



Constitutional Approaches to the Right to Social Protection

- Around the world, billions of people lack access to any form of income support during illness, unemployment, or other financial hardship, increasing their risks of falling into poverty and experiencing hunger and homelessness.
- While always important, protections for adequate income are particularly consequential during periods of large-scale unemployment, including the economic crisis triggered by COVID-19; likewise, paid sick leave is especially critical during the pandemic, but will also remain essential in the future for ensuring households' financial stability when workers inevitably experience other illnesses or injuries.
- Further, international agreements protect the right to a minimum standard of living. For example:
 - The Universal Declaration of Human Rights, binding on all 193 UN member states, provides that "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including...the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."
- Similarly, the International Covenant on Economic, Social, and Cultural Rights (ICESCR), ratified by 171 countries, guarantees the rights to social insurance, health, and adequate food, clothing, and housing.
- In low-income countries, the ICESCR's economic rights can be realized progressively as economies grow; nevertheless, all parties have an obligation to devote the maximum available resources to fulfilling these rights for all.
- However, countries' existing labor and social security laws often exclude the most vulnerable workers from coverage, exacerbating existing inequalities. For example:
 - Among the 193 U.N. member states, just 42% explicitly provide paid sick leave to the self-employed, while just a third of countries explicitly cover those working part-time.
 - According to a July 2020 UNDP report, nearly four billion people globally—disproportionately informal workers, women, refugees and migrants, low-wage workers, and people with disabilities—lack access to social insurance during the pandemic.



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NUMBERS TO NOTE

54%

of constitutions provide a foundation for adequate income in at least some circumstances

23%

of constitutions specifically guarantee income security during unemployment

62%

of current constitutions adopted in 2010–2017 guarantee some aspect of income security

37%

of current constitutions adopted before 1970 guarantee some aspect of income security

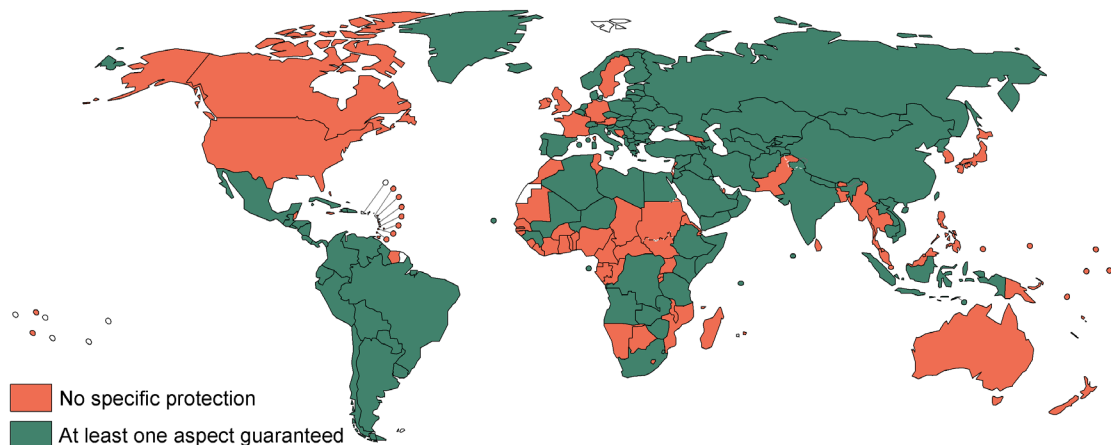
ABOUT THE DATA

This fact sheet presents findings from the following article:

Aleta Sprague, Amy Raub, and Jody Heymann (2020). [Providing a foundation for decent work and adequate income during health and economic crises: constitutional approaches in 193 countries.](#) *International Journal of Sociology and Social Policy.*

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Does the constitution explicitly guarantee income security in any circumstance?

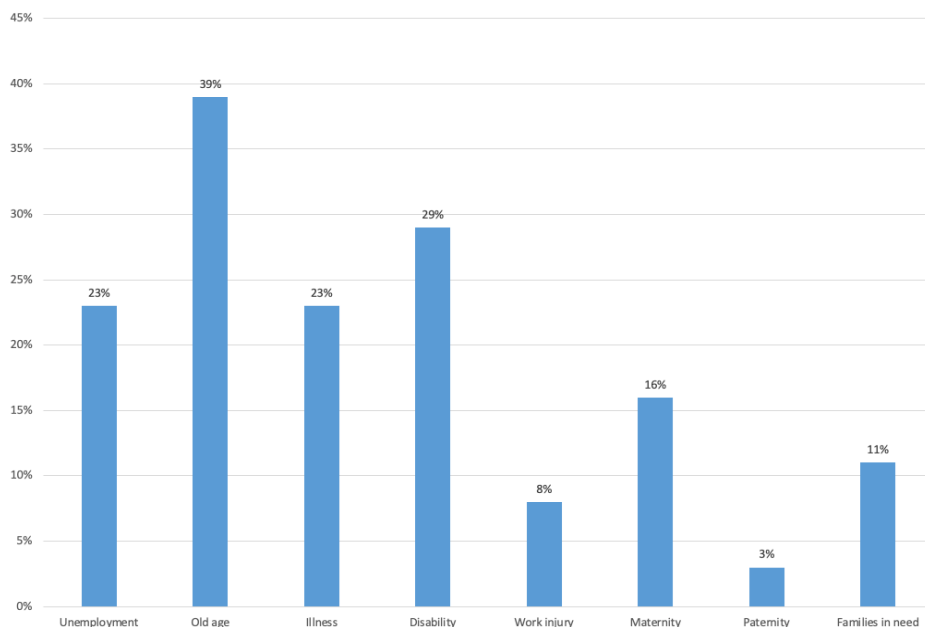


- Constitutional rights have the potential to provide a foundation for more inclusive and effective protections, while protecting against backsliding. In particular, constitutional rights to social insurance—including income support during unemployment, illness, and old age—can offer a basis for protecting against cuts to critical programs and provide a foundation for more detailed labor and social insurance policies that extend coverage to all.
- Cases from a range of countries in recent decades demonstrate these impacts:
 - In **South Africa**, the constitution’s right to social security for “everyone” led to a court ruling that strengthened access to childcare grants and old-age pensions for around 250,000 refugees, including many who had been living and working in the country for decades.
 - In **Portugal, Ukraine, and the Czech Republic**, top courts have found that efforts to impose new fees or privatize parts of the public health system violated constitutional health rights.
 - In **Colombia**, the Constitutional Court held in 1995 that establishing a lower level of unemployment benefits for domestic workers violated the constitution’s protections for decent work and equal rights.
 - As COVID-19 cases were rising in the **U.K.**, a court cited the government’s responsibilities to ensure “the most basic needs of any human being” under the Human Rights Act—which is considered part of the U.K. constitution—to extend eligibility for basic social security benefits to migrant

households facing imminent risks of destitution.

- Altogether, 54% of countries provide a foundation for adequate income in at least some circumstances:
 - 23% specifically guarantee a right to income security during illness.
 - An additional 19% do not address illness specifically, but guarantee a broad right to social security and 7% guarantee income support in case of need.
 - 23% specifically guarantee income security during unemployment.
 - Further, some guarantee income protection in cases of disability (29%), worker injury (8%), new motherhood (16%), or new fatherhood (3%).
- In addition to those that provide guarantees, some constitutions explicitly protect social security rights in aspirational terms or subject to progressive realization.
 - For example, Fiji’s constitution obligates the State to “take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to social security schemes.”
 - 14% of constitutions include an aspirational right to income protection during unemployment, while 15% do so for illness.
- Constitutional rights to social protection are becoming more common: 37% of constitutions adopted before 1970 guarantee some aspect of income security, compared to 62% of those adopted from 2010 to 2017.

Explicit Constitutional Guarantees of Income Security during Different Circumstances



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