

MEXICO

Right to social security under threat

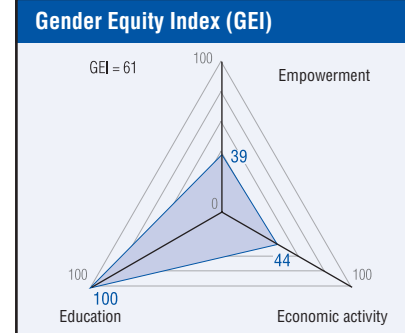
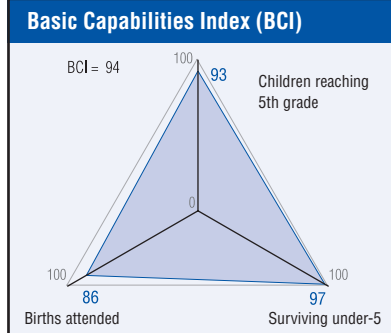


A social security regime benefiting salaried employees and their families does not cover the informal sector or the unemployed and half of all children are unprotected. The pension system has been subject to regressive reforms, which have been opposed by workers through political mobilization and legal action.

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Poverty, inequity and inequality in access to services

In the 2007-2012 National Development Plan (PND), the federal government acknowledges the reduced economic growth that has been reflected in an insufficient generation of formal employment positions and almost no increase in real salaries, thus preventing sustained increases in family income and exacerbating the persistence and intensity of poverty. Inequity in income distribution has also not improved in recent years and unequal opportunity persists, in particular manifesting regionally between different states and municipalities.⁴ The PND acknowledges that public health service coverage is still not universal, that it is very difficult for most people to pay for private services and that great inequalities persist in the quality of services, these being associated with insufficient infrastructure and supplies, as well as problems related to the number and distribution of qualified personnel.⁵



Limited social security coverage and increasingly precarious employment

In Mexico the constitutional basis of social security resides in article 123 on employment and social security.⁶ Within the framework of international law protecting the right to social security, Mexico has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), the American Convention on Human Rights, the San Salvador Protocol and several International Labour Organization (ILO) Conventions including No. 102 on social security (minimum standards).

According to Article 2 of the Social Security Law, the aim of social security in Mexico is “to guarantee health care rights, medical assistance, the protection of livelihood and social services that are essential for individual and collective well-being, as well as the provision of a pension that, where applicable and where legal requirements have been fulfilled, will be guaranteed by the State.”

In general the system is based on an occupational model⁷ and benefits salaried workers and their

families, providing health care services, pensions and some contributory social and economic benefits. But this model does not cover, for example, the unemployed or those working in the informal sector. According to official figures for the first quarter of 2007 (INEGI, 2007, p. 5-6), the unemployed numbered 1.7 million, resulting in an official unemployment rate of 4%, while informal sector workers numbered 11.4 million, equivalent to 26.9% of the economically active population in employment.

Moreover, according to the National Population Council (CONAPO) half of Mexico’s 31.7 million children are not covered by social security.⁸

It is also apparent that with the advance of job market flexibilization, the ratio of temporary workers to permanent workers is increasing, and the former do not receive social security benefits even when they are working in the formal sector. According to the Mexican Social Security Institute (IMSS) 2004 report, jobs with social security coverage frequently pay less than jobs without it, and this encourages workers to choose employment that does not provide IMSS coverage, or informal work, because it pays more than formal employment with social security (CESOP, 2004, p. 28).

In 2006 a total of 58,302,000 people held benefit rights, 47,536,000 through IMSS and 10,766,000 through ISSSTE (INEGI, 2006). According to the National Occupation and Employment Survey 2006, just over a third (35.7%) of the employed economically active population had access to health institutions, while the other 64.3% were without coverage.

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4 Poverty reduction measures taken between 1996 and 2005 have merely re-established the same poverty levels that prevailed prior to the 1995 economic crisis. In 2005, approximately 18% of Mexicans were living in a condition of food poverty and 47% of the population in a condition of ‘patrimonial poverty’ (in which minimum needs for food, education and health can be met but with a per capita income that is not sufficient for the acquisition of minimum requirements in housing, clothing, footwear and transport for each member of the household) (PND, 2007, Central topic: Equality of opportunities. Subject: Overcoming poverty).

5 Mexico has 4,203 hospitals, 1,121 of which are public and 3,082 private. The public sector has an average of 0.74 beds per 1,000 inhabitants, which is less than the figure of

1 bed per 1,000 inhabitants recommended by the World Health Organization (WHO). Mexico has 1.85 doctors per 1,000 inhabitants, which is less than the recommended international average of 3 doctors per 1,000 inhabitants (PND, 2007, Central topic: Equality of opportunities. Subject: Health).

6 Article 123, Section A, sub-section XXIX for workers in general and section B, sub-section XI for state workers.

7 The universal or Beveridge welfare model incorporates citizens’ basic rights to welfare, is characterized by unrestricted access to social services and is financed by taxes. The occupational or Bismarck model corresponds to the distributive principle of social security in which monetary benefits, and in particular pensions, depend on contributions made. (CESOP, 2004, p. 7-8).

8 “Sin seguridad social la mitad de los niños, revela CONAPO”. *El Sol de San Luis*, 30 April 2007. Available from: <www.oem.com.mx/elsoldesanluis/notas/n259630.htm>.

TABLE 1. Summary of the main social security systems in Mexico

System	Type of financing	Legal basis	Involved stakeholders	Benefits covered
Mexican Social Security Institute (IMSS)	Individual contribution with a minimum guaranteed subsidy	IMSS Law	Tripartite: employee, employer and federal government Financial institutions (pension fund administrators)	Sickness and maternity; work-related injuries; disability and life insurance; retirement and old age pensions; child care and social assistance benefits
Public Employees Social Security and Services Institute (ISSSTE)	Individual contribution with a minimum guaranteed subsidy	ISSSTE Law	Tripartite: employee, government department and ISSSTE Pensionists (state administrator) and financial institutions (pension fund administrators)	Health insurance (preventive, curative and maternity medical care, physical and mental rehabilitation); work-related injuries; retirement and old age pensions; disability and life insurance
State companies: Petróleos Mexicanos (PEMEX), Comisión Federal de Electricidad (CFE), Luz y Fuerza del Centro (LFC)	Solidarity scheme	Constitutional law and collective employment contracts	Tripartite: employee, state company and federal government	Sickness and maternity; work-related injuries; disability and life insurance; retirement and old age pensions; child care and social assistance benefits
Health Social Protection System operated through People's Health Insurance (SPS)	Public subsidy and pre-paid by non-beneficiaries of social security institutions	General Health Law	Federal and state governments and non-beneficiaries of social security institutions	Voluntary medical insurance including health care and medicines (limited to the Essential Services Catalogue)

Source: Compiled by authors based on official information.

Of those who did have access, IMSS covered 27.3%, ISSSTE 5.2%, state ISSSTE 1.3%, PEMEX together with the Navy and National Defence Department 0.7%, and others 1.2% (IMSS, 2007, p. 6-7).

To provide coverage for the 57.8% of the total population who are not insured by any social security institution (non-salaried workers, the self-employed and unemployed), People's Health Insurance⁹ was created six years ago and by the second half of 2006 had 15,672,374 affiliates (IMSS, 2007, p. 7). However, the 2006 Alternative Report's chapter on the right to health care¹⁰ condemns it as an instrument that institutionalizes a regression in the right to health care, violates constitutional principles of free and universal health care and follows the trend towards the progressive minimization and commercialization of services provided for the general public.

Regressive pension reform versus international recommendations

The 1999 Alternative Report alerted the UN Economic, Social and Cultural Rights Committee to the legal reforms of 1992 and 1997 that led to the replacement of the solidarity pension system by a system of individual contribution under the administration of finance institutions that charge a commission for account management and earn interest from the investment of pension funds in the stock market. The Committee expressed its concern to the Mexican government about social security system privatization "which could result in those who cannot make contributions to a private pension account being deprived of benefits..." (ECOSOC, 1999, E/C.12/1/Add.41, para. 24). The 2006 Alternative Report also condemned the performance of the Pension Fund Administrators (AFORES) and the pre-

carious situation of IMSS and ISSSTE.¹¹ In response the Committee recommended a number of measures to the government, such as "a thorough evaluation of the modifications to the current pension system involved in the new law governing the Public Employees Social Security and Services Institute, as well as future modifications to other social security systems, in order to guarantee that such modifications do not generate employment insecurity for future pensioners or reduce the value of future pensions thus endangering an appropriate standard of living" (ECOSOC, 2006, E/C.12/MEX/CO/4, para. 35).

The ILO Committee of Experts on the Application of Conventions and Recommendations has recently issued an individual observation for Mexico in relation to Convention 102 on social security,¹² in which it requests from the government, among other things, the texts of the agreements with the private sector for the transfer of responsibility for services, in order to verify their compatibility with the Convention, copies of the inspection reports, and information from supervision bodies indicating the average percentage of commission paid to AFORES. It also notes that the minimum guaranteed pension for 2005 is equivalent to 30.82% of the wage of an ordinary adult labourer, which is considerably less than the minimum percentage prescribed by the Convention (40%), and that consequently the government is expected to adopt the necessary measures to raise the minimum guaranteed pension (CEACR, 2007, Doc. No. (ILOEX) 062007/MEX102). The observation relates to the 1997 IMSS Law reform but it is foreseeable that the Committee will have to pronounce again on Mexico's non-compliance with Convention 102 in connection with the new ISSSTE Law.

A legal analysis¹³ of the 28 March 2007 ISSSTE Law reform concludes that it is a regressive measure when compared with the previous legislation and that it contravenes both the Mexican Constitution and specific provisions of Convention 102 that the Mexican state has an obligation to comply with. Although the new law contemplates several types of insurance and benefits that could be said to fulfil obligations incumbent on Mexico, the truth is that they are regulated in a way that does not include the obligation to provide benefits "for the entire duration" of each contingency. Even worse, this law includes several specific articles that entitle ISSSTE to withhold benefits, either because the department in which an individual is working has not fulfilled its obligation to remit contributions or because of a discretionary management of financial resources that employs a merely financial logic and not the criterion of rights fulfillment (provisions in articles 15, 25, 196 and 198 of the new Law imply a complete lack of security for workers). Furthermore, this law is based on an individual contribution system administered by private institutions, in contravention of the obligation that the social security system be collectively financed, as prescribed by ILO Convention 102.

Hundreds of thousands of public employees have politically mobilized and taken legal action against this reform. Among the legal actions instigated are the following:

- Writs of injunction: According to information from the Supreme Court, between May and July 2007 more than 160,000 legal actions were presented, of which 107,000 were admitted, and it is expected that the Federal Judiciary will protect workers affected and potentially affected by the reform.

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9 See: <www.ssa-sin.gob.mx/SEGURPOPOPULAR/Index.htm>.

10 The Report of Civil Society Organizations on the Situation of Economic, Social, Cultural and Environmental Rights in Mexico (1997-2006) is an alternative report to the 4th Periodic Report of the Mexican State on the Implementation of the ICESCR. Right to Health Care chapter, coordinated by COCOMI, Mexico, April 2006. Available at: <www.equipo pueblo.org.mx> and <www.ohchr.org/english/bodies/cescr/docs/info-ngos/mexico-coalition_En.pdf>.

11 *Ibid.* Right to Social Security chapter, coordinated by Centro de Reflexión y Acción Laboral de Fomento Cultural y Educativo.

12 In 1961 Mexico ratified Convention 102, the following parts of which are obligatory: II (medical care), III (sickness benefit), V (old-age benefit), VI (employment injury benefit) and VIII-X (Maternity benefit, Invalidity benefit and Survivors' benefit).

13 This analysis is based on the claim under article 24 of the ILO Constitution presented by several trade unions and coordinated by Rodrigo Olvera Briceno, Consultoría Especializada en Justicia Social de Derechos Económicos, Sociales y Culturales (CEJUSDEC), Mexico, D.F., 6 June 2007.

Through these policy documents, the government stated its commitment to influencing increased food production on smallholder farms to attain food self-sufficiency through the development and improvement of land access, utilization, enhancement of input and output markets and rural infrastructure. Unfortunately, a great more needs to be done to live up to this commitment. ■

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Platform has serious reservations on this measure and considers that it undermines the rightful focus of ODA, namely tackling poverty. ■

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Challenges

- Demographic change is not the only challenge and may well not be the principal one as the authorities claim. Although fertility and child mortality rates have decreased, while life expectancy has increased, effective measures to address inequality and poverty are still needed along with a review of the social security system administration that is facing problems such as: fragmentation, a lack of integral actuarial assessment, insufficient regulation of private stakeholders (especially financial institutions), tax evasion and a diminishing allocation of budget resources, while fines and surcharges are cancelled for big companies with debts due to non-remittance of employee/employer contributions to IMSS.
- Cuts in the social security and health budget must be prevented to avoid further worsening of the financial crisis facing service institutions, an increased shortage of medicines and equipment and deterioration in the condition of infrastructure and the quality of services.
- It is essential to re-conceptualize social security not only as a work-related benefit but also as a human right applicable to the entire population, in the spirit of ICESCR Article 9.
- While the model continues to be an occupational one, social security can only be guaranteed to the population through policies of full and proper employment that, among other things, widen coverage and guarantee adequate pensions. ■

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It should be noted that in the Maltese context, the allowances given to asylum seekers and rejected asylum seekers could be compared at par or worse to persons living on a 'dollar a day' in a poor country, if they are not aided by charity organizations.

Official development assistance

According to the European Commission (2007, p. 164), Malta spent EUR 7 million (USD 9.68 million) or 0.15% of its GNI on official development assistance (ODA) in 2006. However, questions have been raised on whether the money was actually spent on aid towards the development of poor countries or for other purposes.

CONCORD (2007), an EU non-governmental development organization (NGDO) platform of which the NGDO Platform is a member, criticizes the government of a lack of transparency on where the money goes and to whom. CONCORD stresses that currently Maltese ODA figures include the cancellation of Iraq's debt to Malta, money spent on migrants during their first year in the country, the repatriating of migrants, and a number of scholarships given to people from developing countries. This money is not helping any developing country to develop and thus should not be counted as ODA. CONCORD further criticizes the government for wanting to tie ODA to the acceptance of the repatriation of migrants. The Maltese NGDO

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- Claims by trade union organizations presented to the ILO Administrative Council based on violations of Convention 102: 10 claims have been presented and are awaiting admission.
- Complaints by trade union organizations presented to the ILO Freedom of Association Committee based on violations of Convention 98 on the right to organize and bargain collectively: 10 complaints have been presented, admitted and combined in case 2577.¹⁴

If this type of reform is implemented in the rest of the system (in state companies, for example), the Mexican state will continue to contravene its national and international obligations in respect of the right to social security, and people will be compelled to resort to resistance strategies and extraordinary national and international legal mechanisms.

¹⁴ Further information available from: <www.ilo.org>.