

Extending social protection by anchoring rights in law



International
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Brazil

The adoption of the 1988 constitution marked a landmark in the history of the Brazilian social security system by introducing a universal social security model grounded in citizenship rights. The Constitution sets out the State's responsibility in organizing and legislating social security. This should be done according to principles of universality of protection, adequacy of benefits and with the objective of ensuring the uniformity and equivalence of benefits and services for urban and rural populations. In the last few decades, Brazil has taken bold steps to build and maintain a comprehensive social protection system that reinforces basic social rights. Of notable example is the legislation of programmes to assist families in overcoming hunger and poverty.

The international social security legal framework

ILO's normative framework provides guidance to countries for realizing the human right to social security. It is composed of a rich body of standards, including ILO's landmark Social Security (Minimum Standards) Convention, 1952 (No. 102), and the Social Protection Floors Recommendation, 2012 (No. 202). These standards guide the development of comprehensive national social protection systems following a life-cycle approach.

Evidence shows that the law can serve to clarify individual rights and obligations, enhance the predictability and adequacy of benefits, strengthen institutional capacities, promote transparency and accountability, provide safeguards against corruption and establish a stable and regular funding base.

This note presents a successful country experience of extending social protection by anchoring the right to social security in law.



Main lessons learned

- Brazil's experience shows that the constitution can play a pivotal role in establishing comprehensive social protection when it sets out the right to social security, the architecture of the social security system and a benchmark for the level of contributory benefits.
- Law is an essential tool for securing social protection entitlements and extending social protection coverage.
- By establishing legal entitlements and making rights enforceable, the law can shape the human right to social security.
- Social security systems grounded in law contribute to sustainable development and poverty reduction beyond the initiative of a single government.

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1. The right to social protection in the Brazilian constitution

Brazil's social protection system finds its legal foundation in the 1988 constitution, which is recognized for its extensive inclusion of social rights, including the right to social security. "Education, health, nutrition, labour, housing, leisure, security, social security, protection of motherhood and childhood" are guaranteed as social constitutional rights (article 6). In addition, the constitution paves the way for the development of a comprehensive social protection system by setting out the elements that make up the architecture of the system and by laying down guiding principles. It is the Government's constitutional obligation to establish the social security system by law along three pillars: health, social insurance, and social assistance (article 194). These pillars should be developed according to the objectives of universality, equivalence of benefits between urban and rural population, irreducibility of benefit amounts and diversity of methods and approaches, including of financing mechanisms (article 194). The constitution calls for the coverage of the population against the risks faced throughout the life cycle for both contributory and non-contributory schemes (articles 201, 203).

2. Legal architecture of the Brazilian social protection system

A. Access to health care

Built upon Articles 196-200 of its federal constitution, Brazil introduced the National Health System (Sistema Único de Saúde (SUS)) 25 years ago by adopting the Organic Health Law in 1990 (No. 8.080) with a view to reach universal health coverage and therefore give effect to the constitutional right to health.

The system is tax financed and provides medical services directly to patients in rural and urban areas including: general, specialist, maternity and dental care; hospitalization; medicine; and necessary transportation. It is accompanied by the Farmácia Popular programme established by Law 10.858 in 2004, which provides 112 medicines for common illnesses for free (e.g. diabetes and hypertension,

among others) and another 11 with some cost sharing. The Ministry of Health ensures overall supervision of the SUS. The implementation of the health system has led to a significant drop in child mortality (according to the World Bank, 57.6 per cent from 1990 to 2008), leading the Ministry of Health to say that they had achieved the Millennium Development Goals for infant and child mortality before the 2015 target. However, despite the existence of a national tax-financed health system, a large part of health expenditures is still out-of-pocket (according to WHO, nearly 31 per cent in 2011).

B. Social protection for children and families

As part of the social assistance pillar set out in the constitution and the Organic Social Assistance Law 8742 of 1993, the Bolsa Família programme is the most significant income transfer programme in Brazil. It is aimed at reducing inequalities and breaking the inter-generational transmission of poverty, in particular among poor and extremely poor families, by promoting access to health, education and other welfare public services. Launched in 2003 by means of Provisional Measure 132, it was institutionalized when converted into Law 10.836 in 2004 at the same time as the establishment of the Ministry of Social Development and Hunger Eradication (MDS). This was the first of many legal instruments that were adopted in support of the formal organization of Bolsa Família, including Decree No. 5.209 that regulates Law 10.836. As part of its parameters, Law 10.836 establishes eligibility criteria, the benefit value, payment procedures and qualifying conditions. In addition, it sets out the delivery mechanism as well as enforcement provisions, including sanctions in case of fraud. Details regarding the targeting process and the level and payment of benefits are provided by Decree No. 5.209. While the Bolsa Família covered approximately 3.6 million families at its creation in 2003, in 2015 it reached nearly 14 million households in all municipalities (48 million persons), representing about one quarter of Brazil's population (MDS). Its cost is estimated at only 0.5 per cent of GDP (MDS).

In 2011, the Brasil sem Miséria (Brazil without Extreme Poverty) was launched following the adoption of Decree No. 7.492. It widens and deepens

the focus of Bolsa Família by providing a cash transfer to large families and to pregnant women, as well as introducing an additional income guarantee known as the poverty Superation Benefit. In addition, the programme promotes improved coordination with other non-contributory programs. The Brazil sem Miséria has a multilayer approach that also includes employment support benefits.

In line with Brazil's constitution, the scheme for private sector employees also provides family benefits to low-income employees with one or more children younger than 14 years of age according to Law 8.213 of 1991 regarding the General scheme. Since 2015, benefits were also extended to domestic workers and the self-employed. Benefits are provided to one or both parents so long as they are in insured employment or receiving a sickness benefit. Benefits are conditional on vaccination certificates and school attendance. The allowances are paid directly by the employers and reimbursed by the National Social Security Institute. Benefits are adjusted annually according to changes in the consumer price index.

C. Social protection for women and men of working age

Although Bolsa Família primarily targets families with children, it should be noted that families in extreme poverty may qualify even if they do not have children. Alongside enhancing access to public services, such as health, social assistance, food security, education and housing, the Brazil sem Miséria also promotes social inclusion through facilitating labour market integration, providing training and fostering smallholder agriculture, among other initiatives. By 2014, this programme met its goal of lifting 16 million people out of extreme poverty and is currently in its second phase.

Brazil's contributory scheme provides sickness and maternity benefits, work injury benefits as well as disability and survivors' benefits to private sector employees and civil servants, including rural workers, domestic workers, some categories of casual workers and self-employed persons. The federal constitution established the contributory benefit programmes, in particular article 40 (public servant schemes) and article 201 (General Regime for the private sector).

The particular details of the benefits are provided through Law 8.212 and Law 8.213 on social security. In addition, Law No. 7.998 of 1990 regulates unemployment insurance for persons employed in the formal private sector, but also other categories of workers, such as household workers and fishermen. Self-employed persons, however, are not covered. Law 9.717 sets out the entitlements and parameters concerning public servants.

An interesting feature of Brazil's social insurance system is its rural social insurance model given the extent of the country's agricultural sector (employing 18 million people, according to the FAO). This hybrid scheme, contributory in nature but significantly subsidized by the Government since its inception in the early 1970s, aims at addressing the unique needs of the rural sector. In line with the principle of equivalence set out in the constitution, the rural social insurance scheme, established by Laws Nos. 8.212 and 8.213 following the amendments introduced by Law 11.718 in 2008, provides disability and survivors' pensions, as well as maternity, work injury and sickness benefits. The scheme covers three situations: 1) wage earners of large rural farms; 2) self-employed farmers that meet the criteria for small peasants; and 3) small peasants who work with family members on a plot of land smaller than 4 fiscal modules. Where necessary, contributions are based on the percentage of sold production.

D. Social protection for older women and men

In accordance with article 203 of the federal constitution, the Continued Social Assistance Benefit (Benefício de Prestação Continuada or BPC) is a non-contributory scheme that provides a cash amount equivalent to the minimum wage for the elderly living in extreme poverty. The BPC therefore benefits from a constitutional legal status. The BPC is further legislated by Law No. 8742.

In line with the constitution (articles 201 and 202), the old-age contributory pension system is composed of three pillars: the General Social Security pay-as-you-go mandatory scheme for private sector employees legislated by Laws No. 8212 and 8213; a Pension Regime for Government Workers set out in Law 9.717; and a supplementary private pension

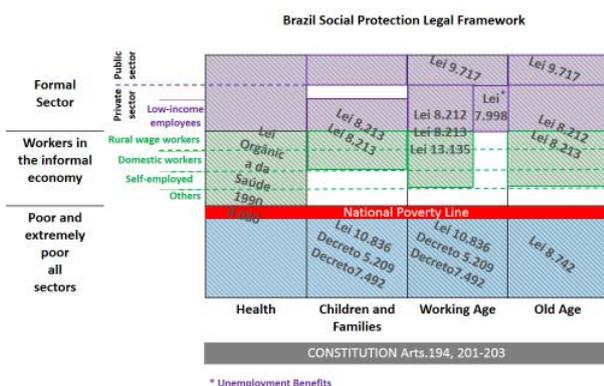
system. As part of the first two pillars, salaried workers in industry, commerce and agriculture, as well as rural, domestic and casual workers, elected civil servants and self-employed persons are covered in case of survival beyond the age of 65 (men), 60 (women, male rural workers and civil servants) or 55 (female rural workers and civil servants).

The constitution details certain parameters in article 202 that govern the private pension supplementary system, including its voluntary nature, right to information and the need to be regulated by law. Complementary Laws No. 108 and 109 regulate the general rules and those regarding the state-run pension funds, respectively.

Following a reform in 2013, persons with disabilities are now covered through a new legal retirement scheme that responds to their special needs in line with the constitution and the UN Convention on the Rights of Persons with Disabilities.

3. Towards a comprehensive social protection legal framework based on international social security standards

Brazil is moving towards developing a comprehensive legally entrenched system providing protection throughout the life cycle. This is done by providing four basic social security guarantees that form the social protection floor set out in Recommendation No. 202, as well as higher levels protection set out in other ILO social security instruments.



Access to health services are granted through a universal health-care scheme. Income security for families with children is ensured through contributory family benefits, the non-contributory Bolsa Família cash transfers and the Brasil sem

Miséria programme. Income security for persons of working age is also guaranteed through contributory unemployment, maternity, sickness, employment injury, invalidity and survivors' benefits along with measures aimed at facilitating labour market integration, including through non-contributory schemes. Families in extreme poverty also qualify for Bolsa Família even if they do not have children. Finally, both contributory and non-contributory schemes provide older persons with income security.

Among the 96 ILO Conventions ratified as of 2015, Brazil is one of seven countries to have accepted all nine branches of the Social Security (Minimum Standards) Convention, 1952 (No. 102), in June 2009. It is also one of eight countries to have ratified the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), in 1993, and is a State party to the Maternity Protection Convention, 1952 (No. 103), since 1965, and the Equality of treatment (Social Security) Convention, 1962 (No. 118), since 1969. The ratification of these Conventions is known to promote, solidify and sustain social protection rights.

The comprehensive and legally anchored Brazilian social security architecture has been commended for its efforts in extending social protection according to ILO standards, including Recommendation No.202, notably by the supervisory body charged with monitoring ILO social security instruments.

The development and successful implementation of Brazil's comprehensive legal framework is furthered by the distinct prominence and culture of social dialogue around social protection. For example, a quadripartite (government, workers, employers and pensioners) National Social Protection Council was established by Law 8.213 and meets monthly to discuss, deliberate on and publish about relevant issues. Coupled with the extensiveness of detailed social protection provisions in the constitution, Brazil has paved the way for ensuring the extension of social protection through a comprehensive legal and institutional framework in line with the principles of universality of protection and coherence with social and employment policies as established by ILO instruments and other UN Conventions.

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