

**El derecho a la seguridad social como un derecho humano  
de las comunidades indígenas de Xochiatipan, Hidalgo,  
México**

*The Right to Social Security as a Human Right of Indigenous Communities of  
Xochiatipan, Hidalgo, Mexico*

*O direito à seguridade social como um direito humano das comunidades  
indígenas de Xochiatipan, Hidalgo, México*

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**Resumen**

El presente estudio consistió en indagar si la población indígena del municipio de Xochiatipan, Hidalgo, tiene acceso y pleno uso del derecho a la seguridad social, incluso como un derecho humano, ya que en la actualidad en México este y otros derechos sociales se han transformado a tal grado que se han clasificado como derechos humanos.

Por tal motivo se recabó información a partir de una muestra: en total 273 encuestas, conformadas por una batería de preguntas sobre pobreza, pobreza alimentaria y relacionadas al derecho a la seguridad social, fueron aplicadas a miembros de siete comunidades de dicho municipio. Específicamente con el objetivo de conocer quiénes de los participantes cotizaban ya sea en el Instituto de Mexicano del Seguro Social (IMSS), en el Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado (Issste), en el Instituto de Seguridad Social para las Fuerzas Armadas Mexicanas (Issfam), en el Hospital de Petróleos de Mexicanos (Pemex) u otra institución pública o privada, gracias a lo cual tuvieran la posibilidad de contar con pensión, jubilación, derecho a adquirir vivienda o servicios de salud.

En el análisis de los resultados estadísticos se obtuvieron frecuencias a partir de las preguntas. En cuanto a la pregunta de a qué se dedican: 40 % respondió que son jornaleros, 35 % que son albañiles y 25 % que ayudantes de albañil. Mientras que del cuestionamiento sobre si acuden a alguna de las instituciones antes mencionadas, se extrae que el derecho a la seguridad social no es ejercido por la totalidad de los encuestados. Por extensión, al no cotizar en dichas instituciones, ninguno cuenta con pensión o jubilación. En suma, estos grupos indígenas viven en un estado de indefensión, así como descobijados por el Gobierno mexicano, con todo lo cual se violentan los derechos humanos consagrados en nuestra máxima ley.

Como conclusión se propone una iniciativa de ley dirigida a la Cámara de Diputados Federal para que reconozca que todo trabajo productivo realizado por las comunidades indígenas aquí representadas cotice, pague los impuestos correspondientes y, con ello, se pueda acceder a una seguridad social amplia.

**Palabras clave:** derechos humanos, derechos sociales, población indígena.

### **Abstract**

The present study consisted of analyzing if the indigenous population of Xochiatipan, Hidalgo, has access to the right to social security, since currently in Mexico this and other social rights have been transformed to such a degree that they have been classified as human rights.

For this reason information was gathered from a sample of the entire population: 273 surveys, integrated by a battery of questions on poverty, food poverty and questions regarding the right to social security, were applied to members of seven communities of the municipality above mentioned. Specifically with the objective of knowing which of the participants were listed either in the Instituto Mexicano de Seguridad Social (IMSS), in the Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado (ISSSTE), in the Instituto de Seguridad Social para las Fuerzas Armadas Mexicanas (ISSFAM), in the Hospital de Petróleos de Mexicanos (PEMEX) or in another public or private institution, thanks to which they had the possibility of having pension, retirement, right to acquire housing or health services.

In the analysis of the statistical results, frequencies were obtained from the questions. Regarding the question of what they do: 40% answered that they are day laborers, 35% are bricklayers and 25% are bricklayers' helpers. While from the question of whether they go to any of the aforementioned institutions, it is extracted that the right to social security is not exercised by all respondents. By extension, when not quoting in said institutions, none has a pension or retirement. In short, these indigenous groups live in a state of defenselessness, as well as uncovered by the Mexican Government, with all of which the human rights enshrined in our highest law are violated.

In conclusion, a bill is proposed to the Federal Chamber of Deputies to recognize that all productive work carried out by the indigenous communities represented here, pay the corresponding taxes and, thus, access to a broad social security.

**Keywords:** human rights, social rights, indigenous population.

## Resumo

O presente estudo consistiu em investigar se a população indígena do município de Xochiatipan, Hidalgo, tem acesso e pleno uso do direito à previdência social, inclusive como direito humano, uma vez que atualmente no México este e outros direitos sociais têm se transformado a tal ponto que eles foram classificados como direitos humanos.

Por essa razão, foram coletadas informações de uma amostra: um total de 273 pesquisas, consistindo em uma bateria de perguntas sobre pobreza, pobreza alimentar e relacionadas ao direito à seguridade social, foram aplicadas a membros de sete comunidades daquele município. Especificamente com o objetivo de saber quais dos participantes foram listados ou no Instituto Mexicano de Seguridade Social (IMSS), no Instituto de Segurança e Serviços Sociais dos Trabalhadores do Estado (Issste), no Instituto de Segurança Social para o Forças Armadas Mexicanas (Issfam), no Hospital de Petróleos de Mexicanos (Pemex) ou outra instituição pública ou privada, graças à qual poderiam ter pensão, aposentadoria, direito de comprar moradia ou serviços de saúde.

Na análise dos resultados estatísticos, as frequências foram obtidas a partir das questões. Quanto à questão do que fazem: 40% responderam que são diaristas, 35% são pedreiros e 25% são ajudantes de pedreiros. Enquanto a questão é se eles vão para qualquer uma das

instituições mencionadas acima, é extraído que o direito à seguridade social não é exercido por todos os entrevistados. Por extensão, quando não cita nas referidas instituições, nenhuma tem pensão ou aposentadoria. Em suma, esses grupos indígenas vivem em estado de indefeso, assim como são descobertos pelo governo mexicano, com todos os quais os direitos humanos consagrados em nossa mais alta lei são violados.

Em conclusão, um projeto de lei é proposto para a Câmara dos Deputados Federal para reconhecer que todo o trabalho produtivo realizado pelas comunidades indígenas aqui representadas, pagar os impostos correspondentes e, assim, o acesso a uma ampla segurança social.

**Palavras-chave:** direitos humanos, direitos sociais, população indígena.

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## Introduction

Currently in Mexico, the right to social security has been transformed. Although years ago it was considered a social right, nowadays it is qualified as a human right. In this way it is contemplated in the Mexican Constitution, as well as in international treaties, taking into account that in recent years human rights have become universally valid principles and have become relevant to the extent of being considered an indispensable part of the human rights establishment and strengthening of any State.

Human rights are the set of prerogatives inherent in the nature of the person by the mere fact of being, whose effective realization is essential for the integral development of the individual living in a legally organized society. These rights, established in the Constitution and laws, as in international treaties, must be recognized and guaranteed by the State.

Doing a bit of history it is possible to observe how the indigenous communities of Mexico have been marginalized in terms of being recognized since the official constitutions. In the case of the first Constitution of 1824, our original peoples are not included in it, with the exception of the only mention registered in article 50, section XI: the General Congress of that time stipulates that it will have the faculties to arrange trade

with the nations foreign, between the different states of the federation and tribes of Indians (Carbajal, 2012, p.468). In the second official Constitution, that of 1857 (Ferrer and López, 2018), although there are contents regarding the rights of man and the citizen, subtracted from the American and French constitutions, the rights of indigenous groups are not reflected, much less the guarantee of social security as a fundamental right (Ferrajoli, 2015). Finally, in the Mexican Constitution of 1917, third and current, the guarantees already described are not observed either; it is only after the reform published in the Official Gazette of the Federation (DOF) on August 14, 2001 that these rights are constitutionally set forth (Federal Executive, August 14, 2001).

Taking into account all of the above, this work offers a historical and current panorama of the social security situation in Mexico, particularly in the indigenous communities of the state of Hidalgo. And to meet this goal the database of the National Council for the Evaluation of Social Development Policy [Coneval] (2014) was used, which includes 216 250 cases nationwide and 6868 cases for the Hidalgo state.

Thus, from a historical perspective, the changes and challenges that social security has involved in Mexico are shown. It should be noted that the state of Hidalgo was analyzed as the seventh entity that presented the most extreme poverty in the country, in addition to having a low level of social security protection in almost all of its municipalities; and in specific Xochiatipan for being one of its poorest municipalities (Coneval, 2014).

The above was carried out based on the application of 273 surveys integrated by a series of questions on poverty and food poverty, as well as questioning in relation to the right to social security; From an exploratory descriptive approach, and using a quantitative method for its analysis through the following questions: To greater poverty less use of social security rights by indigenous groups in this region? Is there a violation of human rights by Do not count on the guarantee of social security by the State towards these vulnerable groups?

Issues that from this study were deepened in the analysis of such statistical data, applied surveys and from the formation of focus groups to know the point of view of the current situation of the social actors of the communities addressed, based on the

aforementioned methodology , all of which helped to collect experiences, perceptions, proposals from the residents themselves.

The institutionalization of social security

The emergence of liberalism in the Middle Ages resulted in the individual acquiring natural and individual rights, limiting the State to perceive and respect them. The father of this doctrine, John Locke, proclaims it in the following way: "So once man is the center and cause of all reality, then he is on the threshold of the incessant search for wealth and individual accumulation" (García, 2013, p.17).

While regarding social security, the National Commission of Human Rights (CNDH) presents the following vision:

"The State must take actions to provide medical services, economic protection due to illness, maternity, work accidents, unemployment, disability or old age, for example when a person suffers an accident at work or is fired from it, should receive financial support that allows you to solve your needs; in the case of older adults, to receive the protection of the State through what is commonly called pension" (Informa anual CNDH, 2019, p. 35).

The concept of social protection, for its part, has its origin with the emergence of the capitalist model, and specifically when, in the mid-twentieth century, the nation states of the old continent resort to the granting of certain privileges to the working class. A clear example of this is demonstrated in the German State. It is above all a state responsibility championed by European social democratic parties to guarantee labor rights (Valverde, 215).

In Mexico, unlike what happened in the European cases mentioned above, with the scant possibility of consolidating a welfare state, it was led towards the adoption of a neoliberal State with little social participation, but with extensive intervention in the creation of a structural reforms, as has been the Federal Labor Law, and thereby decreased its intervention in relation to the protection of labor rights towards the worker.

Even the first social security laws did not begin to emerge until the beginning of the 20th century. There are few relative antecedents that refer to issues of work accidents or to the provision of hygienic measures. The first labor accident laws emerged in the states of Nuevo León and Estado de México. These laws presented a concern for these issues from a civil responsibility perspective, without a social sense, much less from the aspect of labor law (García, 2014).

Subsequently, in the plans made by the different revolutionary and post-revolutionary groups, there was a central concern about the problem of social security. Even the Program of the Liberal Party of 1906 indicated in point 25 that the owners of mines, factories or workshops were obliged to maintain the best conditions of hygiene and safety. In point 27, employers were required to pay compensation for accidents at work, but there were no clauses that preserves the future of workers based on needs arising from work risks such as life or accident insurance.

In the Convention of the Anti-reelectionist Party, the party that promoted the candidacy of Francisco I. Madero, he came to propose a law to ensure pensions for workers who were mutilated in industry, in mines or in agriculture, or to pension their families when these lost their lives in the service of some company (García, 1969).

Later, in the Congress of the Union, in 1913, under the presidency of Victoriano Huerta, the deputies "renovators" José Natividad Macías, Luis M. Rojas, Alfonso Cravioto, Miguel Alardín, Francisco Ortiz Rubio, Guertzayn Ugarte, Jesús Urueta and Felix F. Palavicini presented the first draft of the Labor Law that, among other problems, raised the creation of Social Security (García, 1962).

In the session of the Constituent Congress of January 13, 1917, the commission integrated by Pastor Rouaix, Victorio E. Gongora, Esteban B. Calderon, Luis Manuel Rojas, Dionisio Zavala, Rafael de los Rios, Silvestre Dorador and Jesus de la Torre presented a project whose motive statement referred to the following:

The organization of charitable institutions and social welfare institutions to assist the sick, help the disabled, help the elderly, protect abandoned children, help this large army of involuntarily unemployed workers who are an imminent danger to public safety (García, 1962, p. 18).

The reform of 1929 modified article 123, fraction XXIX, of the Political Constitution of the United Mexican States with the objective of federalizing labor standards and establishing the issuance of laws related to insurance for cases of illness and old age (García, 2014).

The project of the first Social Security Law happened in March 1941, through the establishment of a special commission to prepare the preliminary draft. It would be on April 5, 1943, when the then President Manuel Avila Camacho decreed the establishment of Social Security. The creation of the Mexican Institute of Social Security (IMSS) marked great stages in the development and scope of the country's social policies. Following Garcia (2014), these stages are the following:

- Institutionalized social security. This first stage comprises the period of 1943-1981. It arises with the creation of the IMSS and is characterized by its large expansion aimed at youth and the absence of a considerable number of pensioners. This allowed to have financial surpluses to invest them in public infrastructure.
- Financial crisis of social security. It starts in 1982 and ends in 1994. This stage is characterized by the decrease of resources due to the fact that those that were taken from the different reserves were not replaced to create and improve the infrastructure. During this period there was insufficiency in the contributions of general diseases and maternity, as a result of the economic crisis, inflation, unemployment, devaluation, as well as the evasion of quotas.
- New Social Security Law. The third stage began in 1995 with the foundation and diagnosis of a new Social Security Law. It is argued that the amount of resources received by the IMSS to address general diseases and maternity are insufficient, in addition to that it is required to increase contributions by 25% in order to provide quality services. The new law modified the pension system that consists of



transferring the contributions of workers to the Savings System for the Retirement of Individual Accounts (SAR).

In 1943, the pension system attributed pension rights to citizens over 60 or 65 years of age. These ages were based on data that emphasized that the average life of Mexicans was of the order of 53 years. Currently, the life expectancy of Mexicans is 75 years on average (National Institute of Statistics and Geography [Inegi], 2017).

The current Social Security Law aims to promote health, hygiene education, maternal-child, health and first aid; the improvement of food and housing, the impulse to develop cultural and sports activities "and in general of all those tending to achieve a better occupation of free time"; the regularization of the marital status, technical training courses and training for work, vacation and rehabilitation centers for work, overcoming life in the home and establishment and administration of wakes (Health Law, 2017, Article 210). The Law of 1973 was conceived in favor of the population of deep rural, suburban and urban marginalization.

Through the reform, it was intended to close the changes to the Retirement and Pension Plan that is part of the Collective Labor Agreement (CCT) signed between the IMSS and the National Union of Social Security Workers (SNTSS), particularly for newly hired workers. from the clairvoyance of the reform.

### **The social security reform of the IMSS**

Although the last law is from 1995, it came into force only in 1997. In fact it gives the impression that the adjustments made to the regulations due to the appearance of SAR, especially in the internal regime of the IMSS, were not enough. The presence in the general direction of Santiago Levy, with extensive experience in the world of finance, also explains that particularly organic adjustments have been made with the spirit, so it seems at least that the structure of the IMSS could respond better to a situation that was not exactly good.

The law was published in the DOF on December 20, 2001. The reform includes a significant number of modifications, namely: determination of the base salary of contribution, which includes tips in case of being agreed between workers and the Pattern; definition of balances against and in favor of employers through identification cards with

the option of administrative clarification; suppression of the possibility of reviewing the degree of disability and the amounts of pensions after two years of their granting, also eliminating the provision that allowed the distribution of the widow's pension between different concubines; limitation of collaboration agreements in medical services that can exclusively be held with public bodies, and conservation of rights in the insurance of diseases and maternity for eight weeks after the withdrawal.

It also establishes the electronic formation of the clinical file; privatization, especially health insurance for the family in such a way that instead of quoting as a group, the price considers the age of each member of the family; determination of emoluments and benefits in favor of the directors and commissioners of workers and employers, at the proposal of the general director, which subjects the workers of confidence "A" of the IMSS (classification derived from the CCT) to an external regulation that will be issued by the Federal Executive at the proposal of the Technical Council; precision of the way to establish the employer situation in such a way that if the partners or shareholders of the substitute employer are mostly the same as the replaced one, it will be an indispensable condition that it is the same business line; reiteration of the optional nature of the appeal of disagreement in a precise manner that disputes between the IMSS and employers must be processed in the Federal Court of Fiscal and Administrative Justice and increase of unemployment pensions in old age and old age that may not be less than the salary minimum in Mexico City.

The declaration of human rights recognizes social security as a human right of each person. According to Article 22 of the United Nations (UN), in the area of social security, it is stated that everyone has the right to social security and to obtain the satisfaction of economic, social and cultural rights indispensable to their dignity and to the free development of his personality.

For Guastini (2001), the expression human rights can be used in two different doctrinal contexts. According to this author, human rights should be understood with a much broader spectrum than fundamental rights, since all human rights can not be fundamental, however, every fundamental right is a human right, this is because the characteristics that count the last ones (Guastini, 2001). These characteristics are:

- a) They are universal because they correspond to all people without exception.
- b) Interdependent since all human rights are linked and require their reciprocal respect and protection.
- c) Indivisible since you can not fragment their respect.
- d) Progressive because of the State that has the obligation to seek compliance.

In addition to the above, and as indicated by Carbonell (2014), human rights are a broader category and, in practice, are often used with less legal rigor than fundamental rights. Many times reference is made to human rights as expectations that are not clearly foreseen in any legal norm, with the aim of claiming what some people may think is an improper action by the authorities

In such a way that the right to social security is a matter of national security in Mexico, because of the importance it has in its inhabitants, and with that, this protection is provided to the vital needs of a population to fight poverty, as well as to improve actions in terms of health, disability, unemployment; all for the benefit of Mexican families, and from institutions that support this social security, such as the aforementioned IMSS, the Institute of Security and Social Service for State Workers (ISSSTE) and the National Institute for Housing Development of the Workers (Infonavit).

As can be inferred from the aforementioned, in Mexico the public social security system consists mainly of two institutions: IMSS and ISSSTE, created in 1942 and 1960, respectively. Its financing comes from Branch 19, from the Expenditure Budget, in order to fulfill its obligations: the pensions in course of payment of the IMSS, the statutory fees to the IMSS insurance lines, the contributions to the Fund Administrators for the Retirement (Afores) and resources to cover the deficit of the Issste pension payroll (Centro de Estudios Sociales y de Opinión Pública [CESOP], 2004).

## Results and Discussion

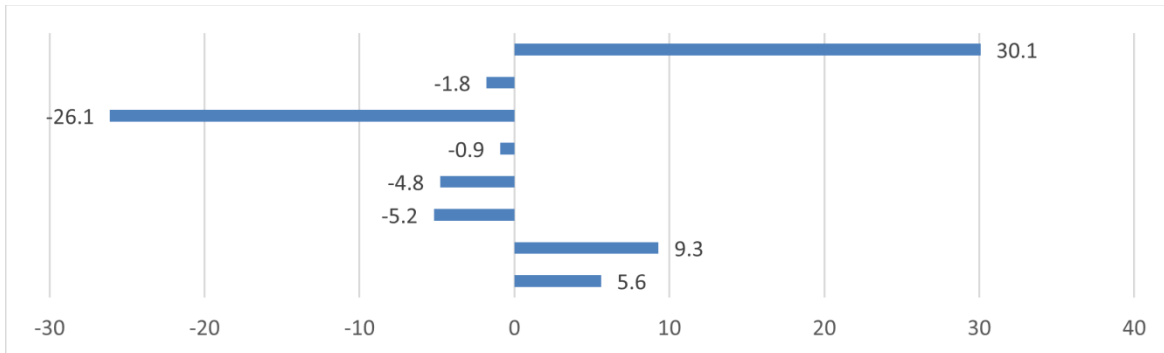
Based on statistical data from both Coneval and Inegi, the quantitative method is proposed, based on a non-probabilistic sample, with a type of documentary and field research with the application of 273 surveys integrated by a series of questions on poverty, poverty food and questions related to the right to social security, from an exploratory descriptive approach.

Poverty in the state of Hidalgo has grown in recent years, mainly on the issue of access to food and income less than the minimum welfare line. During the period 2012-2014, the number of people who had a lack of access to food increased slightly more than 209,000 people, while the number of people with income below the minimum welfare line, during the same period, increased to almost 144,000 people (Coneval, 2015).

The above, in percentage terms, would mean that almost a third of the population has a lack of access to food (30.1%) and approximately one tenth of the population (9.3%) has a shortfall in income that is less than the line of minimum welfare. The data indicate, on the other hand, that poverty decreased, in the aforementioned period, in the quality and spaces of housing (26.1%), as well as in educational lag (5.2%), access to health services (4.8 %), access to basic housing services (1.8%) and access to social security (0.9%). However, despite these advances in the fight against poverty, this increased in the entity by 5.6% (Coneval, 2015) (see figure 2).

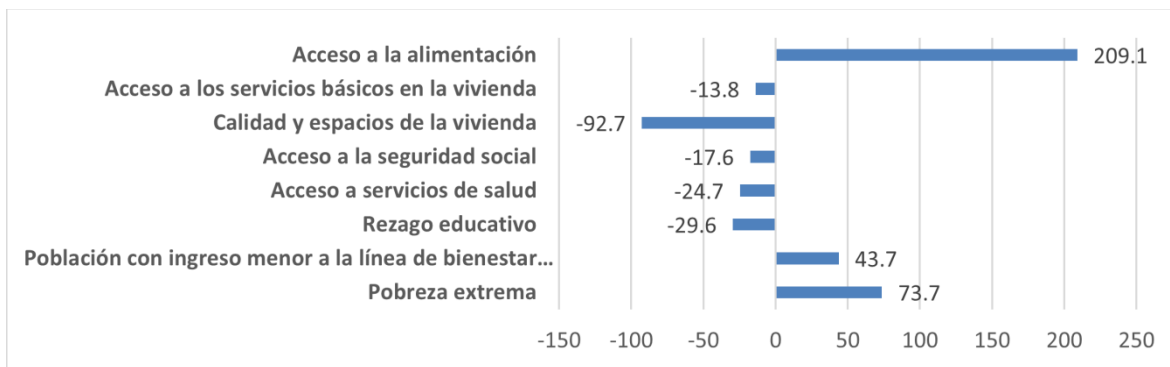
The figures of poverty and extreme poverty in the state of Hidalgo "coincide" in all its dimensions, with the exception of people with less income than the minimum welfare line. This dimension grew by 6.6% to locate Hidalgo with 26.6% of the population in a situation of extreme poverty (see Figures 1 and 2).

**Figura 1.** Variación porcentual del número de personas en pobreza, Hidalgo, 2012-2014



Fuente: Coneval (2015)

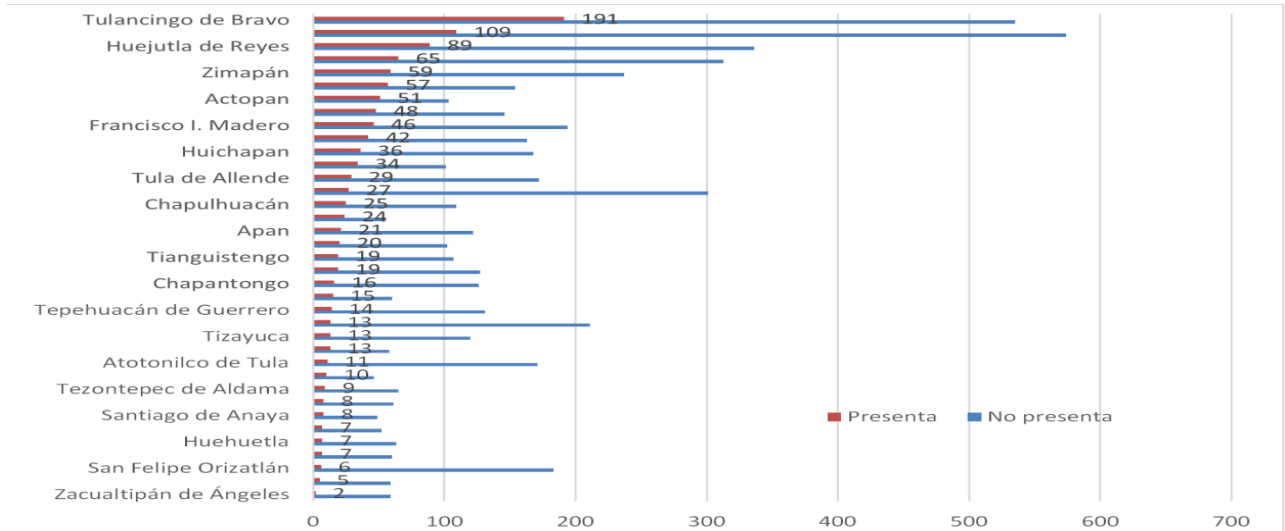
**Figura 2.** Cambio en el número de personas en pobreza extrema, Hidalgo, 2012-2014  
(miles de personas)



Fuente: Coneval (2015)

From a sample of 6868 people, the Coneval (2014) indicates that the municipalities with the largest number of people who lack access to social security in the state of Hidalgo are Tulancingo de Bravo (191), Pachuca de Soto (109), Huejutla de Reyes (89), Mineral de la Reforma (65) and Zimapán (59); It is noteworthy to mention that the last municipality surveyed does not appear within the councils with the greatest lack of social security, given the number of people living there (see figure 3).

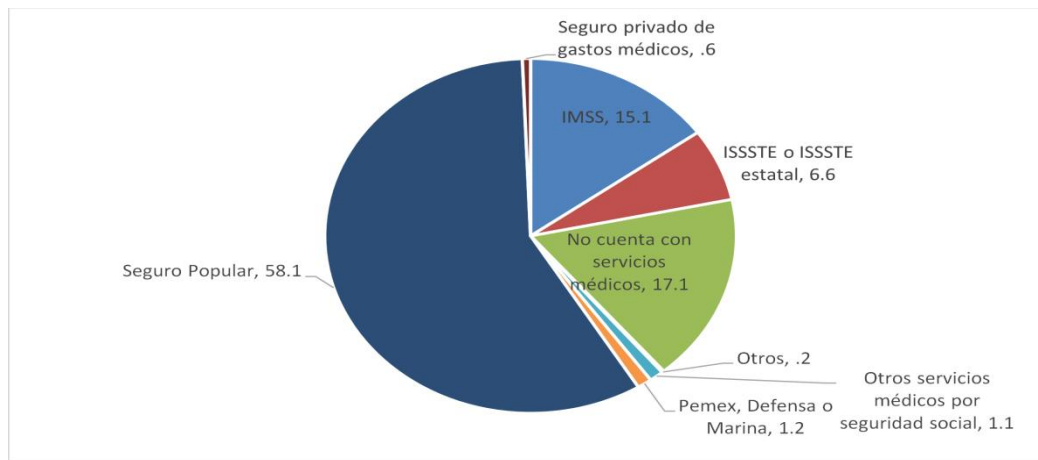
**Figura 3.** Número de personas que presentan carencia de acceso a la seguridad social, Hidalgo, 2014



Fuente: Elaboración propia con base en Coneval (2014)

Another key indicator of social security is the health service available to the population of the state of Hidalgo. Figure 4 shows that almost 6 out of 10 people are enrolled in the popular insurance. In this regard, 15.1% of the population belongs to the IMSS and 10.0% of the population has access to other health institutions: ISSSTE, Petróleos de México (Pemex), Defense, Marina, etc. It highlights the fact that 17.1% of the population does not have any type of access to health services.

**Figura 4.** Acceso de servicios de salud en el estado de Hidalgo, 2014



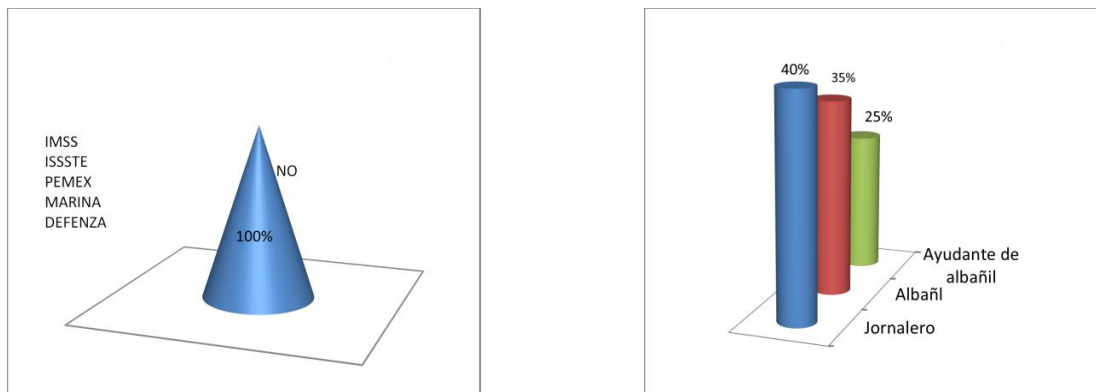
Fuente: Elaboración propia en base a Coneval (2014)

According to the definition of Coneval (June 16, 2010), the lack of access to social security indicator is made up of the members of each household, who enjoy the benefits of having contributed to an institution during their working life . This indicator also includes the kinship networks defined by the Social Security Law and the pension programs for the population aged 65 and over. It also includes those people who have SAR or Afore, enjoy a retirement or pension.

In general terms, direct social security in the state of Hidalgo is precarious. From a sample of 6868 cases, it was found that only 5 municipalities have the largest number of people with direct access to social security: Pachuca de Soto (142), Mineral de la Reforma (94), Tulancingo de Bravo (66), Tula de Allende (60) and Huejutla de Reyes (55). In percentage terms, with the exception of the city of Pachuca de Soto and Tula de Allende, less than a quarter of the inhabitants of the Hidalgo councils have direct access to social security. From the sample obtained, the inhabitants of the mentioned state have direct social security in 26.24% in Pachuca de Soto; 33.10% in Mineral de la Reforma; 10.0% in Tulancingo de Bravo; 42.55% in Tula de Allende, and 14.86% in Huejutla de Reyes.

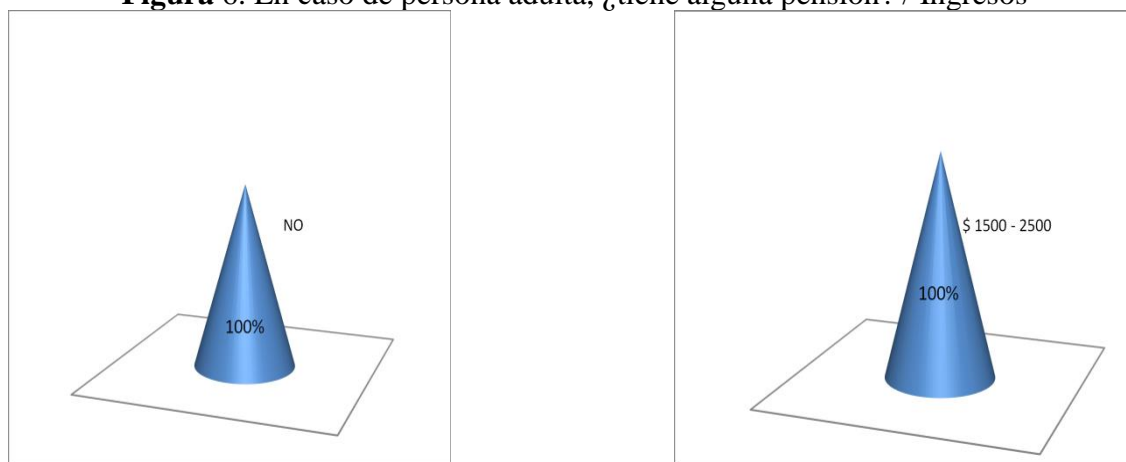
Although this contrasts with the research carried out, given that they are rights to social development embodied in national laws and human rights at the international level, in practice, and according to our research, they are not carried out in these communities, as well You can see them in the following graphs.

**Figura 5.** ¿Tiene acceso a seguridad social? / Ocupación



Fuente: Elaboración propia

**Figura 6.** En caso de persona adulta, ¿tiene alguna pensión? / Ingresos



Fuente: Elaboración propia

## Conclusions

The historical panorama in our country has shown that social security faces the issue of pensions and retirement in a chaotic way, practically on the verge of collapse. Although the reforms in this regard have worked at the institutional and normative level, in the state of Hidalgo it would seem that social security is hardly being institutionalized. This seems to be at least for the population that is part of a formal job, thanks to which it is quoted and, therefore, you can access a pension or retirement in public governmental and private institutions, although with a dilemma of being hired by six months to renew consecutively



the risk of concluding their stay in that job, a situation that brought with it the reform of the Federal Labor Law of 2013, in the so-called structural reforms that the Calderonista and Peñista government of the last 12 years carried out, in which the worker has constant job insecurity day by day. And above all, it definitively closes the door to minority or vulnerable groups, as in the case of the indigenous groups that we have mentioned in our research, which are not quoted and, by extension, can not access a pension or retirement; only have access to health from the popular insurance, for which you have to pay a modest amount of money and the other part of money that the user has to pay is provided by the State; however, the Mexican government handily transfers this cost to society from the collection of taxes collected, as well as article 33, Fraction IV, of our Constitution.

Combining the aforementioned, although the measurement of poverty in Hidalgo only showed negative indicators in the index of food deprivation and in income less than the welfare line, this work showed that the population of the entity also faces problems with respect to retirement and retirement funds. Even in certain municipalities of the entity, all the people who were surveyed indicated that they did not have any type of direct social security access, since most of the surveyed and interviewed population only said that they had popular insurance and did not have any pension or retirement fund, data that concern in the sense that although Mexico subscribes and signs human rights treaties, in practice it does not carry them out. Thus, in the face of this situation, there is nothing left but to exert pressure from a collective action, from within indigenous peoples, to enforce those rights recognized by national and international laws.

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