



## **Human Rights Law Clinic Papers 2021**

# **Enhancing Social Protection to Guarantee Human Rights and Equality**

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To: Malavika Vartak, Amnesty International

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### ***Domestic Instruments***

#### **Nigeria**

Constitution of the Federal Republic of Nigeria 1999

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Pension Reform Act 2014

#### **Nepal**

Constitution of Nepal 2015

Contribution based Social Security Act 2018

Labour Act 2018

Right relating to Free and Compulsory Education Act 2018

Social Protection Act 2018

The Public Health Service Act

#### **UK**

Coronavirus Act 2020

Equality Act 2010

The Statutory Sick Pay (General) Regulations 1982

Universal Credit Regulations 2013

Welfare Reform Act 2012

### iii) Table of Abbreviations

<b>ACHPR</b>	African Charter on Human and People's Rights
<b>CCT</b>	Conditional Cash Transfer
<b>CEDAW</b>	Convention on the Elimination of all Forms of Discrimination Against Women
<b>CESCR</b>	Committee on Economic, Social and Cultural Rights
<b>CRC</b>	Convention on the Rights of the Child
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>DWP</b>	Department of Work and Pensions
<b>ECHR</b>	European Convention on Human Rights
<b>ECSR</b>	European Committee of Social Rights
<b>EHCR</b>	Equality and Human Rights Commission
<b>ESC</b>	European Social Charter
<b>ESCR</b>	Economic, Social and Cultural Rights
<b>GDP</b>	Gross Domestic Product
<b>ICERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ILO</b>	International Labour Organization
<b>NGO</b>	Non-Governmental Organisation
<b>SIP</b>	Social Investment Programme
<b>UC</b>	Universal Credit
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UK</b>	United Kingdom
<b>UN</b>	United Nations



## 1. Introduction and Background

The right to social security is a fundamental human right recognised in numerous international instruments,<sup>1</sup> but social protection programmes globally are too often overlooked and underfunded.<sup>2</sup> The Covid-19 pandemic has exposed economic inequalities and highlighted the link between social security and the costs of living – individuals and communities who are not guaranteed their rights have disproportionately suffered impacts of the virus and lockdown measures.<sup>3</sup>

This memorandum will consider how a rights-based approach to social protection could address the present problems. Nigeria, Nepal and the UK have been chosen as case studies to illustrate how current social protection programmes meet human rights standards. World Bank income classification was used largely in their selection; the UK is classified as a high-income country,<sup>4</sup> and both Nigeria and Nepal are categorized as lower-middle income countries.<sup>5</sup> However, until recently Nepal was in the low-income bracket.<sup>6</sup> Given this, the regional context, the differing levels of income and inequality, and the variation in provision and fulfilment of economic, social and cultural rights in each of the case studies will be significant for the purposes of the memorandum.

Firstly, the memorandum will analyse whether current income support programmes in Nigeria, Nepal and the UK meet international, regional, and domestic human rights standards. It will then examine the interaction of those income support measures with the right to an adequate standard of living; namely the adequacy of the income support measures in supporting or detracting from the right, focusing on the subcategories of the right to housing, the right to food and the right to health. Examples from the case studies will be compared with practices from other jurisdictions to strengthen analysis when needed.

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<sup>1</sup> See Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 22; International Covenant on Economic, Social, and Cultural Rights adopted 19 December 1966 entered into force 3 January 1976) 993 UNTS. 3 (ICESCR) art 9; International Labour Organization (ILO), 'Convention Concerning Minimum Standards of Social Security' (28 June 1952) C102.

<sup>2</sup> International Labour Organization (ILO), 'Universal social protection for human dignity, social justice and sustainable development' (International Labour Conference 108<sup>th</sup> Session, 2019) ILC.108/III/B.

<sup>3</sup> Human Rights Watch, 'Protecting Economic and Social Rights During and Post-Covid-19' (29 June 2020) <[www.hrw.org/news/2020/06/29/protecting-economic-and-social-rights-during-and-post-covid-19](http://www.hrw.org/news/2020/06/29/protecting-economic-and-social-rights-during-and-post-covid-19)> accessed 2 April 2021.

<sup>4</sup> The World Bank, 'United Kingdom' (*The World Bank: Data*, 2021) <[data.worldbank.org/country/GB](http://data.worldbank.org/country/GB)> accessed 2 April 2021.

<sup>5</sup> See The World Bank, 'Nigeria' (*The World Bank: Data*, 2021) <[data.worldbank.org/country/NG](http://data.worldbank.org/country/NG)> accessed 2 April; The World Bank, 'Nepal' (*The World Bank: Data*, 2021) <[data.worldbank.org/country/NP](http://data.worldbank.org/country/NP)> accessed 2 April 2021.

<sup>6</sup> Umar Serajuddin and Nada Hamadeh, 'New World Bank country classifications by income level: 2020-2021' (*World Bank Blogs*, July 2020) <[blogs.worldbank.org/opendata/new-world-bank-country-classifications-income-level-2020-2021](https://blogs.worldbank.org/opendata/new-world-bank-country-classifications-income-level-2020-2021)> accessed 2 April 2021.

The memorandum will then draw from the three case studies to produce recommendations in policy and law to inform what a universal, transparent and comprehensive social protection programme should look like in an increasingly unequal world.

## 2. Applicable Laws and Standards

Social protection systems are regulated through international, regional, and national law frameworks. At the international level, the existing frameworks provide comprehensive guidelines and obligations to state parties directing them to ensure a minimum level of social protection to their citizens. The Universal Declaration of Human Rights (UDHR) recognizes the right to social security as one of the fundamental human rights,<sup>7</sup> albeit as non-binding soft law. Further, the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides the right to social security, including social insurance.<sup>8</sup> The content and its significance are further elaborated by General Comment No. 19 issued by the Committee on Economic, Social and Cultural Rights (CESCR), a treaty body of the Covenant.<sup>9</sup> The General Comments are of non-binding nature, but they clarify the meaning and scope of the rights contained within the ICESCR, binding to those states that have ratified it. Nigeria, Nepal and the UK have signed and ratified the ICESCR with no reservations but have yet to sign the Optional Protocol that would allow individuals to take complaints to the committee.<sup>10</sup>

The International Labour Organization (ILO) Conventions also provide legal and policy framework for social protection. Social Security (Minimum Standards) Convention No. 102 (C102) covers all relevant social risks.<sup>11</sup> The Social Protection Floors Recommendation, which sets the minimum standards on income security for all citizens and asks the states to meet those base requirements, has gained unanimous support from member states.<sup>12</sup> A later generation of ILO Conventions also expands on the social security protection contained in C102.<sup>13</sup>

<sup>7</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 22.

<sup>8</sup> International Covenant on Economic, Social, and Cultural Rights adopted 19 December 1966 entered into force 3 January 1976) 993 UNTS 3 (ICESCR) art 9.

<sup>9</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment no. 19: The right to social security (art. 9)' (4 February 2008) E/C.12/GC/19.

<sup>10</sup> UN General Assembly, 'Optional Protocol to the International Covenant on Economic, Social and Cultural Rights' (5 March 2009) A/RES/63/117.

<sup>11</sup> International Labour Organization (ILO), 'Convention Concerning Minimum Standards of Social Security' (28 June 1952) C102.

<sup>12</sup> International Labour Organization (ILO), 'Recommendation concerning National Floors of Social Protection' (14 June 2012) R202.

<sup>13</sup> See International Labour Organization (ILO), 'Invalidity, Old-Age and Survivors' Benefits Convention' (7 June 1967) C128; International Labour Organization (ILO), 'Medical Care and Sickness Benefits Convention' (4 June 1969) C130; International Labour Organization (ILO), 'Employment Promotion and Protection against Unemployment Convention' (1 June 1988) C168; International Labour Organization (ILO), 'Maintenance of Social Security Rights Convention' (2 June 1982) C157; International Labour Organization (ILO), 'Equality of Treatment (Social Security) Convention' (6 June 1962) C118; International Labour Organization (ILO), 'Employment Injury

No ILO Conventions relating to social security have been ratified in Nigeria or Nepal.<sup>14</sup> The UK has ratified key provisions of C102, including those on income support,<sup>15</sup> but no other key social security conventions.

Many other international human rights conventions specifically include the right to social security,<sup>16</sup> including the UN Convention on the Rights of Persons with Disabilities (CRPD), of which Article 28 governs on social protection and non-discrimination within it.<sup>17</sup>

The right to an adequate standard of living is enshrined in Article 25 of the UDHR,<sup>18</sup> 'for the health and well-being of himself and his family, including food, clothing, housing and medical care'. This right is also defined in the ICESCR<sup>19</sup> and the importance of the right to housing, food and health within the right to an adequate standard of living is elaborated on by the CESCR.<sup>20</sup>

Regional instruments also govern on social protection. The African Charter on Human and Peoples' Rights 1981 covers certain aspects of the right to social security, such as the right to health in Article 16 and the right of the aged and disabled to special measures of protection in Article 18(4). Nigeria has also ratified and domesticated the African Charter on Human and People's Rights (Ratification and Enforcement) Act. As a member of the Council of Europe, the UK has signed and ratified the European Social Charter,<sup>21</sup> of which Article 12 and 13 govern on social protection.<sup>22</sup> Nepal is not party to any regional frameworks.

At a national level, domestic legislation or the constitution may set out the general social policy system and the state's main priorities.<sup>23</sup> Policy frameworks then define the procedure and implementation of such programmes.

Section 12 of the Constitution of Nigeria provides that treaties have to be domesticated into national legislation before they can be binding in Nigeria.<sup>24</sup> The ICESCR has not been

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Benefits Convention' (17 June 1964) C121; International Labour Organization (ILO), 'Maternity Protection Convention' (30 May 2000) C183.

<sup>14</sup> ILO C102 (n 11).

<sup>15</sup> ILO C102 (n 11).

<sup>16</sup> See Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (UNCRC) art 4(2); International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 (CERD); Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW)

<sup>17</sup> Convention on the Rights of Persons with Disabilities (adopted 24 January 2007, adopted into force 3 May 2008) A/RES/61/106 (CRPD)

<sup>18</sup> UDHR (n 7) art 25.

<sup>19</sup> ICESCR (n 8) art 11.

<sup>20</sup> UN Committee on Economic, Social and Cultural Rights, 'General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)' (13 December 1991) E/1992/23.

<sup>21</sup> European Social Charter (revised) 1999.

<sup>22</sup> *ibid* art 12,13.

<sup>23</sup> Constitution of Nepal, 2015; Constitution of the Federal Republic of Nigeria.

<sup>24</sup> Constitution of the Federal Republic of Nigeria (as amended) 1999 sec 12.

domesticated and merely have a persuasive force in the Nigerian courts.<sup>25</sup> Article 9 of the Treaty Law of Nepal recognizes international law and treaties as binding laws therefore Nepal is obligated to domesticate the fundamental international obligations through Constitutional, Legislative and Policy frameworks.<sup>26</sup> However, there are still major implementation gaps and challenges shown by the existing socio-economic inequalities in Nepal, which call for critical review.<sup>27</sup>

The UK has failed to enshrine the ICESCR in domestic legislation, despite the recommendations of CESCR on multiple occasions.<sup>28</sup> Social protection is partially devolved in Scotland and Northern Ireland. Therefore, this memorandum will primarily refer to domestic legislation that specifically applies in England and Wales, with mention or comparison with Scotland and Northern Ireland where relevant or different.

### 3. Social Protection Measures

#### 3.1 Income Support

##### *3.1.1 Nigeria*

Although various social protection projects have been initiated, there exists no coordinated national policy that provides for social protection in Nigeria.<sup>29</sup> Unsuccessful attempts were made both in 2004 and 2009 by the National Planning Commission (NPC) and the National Social Insurance Trust Fund (NSITF) respectively.<sup>30</sup> What is operative is that each successive government has brought with it a new social protection agenda.<sup>31</sup> The National Economic Empowerment and Development Strategy (NEEDS) which was created as a long-term development policy and poverty eradication scheme by the newly elected government in 1999 was abandoned by the subsequent government in 2007 that introduced the seven-point

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<sup>25</sup> Halima Doma Kutigi, 'Towards Justiciability of Economic, Social, and Cultural Rights in Nigeria: A Role for Canadian-Nigerian Cooperation?' (2017) 4 *The Transnational Human Rights Review* 136.

<sup>26</sup> Treaty Act 1990, sec 9.

<sup>27</sup> Committee on Economic, Social and Cultural Rights, 'Concluding Observations on the third periodic report of Nepal', E/C.12/NPL/CO/3, 12 December 2014, para 30.

<sup>28</sup> See UN Committee on Economic, Social and Cultural Rights, 'Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant' (12 June 2009) E/C.12/GBR/CO/5; UN Committee on Economic, Social and Cultural Rights, 'Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) E/C.12/GBR/CO/6.

<sup>29</sup> Aiyede E and others, 'The Political Economy of Social Protection Policy Uptake in Nigeria' (2015) Partnership for African Social and Governance Research Working Paper No. 002, 12 <<http://pasgr.org/wp-content/uploads/2016/08/The-Political-Economy-of-Social-Protection-on-Policy-Uptake-in-Nigeria.pdf>> accessed 1 April 2021.

<sup>30</sup> Jessica Hagen-Zanker and Rebecca Holmes, 'Social Protection in Nigeria' (2012) ODI/UNICEF Nigeria, 10 <[www.Socialprotection.org](http://www.Socialprotection.org)> accessed 15 March 2021.

<sup>31</sup> Oladayo Awojobi, 'Cultivating a long-term social protection strategy in Nigeria' (2017) Socialprotection.org <<https://socialprotection.org/discover/blog/cultivating-long-term-social-protection-strategy-nigeria>> accessed 15 March 2021.

agenda.<sup>32</sup> The approach by the subsequent 2011 and 2015 governments were similar.<sup>33</sup> The frequent changes mean that there are no real long-term benefits for the beneficiaries. Although the CESCR notes that measures should be ‘periodically revised where necessary’,<sup>34</sup> the scheme must also be ‘sustainable so that it can be enjoyed by present and future generations’.<sup>35</sup>

The lack of a unified and sustainable policy on social protection is because the Nigerian legal framework does not adopt a rights-based approach to social protection.<sup>36</sup> Although governments have claimed that the aspirational approach is the most practical because there are no sufficient funds for enforcement,<sup>37</sup> it is underfunded as a result of a lack of political will as Nigeria spends only about 2% of its GDP on social protection which is low compared to some other countries.<sup>38</sup> The 1999 Constitution of the Federal Republic of Nigeria (CFRN) as amended provides the basics for social protection in Nigeria in its ‘Fundamental Objectives and Directive Principles of State Policy’ which are consistent with the AU’s social protection framework.<sup>39</sup> They are however not justiciable because they are merely aspirational directives.<sup>40</sup> South Africa adopts a rights based approach to social protection.<sup>41</sup> Section 27 of the 1996 South African Constitution obliges the state to take reasonable steps to achieve the progressive realisation of right to access social security as required by the CESCR.<sup>42</sup>

The absence of a rights based approach to social protection also means that individuals or groups whose right to social protection has been infringed on cannot seek redress. The inclusion of the right in the domestic laws would enable violations to be addressed by courts.<sup>43</sup> The absence of redress for violations of this right is worsened by Nigeria’s failure to ratify the optional protocol of the ICESCR as individual complaints cannot be brought before the international courts. Although the Economic Community of West African States (ECOWAS) Community Court of Justice ruled that rights guaranteed by the African Charter are justiciable

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<sup>32</sup> *ibid.*

<sup>33</sup> *ibid.*

<sup>34</sup> CESCR, ‘General Comment No. 19’ (n 9) para 4.

<sup>35</sup> *ibid* Para 11.

<sup>36</sup> CFRN (n 24) section 14(2)(b).

<sup>37</sup> Aiyede (n 29) 18.

<sup>38</sup> ILO, ‘Social Protection Sector Review in Nigeria, (2019) <<https://social-protection-sector-review-in-Nigeria-ilo.org>> accessed 1 April 2021.

<sup>39</sup> Aiyede (n 29) 18.

<sup>40</sup> CFRN (n 24) sec 6(6)(c).

<sup>41</sup> Isabel Ortiz, Valérie Schmitt, Loveleen De (eds), *100 Years of Social Protection: The Road to a Universal System of Social Protection and Floors* (Volume 1, ILO 2019) 61.

<sup>42</sup> CESCR General Comment 19 (n 9) para 48.

<sup>43</sup> CESCR, ‘General comment No. 19’ (n 9) para 79.

before the Court even if they are not justiciable within domestic law,<sup>44</sup> Nigeria's persistent disregard of ECOWAS Court rulings leaves violated individuals and groups helpless.<sup>45</sup>

The lack of coordination is further compounded by Nigeria's decentralised three-tiered political system.<sup>46</sup> With 36 states and 774 local governments which are usually largely independent in setting up budgets and enforcing social protection policies, the disparities in resources leads to significant differences in poverty levels among the states.<sup>47</sup> The CESCR explains that the obligation to comply with the ICESCR does not devolve to regional or local authorities even where responsibility of implementation falls with such bodies. It must therefore ensure the effective implementation by the local authorities.<sup>48</sup>

Furthermore, existing measures exclude the informal and the private sector. The CESCR observed that the Nigerian government does not extend social protection programmes to the private sector where most workers are engaged and leaves it to the whims of the employers.<sup>49</sup> Although there has been improvements on the extension of social security programmes to the private sector since the concluding observations of the CESCR in 1998, the informal sector still remains largely unprotected.<sup>50</sup> The Emergency Economic Stimulus Bill (a Covid-19 specific income support programme) of 2020 passed by the House of Representatives on March 24, 2020<sup>51</sup> provides a 50% tax rebate for employers and business owners who agree not to make staff cuts in 2020. The bill provides for workers in the private formal sector but contains no provisions for informal workers. This excludes the over 80% of Nigerians in the informal sector, most of whom are women.<sup>52</sup> In Lagos alone which is the commercial capital of the country, the National Bureau of Statistics estimates that there are approximately 2.38

<sup>44</sup>Action4Justice, 'SERAP v Federal Republic of Nigeria ECW/CCJ/APP/08/09' (*Action4Justice*, 10 December 2010) <<https://action4justice.org/resource-bank/serap-v-federal-republic-of-nigeria-ecwccjapp0809>> accessed 10 April 2021.

<sup>45</sup>Colins Okeke and Kikelomo Lamidi, 'Enforcement of Judgments of the ECOWAS Court' (*Mondaq*, 20 November 2013) <<https://www.mondaq.com/nigeria/human-rights/755842/enforcement-of-the-judgments-of-the-ecowas-court>> accessed 11 April 2021.

<sup>46</sup>Rebecca Holmes and others, 'Social Protection in Nigeria: An Overview of Programmes and their effectiveness' (2011) ODI/UNICEF, 2 <<https://cdn.odi.org/media/documents/7324.pdf>> accessed 11 February 2021.

<sup>47</sup>Aiyede (n 29) 8.

<sup>48</sup>CESCR, 'General Comment No. 19' (n 9) para 73.

<sup>49</sup>Concluding Observations of the Committee on Economic Social and Cultural Rights on Nigeria, E/C.12/1/Add.23, 16 June 1998, para 19.

<sup>50</sup>Kehinde Anifalaje, 'Implementation of the Right to Social Security in Nigeria' (2017) 17 *African Human Rights Law Journal*.

<sup>51</sup>PLAC, 'House of Representatives Passes Emergency Economic Stimulus Bill, 2020' (*PLAC*, 24 March 2020) <[www.houseofrepresentatives.org/press-releases/house-of-representatives-passes-emergency-economic-stimulus-bill-2020](http://www.houseofrepresentatives.org/press-releases/house-of-representatives-passes-emergency-economic-stimulus-bill-2020)> accessed 17 March 2021.

<sup>52</sup>Human Rights Watch, 'Nigeria: Protect Most Vulnerable in Covid-19 Response' (*HRW*, 14 April 2020) <[www.Nigeria: Protect Most Vulnerable in COVID-19 Response | Human Rights Watch \(hrw.org\)](https://www.hrw.org/news/2020/04/14/nigeria-protect-most-vulnerable-in-covid-19-response)> accessed 21 February 2021.

million men and 3.2 million women in the informal sector.<sup>53</sup> The exclusion is particularly problematic in the context of the Covid-19 pandemic because the impacts of the pandemic prevention measures are felt mostly by those in the informal sector. In a bid to slow down the spread of the coronavirus, lockdown measures were implemented between March 2020 and August 2020.<sup>54</sup> The lockdown measures affected workers in the informal sector as they work in labour-intensive, service provision and retailing roles, which are incompatible with social distancing.<sup>55</sup> They have lower incomes, limited buffer stock and savings, with a heavy reliance on daily earnings for survival.<sup>56</sup> As a result, Nigeria which already had 40% of its population living below the poverty level of 381.75 US Dollars a year fell into an economic crisis that put 27 million more people in poverty.<sup>57</sup> The CESCRC obliges States to make adequate provisions for persons working in the informal sector.<sup>58</sup>

To cushion the impacts of the lockdown, cash transfer projects were carried out and food items distributed to vulnerable households.<sup>59</sup> The cash transfer projects were built on the already existing Conditional Cash Transfer (CCT) Programme.<sup>60</sup> The CCT is the most widely used income support programme in Nigeria. It was introduced in 2016 in partnership with the World Bank under the Social Investment Programme (SIP).<sup>61</sup> It involves payment of 5,000 naira (13.11 US Dollars) monthly to the poorest Nigerians, mostly in rural communities.<sup>62</sup> Specifically in response to the pandemic, a COVID-19 intervention fund of 32.5 billion naira (85,182,500 US Dollars) was allocated for the provision of cash transfer to an additional 1 million poor Nigerians from the original 2.6 million people that existed under the scheme. They were paid 20,000 naira (52.42 US Dollars) to cover for the four months of January 2020 to

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<sup>53</sup> Thelma Obiakor, 'Covid-19 and the Informal Sector in Nigeria: The Socio-Economic Cost Implications' (*Business Day*, 10 May 2020) <[www.COVID-19 and the Informal Sector in Nigeria: The Socio-Economic Cost Implications - \(businessday.ng\)](http://www.COVID-19 and the Informal Sector in Nigeria: The Socio-Economic Cost Implications - (businessday.ng))> accessed 14 March 2021.

<sup>54</sup> Al Jazeera, 'Nigeria Announces Lockdown of Major Cities to Curb Coronavirus' (*Al Jazeera*) <[www.Nigeria announces lockdown of major cities to curb coronavirus | Business and Economy News | Al Jazeera](http://www.Nigeria announces lockdown of major cities to curb coronavirus | Business and Economy News | Al Jazeera)> accessed 11 March 2021.

<sup>55</sup> François Gerard, Clément Imbert, Kate Orkin, 'Social Protection Response to Covid-19 Crisis: Options for developing countries' (2020) 36 *Oxford Review of Economic Policy*.

<sup>56</sup> *ibid.*

<sup>57</sup> The World Bank, 'Nigeria Releases New Report on Poverty and Inequality in Country' (*The World Bank*, 28 May 2020) <[www.Nigeria releases new report on poverty and inequality in country \(worldbank.org\)](http://www.Nigeria releases new report on poverty and inequality in country (worldbank.org))> accessed 2 March 2021. See also; International Labour Organisation, 'Country Policy Responses (Nigeria)' (*ILO*, 2021) <[www.Country policy responses \(COVID-19 and the world of work\) \(ilo.org\)](http://www.Country policy responses (COVID-19 and the world of work) (ilo.org))> accessed 12 March 2021.

<sup>58</sup> CESCRC General Comment 19 (n9) para 34.

<sup>59</sup> Babatunde R and Olagunju, F, 'Cash or food transfer? Assessing the effectiveness of social safety nets for households during Covid-19 pandemic in Nigeria' (*UNECA*, 2020) <[https://cash\\_or\\_food\\_transfer-assessing\\_the\\_effectiveness\\_of\\_social\\_safety\\_nets\\_for\\_households\\_during\\_covid-19\\_pandemic\\_in\\_nigeria\\_.pdf](https://cash_or_food_transfer-assessing_the_effectiveness_of_social_safety_nets_for_households_during_covid-19_pandemic_in_nigeria_.pdf) (uneca.org)> accessed 15 April 2021.

<sup>60</sup> *ibid.*

<sup>61</sup> Pulse Nigeria, 'Conditional Cash Transfers in Nigeria' (*Pulse Nigeria*) <[www.Minister says Conditional Cash Transfer processes transparent \[ARTICLE\] - Pulse Nigeria](http://www.Minister says Conditional Cash Transfer processes transparent [ARTICLE] - Pulse Nigeria)> accessed 22 February 2021.

<sup>62</sup> Kunle Sanni, 'Nigerian Government pays N20,000 to 5,000 Abuja households' (*Premium Times*, 2 April 2020) <[www.Nigerian govt pays N20,000 to 5,000 Abuja households -- Minister \(premiumtimesng.com\)](http://www.Nigerian govt pays N20,000 to 5,000 Abuja households -- Minister (premiumtimesng.com))> accessed 15 March 2021.

April 2020.<sup>63</sup> The programme has weak accountability systems and inadequate data as the government has failed to disclose key details of the programmes particularly who the beneficiaries are and how they are selected.<sup>64</sup> This is in violation of Nigeria's responsibility to 'ensure the right of individuals and organizations to seek, receive and impart information on all social security entitlements in a clear and transparent manner'.<sup>65</sup> The qualifying conditions are vague as the government does not provide information on how the poorest individuals are identified in the National Social Register. The CESCR notes that 'Qualifying conditions for benefits must be reasonable, proportionate and transparent'.<sup>66</sup> The lack of sufficient data particularly for workers in the informal sector means that although the additional 1 million people added to the scheme is laudable, it was done arbitrarily without any recourse to data to sufficiently capture individuals and households in need. In India with similarly fragmented social protection implementation like Nigeria, the state of Karnataka rather than lump informal workers together, created relief packages for different sectors. This included 'auto and cab drivers, handloom weavers, barbers, washermen, farmers'.<sup>67</sup> This way data was easier to collect and manage. Further, the applications for the programme have complex procedures and do not make provisions for people living with disabilities.<sup>68</sup>

The cash transfer involved handing out cash directly to beneficiaries. The system of handing out cash directly to beneficiaries is inefficient.<sup>69</sup> Not only does it violate Covid-19 regulations, it also impacts on the transparency of the process because of the presence of the intermediaries in the process of disbursement.<sup>70</sup> The advances in biometric identification and mobile phone penetrations mean that cash transfers can be linked to mobile money.<sup>71</sup> In Togo, the 'Novissi' cash transfer programme paid at least 30% of the minimum wage to people in the informal sector affected by the pandemic with mobile money.<sup>72</sup> This eliminated the need for intermediaries, thereby ensuring a more transparent system, and also did not require

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<sup>63</sup> Yusuf Akinpelu, 'Covid-19: How we fed 127,588 households during lockdown' (*Premium Times*, 16 November 2020) <[www. COVID-19: How we fed 127,588 households during lockdown – Humanitarian Ministry \(premiumtimesng.com\)](http://www.premiumtimesng.com)> accessed 21 February 2021

<sup>64</sup> Sanni (n 62) 2.

<sup>65</sup> CESCR General Comments 19 para 26.

<sup>66</sup> *ibid* para 24.

<sup>67</sup> Madur, 'Covid-19 Relief Packages in Karnataka' (*Karnataka.com* 20 May 2020)

<<https://www.karnataka.com/govt/covid-19-relief-packages-in-karnataka/>> accessed 2 April 2021.

<sup>68</sup> Special Rapporteur on extreme poverty and human rights, 'Looking Back to Look Ahead: A Rights-Based Approach to Social Protection in the Post-COVID-19 Economic Recovery' (2020) <<https://www.ohchr.org/Documents/Issues/Poverty/covid19.pdf>>. 7 para 20, 21.

<sup>69</sup> Shahid Vaziralli, 'A Social Protection Response to Covid-19 in Developing Countries' (*IGC* April 2020) <<https://vazirelli-2020-policy-brief.pdf> (theigc.org)> accessed 15 April 2021.

<sup>70</sup> *ibid*.

<sup>71</sup> *ibid*.

<sup>72</sup> Novissi, 'Togolese Government gives support to informal workers affected by its measures against COVID-19' (*gouv.tg*, 8 April 2020) <<https://novissi.gouv.tg/en/2020/04/08/togoleze-government-gives-support-to-informal-workers-affected-by-its-measures-against-covid-19/>> accessed 9 April 2021.



people queuing for cash handouts.<sup>73</sup> In Nigeria, 99.5% of the population own a mobile phone that can make calls, text and operate mobile money transactions.<sup>74</sup> It is however essential that the 'digital divide does not discriminate against people in poverty'.<sup>75</sup> This is why the systems must be adapted to cater for the need in different demographics. The ICESCR imposes a duty on State parties to carry out measures that are 'suitable to its specific circumstance' and 'to take whatever steps are necessary to ensure that everyone enjoys the right to social security, as soon as possible'.<sup>76</sup> The Central Bank of Nigeria's 50 billion naira (128.5 million US Dollars) targeted credit facility as a stimulus package to support households and micro, small and medium enterprises (MSMEs) affected by the pandemic<sup>77</sup> which is another Covid-19 specific income support programme is in clear violation of this instruction. This facility allows households to get up to 3 million naira (7,700 US Dollars). It however requires proof of collateral which many poor families are unable to provide. Since only 40% of the population have a bank account, with even fewer having personal property, the most vulnerable households would not be able to afford the grant. Furthermore, to open a bank account, a Bank Verification Number (BVN) is required, and this requires a valid national ID or international passport which most Nigerians living in poverty do not have.<sup>78</sup>

Although the CCT was extended from an already existing scheme, the support for Covid-19 was, just like many other similar schemes 'short term contingent supports'.<sup>79</sup> The one-off cash transfers were merely 'a drop in the bucket for people living in poverty'.<sup>80</sup>

In January 2021, the Rapid Response Registration (RRR) Cash Transfer project was commissioned for the 'urban poor and vulnerable populations across Nigeria'. The project uses 'scientifically validated methods of satellite remote sensing tech, machine learning algorithm and big data analysis'. The beneficiaries will receive the cash transfers for 6 months, that is, from January-June 2021.<sup>81</sup> This new project proves further that social protection is

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<sup>73</sup> *ibid*

<sup>74</sup> Paula Gilbert, Nigeria Internet and Mobile Penetration Grows, (*Connecting Africa*, 16 February 2021) <<https://Nigerian Internet and mobile penetration grows - Connecting Africa>> accessed 15 April 2021.

<sup>75</sup> Special Rapporteur (n 70) 14 para 42.

<sup>76</sup> CESCR (n 9) para 66.

<sup>77</sup> Central Bank of Nigeria, 'Guidelines for the Implementation of 50 Billion Naira Credit Facility', (*CBN*, 23 March 2020) <[www. N50 Billion Combined.pdf](http://www.N50BillionCombined.pdf) (cbn.gov.ng)> accessed 3 March 2021.

<sup>78</sup> Siddharth Dixit, Yewande Kofoworola, Obinna Onwjekwe 'How Well Has Nigeria Responded to Covid-19?' (*Brookings*, 2 July 2020) <[www.HowwellhasNigeriarespondedtoCOVID-19?](http://www.HowwellhasNigeriarespondedtoCOVID-19?) (brookings.edu)> accessed 17 March 2021.

<sup>79</sup> CESCR (n9) para 26.

<sup>80</sup> Special Rapporteur (n 68) 1.

<sup>81</sup> The Guardian, '1m Nigerians to benefit from COVID-19 Cash Transfer, Osinbajo says' (*The Guardian*, 20 January 2021) <<https://guardian.ng/news/1m-nigerians-to-benefit-from-covid-19-cash-transfer-osibanjo-says/>> accessed 15 April 2021.

viewed as an emergency response rather than a right that citizens are entitled to and the State must fulfil.<sup>82</sup>

As a further pandemic specific social protection programme, the Government announced that 77,000 metric tons of food will be distributed to households affected by the lockdown in Lagos, Ogun and Abuja. The modalities for distribution just like the CCT have been unclear and without a workable strategy. The plan of building on the existing welfare strategy of feeding pupils was ineffective since schools were on lockdown.<sup>83</sup>

### 3.1.2 Nepal

A ten-year-long civil war that ended in 2006 gave rise to the rights advocacy of excluded and marginalized groups in Nepal's legal and political landscape.<sup>84</sup> A Comprehensive Peace Agreement (CPA) was signed between the Government of Nepal (GoN) and the then Communist Party of Nepal (Maoist) agreeing to resolve the existing problems based on caste, class, religion, and sex.<sup>85</sup> As a result, the newly formed Constitution of Nepal 2015 (Constitution) preamble pledges 'to end all forms of discrimination and oppression created by feudal and autocratic system'. It also extends social security for the protection of women, children, indigenous people, caste, and ethnic minorities as a fundamental right,<sup>86</sup> - this guarantee was essential to treat the persistent inequalities in accessing the socio-economic opportunities<sup>87</sup> that lead to the widespread internal armed conflict.<sup>88</sup>

In comparison to some countries in South Asia who spend less than 2% of their GDP on social protection, Nepal has been able to perform slightly better allocating at 2.1%.<sup>89</sup> The national strategy of the social protection in Nepal has been set out in the Constitution - it requires the state to form separate legislation concerning the right to social security.<sup>90</sup> Since then, various domestic legislations have been enacted to ensure the right to income support. Social

<sup>82</sup> Special Rapporteur (n 68) 24 para 75.

<sup>83</sup> COVID-19: How we fed 127,588 households during lockdown – Humanitarian Ministry ([premiumtimesng.com](https://premiumtimesng.com))

<sup>84</sup> Bishnu Raj Upreti, 'Livelihoods, Basic Services and Social Protection in Nepal' (Secure Livelihood Research Consortium 2012) 7 <<https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7784.pdf>> accessed 11 March 2021.

<sup>85</sup> 'Full Text of the Comprehensive Peace Agreement Held between Government of Nepal and Communist Party of Nepal (Maoist) - Nepal' (*ReliefWeb*) <<https://reliefweb.int/report/nepal/full-text-comprehensive-peace-agreement-held-between-government-nepal-and-communist>> accessed 8 April 2021.

<sup>86</sup> Constitution of Nepal 2015, art 35.

<sup>87</sup> Edward Randall Doyle, 'Economic, Social and Cultural Rights and the New Constitution of Nepal' [2009] International Commission of Jurists <<https://silo.tips/download/economic-social-and-cultural-rights-and-the-new-constitution-of-nepal#embed>> accessed 11 March 2021.

<sup>88</sup> 'Status and Trends: Economic, Social and Cultural Rights in Nepal' (Human Rights Treaty Monitoring Coordination Committee Nepal 2007) A Civil Society Report.

<sup>89</sup> Tej Adhikari, Fatik Bahadur Thapa and Sonam Tamrakar, 'How Does Social Protection Contribute to Social Inclusion in Nepal? Evidence from the Child Grant in the Karnali Region' (2014) <[www.researchgate.net/publication/268809079\\_How\\_does\\_social\\_protection\\_contribute\\_to\\_social\\_inclusion\\_in\\_Nepal\\_Evidence\\_from\\_the\\_Child\\_Grant\\_in\\_the\\_Karnali\\_Region](https://www.researchgate.net/publication/268809079_How_does_social_protection_contribute_to_social_inclusion_in_Nepal_Evidence_from_the_Child_Grant_in_the_Karnali_Region)>.

<sup>90</sup> Constitution (n 86) art 47.

Protection Act 2018 formalizes government cash transfers as legal entitlements.<sup>91</sup> It entitles widows,<sup>92</sup> senior citizens,<sup>93</sup> ‘children who are extremely destitute’,<sup>94</sup> people from Karnali region and other poverty ridden districts to monthly allowances.<sup>95</sup> The amount of the allowance depends on the level of risk and vulnerability of the particular group. Other specific legislations are also enacted to cover various areas, including Compulsory and Free Education Act 2018,<sup>96</sup> Labour Act 2018,<sup>97</sup> and The Public Health Service Act 2018.<sup>98</sup>

In order to investigate the effectiveness of the income support programs or its lack thereof, example of the policies affecting informal sector will be particularly taken to give an overview of the challenges encountered in implementing the social protection programs in Nepal. The informal sector is chosen because more than 70% of the economically active population are dependent on it, of which 78% are women.<sup>99</sup> Most of the informal sector dependents are people below the poverty line,<sup>100</sup> but remain almost excluded from the social insurance schemes.

After the consistent lobbying of the ILO, Contribution based Social Security Act (CSS) 2018<sup>101</sup> was introduced as per its General Recommendation No. 204 to extensively cover the informal sector within the contribution-based scheme.<sup>102</sup> All kinds of workers in the formal and informal sectors, as well as the self-employed can enlist in contribution-based schemes to be eligible for four categories of support including the medical treatment.<sup>103</sup> However, execution of this scheme is delayed for the workers in informal sector<sup>104</sup> owing to the lack of operational management and concrete financial planning.

According to the CSS Act, to be eligible for the scheme both the employer and employee must deposit a certain amount on their social fund accounts.<sup>105</sup> Since the informal sector does not have a well-defined employer, in their absence the government is required to deposit such

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<sup>91</sup> Social Protection Act 2018.

<sup>92</sup> *ibid* s 7(b).

<sup>93</sup> *ibid* s 4.

<sup>94</sup> *ibid* s 9.

<sup>95</sup> *ibid* s 3.

<sup>96</sup> The Right relating to Free and Compulsory Education Act 2018.

<sup>97</sup> Labour Act 2018.

<sup>98</sup> The Public Health Service Act 2018.

<sup>99</sup> Chopra D, ‘Nepal: Social Policy in a Nascent Welfare State’ in Khatiwada and Kohler G (eds) *Development and Welfare Policy in South Asia* (Routledge).

<sup>100</sup> Druzca K, ‘Cash Transfers in Nepal: Do They Contribute to Social Inclusion?’ (2015) 44 *Oxford Development Studies*

<sup>101</sup> Contribution based Social Security Act 2018.

<sup>102</sup> ‘Nepal Launches Contribution-Based Social Security Scheme’ (27 November 2018)

<[http://www.ilo.org/kathmandu/info/public/pr/WCMS\\_651182/lang--en/index.htm](http://www.ilo.org/kathmandu/info/public/pr/WCMS_651182/lang--en/index.htm)> accessed 21 April 2021.

<sup>103</sup> ‘Policy Landscape of Social Protection in Nepal’ (Niti Foundation) Niti Note <<http://nitifoundation.org/wp-content/uploads/2019/07/Policy-Landscape-of-Social-Protection-in-Nepal-Web.pdf>> accessed 11 March 2021.

<sup>104</sup> *ibid*.

<sup>105</sup> Social Security Act (n 101) sec 5.

amount on the account. However, this act gives leeway to indefinitely postpone this deposit date.<sup>106</sup> Consequently, this loophole has been misused to postpone the process even until 2021.<sup>107</sup> As majority of the population are dependent on this sector, excluding the informal sector means excluding majority of workers<sup>108</sup> of which many are women and marginalized groups.<sup>109</sup>

Such delay directly contradicts with the CESCR General Comment No. 3 that states are not allowed to indefinitely delay the implementation of the rights on the pretext that the right is not immediately realizable.<sup>110</sup> Instead, it should take deliberate, concrete and targeted steps which are reasonable, transparent and avoid exclusion errors<sup>111</sup> to the maximum aiming towards the goal realization as emphasized by other international law standards.<sup>112</sup> Initially, the state should have a concrete national strategy with a definite course of action laid down.<sup>113</sup> It should make the fund available for the most vulnerable among the informal sector who are in the risk of economic impoverishment adhering to the principle of non-discrimination and equality.<sup>114</sup> Secondly, specific benchmarks should be tied down to a reasonable time frame<sup>115</sup> after evaluating the available resources in the state.<sup>116</sup>

Most of the workers in informal sectors are employed in 'vulnerable employments'- the lack of security and stability in this type of economy exposes them to high risk of losing jobs.<sup>117</sup> In response to this, the Prime Minister Employment Program is enforced under Employment related Rights Act 2018.<sup>118</sup> It guarantees to employ the unemployed in the public development

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<sup>106</sup> Niti Note (n 103).

<sup>107</sup> 'Why Nepal's Social Security Scheme Has Failed to Take Off' The Kathmandu post (16 January 2020) <<https://kathmandupost.com/national/2019/12/05/why-nepal-s-social-security-scheme-has-failed-to-take-off>> accessed 21 April 2021.

<sup>108</sup> Khatiwada YR and Koehler G, 'Nepal: Social Policy in a Nascent Welfare State', *Development and Welfare Policy in South Asia* (1st edn, Routledge 2014).

<sup>109</sup> Khanal DR, 'Social Security/ Social Protection in Nepal: Situation Analysis' (ILO Nepal) <[www.calpnetwork.org/wp-content/uploads/2020/01/situation-analysis-nepal.pdf](http://www.calpnetwork.org/wp-content/uploads/2020/01/situation-analysis-nepal.pdf)> accessed 22 March 2021

<sup>110</sup> CESCR General Comment 3 on the nature of State Parties obligations adopted by the Committee on Economic, Social and Cultural Rights, Fifth Session 1990, E/1991/23, para. 2. Committee on Economic, Social and Cultural Rights, Report on the Fifth Session. Economic and Social Council, Official Records, 1991, Supplement No. 3 (UN Doc. E/1991/23)

<sup>111</sup> Sepúlveda M and Nyst C, 'The Human Rights Approach to Social Protection' (Ministry of foreign affairs Finland 2012) <[www.ohchr.org/documents/issues/epoverty/humanrightsapproachtosocialprotection.pdf](http://www.ohchr.org/documents/issues/epoverty/humanrightsapproachtosocialprotection.pdf)> accessed 23 March 2021.

<sup>112</sup> *ibid.*

<sup>113</sup> CESCR General Comments 19 (n 9) para. 67.

<sup>114</sup> UDHR (n 7) art 2; ICESCR (n 8) art 2.

<sup>115</sup> CESCR General Comments 19 (n 9) para 61.

<sup>116</sup> 'Universal Social Protection for Human Dignity, Social Justice and Sustainable Development' (International Labour Organization 2019) Report of the Committee of Experts on the Application of Conventions and Recommendations 3 <[www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meeting\\_document/wcms\\_673680.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meeting_document/wcms_673680.pdf)> accessed 1 April 2021.

<sup>117</sup> Druzca (n 100).

<sup>118</sup> Karn Sujeet, 'Social Protection, Challenges and Prerequisites: A Study of Prime Minister's Employment Program in Nepal Paper' Research <[www.researchgate.net/publication/345240245\\_Social\\_Protection\\_Challenges\\_and\\_Prerequisites\\_A\\_study\\_of\\_Prime\\_Minister's\\_Employment\\_Program\\_in\\_Nepal\\_Research\\_Paper](http://www.researchgate.net/publication/345240245_Social_Protection_Challenges_and_Prerequisites_A_study_of_Prime_Minister's_Employment_Program_in_Nepal_Research_Paper)>.

works/projects for at least a hundred days annually. Those who fail to get minimum employment are entitled to compensation.<sup>119</sup>

A report of Prime Minister's Employment Program released in the fiscal year 2018/2019 stated that the program could only provide 13 days of employment of 100 days promised.<sup>120</sup> Some of the workers revealed that they received Rs 11,000 (95 US Dollars) for their total work,<sup>121</sup> while the current minimum wage in Nepal is Rs. 13, 450 per month (119 US Dollars).<sup>122</sup> The minimum wage is measured to ensure that the person is able to afford the good and services to live a decent lifestyle in Nepal as required by General Comment No 19 of the CESCR.<sup>123</sup> However, this transfer falls below the amount needed for an average person to survive, especially when it is the sole source for their purchasing capacity.<sup>124</sup> Although, creating job opportunities should be the priority of any good employment policy, the work should create opportunities that are productive and deliver a fair income along with social insurance, in ILO's words, 'decent work'.<sup>125</sup> Such jobs should be protected and recognized.<sup>126</sup> Thus, the government must create well-sourced revenue sectors for sustainable social insurance and labour market programs to resolve the current donor dependent state of social insurance policies.<sup>127</sup>

The financial leakages and misinformation<sup>128</sup> are another major problem mainly associated with cash transfer programs. For an instance, a study found that only 63% of households of the program received the full allowances and they only received 82% of the original amount they were supposed to receive.<sup>129</sup> Such leakages<sup>130</sup> and corruption<sup>131</sup> in the transfer and

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<sup>119</sup> *ibid.*

<sup>120</sup> Mandal CK, 'Government Says Prime Minister Employment Programme Created over 2.2 Million Days of Work for over 175,000 People' *The Kathmandu Post* (21 April 2021) <<https://kathmandupost.com/national/2019/08/02/government-says-prime-minister-employment-programme-created-over-2-2-million-days-of-work-for-over-175-000-people>> accessed 21 April 2021.

<sup>121</sup> *ibid.*

<sup>122</sup> Nepal Gazette Notice, 2018.

<sup>123</sup> CESCR (n 9).

<sup>124</sup> 'Nepal - Social Safety Nets Project' (The World Bank 2015) Implement Completion and Results Report ICR3263.

<sup>125</sup> Resolution concerning decent work and the informal economy, The General Conference of the International Labour Organization (Geneva 2002).

<sup>126</sup> 'Report of the Director-General: Reducing the Decent Work Deficit - a Global Challenge' (International Labour Organisation) <<http://www.ilo.org/public/english/standards/relm/ilc/ilc89/rep-i-a.htm>> accessed 11 March 2021.

<sup>127</sup> Yannick M, 'Profiles of the Social Protection Systems of Nepal, Sri Lanka and Afghanistan Prior to COVID-19 and Snapshots of Their Responses to the Pandemic' <<https://socialprotection.org/discover/blog/profiles-social-protection-systems-nepal-sri-lanka-and-afghanistan-prior-covid-19-and>> accessed 17 April 2021.

<sup>128</sup> 'The Social Protection Index Assessing Results for Asia and the Pacific' (Asian Development Bank 2011) 43 <<https://www.adb.org/sites/default/files/publication/30293/social-protection-index.pdf>> accessed 9 March 2021.

<sup>129</sup> *ibid.*

<sup>130</sup> Kristie Druzca, 'Social Inclusion and Social Protection in Nepal' (Deakin University 2016) 99 <<http://dro.deakin.edu.au/eserv/DU:30089153/druzca-socialinclusion-2016A.pdf>> accessed 1 March 2021.

<sup>131</sup> Tej (n 89) 41. (An interview survey conducted on child grants programme found that 33% of the applicants were asked to pay fee to apply, which was supposed to be free of cost.<sup>131</sup>)

distribution channels contribute to the ever-widening economic and social gaps.<sup>132</sup> Thus, failing to check such gaps contradicts with the principle of accountability<sup>133</sup> that enable effectiveness in social inclusion process.<sup>86</sup> For cash transfers to have the greatest effect, they need to be delivered in full<sup>134</sup> on time, and at minimum inconvenience.<sup>135</sup>

Additionally, the projects under the employment programme specific projects do not cater to the potential workers' skills or needs. Only a few short-term employment initiatives of budget below Rs. five hundred thousand (US Dollars 5000) in a year are implemented at local level.<sup>136</sup> Most people are allocated to hygiene and cleaning programs without due considerations to their skills and backgrounds.<sup>137</sup> It is the result of lack of proper exploration of employment that meets the growing demand of the market. This dissatisfaction is similar in the employment generation programmes in Afghanistan and Bangladesh most beneficiary reported being unable to gain transferrable skills.<sup>138</sup> Thus, the employment generating programs must not be built in welfare-based approach, rather as rights-based which must be generated by the states.<sup>139</sup>

In response to Covid-19 pandemic, the Government of Nepal introduced in-kind relief support to the most vulnerable and marginalized (April-May) after the first phase national lockdown were enforced.<sup>140</sup> However, this 'temporal measure' put the informal workers at the most risk as most of the people were out of work with little to zero savings.<sup>141</sup> Further, the female headed households are found to be disproportionately affected by economic downfall instigated by the pandemic,<sup>142</sup> as these population are neither protected by the social insurance nor social assistance programs. For this, as recommended by the special rapporteur on extreme poverty

<sup>132</sup> Harvey P. (2004) Social Protection in Fragile States: Lessons Learned. DFID Social Protection Theme Paper. London: DFID.

<sup>133</sup> CESCR General Comment 3 (n 110) para. 2. Committee on Economic, Social and Cultural Rights, Report on the Fifth Session. Economic and Social Council, Official Records, 1991, Supplement No. 3 (UN Doc. E/1991/23), para 8.

<sup>134</sup> Hulme D, 'Social Protection, Marginality, and Extreme Poverty: Just Give Money to the Poor?', *Marginality* (2014).

<sup>135</sup> Samuels F and others, 'Holding Cash Transfers to Account: Beneficiary and Community Perspectives' (Overseas Development Institute) Briefing.

<sup>136</sup> Sujeet (n 118).

<sup>137</sup> Sujeet (n 118).

<sup>138</sup> Babken Babajanian, *How Do Social Protection and Labour Programmes Contribute to Social Inclusion? Evidence from Afghanistan, Bangladesh, India and Nepal*.

<sup>139</sup> *ibid*.

<sup>140</sup> 'ILO | Social Protection Platform | Social Security Profile | Nepal' <[www.social-protection.org/gimi/ShowCountryProfile.action;jsessionid=959TaVrcJaBFZvWbGH-HUMri82mYzpfNuCQwv1-aT8yna1MazhX8!337808379?iso=NP](http://www.social-protection.org/gimi/ShowCountryProfile.action;jsessionid=959TaVrcJaBFZvWbGH-HUMri82mYzpfNuCQwv1-aT8yna1MazhX8!337808379?iso=NP)> accessed 17 April 2021.

<sup>141</sup> 'COVID-19 Impact on Nepal's Economy Hits Hardest Informal Sector' (*World Bank*) <<https://www.worldbank.org/en/news/press-release/2020/10/08/covid-19-impact-on-nepals-economy-hits-hardest-informal-sector>> accessed 17 April 2021.

<sup>142</sup> Freeland N, 'Impact of Covid-19 Crisis on Household Welfare in Nepal' (UNICEF) <[www.unicef.org/nepal/media/11216/file/Understanding\\_the\\_Impact\\_of\\_COVID-19\\_on\\_Household\\_Welfare\\_and\\_Modelling\\_Possible\\_Social\\_Protection\\_Responses.pdf](http://www.unicef.org/nepal/media/11216/file/Understanding_the_Impact_of_COVID-19_on_Household_Welfare_and_Modelling_Possible_Social_Protection_Responses.pdf)> accessed 12 April 2021.

and human rights, the state should extend these measures until the revival of the economy in order to prevent needy people from being temporarily unprotected.<sup>143</sup>

Informal sector workers who lost their jobs were offered positions in public employment programmes for minimum wage or provided with 25% of the local minimum wage if they chose not to participate.<sup>144</sup> However, sufficient inclusion method was not deployed to target the population within the informal sector identified by the provincial and local government using a national integrated information system.<sup>145</sup> Welfare losses are larger among those at the bottom of the income distribution leading to an increase in poverty and inequality. Thus, it is recommended to expand universal grant to the household with dependents<sup>146</sup> such as children below 5 years or old aged above 70 years vis-à-vis their socio-economic realities.<sup>147</sup>

### 3.1.3 The UK

The Welfare Reform Act<sup>148</sup> brought the largest welfare legislation reform to the UK since the 1940s.<sup>149</sup> Universal Credit (UC) is a means-tested, non-contributory form of income support for those who are unemployed or in work on a low income, and to assist with housing and child-associated costs.<sup>150</sup> It was rolled out across the UK from 2013 by the Department of Work and Pensions (DWP), replacing six legacy benefits with a single monthly payment, to 'simplify the benefits system' and 'encourage benefits claimants in to work'<sup>151</sup> – a 'one-stop shop' designed to ensure that those in need receive the range of benefits they are entitled to.<sup>152</sup>

The reforms were launched alongside 'austerity' measures introduced throughout the public sector, and predominant UC policies were designed to curb public spending on welfare.<sup>153</sup> A

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<sup>143</sup> Special Rapporteur (n 68).

<sup>144</sup> ILO Nepal (n 140).

<sup>145</sup> Isabela Franciscon and Pedro Arruda, 'COVID-19 and Social Protection in South Asia: Nepal' (International Policy Centre for Inclusive Growth 2020) <[https://ipcig.org/pub/eng/OP452\\_COVID\\_19\\_and\\_social\\_protection\\_in\\_South\\_Asia\\_Nepal.pdf](https://ipcig.org/pub/eng/OP452_COVID_19_and_social_protection_in_South_Asia_Nepal.pdf)>.

<sup>146</sup> Hanlon, Joseph, Armando Barrientos, and David Hulme. 2010. *Just Give Money to the Poor: The Development Revolution from the Global South*. Sterling, VA: Kumarian.

<sup>147</sup> Holmes, Rebecca, and Armando Barrientos. 2009. 'The Potential Role of Cash Transfers in Addressing Childhood Poverty and Vulnerability in West and Central Africa.' Regional Thematic Report 3 for the Study on Social Protection in West and Central Africa, Overseas Development Institute, London.

<sup>148</sup> Welfare Reform Act 2012.

<sup>149</sup> The Law Library of Congress, 'Great Britain: Welfare Reform Act 2012' (2012) <[www.loc.gov/law/help/welfare-reform/great-britain.php](http://www.loc.gov/law/help/welfare-reform/great-britain.php)> accessed 22 February 2021.

<sup>150</sup> Department for Work & Pensions (DWP), '2010 to 2015 government policy: welfare reform' (8 May 2015) <[www.gov.uk/government/publications/2010-to-2015-government-policy-welfare-reform/2010-to-2015-government-policy-welfare-reform](http://www.gov.uk/government/publications/2010-to-2015-government-policy-welfare-reform/2010-to-2015-government-policy-welfare-reform)> accessed 23 February 2021.

<sup>151</sup> *ibid.*

<sup>152</sup> *ibid.*

<sup>153</sup> *ibid.*

cap on welfare spending was announced in 2014,<sup>154</sup> widely understood to be arbitrary<sup>155</sup> and announced without effectively assessing need, or the impact on those accessing UC.<sup>156</sup> Human rights bodies have continually warned states that cuts should not be made without considering the impact on human rights.<sup>157</sup> The Equality and Human Rights Commission (EHRC)<sup>158</sup> were particularly concerned about the government's responsibilities to protect individuals and groups from discrimination under the Equality Act,<sup>159</sup> responsibilities that are echoed regionally<sup>160</sup> and internationally,<sup>161</sup> as they found the reforms had a disproportionate impact on families with a disabled family member, women, and Black, Asian and Minority Ethnic (BAME) households.<sup>162</sup> The continued lack of monitoring of the cuts by the central government<sup>163</sup> demonstrates that the UK is ignoring its legal duties to marginalised communities, as well as the population as a whole. The devolved nations have made continual efforts to monitor the impact of cuts,<sup>164</sup> and have put measures in place to mitigate some of the worst effects of the system.<sup>165</sup>

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<sup>154</sup> HM Treasury, 'Budget 2014' (2014)

<[assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/293759/37630\\_Budget\\_2014\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/293759/37630_Budget_2014_Web_Accessible.pdf)> accessed 21 February 2021.

<sup>155</sup> NCVO 'Leading charities' concerns about the Annually Managed Expenditure Cap' (February 2014)

<[www.ncvo.org.uk/images/documents/about\\_us/media-centre/est-letter-re-ame-cap-feb-2014.pdf](http://www.ncvo.org.uk/images/documents/about_us/media-centre/est-letter-re-ame-cap-feb-2014.pdf)> accessed 21 February 2021

<sup>156</sup> *ibid.*

<sup>157</sup> See Committee on the Rights of Persons with Disabilities, 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention' (6 October 2016) CRPD/C/15/R.2/Rev.1; Committee on the Elimination of Discrimination against Women, 'Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland' (14 March 2019) CEDAW/C/GBR/CO/8 para 18; Committee on the Elimination of Racial Discrimination, 'Concluding observations on the combined twenty-first to twenty-third periodic reports of the United Kingdom of Great Britain and Northern Ireland' (3 October 2016) CERD/C/GBR/CO/21-23.

<sup>158</sup> Howard Reed and Jonathan Portes, 'Cumulative impact assessment: a research report by Landman Economics and the National Institute of Economic and Social Research (NIESR) for the Equality and Human Rights Commission' (Equality and Human Rights Commission, 2014)

<[www.equalityhumanrights.com/sites/default/files/cumulative\\_impact\\_assessment\\_executive\\_summary\\_30-07-14\\_2.pdf](http://www.equalityhumanrights.com/sites/default/files/cumulative_impact_assessment_executive_summary_30-07-14_2.pdf)> accessed 25 February 2021.

<sup>159</sup> Equality Act 2010.

<sup>160</sup> European Social Charter (n21).

<sup>161</sup> ICESCR (n 8) art 2(2).

<sup>162</sup> Howard Reed and Jonathan Portes (n 158).

<sup>163</sup> National Audit Office, 'Financial sustainability of local authorities 2018' (Ministry of Housing, Communities & Local Government) 10 <[www.nao.org.uk/wp-content/uploads/2018/03/Financial-sustainability-of-local-authorities-2018.pdf](http://www.nao.org.uk/wp-content/uploads/2018/03/Financial-sustainability-of-local-authorities-2018.pdf)> accessed 25 February 2021.

<sup>164</sup> See Department for Social Development, 'Impact assessments for the Welfare Reform Bill (Northern Ireland)' (2011) <[www.dsdni.gov.uk/publications/welfare-changes-equality-impact-assessments](http://www.dsdni.gov.uk/publications/welfare-changes-equality-impact-assessments)> accessed 3 March 2021; Scottish Government, 'Financial impacts of welfare reform on disabled people in Scotland', 2014 <[www.scotland.gov.uk/Resource/0045/00457564.pdf](http://www.scotland.gov.uk/Resource/0045/00457564.pdf)> accessed 3 March 2021; Welsh Government, 'Analysis of the impact of the UK Government's welfare reforms on households in Wales' (2019) <[gov.wales/sites/default/files/publications/2019-03/impact-of-welfare-reform-on-households-in-wales.pdf](http://gov.wales/sites/default/files/publications/2019-03/impact-of-welfare-reform-on-households-in-wales.pdf)> accessed 3 March 2021.

<sup>165</sup> Jim McCormick, 'A Review of Devolved Approaches to Child Poverty' (Joseph Rowntree Foundation, 2013) <[www.jrf.org.uk/sites/default/files/jrf/migrated/files/child-poverty-devolution-full.pdf](http://www.jrf.org.uk/sites/default/files/jrf/migrated/files/child-poverty-devolution-full.pdf)> accessed 5 March 2021



It has been found that large proportions of the population reliant on the welfare state are worse off than they were in 2010.<sup>166</sup> The principles of progressive realisation<sup>167</sup> and non-regression<sup>168</sup> are enshrined in the ICESCR<sup>169</sup> as well as several other international conventions;<sup>170</sup> with rising levels of child poverty, homelessness and inequality since 2013,<sup>171</sup> the UK contravenes its basic international duties. Recipients of UC continually report the system to be ‘demeaning and punitive’,<sup>172</sup> in complete opposition to the principle of human dignity enshrined within the ICESCR.<sup>173</sup>

Although even the CESCR recognises that adjustments are ‘inevitable’ in times of crisis and financial difficulty,<sup>174</sup> it is also stated that any adjustments must be ‘temporary, proportionate... and ensure the protection of core content’,<sup>175</sup> referring to the ILO’s Social Protection Floor.<sup>176</sup> Given the impact as we approach the eleventh year of austerity measures affecting income support with a continued benefit freeze, the UK cannot be said to meet this test.

Specific aspects of the welfare system have impacted certain social groups disproportionately, and the following analysis will focus on those policies, specifically the ‘benefit cap’ and the two-child policy. The ‘benefit cap’ restricts the maximum benefit that one household can receive if they are out of work.<sup>177</sup> Applied to all claimants, it has a disproportionate impact on those who have barriers to finding work; disabled applicants, families with children under 5 and single parent households.<sup>178</sup>

The impact of the benefit cap on families has been compounded by the two-child policy. Introduced in 2015, the policy means that low-income families lose their entitlement to child tax credit for their third or subsequent child.<sup>179</sup> Two-thirds of UC recipients who are affected

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<sup>166</sup> Human Rights Committee, ‘Report by Special Rapporteur on extreme poverty and human rights: Visit to the United Kingdom of Great Britain and Northern Ireland’ (23 April 2019) UN Doc A/HRC/41/39/Add.1.

<sup>167</sup> ICESCR (n 8) art 2(1).

<sup>168</sup> *ibid.*

<sup>169</sup> *ibid.*

<sup>170</sup> See Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (UNCRC) art 4(2); Convention on the Rights of Persons with Disabilities (adopted 24 January 2007, adopted into force 3 May 2008) A/RES/61/106 (CRPD).

<sup>171</sup> Human Rights Committee (n 166).

<sup>172</sup> Mandy Cheetham, Suzanne Moffat, Michelle Addison, Alice Wiseman, ‘Impact of Universal Credit in North East England: a qualitative study of claimants and support staff’ (2019) 9 *BMJ Open* 7.

<sup>173</sup> See ICESCR (n 2); CESCR (n 9).

<sup>174</sup> Chairperson of the CESCR, ‘Letter Dated 16 May 2012 Addressed by the Chairperson of the Committee on Economic, Social and Cultural Rights to States Parties to the International Covenant on Economic, Social and Cultural Rights’ (2012) UN Doc HRC/NONE/2012/76.

<sup>175</sup> *ibid.*

<sup>176</sup> ILO R202 (n 12).

<sup>177</sup> The Universal Credit Regulations 2013.

<sup>178</sup> Human Rights Committee (n 86).

<sup>179</sup> Tom Sefton, Josephine Tucker and Camilla McCartney, ‘All Kids Count: the impact of the two-child limit after two years’ (Church of England, June 2019) <<https://www.churchofengland.org/sites/default/files/2019-06.pdf>> accessed 22 February 2021.

by the benefit cap and the two-child policy are single parents<sup>180</sup> – of which 90% are women.<sup>181</sup> The Supreme Court disagreed that the benefit cap amounted to discrimination against single parents and/or children in 2019.<sup>182</sup> However, dissenting opinion<sup>183</sup> echoed the need to effectively monitor the impact of reforms.<sup>184</sup> The CESCR has said that states have a duty to ensure income support is enjoyed ‘equally by men and women’.<sup>185</sup> Where possible, they must also ‘respect and acknowledge the role of women as providers of care without reinforcing patterns of discrimination and negative stereotyping’.<sup>186</sup> It has also been noted by CEDAW that the single payment of UC to one bank account risks perpetuating gender power imbalances in family units, with risk of financial abuse.<sup>187</sup> While these policies remain in place, subjugating and marginalising women, the UK does not comply with its duties on income support.

The UC system was created with a focus on improving access to work and reducing welfare dependency.<sup>188</sup> While possible in certain circumstances, the insinuation that those on benefits have somehow failed to take up opportunities they should have further marginalises those with a disability or chronic illness; half of those using Universal Credit are in a position where work may not be possible.<sup>189</sup> This is certainly not in line with non-discrimination and conditionality principles as laid out in the ILO Social Protection Floor,<sup>190</sup> as well as in CERD.<sup>191</sup>

As UC was rolled out, it was lauded as progressive due to its ‘digital by default’ nature.<sup>192</sup> To comply with human rights frameworks, social protection programmes should be ‘accessible’,<sup>193</sup> with no physical or administrative barriers that prevent people accessing

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<sup>180</sup> Department for Work and Pensions, ‘Benefit Cap’ (1 November 2018) <assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/753093/benefitcap-statistics-august-2018.pdf> accessed 6 March 2021.

<sup>181</sup> Gingerbread, ‘Single parent statistics’ (September 2018) <<https://www.gingerbread.org.uk/policycampaigns/publications-index/statistics>> accessed 5 March 2021.

<sup>182</sup> *R (DS & Ors) v Secretary of State for Work and Pensions* (2019) UKSC 21.

<sup>183</sup> *ibid.*

<sup>184</sup> See Howard Reed (n 166); NAO (n 109).

<sup>185</sup> CESCR (n 9).

<sup>186</sup> Magdalena Sepulveda and Carly Nyst, ‘The Human Rights Approach to Social Protection’ (The Ministry for Foreign Affairs of Finland, 2012).

<sup>187</sup> See Committee on the Elimination of Discrimination against Women, ‘Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland’ (30 July 2013) CEDAW/C/GBR/CO/7 para 62; Committee on the Elimination of Discrimination Against Women, ‘Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland’ (14 March 2019) CEDAW/GBR/CO/8 para 51.

<sup>188</sup> DWP (n 145).

<sup>189</sup> Trinh Tu and Steven Ginnis, ‘Work and the welfare system: a survey of benefits and tax credits recipients’ (Department of Work and Pensions, 2012) <[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/193471/rrep800.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/193471/rrep800.pdf)> accessed 5 March 2021.

<sup>190</sup> ILO R202 (n 12).

<sup>191</sup> CRPD (n 17) art 28.

<sup>192</sup> Department for Work & Pensions (DWP), ‘Digital Strategy’ (December 2012) <assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/193901/dwp-digital-strategy.pdf> accessed 28 February 2021.

<sup>193</sup> CESCR (n 9).

services.<sup>194</sup> A ‘digital by default’ approach discriminates against many disabled people who will have difficulty accessing and using an online system; this also applies to older people, women, ethnic minorities and those who do not speak English as a first language.<sup>195</sup> In being less likely to have internet access at home and facing difficulty in travelling to libraries or advice centres where internet access might be available, the UK does not ensure that UC is ‘equally available to all’.<sup>196</sup>

The DWP has since said that alternatives to the online system exist for ‘those who really need it’.<sup>197</sup> This includes a phoneline; one that involves waiting times of up to six hours, and extreme gatekeeping of applications made over the phone.<sup>198</sup> Citizens Advice Bureaus also offer a certain amount of face-to-face services, partially funded by local and central government.<sup>199</sup> However, given dramatic cuts to these services and continued difficulties with access,<sup>200</sup> this does not amount to ‘positive action’ of a great enough degree to address the structural discrimination that people with disabilities face.<sup>201</sup> Therefore, the UK is in breach of its non-discrimination obligations.<sup>202</sup>

It has been evident since the initial planning of UC that there were problems that had a disproportionate impact on specific groups. Human rights standards emphasise that participation is an important part of rights-based income support.<sup>203</sup> There is no evidence in early evaluations that people with disabilities or other groups were consulted on the process.<sup>204</sup> To comply with human rights standards, beneficiaries should be involved at all stages.<sup>205</sup>

While many social groups are further marginalised by difficulties within the welfare system, there is an estimated 1.2 million migrants in the UK who have no entitlement to ‘public funds’

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<sup>194</sup> *ibid.*

<sup>195</sup> Office for National Statistics, ‘Exploring the UK’s digital divide’ (4 March 2019) <[www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/articles/exploringtheuksdigitaldivide/2019-03-04](http://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/articles/exploringtheuksdigitaldivide/2019-03-04)> accessed 28 February 2021.

<sup>196</sup> CESCR (n 9).

<sup>197</sup> Department for Work and Pensions (DWP), ‘Welfare Reform Bill: Universal Credit: Equality impact assessment’ (November 2011) <[assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/220152/eia-universal-credit-wr2011.pdf](http://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/220152/eia-universal-credit-wr2011.pdf)> accessed 29 February 2021.

<sup>198</sup> Cheetham (n 168).

<sup>199</sup> Citizens Advice, ‘Our annual report and accounts 2014/15’ (August 2015) <[www.citizensadvice.org.uk/Global/Public/About%20us/Annual%20report/Citizens-Advice-annual-report-2014-15.pdf](http://www.citizensadvice.org.uk/Global/Public/About%20us/Annual%20report/Citizens-Advice-annual-report-2014-15.pdf)> accessed 12 April 2021

<sup>200</sup> Economic Affairs Committee (House of Lords), ‘Universal Credit isn’t working: proposals for reform’ (31 July 2020) HL Paper 105

<sup>201</sup> Sepulveda (n 182).

<sup>202</sup> ICESCR (n 2).

<sup>203</sup> CESCR (n 3).

<sup>204</sup> Catherine Easton, ‘Welfare that Works? The Universal Credit information technology system and disabled people’ (2014) 20 EJCLI 3.

<sup>205</sup> Sepulveda (n 182).

and therefore live in varying levels of destitution.<sup>206</sup> The CESCR states that non-nationals should have access to income support – and that states must pay particular attention to those most at risk, including non-nationals.<sup>207</sup> While asylum-seekers only have access to a ‘second-tier’ asylum support system<sup>208</sup> of no-choice accommodation and small amounts of money,<sup>209</sup> undocumented migrants and those with Leave to Remain with a ‘No Recourse to Public Funds’ (NRPF) condition attached to it are unable to access UC, as well as other benefits and housing assistance from the state.<sup>210</sup> An application to have the NRPF condition lifted can be made, but a level of destitution must be proven before it is granted.<sup>211</sup> This policy therefore forces individuals into destitution, in direct contravention to the UK’s responsibility under the European Convention on Human Rights.<sup>212</sup> This was confirmed by a case heard in the High Court.<sup>213</sup> Further, 85% of those with an NRPF condition on their leave are women,<sup>214</sup> meaning the policy is discriminatory.

The government has included a £20 (28 US Dollars) weekly uplift in the rate of Universal Credit since March 2020, as recognition that things are particularly difficult for people during the pandemic.<sup>215</sup> It was announced in March 2021 this was to be extended for a further 6 months.<sup>216</sup> Although this has made a significant difference to those on UC, the ‘temporary’ nature of the uplift is problematic within a rights-based system. Social security should be a set of permanent entitlements, defining individuals as right-holders.<sup>217</sup> Instead, those currently receiving the uplift are unsure how long it will continue, reliant on the continued benevolence of the government. As well as this, the equivalent uplift does not apply to those on legacy benefits, those still reliant on the benefit system that existed before Universal Credit was introduced.<sup>218</sup> Of the 2.2 million individuals on legacy benefits, 75% of those are people with

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<sup>206</sup> *ibid.*

<sup>207</sup> CESCR (n 9).

<sup>208</sup> Rosemary Sales, ‘The deserving and the undeserving? Refugees, asylum seekers and welfare in Britain’ (2002) 22(3) *Critical Social Policy* 456.

<sup>209</sup> Home Office, ‘Asylum Support’ (updated 2021) <[www.gov.uk/asylum-support](http://www.gov.uk/asylum-support)> accessed 12 March 2021.

<sup>210</sup> NRPF Network, ‘Immigration Status and entitlements: Who has no recourse to public funds (NRPF)?’ <[www.nrpfnetwork.org.uk/information-and-resources/rights-and-entitlements/immigration-status-and-entitlements/who-has-no-recourse-to-public-funds-nrpf](http://www.nrpfnetwork.org.uk/information-and-resources/rights-and-entitlements/immigration-status-and-entitlements/who-has-no-recourse-to-public-funds-nrpf)> accessed 28 March 2021.

<sup>211</sup> Home Office, ‘No Recourse to Public Funds (NRPF): Applications to change conditions of leave’ (30 July 2020).

<sup>212</sup> Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 3.

<sup>213</sup> *R (on the application of Humnyntskiy & Ors) v Secretary of State for the Home Department* [2020] EWHC 1912.

<sup>214</sup> *ibid.*

<sup>215</sup> Universal Credit Regulations (n 97).

<sup>216</sup> HM Treasury, ‘Budget 2021: Protection the Jobs and Livelihoods of the British People’ (March 2021).

<sup>217</sup> See ILO R202 (n 12); CESCR (n 9).

<sup>218</sup> Anela Anwar, ‘Why the £20 uplift in Universal Credit must be extended to those on legacy benefits’ (Z2K, 18<sup>th</sup> February 2021) <[www.z2k.org/latest/why-the-20-uplift-in-universal-credit-must-be-extended-to-those-on-legacy-benefits/](http://www.z2k.org/latest/why-the-20-uplift-in-universal-credit-must-be-extended-to-those-on-legacy-benefits/)> accessed 19 February 2021.

disabilities.<sup>219</sup> Despite this issue being raised with the government,<sup>220</sup> the most recent budget still did not encompass legacy benefits in the uplift.<sup>221</sup> In failing to do so, the government is ignoring a marginalised group of society in contravention to its non-discrimination responsibilities.<sup>222</sup>

The Coronavirus Job Retention Scheme, known as the furlough scheme, was introduced alongside initial lockdown measures, with the state assuming responsibility for 80% of the cost of an employee's wages should the employer be unable to, up to a ceiling of £2500 (3,457 US Dollars) per month.<sup>223</sup> This was effective in preventing a rise in unemployment at the time that many sectors were unable to remain open due to national lockdown measures.<sup>224</sup> Similar to the Universal Credit increase, the furlough scheme has been considered a short-term measure from its inception, and has been extended in increments rather than with a long-term outlook.<sup>225</sup> Therefore, those accessing the scheme could not be considered 'rights-holders' in line with international duties – the CESCR is clear that schemes should be 'sustainable so that it can be enjoyed by present and future generations'.<sup>226</sup>

Sick pay is another important aspect of the welfare system in the context of the pandemic. Sick pay should consist of leave from work due to sickness, and cash benefits to replace the wage during the time of sick leave.<sup>227</sup> At £94.25 (130 US Dollars) per week,<sup>228</sup> Statutory Sick Pay (SSP) is not sufficient to adequately cover wage loss.<sup>229</sup> The inadequacy of SSP is in direct contravention to the European Social Charter.<sup>230</sup> At lower than 40% of the median equivalised income, it was described as 'manifestly inadequate' by the European Committee of Social Rights.<sup>231</sup> This disproportionately impacts women and BAME communities, who are more likely to be in low-income, public-facing roles without a sufficient sick pay system.<sup>232</sup>

### 3.2 Adequate Standard of Living

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<sup>219</sup> *ibid.*

<sup>220</sup> The British Psychological Society, 'Open letter to the Prime Minister on Universal Credit uplift' (4 February 2021) <[www.bps.org.uk/sites/www.bps.org.uk/files/Policy/Policy%20-%20Files/Open%20letter%20to%20the%20Prime%20Minister%20on%20Universal%20Credit%20uplift.pdf](http://www.bps.org.uk/sites/www.bps.org.uk/files/Policy/Policy%20-%20Files/Open%20letter%20to%20the%20Prime%20Minister%20on%20Universal%20Credit%20uplift.pdf)> accessed 29 February 2021.

<sup>221</sup> Budget 2021 (n 211).

<sup>222</sup> See ILO R202 (n 12); CESCR (n 9).

<sup>223</sup> Coronavirus Act 2020.

<sup>224</sup> Deslphine Strauss, 'UK job losses slow as furlough scheme helps limit unemployment rise' *Financial Times* (London, January 2021) <[www.ft.com/content/8afe6890-1335-4c19-8242-7a07ba6b6acc](http://www.ft.com/content/8afe6890-1335-4c19-8242-7a07ba6b6acc)> accessed 4 April 2021.

<sup>225</sup> See Budget 2021 (n 211); Coronavirus Act 2020 (n 168).

<sup>226</sup> CESCR (n 9) para 11.

<sup>227</sup> ILO C102 (n 11).

<sup>228</sup> The Statutory Sick Pay (General) Regulations 1982.

<sup>229</sup> Trades Union Congress, 'Sick pay for all: How the Coronavirus has shown we need urgent reform of the sick pay system' (3 March 2020) <[www.tuc.org.uk/research-analysis/reports/sick-pay-all](http://www.tuc.org.uk/research-analysis/reports/sick-pay-all)> accessed 4 April 2021.

<sup>230</sup> European Social Charter (n 19) art12 (1).

<sup>231</sup> European Committee of Social Rights (ECSR), 'Conclusions XXI-2 (2017) United Kingdom' (January 2018).

<sup>232</sup> Trades Union Congress (n 139).

### 3.2.1 Nigeria

Article 11 of the ICESCR guarantees the right to an adequate standard of living.<sup>233</sup> The CESCR in General Comment No 12 states that the right to adequate food implies availability in sufficient quality and quantity to satisfy dietary needs, accessibility both economically and physically.<sup>234</sup> The announcement of the lockdown measures saw a drastic increase in the prices of foodstuff and commodities.<sup>235</sup> During first month of the lockdown in April 2020, about 16% of Nigerian households were allocated food rations.<sup>236</sup> This figure however drastically reduced from June-July despite the growing need.<sup>237</sup> The consequences of not having a national social welfare programme was more evident since there were no housing, food or energy and utilities subsidies.<sup>238</sup> The emergency measures put in place did not comply with paragraph 22 of General Comment 19 on the Right to Social Security which provides that it 'must be adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care'.<sup>239</sup> The 52 Dollars allocated in the CCT programme equals about 3 Dollars in a day. This is grossly inadequate and worsened by the lack of alternatives many families have in the face of ever-increasing prices of commodities.

Despite the inadequate provisions for housing facilities for the poor, forced evictions were still carried out during the lockdown in Nigeria,<sup>240</sup> leaving people in very poor neighbourhoods vulnerable to displacement. In Lagos State, a forced eviction was carried out on 21 April, where 10 houses were demolished because they were 'illegally erected on the drainage system in the area'.<sup>241</sup> Not only did the income support programmes fail to guarantee an adequate standard of living, Nigeria further violated its international obligations by displacing people illegally, and worse off, during a pandemic.

### 3.2.2 Nepal

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<sup>233</sup> ICESCR (n 8).

<sup>234</sup> Committee on Economic Social and Cultural Rights 'General Comment 12 on the Right to food '(1999) UN. Doc E/1999/5.

<sup>235</sup> Vanguard Nigeria, 'Lockdown: Nigerians Groan as Food Prices Rise' (*Vanguard*, 5 April, 2020) <[www.LOCKDOWN: Nigerians groan as food prices rise \(vanguardngr.com\)](http://www.LOCKDOWN: Nigerians groan as food prices rise (vanguardngr.com))> accessed 17 March 2021.

<sup>236</sup> Carlo Koos, Peter Hangoma, Ottar Maestad, '2020 Household wellbeing and coping strategies in Africa during Covid-19- Findings from high frequency phone Surveys (2020)' (*CMI Report*, 2020) <[www.cmi.no/publications/7391-household-wellbeing-and-coping-strategies-in-Africa-during-covid-19-findings-from-high-frequency/](http://www.cmi.no/publications/7391-household-wellbeing-and-coping-strategies-in-Africa-during-covid-19-findings-from-high-frequency/)> accessed 15 March 2021.

<sup>237</sup> *ibid.*

<sup>238</sup> Ozili Peterson K, 'Covid 19 pandemic and economic crisis: The Nigerian experience and structural causes' (2020) MunichPersonal RePEc Archive.

<sup>239</sup> CESCR General Comment 19 (n 9).

<sup>240</sup> Amnesty International, 'Covid-19 and the Right to Housing' (*Amnesty International*, June 2020) <[www.IOR4026262020ENGLISH.PDF](http://www.IOR4026262020ENGLISH.PDF) (amnesty.org)> accessed 16 March 2021.

<sup>241</sup> *ibid.*

The standard of living in Nepal is below adequate. Affordable and safe housing is an acute challenge for low-income people, especially the workers dependent on the informal sectors.<sup>242</sup> Additionally, the devastating earthquake that hit most part of the country in 2015 destroyed already weak physical housing structures<sup>243</sup> making approximately six million people destitute.<sup>244</sup>

Taking loans from banks and financial institutions for housing finances is difficult. To be eligible for a loan, banks need an immovable property like land as collateral,<sup>245</sup> which discriminates against landless and people without additional property. Banks and financial institution offers high-interest rates. Since, only 19% of women in Nepal have land ownership<sup>246</sup> which effectively marginalizes other 79% of women and her dependents. Thus, the report of the special rapporteur on adequate housing has highlighted the importance of providing subsidized loan facilities to the low-income household to ensure housing are affordable and accessible.<sup>247</sup> The CESCR considers housing as affordable if ‘personal or household financial costs associated with housing are at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised’.<sup>248</sup>

Recently, the Housing Act 2018<sup>249</sup> has been enforced as a legislative framework for the implementation of the right to adequate housing guaranteed under the constitution.<sup>250</sup> Section 7 of the act obligates the state to provide a housing facility to the homeless individual and those displaced due to natural disasters.<sup>251</sup> However, this obligation does not meet the need of people in living in unsafe structures and housing conditions.<sup>252</sup> Additionally, it does not recognize other forms of homelessness that may result from the social inequalities, discrimination, generational poverty, and internal conflicts.<sup>253</sup> According to the Special

<sup>242</sup> ‘Nepal: Adequate Housing for All: Analysis of the Right to Housing Act 2018’ (Amnesty International 2019) <<https://www.amnesty.org/download/Documents/ASA3104962019ENGLISH.pdf>> accessed 11 March 2021.

<sup>243</sup> Amnesty International, ‘Building Inequality’: The Failure of the Government to Protect the Marginalized in Post-Earthquake Reconstruction Efforts’ (2017) 14.

<sup>244</sup> ‘Annual Progress Report’ (Ministry of Cooperative and Poverty Alleviation 2017) <<https://molcpa.gov.np/category/report?title>> accessed 18 March 2021.

<sup>245</sup> ‘Housing Becoming Unaffordable for the Urban Poor, Says Report’ *The Himalayan Times* (2 January 2018) <<https://thehimalayantimes.com/kathmandu/473098>> accessed 11 March 2021

<sup>246</sup> Dipina Sharma Rawal, ‘Barriers to Women’s Land and Property Access and Ownership in Nepal’ (International Organization for Migration 2016) <[https://www.iom.int/sites/default/files/our\\_work/DOE/LPR/Barriers-to-Womens-Land-Property-Access-Ownership-in-Nepal.pdf](https://www.iom.int/sites/default/files/our_work/DOE/LPR/Barriers-to-Womens-Land-Property-Access-Ownership-in-Nepal.pdf)> accessed 21 March 2021.

<sup>247</sup> ‘Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context’ (Human Rights Council 2018) A/HRC/37/53 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/007/65/PDF/G1800765.pdf?OpenElement>> accessed 22 March 2021

<sup>248</sup> Committee on Economic Social and Cultural Rights ‘General Comment 4 on the Right to adequate housing’ (1991) UN. Doc E/1992/23, para 4.

<sup>249</sup> Housing Act, 2018

<sup>250</sup> Constitution of Nepal 2015, art 37

<sup>251</sup> Housing Act (n 249) sec 7.

<sup>252</sup> *ibid* sec 13.

<sup>253</sup> Amnesty International (n 243).

Rapporteur on the right to adequate housing, such disproportionately affects the needy social groups, including women, young people and children.<sup>254</sup>

Moreover, the act does not necessitate the government to play an active role to identify the people in the state of homelessness or those at risk. Today, 49 % of the population live in sub-standard housing, and 30% of the houses are considered structurally unsafe.<sup>255</sup> However, to be eligible for housing facilities, the person must declare themselves as landless or ineligible to own a shelter due to financial hardship.<sup>256</sup> This will make the people living in unsafe housing, those engaged in small income generation activities, or those who are unable to seek government help due to their physical and mental condition ineligible.<sup>257</sup> It is contrary to General Comment No. 4 of CESCR, which says that the right to housing should not be interpreted in a narrow or restrictive sense.<sup>258</sup> Merely having a roof over one's head does not fulfil this obligation.<sup>259</sup> This links with the proliferation of growing populations living in slums, informal settlements, and sub-standard housing<sup>260</sup> and shows the state's failure to comply with its international human rights obligation and the judicial orders.

In the supreme court case of *JuRI-Nepal v. Government of Nepal* the Supreme Court asserted that the needy must be given priority in implementing the fundamental rights through law and specific programs.<sup>261</sup> In another case, including *Sudarshan Subedi v. Office of the Prime Ministers*, the Supreme Court of Nepal has recognized the residential rights of people with disabilities and issued a directive to build a residential home for them.<sup>262</sup> These orders are not sufficiently incorporated within the act. Thus, Section 13 of the Housing Act directly contradicts with General Comment No. 4 as states must prioritize those at risk due to their desperate living conditions,<sup>263</sup> to prevent homelessness and protect homeless people.<sup>264</sup>

### 3.2.3 The UK

<sup>254</sup> Special Rapporteur (n257).

<sup>255</sup> 'Nepal: Right to Housing Law Must Be Strengthened to Prevent Homelessness' (13 June 2019) <[www.amnesty.org/en/latest/news/2019/06/nepal-right-to-housing-law-must-be-strengthened-to-prevent-homelessness/](http://www.amnesty.org/en/latest/news/2019/06/nepal-right-to-housing-law-must-be-strengthened-to-prevent-homelessness/)> accessed 13 April 2021.

<sup>256</sup> Nepal: Adequate Housing for All: Analysis of the Right to Housing Act 2018' (Amnesty International 2019) <<https://www.amnesty.org/download/Documents/ASA3104962019ENGLISH.pdf>> accessed 11 March 2021.

<sup>257</sup> 'Nepal: Country Profile' (Habitat for Humanity 2019) <[www.habitat.org/sites/default/files/documents/Nepal\\_FY19\\_FINAL.pdf](http://www.habitat.org/sites/default/files/documents/Nepal_FY19_FINAL.pdf)> accessed 11 March 2021.

<sup>258</sup> CESCR (n248).

<sup>259</sup> CESCR (n248).

<sup>260</sup> 'Slums Continue to Grow in Urban Areas' The Himalayan Times (13 April 2017) <<https://thehimalayantimes.com/kathmandu/slums-continue-grow-urban-areas>> accessed 1 April 2021

<sup>261</sup> *Raju Prasad Chapagai for Justice and Rights Institute-Nepal (JuRI-Nepal) v Government of Nepal, Office of the Prime Minister and Council of Ministers and others* Supreme Court 4, 071-WO-0257 831.

<sup>262</sup> *Sudarshan Subedi and others v Government of Nepal* NKP 5 (Supreme Court of Nepal) 830.

<sup>263</sup> CESCR (n3).

<sup>264</sup> CESCR, 'General Comment on the Nature of states parties obligations' (1990) UN Doc. E/1991/23.



In the UK, the right to an adequate standard of living from a social security perspective is most effectively assessed through analysis of the housing landscape, which can be described as a crisis. As housing is devolved across the home nations, this section primarily applies to England. Homelessness has been rising since 2010, and issues of unaffordability and overcrowding have become widespread.<sup>265</sup> With the social housing sector unable to meet demand, the private rented sector (PRS) is growing steadily.<sup>266</sup> However, 35% of homes in the PRS do not meet the Decent Homes Standard,<sup>267</sup> a technical standard designed to provide a minimum standard of housing conditions.<sup>268</sup> Security of tenure as guaranteed in the right to adequate housing<sup>269</sup> is often not present in the PRS; 26% of homelessness applications were due to the loss of an assured shorthold tenancy.<sup>270</sup>

These problems often directly stem from issues within the welfare system. Affordability is a core aspect of the right to adequate housing<sup>271</sup> yet families impacted by the benefit cap are 65% more likely to be in rent arrears than others using housing benefit,<sup>272</sup> in clear contravention of the UK's responsibilities to provide the right to live somewhere in 'security, peace and dignity'.<sup>273</sup> The removal of the spare-room subsidy, colloquially known as the 'bedroom tax', was introduced as part of the Welfare Reform Act.<sup>274</sup> The 'bedroom tax' meant housing benefit recipients would receive the benefit based on household size rather than property size.<sup>275</sup> in an effort to both curb welfare spending, and free-up much needed social housing.<sup>276</sup> It has been widely found that it did neither, and has instead caused homelessness and harrowing debt in vulnerable households.<sup>277</sup> The UN Special Rapporteur on Adequate Housing recommended the immediate suspension of the 'bedroom tax', citing its

<sup>265</sup> Human Rights Committee (n 86).

<sup>266</sup> Office for National Statistics, 'UK private rented sector: 2018' (18 January 2019) <[www.ons.gov.uk/economy/inflationandpriceindices/articles/ukprivaterentedsector/2018](http://www.ons.gov.uk/economy/inflationandpriceindices/articles/ukprivaterentedsector/2018)> accessed 5 March 2021.

<sup>267</sup> Andy Hull and Graeme Cooke, 'Together at home – a new strategy for housing' (Institute for Public Policy Research 2012) p7.

<sup>268</sup> Department for Communities and Local Government, 'A Decent Home: Definition and guidance for implementation' (June 2006) <[assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7812/138355.pdf](http://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/7812/138355.pdf)> accessed 5 March 2021.

<sup>269</sup> CESCR (n 3).

<sup>270</sup> Ministry of Housing, Communities & Local Government, 'Statutory Homelessness Annual Report, 2019-20, England' (1 October 2020)

<[assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/923123/Annual\\_Statutory\\_Homelessness\\_Release\\_2019-20.pdf](http://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/923123/Annual_Statutory_Homelessness_Release_2019-20.pdf)> accessed 5 March 2021.

<sup>271</sup> CESCR (n 3) para 4.

<sup>272</sup> Work and Pensions Committee, 'Oral evidence: Benefit Cap' (10 October 2018) HC 1477.

<sup>273</sup> CESCR (n 3) para 6.

<sup>274</sup> Welfare Reform Act (n 93).

<sup>275</sup> *ibid.*

<sup>276</sup> Department for Work and Pensions, 'Local authorities and advisers: removal of the spare room subsidy' (1 March 2013) <[www.gov.uk/government/collections/local-authorities-removal-of-the-spare-room-subsidy](http://www.gov.uk/government/collections/local-authorities-removal-of-the-spare-room-subsidy)> accessed 23 March 2021.

<sup>277</sup> UN Special Rapporteur on Adequate Housing, 'Mission to the United Kingdom of Great Britain and Northern Ireland' (30 December 2013) A/HRC/25/54/Add.2.

implementation had retrogressively interfered with the right to adequate housing, and had a disproportionate impact on vulnerable groups.<sup>278</sup> Families with a disabled family member are disproportionately impacted by the bedroom tax,<sup>279</sup> and as a result are left without income support for food and other essentials. This policy has been found to be discriminatory towards disabled individuals and families by the UK courts in several cases.<sup>280</sup> The European Court of Human Rights (ECtHR) found the 'bedroom tax' discriminated against women at risk of domestic violence, as the policy existed in direct contravention to the Sanctuary scheme in which the applicant lived; namely, to exist in safety.<sup>281</sup> It is clear that the UK is in contravention of its international, regional and domestic responsibilities to equality, and that inadequate income support leads to the right to an adequate standard of living unfulfilled.

Many private landlords and lettings agents actively discriminate against those on housing benefit, with 63% either operating an outright ban or preferring not to let to this group.<sup>282</sup> This disproportionately harms people with disabilities and women<sup>283</sup> – unlawful under the Equality Act 2010.<sup>284</sup> Despite two landmark court rulings in 2020 finding this policy unlawful,<sup>285</sup> the decisions do not set precedent given the jurisdiction of the courts they were heard in; the practice continues<sup>286</sup> and is likely to do so until the Government regulates and prosecutes those who continue it. Until then, those reliant on housing benefits will not have their right to adequate housing fulfilled, interfering with a wider right to an adequate standard of living, and therefore the right to social security.

#### 4. Recommendations and Conclusion

This memorandum has examined income support measures in Nigeria, Nepal and the UK against applicable laws and standards to understand how a rights-based approach can improve inequality and access to the right to an adequate standard of living. Based on this

<sup>278</sup> UN Special Rapporteur on Adequate Housing (n 207).

<sup>279</sup> Disability Rights UK, 'Disabled people still by far the worst affected by the bedroom tax' (11 September 2019) <[www.disabilityrightsuk.org/news/2019/september/disabled-people-still-far-worst-affected-bedroom-tax](http://www.disabilityrightsuk.org/news/2019/september/disabled-people-still-far-worst-affected-bedroom-tax)> accessed 4 March 2021.

<sup>280</sup> See *R (on the application of Carmichael and Rourke) (formerly known as MA and other) v Secretary of State for Work and Pensions* (9 November 2016) UKSC 2014/0125; *R (on the application of Rutherford and another) v Secretary of State for Work and Pensions* (9 November 2016) UKSC 2016/0029; *R (on the application of A) v Secretary of State for Work and Pensions* (9 November 2016) UKSC 2016/0025.

<sup>281</sup> *A v. The United Kingdom* App no. 35373/97 (ECtHR, 17 December 2002).

<sup>282</sup> Shelter, 'Research Report: Survey of Private Landlords' (February 2016) <[assets.ctfassets.net/6sxvmndn0s/1kE9HpyjQKk962Sks6uni1/0bf0eb79e6e05d8e14f558749eb9af63/Research\\_Report\\_Survey\\_of\\_Private\\_Landlords\\_-\\_Shelter\\_England.pdf](https://assets.ctfassets.net/6sxvmndn0s/1kE9HpyjQKk962Sks6uni1/0bf0eb79e6e05d8e14f558749eb9af63/Research_Report_Survey_of_Private_Landlords_-_Shelter_England.pdf)> accessed 4 March 2021.

<sup>283</sup> Shelter, 'Stop DSS Discrimination: Ending prejudice against renters on housing benefit' (2018) <[assets.ctfassets.net/6sxvmndn0s/5ta6BCI8NPeWv2l8VSdFET/b20f1e444c28a0c380f712767e720984/Stop\\_DSS\\_Discrimination\\_-\\_Ending\\_prejudice\\_against\\_renters\\_on\\_housing\\_benefit.pdf](https://assets.ctfassets.net/6sxvmndn0s/5ta6BCI8NPeWv2l8VSdFET/b20f1e444c28a0c380f712767e720984/Stop_DSS_Discrimination_-_Ending_prejudice_against_renters_on_housing_benefit.pdf)> accessed 4 March 2021.

<sup>284</sup> Equality Act 2010 (n 80) Sec 19, 29.

<sup>285</sup> Shelter, 'Second Shelter court trial confirms disabled dad-of-four was discriminated against for receiving housing benefit' (9 September 2020) <[blog.shelter.org.uk/2020/09/second-shelter-court-trial-confirms-disabled-dad-of-four](http://blog.shelter.org.uk/2020/09/second-shelter-court-trial-confirms-disabled-dad-of-four)> accessed 4 March 2021.

<sup>286</sup> Maryam Ahmed and Alison Benjamin 'Property site listings exclude renters on benefits' *BBC News* (18 December 2020, London) <[www.bbc.co.uk/news/uk-5533108](http://www.bbc.co.uk/news/uk-5533108)> accessed 5 March 2021.

analysis, the following recommendations are made for states when considering social protection programmes grounded in human rights.

We have chosen not to group the recommendations based on income level, as we felt there was enough commonality in striving for a rights-based system to make broad recommendations. When a recommendation applies to a specific income-level state, it will be explicitly stated.

### **Ensure those accessing social protection are ‘right-holders’**

- Ratify international laws on social protection
  - Failure to ratify international laws on social protection makes beneficiaries vulnerable to short term contingent programmes as seen in Nigeria and Nepal.
  - States must ratify international instruments on social protection as the first step towards ensuring a rights-based approach
- Incorporate social, economic and cultural rights into domestic legislation
  - States with the dualist system such as Nigeria and the UK require incorporation of international instruments into domestic legislation before they can be binding as domestic law
  - Such States must guarantee that beneficiaries are right holders by incorporating all ratified international laws into domestic legislation
- Ensure they are justiciable
  - Clauses in domestic legislations that preclude access to courts on matters of social protection found in low income and middle-low countries like Nigeria, India, Ghana limits the implementation of social protection laws even when they have been ratified and domesticated
  - These clauses should be removed and the right to social security be made justiciable as done in South Africa

### **Ensure non-discrimination and equal access to social protection programmes**

- Consider ending means-testing, and ‘caps’ in a move towards a universal social protection

- Means-testing is often used to 'cut costs', but it is derogatory and excludes marginalised groups. For example, in the UK policies such as the 'benefit cap' and the 'two-child policy' adversely impact single parent households and families with a disabled family member
- A universal system should be inclusive, and rights based.
- Establish continuous monitoring programmes to measure impacts of cuts and changes to social protection programmes, particularly impacts on marginalised social groups
  - A lack of monitoring has led to exclusion and discrimination without accountability, as demonstrated in this paper. Data must be continually gathered and analysed with a view to identifying discrimination and accessibility issues
  - Beneficiaries should be involved in design and implementation of the monitoring programmes
- Expand coverage of income support to the informal sector by removing exclusionary eligibility requirements
  - Lack of support for the informal sector disproportionately impacts women and indigenous groups; in Nepal the support is inadequate, and in Nigeria there was no support available for the informal sector before the Covid-19 crisis
  - Long-term, adequate social protection must be available for all, with accessibility for the informal work force at its centre
- Expand eligibility to social protection programmes to all non-nationals. Abolish 'second-tier' programmes that gatekeep resources from migrants
  - Restrictions on public funds leads to discrimination, and the most vulnerable being forced into destitution – with 'second-tier' programmes feeding into narratives of 'undeserving' migrants
  - While many high-income countries deliberately design social protection to exclude non-nationals and migrants, a fair, inclusive and rights-based system would not do so – and states should not adopt policies that contravene their international duties
  - This recommendation is made with high-income countries in mind, and something for low and middle-income countries to work towards

### **Align social protection programmes with the socio-economic realities of the State**

- Guarantee that income support programmes are linked to adequate standard of living to ensure affordability to access basic facilities such as housing, food and health.
  - Benefit freezes as seen in the UK, Nepal and Nigeria has made social protection allowances below the average cost required to maintain an adequate standard of living. Such benefits must be revised periodically to make the support align with inflation rates within the respective jurisdictions.
  - Provide subsidized loan and minimize the cost of housing facilities for low-income households
  - This paper has found housing affordability to be an acute problem for low-income households in both low-middle and high-income countries
  - There must be a complete welfare safety net on housing costs, taking steps to ensure suitable, affordable housing is available to those reliant on social protection, including those who are homeless
  - In low and middle-low income economies, the state should ensure that the cost of housing matches with the level of income of the people by providing subsidized loan facilities or minimizing the cost of housing finances for those subscribing to the bank credit
- Prioritize the need of those groups who are disproportionately affected by crises such as the Covid-19 pandemic
  - States must identify groups disproportionately affected by crises and prioritise their needs by making specific provisions for them

### **Ensure more effective and transparent cash transfer programmes**

- Adopt digital cash transfer methods or banking methods to eliminate the need for intermediaries.
  - Intermediaries involved in physical transportation of cash to beneficiaries has facilitated corruption, misinformation and bribery as seen in Nigeria.
  - Digital methods of payments that do not require internet access should be carried out for those with access to the mobile phones as implemented in Togo under the 'Novissi' scheme.

- Caution must however be exercised by having effective monitoring systems that determines those who do not have access to mobile phones and ensuring they are also catered for
- Provision can be made for them through accountable local intermediaries with bank accounts and mobile phones that can disburse the cash to the beneficiaries

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## Annex

<b>SOCIAL PROTECTION PROGRAMMES</b>				
<b>Country</b>	<b>Programme</b>	<b>Relevant Legislation and Policy</b>	<b>Eligibility</b>	<b>Support provided</b>
UK	Statutory Sick Pay	The Statutory Sick Pay (General) Regulations 1982	<ul style="list-style-type: none"> <li>• Be classed as an employee</li> <li>• Have earned £118 (160 USD)/week for previous 8 weeks</li> <li>• Recourse to public funds</li> </ul>	<ul style="list-style-type: none"> <li>• Leave from work</li> <li>• Weekly payment of £94.25 (130 USD)</li> <li>• Available for 28 weeks</li> </ul>
	Universal Credit	Welfare Reform Act 2012  Universal Credit Regulations 2013	<ul style="list-style-type: none"> <li>• On a low income or unemployed</li> <li>• Have less than £16,000 (22,125 USD) in savings</li> <li>• Recourse to public funds</li> </ul>	<ul style="list-style-type: none"> <li>• Monthly payment, including housing and child-related costs</li> </ul>
	Housing benefit	Housing Benefit Regulations 2006	<ul style="list-style-type: none"> <li>• On a low income, unemployed, or claiming benefits</li> <li>• Recourse to public funds</li> </ul>	<ul style="list-style-type: none"> <li>• Payment of all or part of rent</li> </ul>
	Asylum Support	Immigration and Asylum Act 1999  Asylum Support Regulations 2000	<ul style="list-style-type: none"> <li>• Seeking asylum in the UK</li> <li>• Evidence of destitution</li> </ul>	<ul style="list-style-type: none"> <li>• Accommodation on a no-choice basis</li> <li>• Weekly payment of £39.63 (55 USD)</li> </ul>



	Coronavirus Job Retention Scheme	Coronavirus Act 2020	<ul style="list-style-type: none"> <li>Employee of qualifying employer</li> </ul>	<ul style="list-style-type: none"> <li>80% of your usual wage up to a ceiling of £2500 (3,457 USD)</li> </ul>
Nigeria	CCT	Social Investment Programme 2016	<ul style="list-style-type: none"> <li>Poorest Nigerians according to the National Social Register</li> </ul>	<ul style="list-style-type: none"> <li>500 Naira (13.11 USD) cash transfers monthly</li> </ul>
	Food Rations	Social Invest Programme 2016	<ul style="list-style-type: none"> <li>Poorest Nigerians 'affected by the lockdown'</li> </ul>	<ul style="list-style-type: none"> <li>Distribution of food items</li> </ul>
	CBN's Targeted Credit Facility	CBN Financial Policy and Regulations 2020	<ul style="list-style-type: none"> <li>MSMEs affected by the pandemic</li> </ul>	<ul style="list-style-type: none"> <li>3 million Naira (7,700 USD) credit facility</li> </ul>
	Emergency Economic Stimulus package	Emergency Economic Stimulus Bill 2020	<ul style="list-style-type: none"> <li>Registered business owners who agree not to make staff cuts during the pandemic</li> </ul>	<ul style="list-style-type: none"> <li>50% tax rebate for employers and business owners</li> </ul>
Nepal	Cash Transfer/Allowances	Social Protection Act 2018	<ul style="list-style-type: none"> <li>Vulnerable groups and people at risk including Widows, Senior Citizens and people with disabilities</li> </ul>	<ul style="list-style-type: none"> <li>Monthly Allowances</li> </ul>
	Social Security and Insurance	Contribution based Social Security Act 2018	<ul style="list-style-type: none"> <li>Workers in Formal and Informal Sector</li> </ul>	<ul style="list-style-type: none"> <li>Medical Treatment</li> <li>Accidents and disability plans</li> <li>Health protection and maternity leave</li> <li>Retire pensions and dependent family plan</li> </ul>

	Prime Minister Employment Programme	Employment related Rights 2018	<ul style="list-style-type: none"> <li>• Low-income individuals from poor households</li> </ul>	<ul style="list-style-type: none"> <li>• 100 days employment</li> </ul>
	Adequate Housing	Housing Act 2018	<ul style="list-style-type: none"> <li>• People at the risk of disaster</li> <li>• Homeless individuals</li> </ul>	<ul style="list-style-type: none"> <li>• Housing Facility</li> </ul>

<b>INTERNATIONAL LABOUR ORGANIZATION SOCIAL SECURITY INSTRUMENTS</b>			
<b>Name</b>	<b>Type of Instrument</b>	<b>Features</b>	<b>Ratification by case study countries</b>
Social Security (Minimum Standards) Convention, 1952 (No. 102)	Convention	<ol style="list-style-type: none"> <li>1. Provides a comprehensive definition of social security                             <ul style="list-style-type: none"> <li>• Access to medical care</li> <li>• Sickness</li> <li>• Unemployment</li> <li>• Old age benefit</li> <li>• Employment injury</li> <li>• Family benefit</li> <li>• Maternity benefit</li> <li>• Invalidity benefit</li> <li>• Survivor's benefit</li> </ul> </li> <li>2. Minimum standards                             <ul style="list-style-type: none"> <li>• Minimum level of benefit</li> <li>• Percentage of population to be protected</li> <li>• Conditions of entitlement</li> <li>• Duration of benefit</li> </ul> </li> </ol>	<ul style="list-style-type: none"> <li>• No ratification by Nigeria or Nepal</li> <li>• The UK ratified on 27 April 1954, accepting Parts II to V, VII and X</li> </ul>

		<p>3. Flexibility clauses around</p> <ul style="list-style-type: none"> <li>• State protection</li> <li>• Ratification</li> <li>• Type of scheme</li> <li>• Administration</li> </ul> <p>4. Principles</p> <ul style="list-style-type: none"> <li>• State responsibility</li> <li>• Solidarity</li> <li>• Tripartite administration</li> <li>• Collective financing of benefits</li> <li>• Adjustment of payments</li> <li>• Right to appeal</li> <li>• Suspension of benefits</li> </ul>	
<p>Social Protection Floors Recommendation, 2012 (No. 202)</p>	<p>Recommendation</p>	<p>1. Principles</p> <ul style="list-style-type: none"> <li>• Universality</li> <li>• Entitlement</li> <li>• Adequacy</li> <li>• Non-discrimination</li> <li>• Social inclusion</li> <li>• Respect &amp; dignity</li> <li>• Progressive realisation</li> <li>• Solidarity in financing</li> <li>• Diversity of methods</li> <li>• Transparency &amp; accountability</li> <li>• Financial sustainability</li> <li>• Coherence across institutions and policy</li> <li>• Public service delivery</li> <li>• Complain &amp; appeal procedures</li> <li>• Monitoring</li> <li>• Freedom of association of workers</li> <li>• Tripartite participation</li> </ul>	<p>N/A</p>

		<p>2. National Social Protection Floors should:</p> <ul style="list-style-type: none"> <li>• guarantee access to health care and basic income security for children, older persons and those unable to earn sufficient income</li> <li>• be established in law</li> <li>• be financed by national resources</li> </ul> <p>3. Strategies for Extension</p> <ul style="list-style-type: none"> <li>• Implementation of national social security floors to as many people as possible</li> <li>• Ensure support for formal and informal sector, as well as disadvantaged groups</li> </ul> <p>4. Monitoring</p> <ul style="list-style-type: none"> <li>• Tripartite administration</li> <li>• Consultation</li> <li>• Data collection &amp; analysis</li> <li>• Legal framework</li> <li>• Member collaboration</li> </ul>	
Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)	Convention	<ul style="list-style-type: none"> <li>• Revision of the Old Age Insurance Conventions, the Invalidity Insurance Conventions and the Survivor's Insurance Conventions of 1933</li> <li>• Ratifying states are required to protect employees through provision of invalidity</li> </ul>	None

		benefit, old age benefit and survivor's benefit	
Medical Care and Sickness Benefits Convention, 1969 (No. 130)	Convention	<ul style="list-style-type: none"> <li>• Revision of the Sickness Insurance Conventions of 1927</li> <li>• Governing national legislation that protect employees through provision of medical care and sickness benefits</li> </ul>	None
Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)	Convention	<ul style="list-style-type: none"> <li>• Revision of the Unemployment Provision Convention of 1934</li> <li>• Delivers standards for employment and unemployment protection</li> <li>• Of note: full, productive and freely chosen employment, the principles of equality of treatment and non-discrimination and the methods of providing unemployment benefit</li> </ul>	None
Maintenance of Social Security Rights Convention, 1982 (No. 157)	Convention	<ul style="list-style-type: none"> <li>• Concerning the rights of migrant workers in respect of all branches of social security covered by C102</li> <li>• Ratifying states should adopt legislation for maintenance and acquisition of rights of migrant workers</li> </ul>	None
Equality of Treatment (Social Security) Convention, 1962 (No. 118)	Convention	<ul style="list-style-type: none"> <li>• Concerning the social security of non-nationals</li> <li>• Ratifying states should grant equality of treatment to nationals</li> </ul>	None

		of other ratifying states with its own nationals	
Employment Injury Benefits Convention, 1964 [Schedule 1 amended in 1980] (No. 121)	Convention	<ul style="list-style-type: none"> <li>Provides rules for adoption of national legislation on benefits in the case of accidents and occupational diseases</li> </ul>	None
Maternity Protection Convention, 2000 (No. 183)	Convention	<ul style="list-style-type: none"> <li>Provides rules for the adoption of national legislation for the protection of mother and child</li> <li>Of note: protection of pregnancy, the right to maternity leave period, maternity benefits, the right to return</li> </ul>	None

<b>CESCR GENERAL COMMENT 19: NORMATIVE CONTENT</b>			
<b>Principles/ Elements</b>	<b>Paragraph</b>	<b>Contents</b>	<b>Relevant examples</b>
Availability	11	<ul style="list-style-type: none"> <li>A system is available to ensure benefits for relevant social risks</li> <li>The schemes are sustainable and can be ‘realized for present and future generations’</li> </ul>	<p>Nigeria</p> <ul style="list-style-type: none"> <li>Continually negating promises of social security reform with change of government</li> </ul> <p>UK</p> <ul style="list-style-type: none"> <li>Coronavirus Retention Scheme</li> </ul>
Social Risks & Contingencies	12-21	<p>Social security to cover</p> <ul style="list-style-type: none"> <li>Health care</li> <li>Sickness</li> <li>Old age</li> <li>Unemployment</li> <li>Employment injury</li> </ul>	

		<ul style="list-style-type: none"> <li>• Family and child support</li> <li>• Maternity</li> <li>• Disability</li> <li>• Survivors and orphans</li> </ul>	
Adequacy	22	<ul style="list-style-type: none"> <li>• Benefits must be adequate in amount and duration</li> </ul>	<p>Nepal</p> <ul style="list-style-type: none"> <li>• Prime Minister’s Employment Program</li> </ul>
Accessibility	23-27	<ul style="list-style-type: none"> <li>• Coverage</li> <li>• Eligibility</li> <li>• Affordability</li> <li>• Participation and information</li> <li>• Physical access</li> </ul>	<p>UK</p> <ul style="list-style-type: none"> <li>• Digital by default system excludes people with disabilities</li> </ul>
Transparency	24 & 26	Both eligibility and participation must be transparent	<p>Nigeria</p> <ul style="list-style-type: none"> <li>• CCT Program has weak accountability and inadequate data</li> </ul>
Relationship with other rights	28	<ul style="list-style-type: none"> <li>• Right to social security supports the realisation of child care and welfare, combatting poverty and social exclusion</li> <li>• Should not be at expense of creation of social security schemes</li> </ul>	
Non-discrimination and equality	29-31	<ul style="list-style-type: none"> <li>• Right to social security is enjoyed without discrimination</li> <li>• States should give special attention to those who face difficulties exercising right, including women, informal workers, people with disabilities, older people. children,</li> </ul>	<p>UK</p> <ul style="list-style-type: none"> <li>• Exclusion of migrants from the welfare state</li> </ul>

		minority groups, non-nationals	
Gender equality	32	<ul style="list-style-type: none"> <li>• Equal right of men and women to the enjoyment of social security</li> </ul>	<p>UK</p> <ul style="list-style-type: none"> <li>• women disproportionately impacted by the benefit cap and ‘two-child policy’</li> </ul>
Workers inadequately protected by social security	33	<ul style="list-style-type: none"> <li>• states must ensure that systems cover workers inadequately protected by social security, including part-time workers, casual workers and self-employed</li> </ul>	
Informal economy	34	<ul style="list-style-type: none"> <li>• Social security systems must cover those working in informal economy</li> </ul>	<p>Nigeria</p> <ul style="list-style-type: none"> <li>• Informal sector excluded</li> </ul> <p>Nepal</p> <ul style="list-style-type: none"> <li>• Informal sector without adequate support</li> </ul>
Retrogression	42	<ul style="list-style-type: none"> <li>• Retrogressive measures prohibited</li> <li>• Can only be introduced if State can prove <ol style="list-style-type: none"> <li>(1) justification</li> <li>(2) alternatives consider</li> <li>(3) participation of affected groups</li> <li>(4) no discrimination</li> <li>(5) impact on right to social security</li> <li>(6) independent review</li> </ol> </li> </ul>	<p>UK</p> <ul style="list-style-type: none"> <li>• Introduction of benefit freeze and cut to benefit payments</li> </ul>
Obligation to respect	44	<ul style="list-style-type: none"> <li>• States should refrain from interfering with the enjoyment of</li> </ul>	



		the right to social security	
Obligation to protect	45 & 46	<ul style="list-style-type: none"> <li>States should prevent third parties from interfering with the enjoyment of the right to social security</li> </ul>	
Obligation to fulfil	47-51	<p>National social security strategy</p> <ul style="list-style-type: none"> <li>adopting national legislation</li> </ul>	<p>Nigeria</p> <ul style="list-style-type: none"> <li>Rights not justiciable</li> </ul> <p>UK</p> <ul style="list-style-type: none"> <li>Rights not justiciable</li> </ul> <p>Nepal</p> <ul style="list-style-type: none"> <li>Rights not justiciable</li> </ul>
Decentralization	73	<ul style="list-style-type: none"> <li>It remains the duty of state parties to ensure effective implementation by the local authorities</li> </ul>	<p>Nigeria</p> <ul style="list-style-type: none"> <li>decentralization has caused significant disparity in poverty between states</li> </ul>
Participation	69	<ul style="list-style-type: none"> <li>Beneficiaries should be involved in every stage of social security, from planning to implementation</li> </ul>	<p>UK</p> <ul style="list-style-type: none"> <li>lack of involvement of beneficiaries led to discrimination and exclusion of vulnerable groups from Universal Credit</li> </ul>