons with Disabilities + Social Security Act | DG | ◆ |
| | Social Security Act | CG | ◆ |
| | National Foundation for Development of Indigenous Nationalities Act, 2002 + Social Security Act | EIPA | ◆ |
| | Senior Citizens Act and Rules + Social Security Act | OAA | ◆ |
| | Senior Citizens Act and Rules + Social Security Act | SWA | ◆ |
| Pakistan | Benazir Income Support Programme Act | BISP | ◆ |
| | <i>Bait-ul-Mal</i> Act | BuM | ◆ |
| Sri Lanka | <i>Divineguma</i> Act | DP | ◆ |

Legend: MDPP: Martyrs and Disabled Pension Programme; TDPS: Targeted Public Distribution System; MDM: Mid Day Meal; MGNREGA: Mahatma Gandhi National Rural Employment Guarantee Act; OABP: Old Age Basic Pension; HA: *Husnuvaa Aasandha*; FS: Food Subsidy; SPA: Single Parent Allowance; FPA: Foster Parent Allowance; DA: Disability Allowance; DG: Disability Grant; CG: Child Grant; EIPA: Endangered Indigenous Peoples Allowance; OOA: Old Age Allowance; SWA: Single Women's Allowance; BISP: Benazir Income Support Programme; BuM: *Bait-ul-Mal*; DP: *Divineguma* Programme.

Source: Author's elaboration.

As Table 22 unequivocally shows, most regulatory frameworks do not include any participatory mechanism. Notable exceptions are Sri Lanka's *Divineguma* Act, the Nepalese Act Relating to Rights of Persons with Disabilities and the Indian legislation.

Sri Lanka's *Divineguma* Act implies the establishment of community-based organisations that are, by definition, participatory, as also confirmed in a norm providing that these organisations are based on the voluntary participation of *Divineguma* beneficiaries.

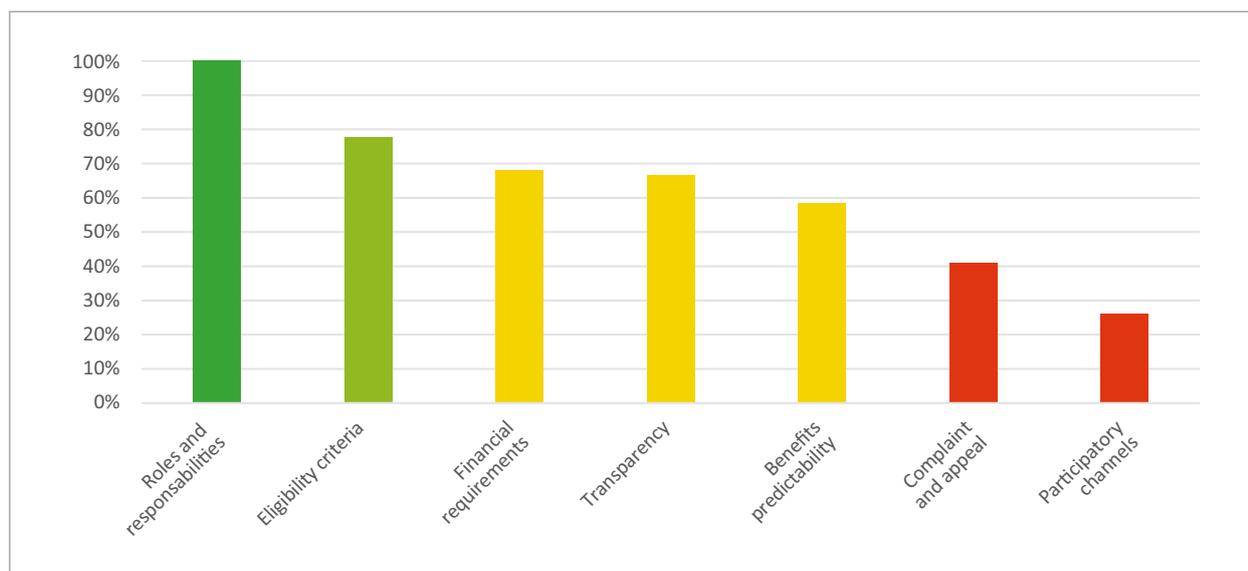
India's sets of laws include two different participation channels for citizens. The first is social audit, foreseen in both the NFSA and the MGNREGA. Furthermore, both Acts set participation quotas for key institutional bodies associated with the programmes. For instance, the NFSA requires the presence of two women in State Food Commissions, one person belonging to Scheduled Castes and one person belonging to Scheduled Tribes.

The latter approach is also adopted by Nepal in the Act relating to Rights of Persons with Disabilities. The Act states that the Steering Committee should comprise 10 people, including at least 5 women, from among the organisations, associations, federations at the national level and the institutions involved in the field of human rights, 2 persons with disabilities who have made important contributions at the national level, and 2 people, including 1 woman, from the service provider institutions related to disabilities.

Overall compliance of regulatory frameworks

After having separately assessed the compliance of regulatory frameworks with each criterion used in the analysis, it is possible to offer some general observations on the overall level of compliance of the legislation analysed and contextually highlight the main associated consequences. Figure 7 displays the overall extent of compliance of regulatory frameworks with each criterion.

Figure 7. Overall compliance of regulatory frameworks with the HRBA criteria



Source: Author's elaboration.

As the graph shows, significant differences exist in terms of compliance with the criteria. The only criterion for which there is full compliance is the one related to the definition of roles and responsibilities for the organisations involved in the implementation of the scheme. This establishes fundamental guidelines for the effective implementation of schemes and possibly for holding institutions accountable in case of mismanagement or omission.

The second most common characteristic of regulatory frameworks, with a compliance level of 78 per cent, is that they set out precise eligibility requirements. As a result, the compliant regulatory frameworks guarantee institutional accountability and transparency to a wider extent, and also potentially enable beneficiaries to exercise their rights in cases of undue exclusion. This does not apply to Pakistan's and Sri Lanka's regulatory frameworks, which do not include eligibility criteria.

Long-term financial requirements and transparency mechanisms are found in, respectively, 68 per cent and 67 per cent of the regulatory frameworks. All regulatory frameworks except Afghanistan’s contain at least one relevant norm on financial requirements, but some (i.e. India’s, Pakistan’s and the Maldivian Pension Act) contain a number of further provisions on financial management which undoubtedly contribute to a greater sustainability of social protection programmes over the long term. A similar situation applies to transparency mechanisms: once again, India stands out as a positive example, closely followed by Maldives and Pakistan. Conversely, in Nepal and Sri Lanka measures for transparency should be strengthened, and in Afghanistan they are completely absent. It should be noted that weak or non-existent transparency mechanisms translate into a higher risk of corruption, abuse and mismanagement.

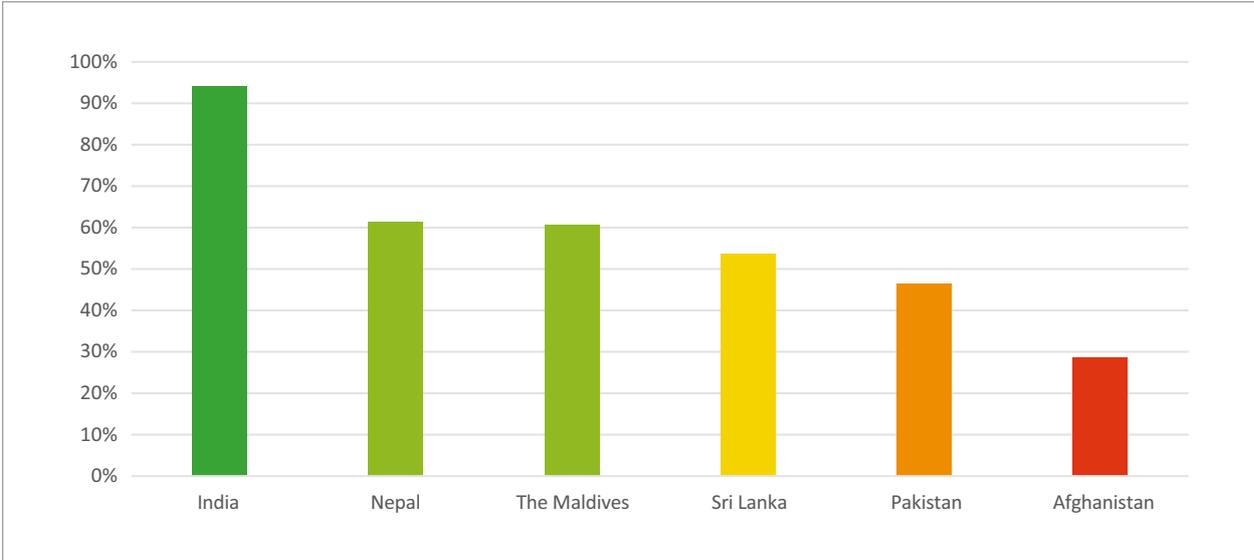
A compliance level of 58 per cent was found in relation to the predictability of benefits. The regulatory frameworks of India and Maldives are the most compliant in this respect. In Nepal the legislation only provides for a deadline by which a decision on the admissibility of an application must be made, while the regulatory frameworks of Pakistan and Sri Lanka do not include any provision in this regard.

The second least common characteristic of the regulatory frameworks, with a compliance rate of 41 per cent, is that they establish accessible complaints and appeals mechanisms. It is a matter of some concern that seven regulatory frameworks were classified as weak on compliance, with significant gaps or inconsistencies, a further six were found to be non-compliant, and another two had no such provision. Indeed, only the Nepalese Disability Grant was found to be fully compliant. Such a shortcoming significantly hinders the application of an HRBA to social protection, since rights-holders are not in a position to hold institutions accountable; this needs to be urgently addressed.

Finally, only 26 per cent of regulatory frameworks complied with the criterion of establishing participatory mechanisms.

Figure 8 provides an overview of the compliance of regulatory frameworks with the HRBA criteria by country. It is important to note that this by no means represents an assessment of each country’s overall legal framework for social protection but solely concerns the regulatory frameworks for the programmes mapped.

Figure 8. Compliance of regulatory frameworks with the HRBA criteria, by country



Source: Author’s elaboration.

India's regulatory frameworks were found to be the most compliant, with a notable compliance rate of 94 per cent. The legislation could be improved by developing accessible complaints and appeals mechanisms and, to a lesser extent, participatory channels.

Nepal and Maldives both have an overall compliance rate of 61 per cent. In the first place, the complaints and appeals mechanisms of the regulatory frameworks of both countries should be strengthened. Nepal's legislation on transparency mechanisms, long-term financial requirements and predictability of benefits should also be improved, as should the Maldivian legislation regulating programmes' long-term financial requirements, an area in which it is particularly deficient.

Sri Lanka was found to have an overall compliance rate of 54 per cent. Aspects of its regulatory frameworks that need to be improved are appeals and complaints mechanisms, eligibility criteria, transparency, and predictability of benefits.

Pakistan has an overall compliance rate of 46 per cent. The regulation of appeals and complaints mechanisms, eligibility criteria, participatory mechanisms and predictability of benefits needs to be modified.

Finally, Afghanistan's regulatory frameworks were found to have the lowest level of compliance (only 29 per cent). The legislation should be improved for each criterion analysed, except for roles and responsibilities, which are clearly spelled out.

4. CONCLUSIONS

4.1 International-level conclusions

- Human rights instruments play a key role in determining the scope and content of social protection legislation at the national level, given their binding nature on States parties and the fact that their normative standards can be used as reference points for domestic social protection systems by States that are not parties to the given human right instrument.
- Given the interdependence and interrelatedness of human rights, the realisation of the right to social protection can significantly contribute to the achievement of other economic, social and cultural rights, such as the rights to an adequate standard of living, to health and to education, among others.
- Each country in South Asia is a State party to the CRC. As a consequence, they are obliged to recognise the right of every child to an adequate standard of living, and to take the necessary measures to achieve the full realisation of children's right to benefit from social security.
- With the notable exception of Bhutan, every country in South Asia is a State party to the ICESCR and, as such, is bound to respect, protect and fulfil the rights to social protection and to an adequate standard of living in the terms described in Section 1.4.
- Given that all countries in South Asia either belong to the dualist tradition or, on the basis of their constitutional settings, adopt a mixed approach, the translation of international human rights instruments—including the CRC—into domestic law is a mandatory step to guarantee their applicability.

4.2 Regional-level conclusions

- South Asia is the only region in the world without its own human rights system. The existence of such a system would contribute significantly to protecting, respecting and fulfilling human rights, including social protection, in at

least two ways. First, countries would be bound on an equal footing by regional treaties and associated implementing procedures. Second, the presence of a regional monitoring body—political or jurisdictional—coupled with regular follow-up procedures would further strengthen the fulfilment, monitoring and enforcement of human rights.

- The SAARC includes several objectives that are relevant to social protection, such as the promotion of welfare, social progress and cultural development in the region and the provision to all individuals of the opportunity to live in dignity and to realise their full potential. Further, social development is one of the Association's areas of cooperation.
- Despite the presence of relevant instruments such as the SAARC's Social Charter and the Convention on Regional Arrangements for the Promotion of Child Welfare, very few initiatives have been adopted as a result of these instruments.

4.3 National-level conclusions: constitutions

- All constitutions commit to protecting and promoting economic, social and cultural rights. Each constitution, with the exception of Afghanistan's, contains a provision on social protection. The Afghan, Indian, Maldivian and Nepalese constitutions include specific provisions related to assistance for children.
- In the great majority of the countries, economic, social and cultural rights—including the right to social protection itself—figure in the non-justiciable sections of the constitution. Notable exceptions are the Maldivian and Nepalese constitutions. The former establishes a set of specific rights, including economic, social and cultural rights (e.g. the right to food, to clothing and housing, to a good standard of health care etc.) that the State must offer in line with its ability and resources following the concept of progressive realisation. Similarly, Nepal's Constitution individuates and commits to a series of basic social rights, including the right to food and to social justice, for example.
- The Nepalese Constitution is the only fundamental law in the region that directly establishes children's rights (in Art. 39).

4.4 National-level conclusions: statutory frameworks for social protection

- Statutory frameworks for social protection have been adopted in each country in the region except Bhutan and Pakistan.
- Significant differences exist among the sets of legislation analysed, which were divided into two main groups. The first group includes legislation providing a general regulatory framework for social protection (i.e. the Maldivian Social Protection Act or specific economic, social and cultural rights (i.e. the Indian NFSA and the Nepalese Social Security Act), whereas the second group encompasses legislation regulating single aspects of social protection. The Afghan Social Protection Law, despite its name, mainly deals with the country's institutional framework for social protection. Similarly, in Bangladesh's case the sets of laws regulate, respectively, NGOs operating in social welfare and foreign-funded NGOs. The Indian *Aadhaar* Act provides a unique identification number to residents which serves as a proof of identity and residence, while Sri Lanka's Welfare Benefit Act establishes a single framework for the payment of all welfare benefits and related matters.
- The Indian NFSA demonstrates the impact that legislation regulating economic, social and cultural rights can have on social protection, since it has direct implications for the operation of all food distribution programmes in the country, as well as for the very criteria adopted by most poverty reduction programmes to establish eligibility.

- General legal frameworks for social protection are lacking in Bangladesh, Bhutan, India, Pakistan and Sri Lanka. However, a Social Protection Act is currently being discussed in Bangladesh.
- Four countries—Afghanistan, Maldives, Nepal and Sri Lanka—have enacted social protection laws within the last 6 years. This trend can be interpreted as an important step towards building social protection systems anchored in a rights-based approach.
- A number of economic, social and cultural rights have been recently enshrined at the statutory level in India and Nepal, with a view to implement constitutional provisions. The introduction of this legislation in both contexts represents a significant step towards a rights-based approach.

4.5 National-level conclusions: statutory child-focused legislation

- The most typical approach in the region is the regulation of single matters (e.g. child protection, education etc.) through single pieces of legislation. This approach has generated a considerable amount of legislation at national level over time. While this does not necessarily constitute a problem, it is important to point out that a comprehensive children's rights act, giving full implementation to the CRC, is preferable, as it avoids possible conflicts among the different sets of laws, especially when a considerable amount of time passes between the enactment of one law and the subsequent enactment of another.
- The latest Concluding Observations provided for each country by the Committee on the Rights of the Child unequivocally recommend full implementation of the CRC at national level. Most of the legislation analysed focuses on child protection rather than social protection.
- As a result of these Concluding Observations, Afghanistan, Maldives and Nepal have enacted child-focused legislation which explicitly includes children's right to social protection and further provisions to fulfil such a right. These laws are particularly commendable for their efforts to systematise national legislation establishing children's rights. They were all enacted in 2018 or 2019.

4.6 National-level conclusions: National Human Rights Institutions

- NHRIs represent a fundamental guarantee of monitoring the effective implementation of fundamental children's rights at national level, as well as the right to social protection and other human rights. The need for functioning NHRIs appears even more fundamental, given that no country is a State party to the ICESCR Optional Protocol and a regional human rights system is lacking.
- NHRIs have been set up in each country except Bhutan.

4.7 Programme-level conclusions

- At the programme level the analysis revealed that only 18 programmes are embedded in regulatory frameworks; therefore, the remaining 33 programmes—10 of which are at least supported by a legal basis—are worryingly not governed by any set of enforceable rules.
- A number of relevant differences exist across countries in South Asia. In Maldives, notably, there is a regulatory framework for each of the schemes mapped, except for the Medical Welfare programme, for which only a legal basis was found. In Nepal exactly half of the programmes (i.e. 5 out of 10) have regulatory frameworks, whereas for the other half there is at least a legal basis. In Pakistan half of the programmes mapped

(i.e. two out of four) are regulated, whereas the other half do not have any regulation. Slightly fewer than half of the social protection programmes in India are characterised by regulatory frameworks. Only one regulatory framework in support of the programmes mapped was found in Afghanistan and Sri Lanka. In Bangladesh and Bhutan none of the programmes are supported by regulatory frameworks; this finding is particularly significant for Bangladesh, since it is the country with the most programmes mapped.

- From a temporal perspective, all the regulatory frameworks—except the *Bait-ul-Mal* Act in Pakistan—have been enacted since the beginning of the new millennium.
- In terms of compliance with international standards, the analysis revealed that the only criterion with which each regulatory framework fully complies relates to the definition of roles and responsibilities. The remaining criteria presented the following compliance rates: eligibility criteria 78 per cent; long-term financial requirements 68 per cent; mechanisms for transparency 67 per cent; predictability of benefits 58 per cent; accessible complaints and appeals mechanisms 41 per cent; and participatory channels 26 per cent. It needs to be strongly emphasised that the lack of compliance in relation to complaints and appeals mechanisms poses an almost unsurmountable obstacle to the implementation of an HRBA to social protection, given that institutions cannot be held accountable while rights-holders are not in a position to enforce their rights.

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ANNEX I—PROGRAMMES MAPPED

| Country | Programme |
|---|---|
| Afghanistan | Afghanistan Social Protection Programme |
| | Martyrs and Disabled Pension Programme |
| | National Rural Access Programme |
| Bangladesh | Allowance for Financially Insolvent Persons with Disabilities |
| | Employment Generation Programme for the Poorest |
| | Work for Money |
| | Husband-Deserted, Widowed and Destitute Women Allowance |
| | Maternity Allowance for the Poor Lactating Mothers |
| | Old-age Allowance Programme |
| | Public Food Distribution System |
| | School Feeding Programme in the Poverty-prone Areas |
| | Primary Education Stipend Programme |
| | Secondary Education Stipend Programme |
| Secondary Education Sector Investment Programme | |
| Higher Secondary Stipend Programme | |
| Bhutan | Rural Economy Advancement Programme |
| | School Feeding Programme |
| India | Targeted Public Distribution System |
| | <i>Janani Suraksha Yojana</i> |
| | Mahatma Gandhi National Rural Employment Guarantee Act |
| | Mid Day Meal |
| | National Health Protection Scheme |
| | National Social Assistance Programme |
| <i>Pradhan Mantri Matritva Vandana Yojana</i> | |
| Maldives | Disability Allowance Programme |
| | Food Subsidy Programme |
| | Foster Parent Allowances |
| | Husnuvaa Aasandha |
| | Medical Welfare |
| | Old Age Basic Pension |
| Single Parent Allowance | |
| Nepal | <i>Aama</i> (Safe Motherhood) Programme |
| | Child Grant |
| | Disability Grant |
| | Endangered Indigenous Peoples Allowance or Endangered Ethnicity Grant |
| | Karnali Employment Programme |
| | National School Meals Programme and Food for Education |
| | Old Age Allowance or Senior Citizen's Allowance |
| | Rural Community Infrastructure Work |
| Scholarships | |
| Single Women's Allowance | |



| Country | Programme |
|-----------|--|
| Pakistan | Benazir Income Support Programme |
| | Pakistan Bait-ul-Mal |
| | Pakistan FATA Temporarily Displaced Persons Emergency Recovery Project |
| | Prime Minister National Health Programme |
| Sri Lanka | Divineguma Programme/ <i>Samurdhi</i> |
| | Financial Support to Elderly or Elderly Assistance Programme |
| | National Secretariat for Persons with Disabilities Programmes |
| | National Supplementary Food Programme (<i>Thripasha</i>) |
| | Public Welfare Assistance Allowance |
| | School Feeding Programmes |

ANNEX II—DEFINITIONS OF PROGRAMME TYPES USED IN THIS STUDY

| Programme type | Definition | Source | Reference to original source |
|-----------------------------------|--|---|--|
| Unconditional cash transfer | Unconditional cash transfers are “grants paid to beneficiaries without the beneficiary having to do anything specific to receive the benefit”. | https://socialprotection.org/learn/glossary/unconditional-cash-transfers | European Commission Directorate General for Humanitarian Aid & Civil Protection (2013) |
| Conditional cash transfer | Conditional cash transfers refer to “cash distributed to individuals or households on condition that these undertake specified activities, e.g. that children attend school or that mothers attend primary health centres”. | https://socialprotection.org/learn/glossary/conditional-cash-transfers | Barrientos et al (2010) |
| School feeding programme | School feeding programmes are interventions that provide a meal or snack to school students. | | Author’s elaboration |
| Cash for work | Cash for work programmes consist of “cash transfers distributed to vulnerable individuals or households in exchange for labour”. | https://socialprotection.org/learn/glossary/cash-work | Barrientos et al. (2010) |
| Food for work | Food for work programmes consist of “food distributed to individuals or households in exchange for labour”. | https://socialprotection.org/learn/glossary/food-work | Barrientos et al. (2010) |
| Educational fee waiver | “School fee waivers should enable those who cannot afford to pay for their education to have access to schooling.” | https://socialprotection.org/learn/glossary/educational-fee-waiver | Kadzamira and Rose (2003) |
| Targeted food subsidies | “Targeted subsidies mean that governments subsidise food prices for certain households, targeted either by income level or by category. In other words, a dual-price policy is adopted: non-targeted individuals buy food at market prices, while eligible households have access to cheaper food.” | https://socialprotection.org/learn/glossary/food-subsidies | HLPE (2012) |
| Housing subsidies | Housing subsidies are mainly divided into two kinds: supply-side and demand-side subsidies. “Traditional supply-side housing programs include government-built public housing and other so-called ‘bricks and mortar’ subsidies given to the producers of housing, including, for example, subsidized financing, contributions of land and materials, and tax credits and deductions.” Demand-side subsidies, on the other hand, consist mainly of “capital grants and allowances targeted to poor households [. . .] In the housing sector, capital grants are one-time subsidies to households that they can use to purchase, build, or complete [new or existing] units or to rehabilitate existing units [. . .] A housing allowance is a regular ongoing subsidy to households that offsets some of the costs of their housing and housing-related services. Allowances can be provided to either owners or renters, and they may be used for new or existing housing.” | https://socialprotection.org/learn/glossary/housing-subsidies | Katsura and Romanik (2002) |
| Non-contributory health insurance | Health insurance provides free at the point of usage or, at least, subsidised access to a variety of health services [some are limited to basic consultations; others include complex services, surgeries and even access to medication]. For our study, this denotes initiatives that provide continuous and non-specified, even if limited, health coverage, so as to differentiate them from health fee waiver initiatives and one-off service provision. | | Author’s elaboration |
| Unconditional in-kind transfer | Unconditional in-kind transfers provide in-kind benefits to participants without the fulfilment of conditionalities. | | Author’s elaboration |



| Programme type | Definition | Source | Reference to original source |
|---|---|---|------------------------------|
| Social support services | Social care services refer to non-cash interventions such as family support services to prevent family breakdown, child protection services to respond to abuse and neglect, alternative care for children, and social work support to people with disabilities. It can also include care and referral support linking people to social service and social assistance. | https://socialprotection.org/learn/glossary/social-care-services | European Commission (2019) |
| Sustainable livelihoods programmes | Sustainable livelihoods programmes are “asset transfers/ access, seen as effective ways to particularly (although not exclusively) assist those struggling to survive in the informal sector”. | https://socialprotection.org/learn/glossary/sustainable-livelihood-programmes | Campos (2015) |
| Training | “...social protection can be implemented alongside complementary training programmes, in order to promote employability and consumption smoothing simultaneously (...) Some programmes simply link training to social protection provision, while others create an integrated package of mutually reinforcing interventions to try to promote skills development, or make participation in training a criterion for transfer receipt (...) The common objective throughout these programmes is to intervene in such a way as to change the labour market performance of participants.” Common examples of linkages between skills training and social protection range from classroom training as a conditionality of a programme such as food for training or on the job training in public works programmes.” | https://socialprotection.org/learn/glossary/training | McCord (2012) |
| Health fee waivers | The provision of services without incurring out-of-pocket expenditure that would be otherwise required. This is different from non-contributory health insurance, since it applies to specific services, rather than a broad set of health coverage. This is usually provided in cases such as, for instance, waiving perinatal visit fees for mothers and lactating women, or waiving costs of health visits for children or for specific sexual and reproductive health services etc. | | Author's elaboration |
| Institutional purchase that can benefit smallholder farmers | Purchases from smallholder farmers aim “to support smallholder farmers in one of the most difficult aspects of the productive process: gaining market access for the produce they grow”. They “allow farmers to sell their produce to local public institutions such as hospitals, community canteens, food banks, orphanages and charities, without the need for a public bidding process”. | https://ipcig.org/pub/IPCTechnicalPaper7.pdf | Veras Soares et al. (2013) |

ANNEX III—LEGISLATION SCORECARDS

Afghanistan

Scheme: Martyrs and Disabled Pension Programme, launched in 1995

Programme type: Unconditional cash transfer

Programme objective(s): To provide social assistance to families of martyrs and people living with disabilities

Legislation analysed: Law on Rights and Benefits/Privileges of Survivor of Martyrs and Missing Persons (LRBPSMMP) and Law on Rights and Benefits/Privileges of People with Disabilities (LRBPwD), both introduced in 2010 and amended in 2013

Legislation scorecard

| Criterion | Score | Legal provision | Score rationale |
|--|-------|---|---|
| HRBA 1: eligibility criteria | ◆ | LRBPSMMP, Art. 2 LRBPwD, Art. 5, 7 | LRBPSMMP, Art. 2: Survivors of those who were killed during the <i>jihad</i> ; in armed conflicts since 1978; defending the territorial integrity of the country and the rule of law; by anti-government acts. LRBPwD, Art. 7: Persons who have been disabled: during the <i>jihad</i> ; in armed conflicts since 1978; defending the territorial integrity of the country and the rule of law; by anti-government acts. Art. 2 of the LRBPwD provides a wide definition of persons with disabilities but limits the benefits afforded by the law only to those who fall within the scope of Art. 7. |
| HRBA 2: transparency | ◆ | | No relevant provision was found in the legislation analysed. |
| HRBA 3: roles and responsibilities | ◆ | LRBPSMMP, Art. 5, 10, 11, 12, 15, 16 LRBPwD, Art. 3, 6, 18, 19, 20, 21, 22, 23, 24, 26, 27, 30, 33, 34, 37 | The legislation (and, more specifically, the articles identified) defines with sufficient clarity the roles and responsibilities of public bodies involved in the implementation of the scheme. |
| HRBA 4a: long-term financial requirements | ◆ | | No relevant provision in the legislation analysed. While the newly introduced Social Protection Law articulates the sources of funding for the associated social protection expenses (Art. 19), it is important to note that such sources apply exclusively to the expenses connected to that Act and not to the Afghan social protection sector as a whole. |
| HRBA 4b: ensure the predictability of benefits | ◆ | LRBPSMMP, Art. 5 | The LRBPSMMP (Art. 5) fundamentally aims to guarantee the delivery of benefits to the descendants of those who were killed prior to the laws' entry into force and, as such, were not in a position to obtain martyrdom cards. The period covered spans from 27 April 1978 to the present, yet the law requires a separate regulation to determine the conditions for assessing and delivering rights and benefits, and no such regulation was found. As a consequence, rights-holders in such a situation cannot exercise their rights, and the delivery/predictability of benefits is severely constrained. From a more general point of view, it is important to note that besides the delivery of financial assistance (a single cash transfer and a monthly pension) both sets of law also provide housing subsidies (allocation of plots of land and residential apartments) and education fee waivers (scholarships). The norms related to the latter subcomponents fail to clarify the conditions and mechanisms through which these benefits should be delivered, significantly hindering the predictability of such benefits. |
| HRBA 5: Accessible complaints and appeals mechanisms | ◆ | | No relevant provision in the legislation analysed. |
| HRBA 6: participatory mechanisms | ◆ | | No relevant provision in the legislation analysed. |

India

Scheme: Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), launched in 2005

Programme type: Cash for work

Programme objective(s): To reduce rural poverty by providing 100 days of guaranteed paid employment per year to the rural poor population (or a compensatory payment when employment cannot be provided) and creating durable public assets

Legislation analysed: MGNREGA, enacted in 2005

Legislation scorecard

| Criterion | Score | Legal provision | Score rationale |
|------------------------------------|-------|-----------------------------|---|
| HRBA 1: eligibility criteria | ◆ | MGNREGA, Art. 3 | Programme operates on the basis of self-targeting. Art. 3: The state government shall [...] provide to every household whose rural adult members volunteer to do unskilled manual work [...]. Further, the Act in its Schedule II prohibits discrimination on the basis of gender and recalls the necessary application of the Equal Remuneration Act. This provision reinforces the non-discrimination clause of the Constitution. |
| HRBA 2: transparency | ◆ | MGNREGA, Art. 15, 23 and 24 | Several transparency mechanisms—ranging from the proper use of the funds to payment and implementation modalities of the scheme—are included within the responsibilities of the District Programme Coordinator and all implementing agencies (Art. 23). Further, in accordance with Art. 15, social audits are foreseen as the responsibility of programme officers. The same article explicitly allows state governments to establish rules to ensure transparency and accountability at all levels. Finally, Art. 24 provides for the central government to prescribe arrangements for audits of the accounts of the schemes at all levels. |
| HRBA 3: roles and responsibilities | ◆ | MGNREGA, Chapter IV | Chapter IV of the MGNREGA contains detailed rules for implementing and monitoring authorities involved in the scheme. It also foresees the possibility of the central and state governments further elaborating such rules with sub-statutory acts (e.g. regulations). Within this context the Act provides for the creation of the Central Employment Guarantee Council (Art. 10), responsible for, among others: setting up a monitoring and evaluation system, monitoring the implementation of the Act and advising the central government on related matters (Art. 11). These provisions are further elaborated by the National Rural Employment Guarantee (Central Council) Rules, 2006. The Act also requires the establishment of councils also at state level, with similar responsibilities (Art. 12). <i>Panchayats</i> are identified as the principal authorities for planning and implementation of the scheme at district, intermediate and village levels (Art. 13). The Act regulates the roles and responsibilities of the District Programme Coordinator (Art. 14), Programme Officer (Art. 15), <i>Gram Panchayats</i> (Art. 16, identification of projects) and <i>Gram Sabha</i> (Art. 17, monitoring and social audits). |



| Criterion | Score | Legal provision | Score rationale |
|--|-------|------------------------------|--|
| HRBA 4a: long-term financial requirements | ◆ | MGNREGA, Chapter V | Chapter V of the MGNREGA provides for the establishment of national and state employment guarantee funds and audit procedures. The central government is obliged to establish this fund (Art. 20), whereas Art. 21 foresees the establishment of employment guarantee funds at state level only in terms of possibility rather than obligation. After due appropriation is made by Parliament by law, the central government may credit, by way of grants or loans, such sums of money as deemed necessary to the national fund (Art. 20, para. 2). Art. 22, articulating the funding pattern, prescribes in its first paragraph that the central government has an obligation to meet the cost of: the amount required for payment of wages for unskilled manual labour (let. a); up to three quarters of the material cost of the scheme (let. b); and a percentage of administrative expenses (let. c). The second paragraph of the article identifies the costs that must be borne by state governments, including: the cost of unemployment allowance (let. a); a quarter of the material cost of the scheme (let. b); and administrative expenses of State Councils (let. c). Art. 23 assigns to the District Programme Coordinator and implementing agencies the responsibility for the proper use and management of funds. This responsibility is complemented by the possibility for state governments to prescribe the manner of maintaining proper books and accounting (Art. 23, para. 2). The central government may, in consultation with the Comptroller and Auditor General of India, prescribe appropriate arrangements for audits of the accounts of the schemes at all levels (Art. 24). As a result, the Mahatma Gandhi National Rural Employment Guarantee Audit of Schemes Rules were enacted in 2011. |
| HRBA 4b: ensure the predictability of benefits | ◆ | MGNREGA, Art. 7 | The first paragraph of Art. 7 of the MGNREGA clearly establishes that if an applicant is not provided with employment within 15 days from the receipt of their application, they are entitled to receive a daily unemployment allowance. In terms of benefit adequacy, Schedule I provides for the Minimum Features of a Rural Employment Guarantee Scheme, whereas Schedule II deals with the Conditions for Guaranteed Rural Employment Under a Scheme and Minimum Entitlements of Labourers. |
| HRBA 5: accessible complaints and appeals mechanisms | ◆ | MGNREGA, Art. 15, 19, 23, 32 | The MGNREGA refers exclusively to complaints mechanisms and not to the eventual phase of appeal. The Act attributes to the Programme Officer the responsibility of dealing promptly with all complaints that might arise regarding the implementation of the scheme at the block level (Art. 15, para. 4, let. c). The sixth paragraph of Art. 23 specifies that the Programme Officer must enter every complaint in a registry and resolve the disputes and complaints within 7 days of their receipt. This responsibility is clearly connected to the redressal of applicants' grievances, attributed to the District Programme Coordinator (Art. 14, para. 3, let. g). Art. 19 of the same Act, in parallel with para. 2, let. d of Art. 32, attributes to state governments the regulation of appropriate grievance redressal mechanisms, as well as associated procedures, at the district and block levels. This entails that different rules for addressing complaints might be potentially applied to state, district and block levels of the programme, therefore resulting in unequal (and potentially discriminatory) treatment. |
| HRBA 6: participatory mechanisms | ◆ | MGNREGA, Art. 10, 12 | The MGNREGA foresees in Art. 10 the creation of a Central Employment Guarantee Council and fixes at 15 the number of non-official members representing disadvantaged groups. In a similar vein, the Act provides that, of a total of 15 non-official members of State Employment Guarantee Councils, at least one third must be women and a further third must belong to the Scheduled Castes, Scheduled Tribes, Other Backward Classes or Minorities (Art. 12, para. 1). |

Scheme: Targeted Public Distribution System (TPDS), launched in 1997

Programme type: Subsidy, institutional purchase that benefits smallholder farmers

Programme objective(s): The TPDS aims at providing food security to poor and vulnerable people. The programme also provides subsidised fuel for household use in cooking and lighting.

Legislation analysed: National Food Security Act, enacted in 2013

Legislation scorecard

| Criterion | Score | Legal provision | Score rationale |
|------------------------------------|-------|-------------------------------|--|
| HRBA 1: eligibility criteria | ◆ | NFSA, Art. 9, 10, 11, 13 | <p>The NFSA requires the central government to define the total number of persons to be covered by the for the TPDS in each state on the basis of population estimates derived by census [Art. 9]. State governments have the obligation, within the number of persons determined by Art. 9, to identify 'priority households' for the TPDS as soon as possible and within 365 days after the commencement of the Act [Art. 10].</p> <p>Each state government will publish and display in public the lists of eligible households and update them [Art. 11].</p> <p>Chapter VI of the Act establishes additional rules specifically aiming at women's empowerment. Within this context, Art. 13 fundamentally foresees that when a woman of 18 years of age or older is present in a household that is eligible for ration cards, she shall be regarded as the head of the household for the purpose of issuing the ration card.</p> <p>It should also be mentioned that within the context of the progressive reforms of the TDPS, Art. 12 provides for leveraging <i>aadhaar</i> for unique identification, with biometric information of entitled beneficiaries to ensure effective targeting of benefits under the Act, including the TDPS.</p> |
| HRBA 2: transparency | ◆ | NFSA, Chapter XI | <p>Chapter XI of the NFSA is dedicated to transparency and accountability. Art. 27 of the Act requires that all records related to the TPDS be kept in the public domain and remain accessible to everyone for inspection. Art. 28 compels local authorities to undertake periodic social audits for the TPDS and other welfare schemes and publicise the findings. Further, Art. 29 entails the establishment of vigilance committees at the state, district, block and fair price shop levels, which are responsible for supervising the implementation of all schemes under the Act. These committees should give due representation to Scheduled Castes, Scheduled Tribes, women, destitute persons and persons with disabilities.</p> |
| HRBA 3: roles and responsibilities | ◆ | NFSA, Chapters VIII, IX and X | <p>Since India is a union of states, it is noteworthy from a governance perspective that the NFSA clearly outlines in chapters VIII, IX and X the obligations of central and states governments, as well as the obligations inherent to local authorities.</p> <p>The obligations of the central government include: allocating from the central pool the required quantity of food grains to state governments under the TPDS; procuring food grains for the central pool through its own agencies and state governments and their agencies; providing for the transportation of food grains to the depots designated; and creating and maintaining storage facilities.</p> <p>The obligations of state governments include: taking delivery of food grains from the designated depots and organising intra-state allocations for delivery; ensuring actual delivery or supply to the entitled persons; in case of non-supply of the entitled quantities, paying the food security allowance; creating and maintaining storage facilities at state, district and block levels; and making licensing arrangements for fair price shops.</p> <p>Local authorities are generally responsible for the effective implementation of the scheme in their respective areas.</p> <p>It should be mentioned that, at state level, each state has to set up a State Food Commission for monitoring and reviewing the implementation of the Act [Art. 16]. Such commissions are also responsible for advising the state government and preparing annual reports to be put before the state legislature.</p> |



| Criterion | Score | Legal provision | Score rationale |
|--|-------|--|---|
| HRBA 4a: long-term financial requirements | ◆ | NFSA, Art. 3, 4, 5, 7 and Chapter VIII | <p>The NFSA entails a general obligation for state governments to implement the schemes covering the entitlements afforded by the Act in accordance with the guidelines prescribed by the central government, including cost-sharing between central and state governments (Art. 7).</p> <p>Chapter VIII of the law is dedicated to establishing the obligations of the central government regarding food security. It should be observed that such provisions are generally directed at ensuring the regular supply of food grains, but there are also some norms that regulate funding. Art. 23 provides that, in case of a short supply of food grains from the central pool to a state, the central government must provide funds to state governments. These provisions are elaborated by the Provisioning of Funds to State Governments for Short Supply of Food Grains Rules of 2014 and the Food Security (Assistance to State Governments) Rules of 2015.</p> <p>Further, Art. 22, para. 4, let. d entails an obligation for the central government to assist state governments in meeting expenditures in terms of intra-state migration, handling of food grains, and margins paid to fair price shop dealers.</p> |
| HRBA 4b: ensure the predictability of benefits | ◆ | NFSA, Art. 8 | <p>The NFSA provides that, in case of non-supply of the quantities of food or meals to entitled persons, such subjects shall be entitled to receive a food security allowance from the state government (Art. 8). This norm is further elaborated by the Cash Transfer of Food Subsidy Rules of 2015.</p> |
| HRBA 5: accessible complaints and appeals mechanisms | ◆ | NFSA, Art. 14, 15, 20 | <p>Art. 14 of the NFSA provides that every state government shall put in place an internal grievance redressal mechanism, which may include call centres, help lines, designation of nodal officers or such other mechanisms as may be prescribed. Some of the instruments indicated in the law, such as call centres and help lines, seem more suitable to providing orientation than resolving complaints.</p> <p>Similarly to the MGNREGA, the competence attributed to state governments for establishing their own grievance redressal mechanisms might result in significant differences in protection across states. The District Grievance Redressal Officer present in each district is responsible for receiving first-stage complaints, as prescribed by para. 5 of Art. 15. The following paragraph foresees the possibility of appealing to the State Commissions that must be constituted in each state, while Art. 20 stipulates that State Commissions have all the powers of a civil court to inquire (para. 1) and the possibility to forward cases to a magistrate (para. 2).</p> |
| HRBA 6: participatory mechanisms | ◆ | NFSA, Art. 2, 16, 29 | <p>Art. 2, para. 20 of the NFSA defines 'social audit' as the process through which people collectively monitor and evaluate the planning and implementation of a programme or scheme. Furthermore, the Act reserves participation quotas in key institutional bodies associated with the programmes. Art. 16 of the NFSA requires the presence of two women in State Food Commissions, one person belonging to Scheduled Castes and one person belonging to Scheduled Tribes. The norm further clarifies that these people can serve as either chairpersons, members or member-secretaries. Likewise, Art. 29 regulates the establishment of vigilance committees at the state, district, block and fair price shop levels, and requires giving due representation to Scheduled Castes and Scheduled Tribes, women, destitute persons and persons with disabilities.</p> |

Scheme: Mid Day Meal, launched in 1995

Programme type: School feeding programme

Programme objective(s): To enhance school enrolment and attendance, and simultaneously improve nutritional levels among children

Legislation analysed: National Food Security Act (NFSA), enacted in 2013, and Mid Day Meal Rules, which entered into force in 2015

Legislation scorecard

| Criterion | Score | Legal provision | Score rationale |
|------------------------------------|-------|---|---|
| HRBA 1: eligibility criteria | ◆ | NFSA, Art.5 Mid Day Meal Rules, Art. 3 | The NFSA and the Mid Day Meal Rules (Art. 5, let. b and Art. 3) clearly state that every child aged 6–14 years (or studying in classes I–VIII) who enrolls and attends school is entitled to a meal free of charge every day except for school holidays. |
| HRBA 2: transparency | ◆ | NFSA, Chapter XI Mid Day Meal Rules, Art. 8 | Chapter XI of the NFSA is dedicated to transparency and accountability. Art. 28 compels local authorities to undertake periodic social audits and make public the findings. Further, Art. 29 provides for the establishment of vigilance committees at the state, district, block and fair price shop levels, which are responsible for the implementation of all schemes under the NFSA and for guaranteeing transparency. Chapter XI of the NFSA is applicable also to the Mid Day Meal. The Mid Day Meal Rules provide for testing of meals by accredited laboratories to ensure that the meal meets the nutritional standards and quality specified (Art. 8). Further monitoring duties are attributed to state steering-cum-monitoring committees and school management committees (see point below). |
| HRBA 3: roles and responsibilities | ◆ | NFSA, Art. 7, 15, 16, Chapters VIII, IX and X Mid Day Meal Rules, Art. 6 and 7 | The legal framework determines with sufficient clarity the institutional structure as well as power, functions and responsibilities of institutions and subjects responsible for programme management and implementation. Art. 7 identifies state governments as being responsible for the implementation of the Mid Day Meal. Further, each state has to set up a State Food Commission for monitoring and reviewing implementation of the Act (Art. 16). Such commissions are also responsible for advising the state government and preparing annual reports to be put before the state legislature. The obligations concerning central and state governments and the local level outlined in chapters VIII, IX and X described above for the TDPS also apply to the Mid Day Meal. The Mid Day Meal Rules provide for the establishment of state steering-cum-monitoring committees, overseeing the implementation of the scheme, and specify the role of school management committees as equally responsible for monitoring implementation of the scheme, with a particular focus on the quality of meals, the cleanliness of the cooking facilities and hygiene maintenance. |



| Criterion | Score | Legal provision | Score rationale |
|--|-------|--|---|
| HRBA 4a: long-term financial requirements | ◆ | NFSA, Art. 3, 4, 5, 7 and Chapter VIII Mid Day Meal Rules, Art. 7 and 9 | <p>The NFSA entails a general obligation for state governments to implement the schemes covering the entitlements afforded by the Act in accordance with the guidelines prescribed by the central government, including cost-sharing between central and state governments (Art. 7).</p> <p>Chapter VIII of the law is dedicated to establishing the obligations of the central government regarding food security. It should be observed that such provisions are generally directed at ensuring the regular supply of food grains, but there are also some norms that regulate funding. Art. 23 provides that, in case of a short supply of food grains from the central pool to a state, the central government must provide funds to state governments. This provision is elaborated by the Provisioning of Funds to State Governments for Short Supply of Food Grains Rules of 2014.</p> <p>Further, Art. 22, para. 4, let. d entails an obligation for the central government to assist state governments in meeting expenditures in terms of intra-state migration, handling of food grains, and margins paid to fair price shop dealers. Also in this case the norm is further regulated by the Food Security (Assistance to State Governments) Rules of 2015.</p> <p>Art. 7 of the Mid Day Meal Rules empowers school head teachers to use any available funds for the purpose of continuing the scheme in case of temporary unavailability of food grains, to cover cooking costs etc. Such funds are to be reimbursed after the receipt of scheme funds.</p> <p>Art. 9 of the Mid Day Meal Rules attributes to the state government the obligation to pay the food security allowance if the Mid Day Meal is not provided.</p> |
| HRBA 4b: ensure the predictability of benefits | ◆ | NFSA, Art. 8 Mid Day Meal Rules, Art. 9 | <p>The NFSA provides that, in case of non-supply of the quantities of food or meals to entitled persons, such subjects shall be entitled to receive a food security allowance from the state government (Art. 8).</p> <p>Further, the Mid Day Meal Rules (Art. 9) complement the above-mentioned provision by specifying that the payment of the food security allowance must occur by the 15th day of the following month.</p> |
| HRBA 5: accessible complaints and appeals mechanisms | ◆ | NFSA, Art. 14, 15, 20 | <p>The NFSA provides, in Art. 14, that every state government shall put in place an internal grievance redressal mechanism, which may include call centres, help lines, designation of nodal officers or such other mechanisms as may be prescribed. Some of the instruments indicated in the law, such as call centres and help lines, seem more suitable to providing orientation than resolving complaints. Similarly to the MGNREGA, the competence attributed to state governments for establishing their own grievance redressal mechanisms might result in significant differences in protection across states. The District Grievance Redressal Officer present in each district is responsible for receiving first-stage complaints, as prescribed by the fifth paragraph of Art. 15. The following paragraph foresees the possibility of appealing to the State Commissions that must be constituted in each state, while Art. 20 stipulates that State Commissions have all the powers of a civil court to inquire (para. 1) and the possibility to forward cases to a magistrate (para. 2).</p> |
| HRBA 6: participatory mechanisms | ◆ | NFSA, Art. 2, 16, 29 | <p>Art. 2, para. 20 of the NFSA defines 'social audit' as the process through which people collectively monitor and evaluate the planning and implementation of a programme or scheme. Furthermore, the Act reserves participation quotas in key institutional bodies associated with the programmes. Art. 16 of the NFSA requires the presence of two women in State Food Commissions, one person belonging to Scheduled Castes and one person belonging to Scheduled Tribes. The norm further clarifies that these people can serve as either chairpersons, members or member-secretaries. Likewise, Art. 29 regulates the establishment of vigilance committees at the state, district, block and fair price shop levels, requires giving due representation to Scheduled Castes and Scheduled Tribes, women, destitute persons and persons with disabilities.</p> |

Maldives

Scheme: Food Subsidy Programme, launched in 2011

Programme type: Subsidy

Programme objective(s): To alleviate poverty and secure the basic needs of vulnerable and poor people

Legislation analysed: Social Protection Act (2014), Social Protection Regulation (R-22/2016), Food Subsidy Regulation (R-23/2016), National Social Health Insurance Act (NSHIA) (2011)

Legislation scorecard

| Criterion | Score | Legal provision | Score rationale |
|--|-------|--|---|
| HRBA 1: eligibility criteria | ◆ | Social Protection Act, Art. 4 Food Subsidy Regulation (R-23), Art. 6, 7 | Art. 4 of the Social Protection Act: The following citizens may apply for assistance from the government for social protection: a) person in need of assistance; b) family member of a person in need of assistance; c) guardian of a person in need of assistance; d) a government agency; e) a friend or helper of a person in need of assistance. Reg. 23: Individuals who may apply for the Food Subsidy Programme (Art. 6): a) person in need of assistance; b) family member of a person in need of assistance. Eligibility requirements for individuals who may apply for the Food Subsidy Programme (Art. 7): a) the individual must be a citizen of Maldives; b) the individual must have a monthly income lower than the maximum allowed by the National Social Protection Agency. Reg. 23 excludes the possibility of the guardian or helper of a person in need applying for the Food Subsidy Programme. |
| HRBA 2: transparency | ◆ | Social Protection Regulation (R22), Art. 8,9, 10 | Art. 8 of the Social Protection Regulation (R-22/2016) requires the National Social Protection Agency (NSPA) to inform the applicant when the documents presented in the application need to be submitted; the Agency also has the obligation to respond to the application, either accepting or rejecting it, within 15 days from the completion of the application. Art. 9 entails the duty of the NSPA to continuously monitor whether beneficiaries indeed meet the eligibility requirements. Art. 10 provides that when social protection services are suspended or terminated, the beneficiary must be informed immediately. |
| HRBA 3: roles and responsibilities | ◆ | Social Protection Act/ NSHIA | The NSHIA (2011) formally established the NSPA, which is responsible for coordinating and implementing social protection programmes. Moreover, in 2014 the Social Protection Act (2/2014) was passed, fundamentally setting and regulating a number of entitlements and associated social protection benefits administered by the NSPA. As part of its mandate, the NSPA also implements programmes that do not fall under the Social Protection Act (NSHIA Art. 21, let. e). |
| HRBA 4a: long-term financial requirements | ◆ | Social Protection Act, Art. 11 | Art. 11 of the Social Protection Act requires in general terms that the amount of finances for social protection services must be clearly outlined in the national budget every fiscal year. No further rules were found in the legislation analysed. |
| HRBA 4b: ensure the predictability of benefits | ◆ | Social Protection Regulation (R22), Art. 8 | The Social Protection Regulation provides that when an application is accepted, the beneficiary will receive financial aid before the 10th day of the following month (Art. 8, let. c). The same article determines that the benefit will be received monthly for 2 years. After 2 years the beneficiary needs to reapply for the benefit. |



| Criterion | Score | Legal provision | Score rationale |
|--|-------|-----------------|--|
| HRBA 5: accessible complaints and appeals mechanisms | ◆ | NSHIA | The NSHIA entails an obligation, through Art. 37, for the Board of the NSPA to establish a mechanism that allows complaints to be filed and received easily and reviewed and resolved as soon as possible. It is unclear whether this provision refers to each scheme implemented by the NSPA or solely to those afforded by the NSHIA. Thus, if the first interpretation is valid, each scheme mapped for Maldives would be covered at least in terms of complaints, given that no reference is made to appeals mechanisms. |
| HRBA 6: participatory mechanisms | ◆ | | No relevant provision in the legislation analysed. |

Scheme: Single Parent Allowance, launched in 2010

Programme type: Conditional cash transfer

Programme objective(s): To provide financial assistance to single parents and their children, as a means to alleviate poverty

Legislation analysed: Social Protection Act (2014), Social Protection Regulation (R-22/2016), Single Parent Allowance Regulation (R-39/2016), National Social Health Insurance Act (NSHIA) (2011)

Legislation scorecard

| Criterion | Score | Legal provision | Score rationale |
|---|-------|--|--|
| HRBA 1: eligibility criteria | ◆ | Social Protection Act, Art. 4 Social Protection Regulation 39, Art. 6, 7, 8 | <p>Art. 4 of the Social Protection Act: The following citizens may apply for assistance from the government for social protection: a) person in need of assistance; b) family member of a person in need of assistance; c) guardian of a person in need of assistance; d) a government agency; e) a friend or helper of a person in need of assistance.</p> <p>Reg. 39: Individuals who may apply for assistance (Art. 6): Only single parents may apply for single parent benefits. Family members and government agencies may not apply for the single parent.</p> <p>Minimum eligibility requirements for the applicant (Art. 7): a) the individual must be a single mother or father who is raising a child under the age of 18 without any help from the other parent; b) the individual must have a monthly income that falls below that of the national poverty level; c) the applicant must not be married; d) the child of the individual must be living with the parent requesting assistance; e) the applicant must have been legally divorced for more than 3 months. This rule is inapplicable to widows; f) individuals living abroad will receive no assistance. The requirement of being divorced significantly restricts access to the programme for those who are formally married but in a substantial situation of crisis with their spouse; thus, it appears to conflict with Art. 17 of the Constitution, which explicitly prohibits discrimination, including on the ground of 'status'.</p> <p>Minimum eligibility requirements for the child of the applicant (Art. 8): a) the child must be a Maldivian citizen; b) the child must not be receiving disability benefits; c) the child must attend school if s/he is of age; d) the child must have received all required vaccinations.</p> |
| HRBA 2: transparency | ◆ | Social Protection Regulation (R22), Art. 8, 9, 10 | <p>Art. 8 of the Social Protection Regulation (R-22/2016) requires the NSPA to inform the applicant when the documents presented in the application need to be submitted; the Agency also has the obligation to respond to the application, either accepting or rejecting it, within 15 days from the completion of the application.</p> <p>Art. 9 entails the duty of the NSPA to continuously monitor whether beneficiaries indeed meet the eligibility requirements.</p> <p>Art. 10 provides that when social protection services are suspended or terminated, the beneficiary must be informed immediately.</p> |
| HRBA 3: roles and responsibilities | ◆ | Social Protection Act/ NSHIA | <p>The NSHIA (2011) formally established the NSPA, which is responsible for coordinating and implementing social protection programmes. Moreover, in 2014 the Social Protection Act (2/2014) was passed, fundamentally setting and regulating a number of entitlements and associated social protection benefits administered by the NSPA. As part of its mandate, the NSPA also implements programmes that do not fall under the Social Protection Act (NSHIA Art. 21, let. e).</p> |
| HRBA 4a: long-term financial requirements | ◆ | Social Protection Act, Art. 11 | <p>Art. 11 of the SPA requires in general terms that the amount of finances for social protection services must be clearly outlined in the national budget every fiscal year. No further rules were found in the legislation analysed.</p> |



| Criterion | Score | Legal provision | Score rationale |
|--|-------|--|--|
| HRBA 4b: ensure the predictability of benefits | ◆ | Social Protection Regulation (R22), Art. 8 | The Social Protection Regulation provides that when an application is accepted, the beneficiary will receive financial aid before the 10th day of the following month (Art. 8, let. c). The same article determines that the benefit will be received monthly for 2 years. After 2 years the beneficiary needs to reapply for the benefit. |
| HRBA 5: accessible complaints and appeals mechanisms | ◆ | NSHIA | The NSHIA entails an obligation, through Art. 37, for the Board of the NSPA to establish a mechanism that allows complaints to be filed and received easily and reviewed and resolved as soon as possible. It is unclear whether this provision refers to each scheme implemented by the NSPA or solely to those afforded by the NSHIA. Thus, if the first interpretation is valid, each scheme mapped for Maldives would be covered at least in terms of complaints, given that no reference is made to appeals mechanisms. |
| HRBA 6: participatory mechanisms | ◆ | | No relevant provision in the legislation analysed. |

Scheme: Foster Parent Allowance, launched in 2011

Programme type: Conditional cash transfer

Programme objective(s): To avoid children's poverty and secure their basic needs through financial assistance

Legislation analysed: Social Protection Act (2014), Social Protection Regulation (R-22/2016), Foster Parent Allowance Regulation (R-38/2016), National Social Health Insurance Act (NSHIA) (2011)

Legislation scorecard

| Criterion | Score | Legal provision | Score rationale |
|--|-------|--|--|
| HRBA 1: eligibility criteria | ◆ | Social Protection Act, Art. 4 Social Protection Regulation 38, Art. 6, 7, 8 | <p>Art. 4 of the Social Protection Act: The following citizens may apply for assistance from the government for social protection: a) person in need of assistance; b) family member of a person in need of assistance; c) guardian of a person in need of assistance; d) a government agency; e) a friend or helper of a person in need of assistance</p> <p>Reg. 38: Individuals who may apply for assistance (Art. 6): Only individuals who require assistance may apply for Foster Parent Care.</p> <p>Eligibility requirements (Art. 7): a) the applicant must be the legal guardian of a minor as per Art. 8; b) the applicant must be a Maldivian citizen; c) Maldivians living abroad will not receive any assistance; d) the applicant must have a monthly income that falls below that of the national poverty level.</p> <p>Conditions for application eligibility (Art. 8): a) the parents are either deceased or disabled to a point that they do not have the capacity to raise a child; b) the parents have lost custody of their child because they have been convicted of a crime or are serving a prison sentence; c) the guardian has legal custody of the child, as the parents are not fulfilling the basic needs of the child.</p> |
| HRBA 2: transparency | ◆ | Social Protection Regulation (R22), Art. 8, 9 and 10 | <p>Art. 8 of the Social Protection Regulation (R-22/2016) requires the NSPA to inform the applicant when the documents presented in the application need to be submitted; the Agency also has the obligation to respond to the application, either accepting or rejecting it, within 15 days from the completion of the application.</p> <p>Art. 9 entails the duty of the NSPA to continuously monitor whether beneficiaries indeed meet the eligibility requirements.</p> <p>Art. 10 provides that when social protection services are suspended or terminated, the beneficiary must be informed immediately.</p> |
| HRBA 3: roles and responsibilities | ◆ | Social Protection Act/ NSHIA | <p>The NSHIA (2011) formally established the NSPA, which is responsible for coordinating and implementing social protection programmes.</p> <p>Moreover, in 2014 the Social Protection Act (2/2014) was passed, fundamentally setting and regulating a number of entitlements and associated social protection benefits administered by the NSPA. As part of its mandate, the NSPA also implements programmes that do not fall under the Social Protection Act (NSHIA Art. 21, let. e).</p> |
| HRBA 4a: long-term financial requirements | ◆ | Social Protection Act, Art. 11 | <p>Art. 11 of the Social Protection Act requires in general terms that the amount of finances for social protection services must be clearly outlined in the national budget every fiscal year. No further rules were found in the legislation analysed.</p> |
| HRBA 4b: ensure the predictability of benefits | ◆ | Social Protection Regulation (R22), Art. 8 | <p>The Social Protection Regulation provides that when an application is accepted, the beneficiary will receive financial aid before the 10th day of the following month (Art. 8, let. c). The same article determines that the benefit will be received monthly for 2 years. After 2 years the beneficiary needs to reapply for the benefit.</p> |



| Criterion | Score | Legal provision | Score rationale |
|--|-------|-----------------|--|
| HRBA 5: accessible complaints and appeals mechanisms | ◆ | NSHIA | The NSHIA entails an obligation, through Art. 37, for the Board of the NSPA to establish a mechanism that allows complaints to be filed and received easily and reviewed and resolved as soon as possible. It is unclear whether this provision refers to each scheme implemented by the NSPA or solely to those afforded by the NSHIA. Thus, if the first interpretation is valid, each scheme mapped for Maldives would be covered at least in terms of complaints, given that no reference is made to appeals mechanisms. |
| HRBA 6: participatory mechanisms | ◆ | | No relevant provision in the legislation analysed. |

Scheme: *Husnuvaa Aasandha*, launched in 2014

Programme type: Non-contributory health insurance

Programme objective(s): To provide free medical assistance to complement the Medical Welfare Programme

Legislation analysed: Social Protection Act (2014), *Husnuvaa Aasandha* Regulation (R-19/2015), National Social Health Insurance Act (NSHIA) (2011)

Legislation scorecard

| Criterion | Score | Legal provision | Score rationale |
|--|-------|--|---|
| HRBA 1: eligibility criteria | ◆ | NSHIA, Art. 5; R19, Art. 4 | NSHIA, Art. 5 (mirrored by Art. 4 of R19): All Maldivian citizens are entitled to the scheme. The NSPA must ensure that all health care centres have a system in place to identify and provide services to people with their national identification card. R19 also clarifies that for the first 28 days newborns will receive services under the name of their mother. |
| HRBA 2: transparency | ◆ | NSHIA, Art. 15; R19, Art. 8, 9 and 10. | Art. 15 of the NSHIA (mirrored by Art. 8 of R19) assigns to the NSPA a general monitoring duty to ensure that: health care institutions do not provide services below the minimum required standards; health care institutions use all the services at their disposal to treat patients; and prescription drugs and therapeutic devices are prescribed and used accordingly. Art. 9 of R19 provides for the formation of a committee responsible for assessing and approving the registration of companies providing services under the scheme. Art. 10 includes a quite detailed set of rules to be observed by such companies. The NSHIA (2011) formally established the NSPA, which is responsible for coordinating and implementing social protection programmes. Art. 21 of the NSHIA determines the responsibilities of the Agency, which include ensuring that the services are received in every part of the country. This provision is extremely relevant when the nature of the territory of Maldives is considered: it comprises about 1,200 islands, of which roughly 200 are inhabited. Such a feature poses a number of challenges to social protection in terms of accessibility to goods and services provided by the government. Art. 26 defines the responsibilities of the Agency's Board members. These provisions add to the monitoring responsibility of the NSPA (NSHIA, Art. 15 and R19, Art. 8) and the role of the committee in the registration of companies providing services under the scheme (R19, Art. 9) mentioned in the point above, as well as the norms that the latter are obliged to observe (R19, Art. 10). |
| HRBA 3: roles and responsibilities | ◆ | NSHIA, Art. 15, 21 and 26; R19, Art. 8, 9 and 10 | |
| HRBA 4a: long-term financial requirements | ◆ | NSHIA, Art. 26 and 35 | The NSHIA identifies the sources of funding (Art. 35, let. a), which interestingly include revenues generated from the collection of alcohol and tobacco taxation. The same provision dictates further rules, such as the need to clearly distinguish between the budget allocated to the NSAP and the schemes' assets (let. d), and the establishment of bank accounts and funds for that purpose (let. e). No mention of auditing procedures was found in the NSHIA or R19. Art. 26 stipulates the responsibility of the members of the Agency's Board to establish a scheme to raise the required finances from the government and investors. |
| HRBA 4b: ensure the predictability of benefits | ◆ | NSHIA, Art. 35 | Art. 35, let. c provides that the Agency will reply to requests for assistance and provide assistance within 30 days. |
| HRBA 5: accessible complaints and appeals mechanisms | ◆ | NSHIA, Art. 37 | The NSHIA, through Art. 37, requires the Board of the NSPA to establish a mechanism that allows complaints to be filed and received easily and reviewed and resolved as soon as possible. The same article also identifies the subjects and grounds on which complaints may be filed. No reference is made to the eventual appeals phase. |
| HRBA 6: participatory mechanisms | ◆ | | No relevant provision in the legislation analysed. |

Scheme: Disability Allowance, launched in 2010

Programme type: Unconditional in-kind transfer; unconditional cash transfer; social support services

Programme objective(s): To protect people living with disabilities and provide them with the same rights and opportunities as any other citizen

Legislation analysed: Protection of the Rights of Persons with Disabilities and Provision of Financial Assistance (Law No. 8/2010, the Disabilities Act), the Social Protection Act, the Social Protection Regulation and the NSHIA

Legislation scorecard

| Criterion | Score | Legal provision | Score rationale |
|--|-------|---|--|
| HRBA 1a: eligibility criteria | ◆ | Disabilities Act, Art. 14, Social Protection Act and NSHIA | <p>Art. 14 [a] of the Disabilities Act defines persons with disabilities as those: “having long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society, on an equal basis with others”. This definition perfectly mirrors Art. 1 of the United Nations Convention on the Rights of Persons with Disabilities.</p> <p>The NSPA maintains a national registry of persons who voluntarily register with the agency to access financial assistance from the State, i.e. a “disability allowance” (Art. 14, b).</p> <p>While this registry fulfils the legal requirement established under the Disabilities Act, Maldives is yet to establish a comprehensive national registry of persons with disabilities.</p> <p>In accordance with the Social Protection Act, the individual or their parent or guardian may apply for the scheme.</p> <p>Required documents are:</p> <ol style="list-style-type: none"> 1. Medical documents 2. A copy of the applicant’s ID card 3. A copy of the parent/guardian’s ID card 4. Bank statement of the applicant or guardian. |
| HRBA 2: transparency | ◆ | Disabilities Act, Art. 4 and Social Protection Regulation (R22), Art. 8, 9 and 10 | <p>The Disability Council established under the Disabilities Act functions to ensure all facilities and programmes designed to serve persons with disabilities are effectively monitored. However, the lack of capacity and funds poses significant challenges to implement its functions, especially its monitoring function.</p> <p>Further, the transparency mechanisms of the Social Protection Regulation also apply. Art. 8 of the Social Protection Regulation (R-22/2016) requires the NSPA to inform the applicant when the documents presented in the application need to be submitted; the Agency also has the obligation to respond to the application, either accepting or rejecting it, within 15 days from completion of the application.</p> <p>Art. 9 entails the duty of the NSPA to continuously monitor whether beneficiaries indeed meet the eligibility requirements.</p> <p>Art. 10 provides that when social protection services are suspended or terminated, the beneficiary must be informed immediately.</p> |
| HRBA 3: roles and responsibilities | ◆ | Disabilities Act, Art. 4 and 12, NSHIA | <p>As mentioned above, the Disability Council is responsible for monitoring the implementation of the law, policies and programmes relating to persons with disabilities (Art. 4). The responsibilities of the Council are defined in Art. 12.</p> <p>The NSPA, in addition to being responsible for operating and maintaining the registry of persons with disabilities, is also responsible for implementing this scheme (NSHIA Art. 21, let. e).</p> |
| HRBA 4a: long-term financial requirements | ◆ | Disabilities Act, Art. 32 | <p>Art. 32 generally provides that the national budget must allocate finances for disability benefits.</p> |
| HRBA 4b: ensure the predictability of benefits | ◆ | Social Protection Regulation (R22), Art. 8 | <p>The Social Protection Regulation provides that when an application is accepted, the beneficiary will receive financial aid before the 10th day of the following month (Art. 8, let. c).</p> |



| Criterion | Score | Legal provision | Score rationale |
|--|-------|-----------------|---|
| HRBA 5: accessible complaints and appeals mechanisms | ◆ | NSHIA, Art. 37 | The NSHIA entails an obligation, through Art. 37, for the Board of the NSPA to establish a mechanism that allows complaints to be filed and received easily and reviewed and resolved as soon as possible. It is unclear whether this provision refers to each scheme implemented by the NSPA or solely to those afforded by the NSHIA. Hence, if the first interpretation is valid, each scheme mapped for Maldives would be covered at least in terms of complaints, given that no reference is made to appeals mechanisms. |
| HRBA 6: participatory mechanisms | ◆ | | No relevant provision in the legislation analysed. |

Scheme: Old Age Basic Pension, launched in 2009

Programme type: Unconditional cash transfer

Programme objective(s): To serve as a safety net for elderly people

Legislation analysed: Maldives Pension Act (MPA), enacted in 2009 (as last amended in 2019) and Basic Pension Regulation (R-22/2014)

Legislation scorecard

| Criterion | Score | Legal provision | Score rationale |
|--|-------|--|---|
| HRBA 1: eligibility criteria | ◆ | MPA, Art. 11 | Art. 11, let. e clearly provides that the age for receiving a Basic Pension shall be 65 years. Everyone shall be eligible for the pension on the first day of the month in which they reach 65 years of age. |
| HRBA 2: transparency | ◆ | MPA, Art. 4, 5 | Art. 4 of the MPA sets an obligation for the Pension Office to make public: annual statements of assets and liabilities; statements with details of pension assets (once every 3 months); any modification to the 'statement of investment principles'; and any other information required by the Securities Market Regulator. Further, Art. 5 of the same Act provides for the establishment of a Pension Supervision Department within the Securities Market Regulator. |
| HRBA 3: roles and responsibilities | ◆ | MPA, Art. 2, 3, 5, 6, 7, 8, 9, 10 and 18 | Articles 2, 3, 5, 6, 7, 8, 9 and 18 define with sufficient clarity the roles and responsibilities of the bodies/subjects involved in the scheme. These articles nominally regulate the roles and responsibilities of: <ul style="list-style-type: none"> the Maldives Pension Office and its functions/responsibilities (Art. 2 and 3) as well as responsibilities in financial administration (Art. 7); the Pension Supervision Department (Art. 5); the Board of the Pension Office (Art. 7) and its general powers (Art. 6), composition and functioning (Art. 8), term of office and removal of members (Art. 10); the Investment Committee (Art. 9); and asset managers (Art. 18). |
| HRBA 4a: long-term financial requirements | ◆ | MPA, Art. 7, 11 | Art. 7 sets down several provisions for the financial administration of the Pension Office and its budget. Particularly relevant are let. a and b. Let. a: The Pension Office shall be administered by charging a reasonable fee from participants in the Retirement Pension Scheme as stipulated in subsection 6 (d) of this Act, and from payments made to the annual budget of the Pension Office from the government budget to administer the Old Age Basic Pension scheme and matters related to pensions. A subsidy may be provided from the government budget to cover operational expenses of the Maldives Retirement Pension Scheme as stipulated in subsection 6 (d) of this Act until pension assets increase such that the cost could be recovered fully from the participants in the scheme. <p>Let. b: Approval shall be obtained from the Ministry of Finance and Treasury for the money provided to the budget of the Pension Office from the government budget pursuant to this Act.</p> <p>Art. 11, let. f provides that the Pension Office, in consultation with the ministry responsible for social security, shall prepare a budget to provide the Basic Pension, and shall submit it to the Ministry of Finance and Treasury to be incorporated in the annual government budget. This budget shall include the costs for the provision of the Basic Pension and the administrative expenses to operate the scheme. It shall be funded from the government's income.</p> |
| HRBA 4b: ensure the predictability of benefits | ◆ | MPA, Art. 11, R22 | Art. 11, let. i sets an obligation for the Board of the Pension Office to formulate, within 3 months of appointment, procedures required for persons who are eligible for the Basic Pension to obtain the pension, and to identify recipients and complete the arrangements for disbursement within 6 months of appointment. Regulation 22/2014 was enacted to implement these provisions. |
| HRBA 5: accessible complaints and appeals mechanisms | ◆ | NSHIA, Art. 37 | The NSHIA entails an obligation, through Art. 37, for the Board of the NSPA to establish a mechanism that allows complaints to be filed and received easily and reviewed and resolved as soon as possible. It is unclear whether this provision refers to each scheme implemented by the NSPA or solely to those afforded by the NSHIA. Hence, if the first interpretation is valid, each scheme mapped for Maldives would be covered at least in terms of complaints, given that no reference is made to appeals mechanisms. |
| HRBA 6: participatory mechanisms | ◆ | | No relevant provision in the legislation analysed. |

Nepal

Scheme: Child Grant, launched in 2009

Programme type: Unconditional cash transfer

Programme objective(s): To improve children's nutritional outcomes

Legislation analysed: Social Security Act, 2018

Legislation scorecard

| Criterion | Score | Legal provision | Score rationale |
|---|-------|---|--|
| HRBA 1a: eligibility criteria | ◆ | Social Security Act, Art. 9, 12 and 16 | <p>Art. 9 of the Social Security Act: Children who are extremely destitute, on the verge of extinction and have not reached the age of 5 years are eligible for the Child Grant.</p> <p>A particular feature of the Social Security Act is that it requires an application for the Child Grant to be filed before the competent local level [Art. 12], which includes submitting evidence of the record of birth registration together with the application (para. 2). This requirement is a notable incentive for child registration set directly by law, yet it could also operate as a barrier if such registration is missing. The same article allows the child's caregiver or guardian to file an application on her/his behalf.</p> <p>Art. 16 sets an obligation for the local level to provide identity cards to people entitled to receive the social security allowance. Not possessing an identity card hinders the delivery of the benefit.</p> |
| HRBA 2: transparency | ◆ | Social Security Act, Art. 12, 16, 17, 18, 26 and 28 | <p>The only administrative transparency measures found are as follows:</p> <p>Art. 12[4] requires, if the applicant is not deemed eligible for the Child Grant, the local level to provide a written response indicating the reasons for the denial.</p> <p>Art. 16, requires the local level to review and update the records of identity cards relating to disabilities on a yearly basis. It is unclear why the identity cards issued under other benefits afforded by the grant are not reviewed on an equal basis.</p> <p>Art. 17 requires payments of the social security allowance to be made exclusively through the banking system, when determined by regulation; no such regulation was found.</p> <p>Art. 18 requires the local level to maintain records of the social security allowance and to transmit such records to the relevant body in the Government of Nepal.</p> <p>Art. 26 calls for the adoption of a regulation setting the provisions relating to the management of records of beneficiaries, yet no such regulation was found.</p> <p>Art. 28 entails an obligation for the local level to report to the central and provincial governments every 4 months on the social security allowances distributed.</p> <p>No mention of a mechanism guaranteeing financial transparency was found.</p> |
| HRBA 3: roles and responsibilities | ◆ | Social Security Act | <p>The Act defines with sufficient clarity the roles and responsibilities of those involved in the implementation of the scheme. In particular, considering the federal system, the different obligations of federative entities are clearly defined. Overall, the local level is responsible for implementing the scheme, maintaining and managing records and monitoring the delivery of benefits. It also has to inform central and provincial governments about the distribution of social security allowances.</p> <p>The central government is responsible for the budget (see point below) and framing rules to implement the Act, as well as for devising directives and procedures for the distribution of benefits.</p> |
| HRBA 4a: long-term financial requirements | ◆ | Social Security Act, Art. 20 | <p>The only relevant disposition found is Art. 20, which requires the Government of Nepal to fund the social security allowance(s) pursuant to the Act.</p> |



| Criterion | Score | Legal provision | Score rationale |
|--|-------|----------------------------------|--|
| HRBA 4b: ensure the predictability of benefits | ◆ | Social Security Act, Art. 12 | Art. 12 (3): When an application is received, the local level shall make a decision by taking the necessary action within 7 days. Art. 12 (4): While taking action pursuant to subsection (3), if it appears that the applicant is not entitled to the social security allowance, they shall be informed of the reason in writing. |
| HRBA 5: accessible complaints and appeals mechanisms | ◆ | Social Security Act, Art. 22, 23 | Art. 22 of the Social Security Act grants the right of any person to file a complaint before the local-level Judicial Committee. According to Art. 23, the Judicial Committee has the duty to settle the case within 120 days from the date of its filing. Further, Art. 23 allows the complainant to appeal before the District Court within 35 days from the date of receipt of the decision. The problem in this context is that Art. 22 only permits complaints on the basis of the offences foreseen in Art. 21. The latter foresees the possibility of holding to account the official who distributes the allowance in case of misuse [Art. 21, let. d] but does not include the possibility of making a complaint about the quantity/quality of the benefit or in the case of its refusal. |
| HRBA 6: participatory mechanisms | ◆ | | No relevant provision in the legislation analysed. |

Scheme: Disability Grant, launched in 1996

Programme type: Unconditional cash transfer

Programme objective(s): To provide financial assistance to persons with disabilities

Legislation analysed: The Act Relating to Rights of Persons with Disabilities, 2017 (DRA) and Social Security Act, 2018

Legislation scorecard

| Criterion | Score | Legal provision | Score rationale |
|------------------------------|-------|--|--|
| HRBA 1: eligibility criteria | ◆ | Social Security Act, Art. 8 DRA, Art. 3 | <p>Art. 8 of the Social Security Act: Citizens with total disability shall receive a disability allowance of a sum specified by the Government of Nepal as the social security allowance.</p> <p>Art. 3 of the DRA regulates the classification of disability by referring to the schedule contained in the same Act. The schedule in question does not contain the definition of 'total disability' but distinguishes between 'profound' and 'severe' disability. Hence it is not clear whether the term 'total disability' should solely include 'profound disability' or also 'severe disability', also considering that the definition of 'citizen with disabilities' provided in Art. 2 of the Social Security Act does not match either of the two contained in the schedule of the DRA.</p> |
| HRBA 2: transparency | ◆ | Social Security Act, Art. 12, 16, 17, 18, 26 and 28 DRA, Art. 6 | <p>The only administrative transparency measures found are as follows:</p> <p>Art. 12(4) requires, if the applicant is not deemed eligible for the Disability Grant, the local level to provide a written response indicating the reasons for the denial.</p> <p>Art. 16 requires the local level to review and update the records of identity cards relating to disabilities on a yearly basis. It is unclear why the identity cards issued under other benefits afforded by the grant are not reviewed on an equal basis.</p> <p>Art. 17 requires payments of the social security allowance to be made exclusively through the banking system, when determined by regulation; no such regulation was found.</p> <p>Art. 18 requires the local level to maintain records of the social security allowance and to transmit such records to the relevant body in the Government of Nepal.</p> <p>Art. 26 calls for the adoption of a regulation setting the provisions relating to the management of records of beneficiaries, yet no such regulation was found.</p> <p>Art. 28 entails an obligation for the local level to report to the central and provincial governments every 4 months on the social security allowances distributed.</p> <p>No mention of a mechanism guaranteeing financial transparency was found.</p> <p>Finally, Art. 6 of the DRA entails an obligation for the local level to maintain and update records of persons with disabilities who reside permanently in the area. The same disposition requires such records to be forwarded to the ministry looking after the federal affairs of the Government of Nepal, and the provincial ministry looking after the social sector.</p> |



| Criterion | Score | Legal provision | Score rationale |
|--|-------|--|---|
| HRBA 3: roles and responsibilities | ◆ | Social Security Act and DRA | <p>The Social Security Act defines with sufficient clarity the roles and responsibilities of those involved in the implementation of the scheme. In particular, considering the federal system, the different obligations of federative entities are clearly defined. Overall, the local level is responsible for implementing the scheme, maintaining and managing records and monitoring the delivery of benefits. It also has to inform central and provincial governments about the distribution of social security allowances.</p> <p>The central government is responsible for the budget (see point below) and framing rules to implement the Act, as well as for devising directives and procedures for the distribution of benefits.</p> <p>Also, the DRA clearly separates the obligations of the Ministry of Women, Children and Senior Citizens (central government) from those that are incumbent on the provincial and local levels.</p> <p>In addition, the DRA provides for the creation of a steering committee to coordinate, monitor and promote activities related to the rights, facilities, services and protection of persons with disabilities and to give direction in related activities. Further, coordination committees are to be set up in each municipality (urban or rural) to coordinate matters related to the protection of the rights and interests of persons with disabilities.</p> |
| HRBA 4a: long-term financial requirements | ◆ | Social Security Act, Art. 20 | <p>The only relevant disposition found is Art. 20, which requires the Government of Nepal to fund the social security allowance(s) pursuant to the Act.</p> |
| HRBA 4b: ensure the predictability of benefits | ◆ | Social Security Act, Art. 12 | <p>Art. 12 (3): When an application is received, the local level shall make a decision by taking the necessary action within 7 days.</p> <p>Art. 12 (4): While taking action pursuant to subsection (3), if it appears that the applicant is not entitled to the social security allowance, they shall be informed of the reason in writing.</p> |
| HRBA 5: accessible complaints and appeals mechanisms | ◆ | Social Security Act, Art. 22, 23 DRA, Art. 51, 52 | <p>Art. 22 of the Social Security Act grants the right of any person to file a complaint before the local-level Judicial Committee. According to Art. 23, the Judicial Committee has the duty to settle the case within 120 days from the date of its filing. Further, Art. 23 allows the complainant to appeal before the District Court within 35 days from the date of receipt of the decision. The problem in this context is that Art. 22 only permits complaints on the basis of the offences foreseen in Art. 21. The latter foresees the possibility of holding to account the official who distributes the allowance in case of misuse (Art. 21, let. d) but does not include the possibility of making a complaint about the quantity/quality of the benefit or in the case of its refusal.</p> <p>Art. 51 of the DRA states, in general terms, that in case of violation of a right or responsibility set out in the Act, the interested person or his/her family members or guardians may make an application before the Chief District Officer for the enforcement or fulfilment of such a right or responsibility. The second paragraph requires the Chief District Officer to make the necessary inquiries within 7 days. Then the Chief District Officer can basically give an order to the concerned person (para. 3) or to the concerned body or institution (para. 4) to enforce the right of the person or to perform the responsibility towards the person with disability. Paragraph 7 of the article foresees that in case of dissatisfaction with the order given by the Chief District Officer, the concerned party may appeal to the High Court concerned within 35 days. Notwithstanding what is contained in Art. 51, the law also explicitly incorporates in Art. 52 the possibility of filing an application (for the enforcement of a right or the fulfilment of a responsibility) directly before the District Court in the district in which the person with disability is residing.</p> |



| Criterion | Score | Legal provision | Score rationale |
|----------------------------------|-------|------------------|--|
| HRBA 6: participatory mechanisms | ◆ | DRA, Art. 38, 42 | <p>The DRA, through Art. 38, includes as mandatory members of the Steering Committee: 10 people, including at least 5 women, from among the organisations, associations and federations at the national level and the institutions involved in the field of human rights (let. r); 2 persons with disabilities who have made important contributions at the national level (let. r1); and 2 persons, including one woman, from the service provider institutions related to disabilities (let. s). According to let. a1 of the same article, the vice-chairperson of the steering committee must be selected from the members referred to in let. r. Through the reservation of quotas, the norm guarantees the participation of stakeholders in relevant bodies, but not the direct participation of beneficiaries.</p> <p>Conversely, regarding the composition of the coordination committees, Art. 42 explicitly includes three people, including one woman nominated by the coordination committee from among persons with disabilities within the rural municipality and municipality.</p> |

Scheme: Endangered Indigenous Peoples Allowance or Endangered Ethnicity Grant, launched in 2009

Programme type: Unconditional cash transfer

Programme objective(s): To provide financial assistance to indigenous people

Legislation analysed: the Nepalese National Foundation for Development of Indigenous Nationalities Act, 2002 (INA) and the Social Security Act, 2018

Legislation scorecard

| Criterion | Score | Legal provision | Score rationale |
|---------------------------------|-------|---|--|
| HRBA 1: eligibility criteria | ◆ | Social Security Act, Art. 2 | Art. 2 recalls the Act's schedule, which identifies nominally the tribes on the verge of extinction—i.e. Kusunda, Raute, Hayu, Kisan, Meche, Bankariya, Surel, Raji, Lopcha, Kuswadiya [Pattharkatta, Silkat, Kushbadhiya and Kuchbadhiya]. |
| HRBA 2: transparency | ◆ | Social Security Act, Art. 12, 16, 17, 18, 26 and 28 | <p>The only administrative transparency measures found are as follows:</p> <p>Art. 12(4) requires, if the applicant is not deemed eligible for the benefit, the local level to provide a written response indicating the reasons for the denial.</p> <p>Art. 16 requires the local level to review and update the records of identity cards relating to disabilities on a yearly basis. It is unclear why the identity cards issued under other benefits afforded by the grant are not reviewed on an equal basis.</p> <p>Art. 17 requires payments of the social security allowance to be made exclusively through the banking system, when determined by regulation; no such regulation was found.</p> <p>Art. 18 requires the local level to maintain records of the social security allowance and to transmit such records to the relevant body in the Government of Nepal.</p> <p>Art. 26 calls for the adoption of a regulation setting the provisions relating to the management of beneficiaries' records, yet no such regulation was found.</p> <p>Art. 28 entails an obligation for the local levels to report to the central and provincial governments every 4 months on the social security allowances distributed.</p> <p>No mention of a mechanism guaranteeing financial transparency was found.</p> |



| Criterion | Score | Legal provision | Score rationale |
|--|-------|----------------------------------|--|
| HRBA 3: roles and responsibilities | ◆ | Social Security Act and INA | <p>The Social Security Act defines with sufficient clarity the roles and responsibilities of those involved in the implementation of the scheme. In particular, considering the federal system, the different obligations of federative entities are clearly defined. Overall, the local level is responsible for implementing the scheme, maintaining and managing records and monitoring the delivery of benefits. It also has to inform central and provincial governments about the distribution of social security allowances.</p> <p>The central government is responsible for the budget (see point below) and framing rules to implement the Act as well as for devising directives and procedures for the distribution of benefits.</p> <p>In addition, the INA provides for the creation of the National Foundation for Development of Indigenous Nationalities, which has several functions relevant to social protection, including undertaking special programmes aimed at enhancing the economic and social status of poor and marginalised groups among the indigenous nationalities, and preparing lists of poor and non-poor indigenous nationalities to determine social, economic and cultural differences, similarities and discrepancies between indigenous nationalities.</p> <p>The functions, duties and responsibilities of the Foundation's governing council and executive committee are clearly defined.</p> |
| HRBA 4a: long-term financial requirements | ◆ | Social Security Act, Art. 20 | <p>The only relevant disposition found is Art. 20, which requires the Government of Nepal to fund the social security allowance(s) pursuant to the Act.</p> |
| HRBA 4b: ensure the predictability of benefits | ◆ | Social Security Act, Art. 12 | <p>Art. 12 (3): When an application is received, the local level shall make a decision by taking the necessary action within 7 days.</p> <p>Art. 12 (4): While taking action pursuant to subsection (3), if it appears that the applicant is not entitled to the social security allowance, they shall be informed of the reason in writing.</p> |
| HRBA 5: accessible complaints and appeals mechanisms | ◆ | Social Security Act, Art. 22, 23 | <p>Art. 22 of the Social Security Act grants the right of any person to file a complaint before the local-level Judicial Committee. According to Art. 23, the Judicial Committee has the duty to settle the case within 120 days from the date of its filing. Further, Art. 23 allows the complainant to appeal to the District Court within 35 days from the date of receipt of the decision. The problem in this context is that Art. 22 permits complaints solely on the basis of the offences foreseen in Art. 21.</p> <p>The latter foresees the possibility of holding to account the official who distributes the allowance in case of misuse (Art. 21, let. d) but does not include the possibility of making a complaint about the quantity/quality of the benefit or in the case of its refusal.</p> |
| HRBA 6: participatory mechanisms | ◆ | INA, Art. 7 | <p>Art. 7 reserves the following seats in the governing council: persons nominated by the co-chairperson, on recommendation of the federation of the indigenous nationalities out of the unions and associations of the indigenous nationalities referred to in the schedule affiliated to the federation, one person from each indigenous nationality and, if there are any indigenous nationalities not affiliated to the federation of indigenous nationalities, one person each from such indigenous nationalities; 10 women nominated by the Government of Nepal, 2 from each development region from among the indigenous nationalities.</p> |

Scheme: Old Age Allowance, launched in 1996

Programme type: Unconditional cash transfer

Programme objective(s): To provide financial assistance to elderly people

Legislation analysed: Social Security Act, 2018, Senior Citizens Act, 2006 (SCA) and Senior Citizens Rules, 2008 (SCR)

Legislation scorecard

| Criterion | Score | Legal provision | Score rationale |
|---|-------|---|--|
| HRBA 1: eligibility criteria | ◆ | Social Security Act, Art. 4 SCA, Art. 2 | <p>Art. 4 of the Social Security Act identifies <i>Dalit</i> and single women senior citizens who have reached the age of 60 years and other senior citizens reaching the age of 70 years as beneficiaries. The same article allows an exception so that the Government of Nepal may, by specifying a certain area, also provide an allowance to senior citizens living in such area who have not reached the age required.</p> <p>Art. 2 of the SCA generally defines as senior citizens any Nepalese person who has reached the age of 60 years.</p> |
| HRBA 2: transparency | ◆ | Social Security Act, Art. 12, 16, 17, 18, 26 and 28 | <p>The only administrative transparency measures found are as follows:</p> <p>Art. 12(4) requires, if the applicant is not deemed eligible for the benefit, the local level to provide a written response indicating the reasons for the denial.</p> <p>Art. 16 requires the local level to review and update the records of identity cards relating to disabilities on a yearly basis. It is unclear why the identity cards issued under other benefits afforded by the grant are not reviewed on an equal basis.</p> <p>Art. 17 requires payments of the social security allowance to be made exclusively through the banking system, when determined by regulation; no such regulation was found.</p> <p>Art. 18 requires the local level to maintain records of the social security allowance and to transmit such records to the relevant body in the Government of Nepal.</p> <p>Art. 26 calls for the adoption of a regulation setting the provisions relating to the management of beneficiaries' records, yet no such regulation was found.</p> <p>Art. 28 entails an obligation for the local levels to report to the central and provincial governments every 4 months on the social security allowances distributed.</p> <p>No mention of a mechanism guaranteeing financial transparency was found.</p> |
| HRBA 3: roles and responsibilities | ◆ | Social Security Act, SCA and SCR | <p>The Social Security Act defines with sufficient clarity the roles and responsibilities of those involved in the implementation of the scheme. In particular, considering the federal system, the different obligations of federative entities are clearly defined. Overall, the local level is responsible for implementing the scheme, maintaining and managing records and monitoring the delivery of benefits. It also has to inform central and provincial governments about the distribution of social security allowances.</p> <p>The central government is responsible for the budget (see point below) and framing rules to implement the Act as well as for devising directives and procedures for the distribution of benefits.</p> <p>In addition, the SCA and SCR provide for the creation of a Central Senior Citizens Welfare Committee. Further, District Senior Citizens Welfare Committees need to be created in each district. In both cases, functions, roles and responsibilities are clearly defined. Particularly relevant to our context are two functions of the Central Committee: the preparation of social security programmes for senior citizens [SCA, Art. 14, let. a] and monitoring the implementation of these programmes [SCA, Art. 14, let. b].</p> |
| HRBA 4a: long-term financial requirements | ◆ | Social Security Act, Art. 20 SCA, Art. 17 | <p>The only relevant disposition found in the Social Security Act is Art. 20, which requires the Government of Nepal to fund the social security allowance(s) pursuant to the Act.</p> <p>The SCA provides for the creation of the Senior Citizen Welfare Fund and contextually individuates the sources of funding. Further, it clarifies that the funds shall be spent exclusively for the protection and social security of senior citizens.</p> |



| Criterion | Score | Legal provision | Score rationale |
|---|-------|----------------------------------|--|
| HRBA 4b: ensure the predictability of benefits | ◆ | Social Security Act, Art. 12 | Art. 12 [3]: When an application is received, the local level shall make a decision by taking the necessary action within 7 days. Art. 12 [4]: While taking action pursuant to subsection [3], if it appears that the applicant is not entitled to the social security allowance, they shall be informed of the reason in writing. |
| HRBA 5: accessible complaints and appeals mechanisms | ◆ | Social Security Act, Art. 22, 23 | Art. 22 of the Social Security Act grants the right of any person to file a complaint before the local-level Judicial Committee. According to Art. 23, the Judicial Committee has the duty to settle the case within 120 days from the date of its filing. Further, Art. 23 allows the complainant to appeal to the District Court within 35 days from the date of receipt of the decision. The problem in this context is that Art. 22 permits complaints solely on the basis of the offences foreseen in Art. 21. The latter foresees the possibility of holding to account the official who distributes the allowance in case of misuse [Art. 21, let. d] but does not include the possibility of making a complaint about the quantity/quality of the benefit or in the case of its refusal. |
| HRBA 6: participatory mechanisms | ◆ | | No relevant provision was found in the legislation analysed. |

Scheme: Single Women's Allowance, launched in 1997

Programme type: Unconditional cash transfer

Programme objective(s): To provide financial assistance to single women

Legislation analysed: Social Security Act, 2018, Senior Citizens Act, 2006 (SCA) and Senior Citizens Rules, 2008 (SCR)

Legislation scorecard

| Criterion | Score | Legal provision | Score rationale |
|------------------------------|-------|---|--|
| HRBA 1: eligibility criteria | ◆ | Social Security Act, Art. 7 SCA, Art. 2 | <p>Art. 7 of the Social Security Act identifies the following single women who have reached the age of 60 years as beneficiaries: those who have not remarried after getting divorced; widows; those who are awaiting legal separation; and those who are unmarried. The same article allows an exception for helpless single women (except for those who are unmarried) who have not reached the age of 60 years and have no source of income or have an income less than that fixed by the government and cannot work.</p> <p>It is noteworthy that the definition of 'helpless single women' provided in the Social Security Act (Art. 2, let. c) differs from the definition provided in Art. 2 of the SCA.</p> |
| HRBA 2: transparency | ◆ | Social Security Act, Art. 12, 16, 17, 18, 26 and 28 | <p>The only administrative transparency measures found are as follows:</p> <p>Art. 12{4} requires, if the applicant is not deemed eligible for the benefit, the local level to provide a written response indicating the reasons for the denial.</p> <p>Art. 16 requires the local level to review and update the records of identity cards relating to disabilities on a yearly basis. It is unclear why the identity cards issued under other benefits afforded by the grant are not reviewed on an equal basis.</p> <p>Art. 17 requires payments of the social security allowance to be made exclusively through the banking system, when determined by regulation; no such regulation was found.</p> <p>Art. 18 requires the local level to maintain records of the social security allowance and to transmit such records to the relevant body in the Government of Nepal.</p> <p>Art. 26 calls for the adoption of a regulation setting the provisions relating to the management of beneficiaries' records, yet no such regulation was found.</p> <p>Art. 28 entails an obligation for the local levels to report to the central and provincial governments every 4 months on the social security allowances distributed.</p> <p>No mention of a mechanism guaranteeing financial transparency was found.</p> |



| Criterion | Score | Legal provision | Score rationale |
|--|-------|--|---|
| HRBA 3: roles and responsibilities | ◆ | Social Security Act, SCA and SCR | <p>The Social Security Act defines with sufficient clarity the roles and responsibilities of those involved in the implementation of the scheme. In particular, considering the federal system, the different obligations of federative entities are clearly defined. Overall, the local level is responsible for implementing the scheme, maintaining and managing records and monitoring the delivery of benefits. It also has to inform central and provincial governments about the distribution of social security allowances.</p> <p>The central government is responsible for budget (see point below) and framing rules to implement the Act as well as for devising directives and procedures for the distribution of benefits.</p> <p>In addition, the SCA and SCR provide for the creation of a Central Senior Citizens Welfare Committee. Further, District Senior Citizens Welfare Committees need to be created in each district. In both cases, functions, roles and responsibilities are clearly defined. Particularly relevant to our context are two functions of the Central Committee: the preparation of social security programmes for senior citizens (SCA, Art. 14, let. a) and monitoring the implementation of these programmes (SCA, Art. 14, let. b).</p> |
| HRBA 4a: long-term financial requirements | ◆ | Social Security Act, Art. 20 SCA, Art. 17 | <p>The only relevant disposition found in the Social Security Act is Art. 20, which requires the Government of Nepal to fund the social security allowance(s) pursuant to the Act.</p> <p>The SCA provides for the creation of the Senior Citizen Welfare Fund and contextually individuates the sources of funding. Further, it clarifies that the funds shall be spent exclusively for the protection and social security of senior citizens.</p> |
| HRBA 4b: ensure the predictability of benefits | ◆ | Social Security Act, Art. 12 | <p>Art. 12 (3): When an application is received, the local level shall make a decision by taking the necessary action within 7 days.</p> <p>Art. 12 (4): While taking action pursuant to subsection (3), if it appears that the applicant is not entitled to the social security allowance, they shall be informed of the reason in writing.</p> |
| HRBA 5: accessible complaints and appeals mechanisms | ◆ | Social Security Act, Art. 22, 23 | <p>Art. 22 of the Social Security Act grants the right of any person to file a complaint before the local-level Judicial Committee. According to Art. 23, the Judicial Committee has the duty to settle the case within 120 days from the date of its filing. Further, Art. 23 allows the complainant to appeal to the District Court within 35 days from the date of receipt of the decision. The problem in this context is that Art. 22 permits complaints solely on the basis of the offences foreseen in Art. 21. The latter foresees the possibility of holding to account the official who distributes the allowance in case of misuse (Art. 21, let. d) but does not include the possibility of making a complaint about the quantity/quality of the benefit or in the case of its refusal.</p> |
| HRBA 6: participatory mechanisms | ◆ | | No relevant provision was found in the legislation analysed. |

Pakistan

Scheme: *Bait-ul-Mal*, launched in 1991

Programme type: Conditional cash transfer, educational fee waiver, housing subsidy, unconditional in-kind transfer and social support services

Programme objective(s): To provide financial assistance to people who are destitute, widows, orphans, persons with disabilities, and other people in need, with an emphasis on rehabilitation; educational assistance to orphans in need and stipends for outstanding students with a low income for higher professional education; residential accommodation and necessary facilities for those who are deserving; free medical treatment for indigent sick people and set up free hospitals and rehabilitation centres for people living in poverty; financial aid to charitable institutions, including educational and vocational bodies; to sponsor and promote self-employment schemes; and any other purpose approved by the Board

Legislation analysed: *Bait-ul-Mal Act*, 1992

Legislation scorecard

| Criterion | Score | Legal provision | Score rationale |
|--|-------|---|--|
| HRBA 1: eligibility criteria | ◆ | Bait-ul-Mal Act, Art. 4 | <p>Art. 4: Widows, orphans, sick people, persons with disabilities and other persons with special needs (and their children), indigent sick persons, educated youth and brilliant but poor students are eligible for benefits.</p> <p>The Bait-ul-Mal Act does not establish (or refer to any Act determining) the exact criteria to identify these categories. Eligibility criteria are instead listed on the government's websites dedicated to the programmes (Government of Pakistan 2019). However, besides the fact that not all vulnerable individuals have Internet access, in these instances (as when specified in guidelines or operational manuals) eligibility criteria have no legal value and are, therefore, not enforceable before the courts.</p> |
| HRBA 2: transparency | ◆ | Bait-ul-Mal Act Art. 16 and 18 | <p>Articles 17 and 18 regulate auditing procedures to ensure financial transparency. Administrative transparency on the supply side is guaranteed by the Employment Service Regulation.</p> |
| HRBA 3: roles and responsibilities | ◆ | Bait-ul-Mal Act | <p>The Act defines with sufficient clarity the roles and responsibilities of those involved in the implementation of the scheme. Unlike other federal and quasi-federal settings, the legislation does not regulate the responsibilities of federative entities; this is because it is a centrally sponsored government scheme.</p> <p>The Act provides for the creation of a Management Board, whose roles and responsibilities are clearly defined.</p> |
| HRBA 4a: long-term financial requirements | ◆ | Bait-ul-Mal Act, Art. 3, 4, 17, 18 and 19 | <p>Art. 3 of the Bait-ul-Mal Act encompasses the establishment of a fund and specifies, in the second paragraph of the same section, the sources of funding. Voluntary donations (let. c), according to para. 3 of the same article, are deductible from donors' taxable income.</p> <p>Art. 4 establishes rules related to the administration of the programme and its funds, by connecting them to the purposes of the programme. For example, let. a identifies as a purpose of the programme the provision of financial assistance for a number of subjects and, as such, ties the use of funds to the fulfilment of this purpose.</p> <p>Articles 17 and 18 regulate, respectively, the maintenance of accounts ("complete and accurate books") and the Auditor General's obligation to audit the programme's accounts every year.</p> <p>Art. 19 requires the Board to submit, every January, a statement of estimated revenues and expenditures for the next financial year, for the federal government's approval.</p> |
| HRBA 4b: ensure the predictability of benefits | ◆ | | No relevant provision was found in the legislation. |



| Criterion | Score | Legal provision | Score rationale |
|--|-------|-----------------|---|
| HRBA 5: accessible complaints and appeals mechanisms | ◆ | | No relevant provision was found in the legislation. |
| HRBA 6: participatory mechanisms | ◆ | | No relevant provision was found in the legislation. |

Scheme: Benazir Income Support Programme, launched in 2008

Programme type: Unconditional cash transfer and conditional cash transfer

Programme objective(s): To protect poor people from the adverse impacts of the food, fuel and financial crises (short-term goal) and to provide a minimum income support package to chronically poor people and those who are more likely to be affected negatively by future economic shocks (long-term goal)

Legislation analysed: Benazir Income Support Programme Act (BISP), 2010

Legislation scorecard

| Criterion | Score | Legal provision | Score rationale |
|------------------------------------|-------|------------------------------|--|
| HRBA 1: eligibility criteria | ◆ | BISP Act, Art. 11 | Art. 11: The Board shall determine, from time to time, the criteria for the eligibility of persons and families for financial assistance from the programme. Besides the lack of precision of the expression 'from time to time', in this case also eligibility criteria are instead listed on the government's websites dedicated to the programme (Government of Pakistan 2019). However, besides the fact that not all vulnerable individuals have Internet access, in these instances (as when specified in guidelines or operational manuals) eligibility criteria have no legal value and are, therefore, not enforceable before the courts. The lack of a legal framework diminishes the effectiveness of virtuous targeting mechanisms—for example, the BISP, besides aiming to reduce poverty, also empowers women by directly transferring the benefits to the female heads of households. Yet this rule is not enshrined in legislation, hence frustrating the possibility of the rights-holder to legally enforce their entitlement and to hold the duty-bearer accountable. |
| HRBA 2: transparency | ◆ | BISP Act, Art. 6, 10, 15, 16 | In determining the powers and duties of the Board, the BISP Act sets out a general duty of the body to generally "monitor the programme in a transparent manner" (Art. 6, let. c). Moreover, Art. 10, let. b of the same Act calls for the adoption of modern and effective processing and distribution mechanisms without any intermediary, to provide financial assistance or funds directly to eligible persons and families. Some administrative transparency on the supply side is, nevertheless, guaranteed for the programme by the respective Employees Services Regulation. The Act includes rules on auditing procedures (BISP Act, Art. 15, 16). The Act defines with sufficient clarity the roles and responsibilities of those involved in the implementation of the scheme. Unlike other federal and quasi-federal settings, the legislation does not regulate the responsibilities of federative entities; this is because it is a centrally sponsored government scheme. |
| HRBA 3: roles and responsibilities | ◆ | BISP Act | The BISP Act foresees the creation of both a Management Board and a BISP Council. A notable feature of the BISP Act is that it foresees that the Chief and Executive Patrons of the Council are, respectively, the President and the Prime Minister of Pakistan, linking some aspects of programme management to the highest institutional and political figures. |



| Criterion | Score | Legal provision | Score rationale |
|--|-------|-----------------------|--|
| HRBA 4a: long-term financial requirements | ◆ | BISP Act, Chapter VII | Chapter VII of Pakistan's BISP Act is dedicated to the institution of the Benazir Income Support Fund (Art. 13). Sources of funding are specified in para. 2, whereas the subsequent paragraph entails the possibility of designing regulations to further define the rules for the administration of the Fund. Art. 14 specifies that the Secretary has an annual obligation to prepare, in accordance with the financial procedures approved by the Board, the annual budget estimates, subject to the Board's approval. Section 15 of the law dictates that the programme must maintain complete and accurate accounting books, as prescribed by the Auditor-General of Pakistan. Para. 2 of the same article regulates the internal auditing procedure, which must be carried out by an independent internal audit officer, reporting directly to the Board. The requirement of a further, external audit, to be conducted annually by the Auditor-General of Pakistan, is imposed by Art. 16. A copy of this audit must be submitted to the Board for information and remedial actions, to the Council and to the federal government, solely for information purposes. These rules are further elaborated by a 2018 financial regulation. |
| HRBA 4b: ensure the predictability of benefits | ◆ | | No relevant provision was found in the legislation. |
| HRBA 5: accessible complaints and appeals mechanisms | ◆ | BISP Act, Art. 21 | The BISP Act foresees in Section 21 that any person or family aggrieved by a decision which determines their ineligibility may, within 30 days from the decision, file a complaint in the form and to the authority prescribed by regulations, although no reference is made to appeals mechanisms. Also in this case, no implementing regulation was found. Nevertheless, it has to be highlighted that an online interface has been made available on the dedicated BISP website for filing complaints. According to the website, complaints may also be lodged by visiting BISP field offices, by writing a letter to BISP or by calling a toll-free number. Such mechanisms should be enshrined in regulations, as also foreseen in the BISP Act, to fully embrace a rights-based approach to social protection. |
| HRBA 6: participatory mechanisms | ◆ | | No relevant provision was found in the legislation. |

Sri Lanka

Scheme: *Divineguma* Programme, launched in 2014 (previously known as *Samurdhi*)

Programme type: Unconditional cash transfer

Programme objective(s): Poverty alleviation

Legislation analysed: *Divinenguma Act*, 2013

Legislation scorecard

| Criterion | Score | Legal provision | Score rationale |
|---|-------|--|---|
| HRBA 1a: eligibility criteria | ◆ | Divinenguma Act, Art. 42 | Art. 42, (2), let. f bases the determination of criteria in respect to the selection of beneficiaries on a regulation of the Ministry of Social Empowerment and Welfare (MoSEW). No regulation was found in this respect. |
| HRBA 2: transparency | ◆ | Divinenguma Act, Art.5, 17, 20 | Art. 5 assigns to the Divineguma Development Department the duty to: (a) supervise and monitor the establishment, control and management of Divineguma community-based organisations, regional organisations and district committees; (f) supervise, manage, monitor and audit Divineguma community-based organisations, regional organisations, district committees, community-based banks and community-based banking societies; and (h) collect information as may be required to plan, supervise, monitor and implement Divineguma development programmes. In addition, Art. 17 attributes to Divineguma regional organisations the duty to: (h) collect information as may be required to plan, supervise, monitor and implement Divineguma development programmes. Finally, Art. 20 requires Divineguma district committees to supervise, monitor and evaluate programmes of Divineguma community-based organisations and regional organisations in their respective districts. |
| HRBA 3: roles and responsibilities | ◆ | Divinenguma Act | The Act defines with sufficient clarity the roles and responsibilities of those involved in the implementation of the scheme. |
| HRBA 4a: long-term financial requirements | ◆ | Divinenguma Act Art. 5, 13, 17, 27, 36, 37 | Sri Lanka's Divineguma Act provides for the creation of the Divineguma Development Fund in Art. 36 and identifies its sources of funding. Interestingly, one is the percentage, set by the Minister, of the profit made by the Divineguma community-based banks and banking societies set up in accordance with the Act. The third paragraph clarifies that the purposes for and ways in which these funds may be used are regularly determined by the Minister through regulations. Art. 37 provides for the establishment of another fund—the Divineguma Revolving Fund—which absorbs the resources of several revolving funds, including the one associated with the previous version of the programme (<i>Samurdhi</i>). Further, Art. 5, in defining the powers of the Divineguma Development Department, includes in let. f the supervision, management, monitoring and audit of Divineguma community-based and regional organisations, district committees, community-based banks and community-based banking societies. Various dispositions of the Act encompass financial provisions for the bodies mentioned above: Divineguma community organisations must deposit and maintain funds in a Divineguma community-based bank (Art. 13); Divineguma regional organisations need to directly establish and maintain a fund, as prescribed by the Minister (Art. 17, let. h); and Divineguma community-based banks are explicitly allowed to invest their funds in the Divineguma banking societies (Art. 27, let. e). |



| Criterion | Score | Legal provision | Score rationale |
|--|-------|--------------------------|--|
| HRBA 4b: ensure the predictability of benefits | ◆ | | No relevant provision was found in the legislation. |
| HRBA 5: accessible complaints and appeals mechanisms | ◆ | Divinenguma Act, Art. 42 | Art. 42, (2), let. I attributes to the relevant ministry the duty to enact regulations for dispute settlement, but no such regulation was found. |
| HRBA 6: participatory mechanisms | ◆ | Divinenguma Act | The Divinenguma Act implies the establishment of community-based organisations of the same name that are, by definition, participatory. Art. 9 clarifies that these organisations are based on the voluntary participation of Divinenguma beneficiaries. |



International Policy Centre for Inclusive Growth

SBS, Quadra 1, Bloco J, Ed. BNDES, 13º andar
70076-900 Brasília, DF - Brazil
Telephone: +55 61 2105 5000

ipc@ipcig.org • www.ipcig.org