



EXECUTIVE SUMMARY

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**

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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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.

REFERENCE

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