



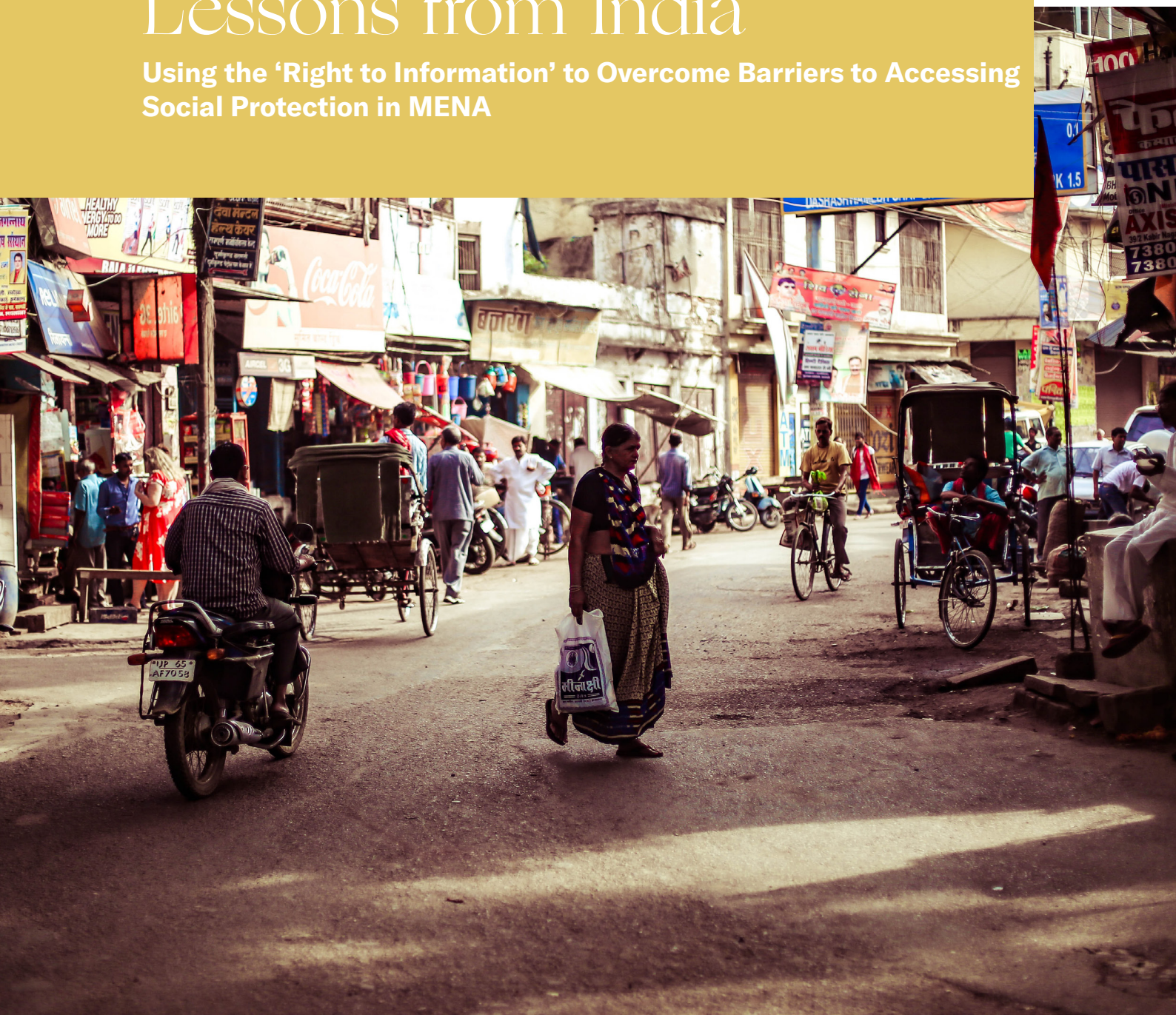
MENASP

middle east & north africa
social policy network

Policy Innovation Case Studies No. 5

Lessons from India

Using the 'Right to Information' to Overcome Barriers to Accessing Social Protection in MENA





Introduction

This Policy Innovation Case Study (PICS) discusses how barriers to accessing social protection can be overcome using the ‘right to information’. It draws on the experiences of activists in India who mobilised around a ‘right to information act’ to contest the denial of social protection to formally-eligible poor and vulnerable applicants. The PICS analyses how the Indian experience could inform efforts to improve access to social protection in the Middle East and North Africa (MENA) region.

The Policy Innovation

The right to information is the right of every person to obtain information and data from government bodies. It is an enabling right and an important tool for journalists, activists and communities. The policy innovation described in this paper is the use of the ‘right to information’ to overcome barriers to accessing social protection.

Policy Actors and Institutions

This policy innovation discusses the ways in which civil society groups can use domestic and international laws to access government held information pertinent to social protection provision. Key institutions are the law and the courts. Key policy actors are civil society and government officials that mediate access to government-held information.

Research upon which the PICS is based

This PICS is based upon a review of the secondary literature, qualitative interviews conducted with activists in India in 2015 and 2017, and legal analysis.

Social Protection and Barriers to Accessing Social Protection

The 2030 Agenda for Sustainable Development underscores the importance of social protection for the attainment of the Sustainable Development

Goals (SDGs). The overarching social protection goal is the ‘substantial coverage of the poor and the vulnerable’. A common definition of social protection refers to ‘all public measures providing benefits to guarantee income security and access to essential health care, such as unemployment insurance, disability benefits, old-age pensions, cash and in-kind transfers, and other contributory and tax-financed schemes’.

Over the past decade, numerous MENA states have set up new or expanded existing social protection programmes. However, it is not sufficient for states to simply set up social protection systems; they must also ensure they are accessible to those who are eligible for them, without discrimination. Barriers to access undermine the effectiveness of social protection and hinder the 2030 Agenda ambition to ‘leave no-one behind’.

Numerous studies demonstrate that not all segments of the population officially covered by social protection schemes – including in the MENA region – are able to access their entitlements in practice.

Barriers to accessing social protection are inextricably linked to the fact that many if not most social protection programmes in place around the world are ‘targeted’ – either at the poor or at particular categories of vulnerable individuals. Targeting involves identifying eligible individuals and screening out the ineligible based on a set of criteria. Common targeting mechanisms include:

- Means tests which assess the applicants’ income, assets or wealth.
- Proxy means tests, based on some indicators of poverty that are believed to be highly correlated with wellbeing or deprivation.
- Categorical targeting which selects individuals belonging to specific social or demographic groups deemed to be particularly in need i.e.

older people, disabled people, women, children.

- Geographic targeting which selects all individuals living in a particular geographic area (i.e. an area with high poverty prevalence).
- Community-based targeting can involve any of the previous mechanisms but the determinations are made at a community level.

It is almost impossible to target with 100 per cent accuracy. Therefore, eligible individuals are sometimes erroneously excluded from social protection programmes that could enable them to escape poverty or even destitution. This phenomenon is commonly referred to as ‘errors of exclusion’. As elsewhere, errors of exclusion are prevalent in the Middle East. For example, researchers concluded that ‘huge errors of exclusion’ undermined the effectiveness of cash transfer programmes in the MENA region; that Egypt’s Food Subsidy programme has been ineffective in targeting the poor; and that a Moroccan medical assistance programme for the destitute excluded 72 percent of the target population.

The causes of ‘errors of exclusion’ are complex and multifaceted and cannot be reviewed comprehensively here. What is of interest – due to its relevance to the policy innovation set out above – is the manner in which inequalities of power between social protection applicants and officials that mediate access to social protection can lead to errors of exclusion. The nature of this phenomenon has been documented using in-depth qualitative research in numerous contexts. In South Korea, for example, eligible applicants’ applications were arbitrarily rejected by government officials, with the applicants having no means of recourse. In one case, a rejection was only reversed when the applicant returned to contest the decision with his sponsor, a ‘socially powerful’ university

professor. In India, research conducted by the NGO ‘Parivartan’ demonstrated that poor and illiterate families were cheated out of their full entitlements to subsidised food by food store administrators. In Egypt, social protection scheme applicants have argued that favouritism and a lack of commitment to fairness shape the behaviour of officials responsible for administering social protection applications. One applicant explained:

‘My daughter’s name was first on the list, [but] they told her your name is not there, go home and we will call you...she kept telling them, “Look for my name. If you do not want to look give me the paper and I will look for it myself”, and then she saw the paper, hers was the first name on the list’.

Barriers to Access and India’s ‘Right to Information Act’

The India-based case study described here demonstrates that a ‘right to information’ has the potential to challenge the illegitimate exclusion of social protection applicants, by altering the power balance between applicants and officials. The enactment of the 2005 ‘Right to Information Act’ meant that government officials were no longer guided by a highly restrictive colonial-era Official Secrets Act but instead had a responsibility to publish information about how public money is spent, and to respond to detailed requests from members of the public for information held by state and central governments. Individual public servants who fail to adhere to the stipulations of the Right to Information Act can be fined for withholding information without justification.

In the realm of social protection provision in India, the Act has come to serve as a grievance redressal mechanism. Among other things, civil society activists have used the Right to Information Act to:

- Request information regarding the reasons why

an individual's application for social protection was rejected – such requests, in themselves, have regularly led to the reversal of the initial rejection, indicating that the initial rejection was either arbitrary or erroneous.

- Request information regarding the stocks of food sent to subsidised food shops, making it more difficult for the owners to unlawfully sell the stocks on the open market for a higher profit; and
- Request information regarding lists of beneficiaries, enabling activists to 'weed out' fictitious names on beneficiary lists which were being used to siphon off supplies.

Could a 'Right to Information' Improve Access to Social Protection in MENA?

Civil society activists' use of the Right to Information Act in India may offer lessons for other countries. A number of states in the MENA region (Algeria, Iran, Iraq, Israel, Jordan, Lebanon, Sudan, Tunisia, Turkey, and Yemen) already have a 'right to information' or a 'freedom of information' act on the statute books. Depending on the specific provisions of these acts, they could be used to improve access to social protection for eligible

beneficiaries by contesting and challenging the reasons for rejected applications.

If a domestic right to information act does not exist, human rights law may offer a solution. The International Covenant on Civil and Political Rights (ICCPR) establishes a right to access government held information, as part of the right to freedom of expression. Nearly all MENA states have ratified the ICCPR.

By expressly establishing the right to 'seek' and to 'receive' information, Article 19 paragraph 2 ICCPR protects the rights of all individuals to request access to government-held information. This was stated clearly by the UN Human Rights Committee, in General Comment No. 34. The right to freedom of expression establishes a positive obligation on states: they must make information available to individuals. In General Comment 19 the Committee on Economic, Social and Cultural Rights emphasised the importance of this right in the context of social protection. Under human rights law procedures for accessing information should be 'simple, rapid, and free or low-cost'. The release of government-held information should operate on the basis of the 'principle of maximum disclosure': any limitations should be construed narrowly.

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