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Children's right to social protection in the Middle East and North Africa Region - An analysis of legal frameworks from a child rights perspective. Executive summary

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EXECUTIVE SUMMARY

Children's Right to Social Protection in the Middle East and North Africa Region—an Analysis of Legal Frameworks from a Child Rights Perspective

Charlotte Bilo and Anna Carolina Machado, International Policy Centre for Inclusive Growth (IPC-IG)

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Our intention is to keep the information updated, thus any suggestions and/or corrections are welcome. Please contact Anna Carolina Machado (anna.machado@ipc-undp.org) or Charlotte Bilo (charlotte.bilo@ipc-undp.org) if you wish to update, rectify or add any information about the legal frameworks and programmes.

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**CHILDREN'S RIGHT TO SOCIAL
PROTECTION IN THE MIDDLE EAST AND
NORTH AFRICA REGION—AN ANALYSIS OF
LEGAL FRAMEWORKS FROM A CHILD
RIGHTS PERSPECTIVE**

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EXECUTIVE SUMMARY

Background

Although in the past decade the Middle East and North Africa (MENA) region has made important advances in terms of reducing extreme poverty and improving health, education and child survival indicators, progress has remained uneven across the region. Countries affected by conflicts and humanitarian situations (such as Iraq, Libya, Syria and Yemen) in particular have seen a reversal in child well-being indicators (UNICEF 2017a). In fact, child poverty in the region remains a critical concern. According to a recent study in 11 Arab countries, one in four children suffers from acute multidimensional poverty (LAS et al. 2017).

An ever-growing body of research has documented the positive effects of social protection on preventing and reducing both monetary and multidimensional child poverty. The nexus between reducing child poverty and social protection policies is also emphasised in Sustainable Development Goal (SDG) 1: “End poverty in all its forms everywhere”, and Target 1.3, which foresees the implementation of “nationally appropriate social protection systems and measures for all, including floors” to achieve substantial coverage of poor and vulnerable people by 2030.

While increased attention is being paid to the role of social protection in improving human development indicators, especially among children, it is important to remember that access to social protection is not just a matter of policies but one of rights, as also enshrined in several international human rights instruments, including the Convention on the Rights of the Child (CRC). A human rights-based approach to social protection foresees that programmes are anchored in a system of rights, clearly establishing citizens’ entitlements and corresponding obligations for the State.

The analysis of whether and how social protection programmes are incorporated into domestic law is an important entry point to advance children’s rights. Embedding social protection programmes in comprehensive legal frameworks is particularly relevant for children, as they are not only more vulnerable to malnutrition, disease and abuse (and thus in need of adequate social protection) but are also more dependent on others for support. Social protection schemes enshrined in national legal frameworks are less prone to political manipulation and become entitlements to which citizens have the right to access (UNICEF 2014).

While the MENA region has a long tradition of providing social support to the most vulnerable segments of society, in many countries social protection systems remain limited, relying to a large extent on food and fuel subsidies and on the support of charitable and other non-state organisations. In recent years the region has seen a number of social protection reforms, which have often included the removal of universal subsidies and the introduction or scale-up of targeted cash transfer programmes, as in the case of Egypt, Iran and Saudi Arabia. In light of this new landscape of social provisioning and the political changes in MENA since the events of 2011, the question arises whether a shift towards a more rights-based approach to social protection can be observed in the region.

Methodology and limitations

Against this background, this study’s **main objectives** are: (i) to present an overview of the existing legal and regulatory frameworks promoting children’s right to social protection in MENA; and (ii) to assess whether the legal frameworks of the region’s non-contributory social protection programmes comply with a human rights-based approach to social protection.

This study is primarily based on a comprehensive desk review of legal frameworks related to non-contributory social protection in all 20 countries in the MENA region.¹ The term ‘legal framework’ is defined here as “all national laws and other decrees or secondary legislations and regulations” (Transform 2017, Glossary). As such it can refer to both statutory law as well as executive regulations and decrees (issued by a Minister of State, for example). In a first step, the countries’ constitutions, social protection and/or poverty reduction strategies and child rights statutes were mapped. All relevant instruments identified passed through a systematic analysis to examine to what extent they entail the right to social protection, and whether and how they extend this right to children. Afterwards, a review of non-contributory social protection schemes was conducted to verify which programmes in the region are anchored in legal frameworks. Here the authors drew primarily on their previous mapping of non-contributory social protection programmes in the MENA region (Machado et al. 2018), with a major focus on cash transfers, in-kind transfers (including housing and school feeding) and health care benefits.

In a third step, 22 non-contributory programmes were selected for a more in-depth analysis of their legal frameworks. One scheme was included for each country except for the State of Palestine (SOP), where a law for the National Cash Transfer Programme is still in the process of deliberation. The programmes’ legal frameworks were assessed to better understand whether they reflect a rights-based approach based on the principles enshrined in the CRC and other human rights instruments. In short, they should: (i) set out the eligibility criteria of the programme; (ii) define the various roles and responsibilities of all those involved in the implementation of schemes; (iii) articulate long-term financial requirements; (iv) establish an accessible complaints and appeal mechanism; and (v) set the foundations for citizens’ participation.

Despite the relevance of enshrining social protection schemes in comprehensive legal frameworks, the implementation of public policies, even when mandated by law, does take time to mature. In fact, the adoption of a legal norm does not necessarily lead to an immediate change in social realities, even if it entails the provision of a concrete benefit or improvements in the quality of services provided. In this study a few examples of reported implementation gaps are highlighted; however, a comprehensive assessment of the implementation, efficacy and adequacy of social protection legal frameworks goes beyond its scope. The contribution of this study is nevertheless important, as mapping the legal frameworks helps identify potential regulatory gaps that can ensure the entitlements of potential beneficiaries. Supporting countries to fill in these gaps could lead to a reduction of exclusion errors and to a larger coverage of social protection programmes—a key SDG target.

Report structure

This report’s first section presents relevant background information to the research conducted and describes the conceptual framework and the methodology employed. In Section 2, the main international and regional human rights treaties and conventions, countries’ constitutions, social protection strategies and child rights acts or statutes are assessed in depth. Subsequent to this, Section 3 assesses whether the region’s cash, in-kind and health protection/benefits are embedded in legal frameworks, and in Section 4 a number of selected programmes are examined in more detail, analysing whether and how they comply with a human rights-based approach to social protection. Finally, Section 5 summarises the main findings of the study and provides a set of recommendations for improving the legal frameworks of social protection programmes in the region.

Main findings

- Eighteen of the 20 countries in the MENA region **have a legal guarantee to social protection in their constitutions—the two exceptions being Djibouti and Lebanon**. However, **only a few countries—namely, Bahrain, Egypt, Iran, Iraq and Morocco—clearly extend the right to social protection or to an adequate**

1. Based on UNICEF’s definition of the MENA region, this study covers the following 20 countries: Algeria, Bahrain, Djibouti, Egypt, Iran (Islamic Republic of), Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, State of Palestine, Sudan, Syria, Tunisia, United Arab Emirates and Yemen.

standard of living to all children. When the right is extended to children, it is often done so for orphans, reflecting the region's tradition of providing assistance to families without a (male) breadwinner. Most frequently, social protection is understood to be provided in the case of the inability to work, such as old age, disability or illness. The right to an adequate standard of living is commonly enshrined in some form into national constitutions, yet to varying degrees. While in some constitutions the right to a decent life is directly linked to the provision of social security, such as in Egypt, others see an adequate standard of living rather as a desired development objective, as in the case of Kuwait, Oman and Qatar. Furthermore, in many of the region's constitutions, children's right to protection is mentioned within articles related to the importance of the family for society.

- Social protection strategies can help enhance institutional legitimacy and coordination among different governmental schemes. Only Djibouti and Morocco were found to have a specific social protection strategy, even though the former does not have a legal social protection guarantee in its national constitution. The overall tendency in MENA is to embed social protection in broader poverty reduction and development plans. Only a few of the national strategies in the region which encompass social protection **clearly stipulate the provision of social protection to children.** Examples include Djibouti, Jordan and Morocco.
- In total, 14 out of the 20 countries in MENA were found to have a **legal instrument majorly concerned with the rights of children.** However, only seven clearly mention the right to social protection, as in Egypt and the State of Palestine (SOP). Here too, orphans are commonly mentioned as a particularly vulnerable group which should receive social protection services. In Egypt, the 2008 amendments to the national child statute stands out for affirming children's right to social protection by envisaging the introduction of a cash transfer programme targeted at orphans and vulnerable children.
- Out of 154 **non-contributory social protection schemes** mapped in MENA (including cash and in-kind transfers, cash-for-work, educational fee waivers, school feeding programmes, housing benefits, health protection programmes and food and energy subsidies), **more than half (88) are anchored in a legal framework.** Programmes for which a legislation was enacted between the 1950s and 1970s are mainly energy, fuel and food subsidies. In the Gulf countries, laws regulating social assistance date back to the 1970s and 1980s. Since the 1990s the region has seen the introduction of more social transfer-related legislations, especially in Algeria, Tunisia and Yemen. A number of the region's major flagship social protection programmes have been introduced since 2010, such as Iran's cash transfer programme introduced by the Targeted Subsidies Reform Act, *Shamel* in Sudan and *Takaful* and *Karama* in Egypt.
- Analysing the **legal frameworks of the non-contributory programmes** in the region, it can be observed that **several programmes that are particularly relevant for children are not (yet) embedded in a legal framework.** This includes the *Tayssir* programme in Morocco, the *Programme National d'Aide aux Familles Nécessiteuses* (PNAFN—National Programme of Assistance to Needy Families) and its education benefit programme (*Programme d'Allocations Scolaires*—PPAS) in Tunisia, the Emergency National Poverty Targeting Programme (E-NPTP) in Lebanon, as well as the Palestinian National Cash Transfer Programme (PNCTP) in the SOP. For the latter two a relevant provision is in the process of development. It should be remembered here that the implementation of social protection programmes can also precede the development of a clear legal framework, and in some cases even inform those in a positive manner (Kaltenborn et al. 2017). While cash transfer and health protection programmes tend to be somewhat better embedded in legal frameworks, school feeding programmes and in-kind transfers are often missing a clear framework. The lack of legal frameworks for the latter might be explained by the fact that they are often planned to be temporary, responding to humanitarian emergencies.
- It is important to note that **children on the move are commonly not covered by national social protection legal frameworks.** This is particularly the case in the Gulf countries, which have a high number of foreign workers. While other countries are more inclusive in allowing at least economic migrants, refugees are usually not covered by social protection programmes.

- Analysis of a selection of 22 non-contributory social protection programmes (cash transfers and health protection schemes) regulated by a legal framework shows that while most of them define eligibility criteria and institutional roles and responsibilities (albeit with varying degrees of precision), **fewer frameworks stipulate the long-term financial requirements or establish strong complaints mechanisms**. The participation of beneficiaries is rarely mentioned in the legal frameworks in the region. Only three programmes envisage some form of participation: the Disability Card in Lebanon and the *Allocation Spéciale de Scolarité* in Algeria are especially relevant cases to note here.
- Some programmes stand out for their **more comprehensive legal frameworks** and for complying with at least four of the five criteria assessed, such as **Iraq's Social Protection Network** (regulated by Law No. 11 of 2014) and **Djibouti's Programme National de Solidarité Famille** (PNSF) (*Décret n°2015-279/PR/SESN*, modified by *Décret N° 2017-096/PR/SEAS*). Yet the existence of a detailed legal framework does not necessarily mean that the programme is implemented as such in reality. The **implementation of a law is particularly challenging in contexts of conflict and war**, which can in the most extreme case lead to complete suspension, as in the case of Yemen's Social Welfare Fund (SWF).

Recommendations

Based on the findings of the research conducted, countries in the MENA region should consider the following recommendations to promote children's right to social protection and strengthen social protection systems to comply with the standards established by international human rights law:

- Work towards **legislation and macro policy documents**, such as social protection strategies that **establish social protection as a right and not merely as charity** or as 'discretionary' social policy, ensuring that such right is extended to everyone, including children.
- Ensure that **social protection legislation is inclusive and non-discriminatory**, paying particular attention to the most disadvantaged and marginalised.
- Establish **appropriate regulatory frameworks** to ensure that **children on the move have access to a minimum of social protection**. This should also be supported by the international community. Particular attention should be paid to ensure equal treatment of all refugees, regardless of nationality.
- Embed programmes in comprehensive legal frameworks and complement existing **legislation in line with a human rights-based approach** to social protection.
- Particular efforts should be made to create legally embedded **appeal and complaints mechanisms** as well as **channels which allow beneficiaries to participate in** and inform the design, implementation and evaluation of the programme.
- Strengthen mechanisms that allow for the **monitoring of legal frameworks** and their implementation in practice to hold governments and programme implementers accountable.



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