

Reforming Social Security in Brazil during the Lula Government: a reassessment of continuities from Fernando Henrique Cardoso's policies

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During the 1990's Brazil witnessed an incremental process of mini-reforms in Social Security System which cannot be considered a structural change from public toward private system. A sequence of changes in some procedures and rules, points to a gradual reform within the current system, without major ruptures.

These changes were inspired mostly by the government goal to reduce the financial and actuarial disequilibria in the public pension sector. There was also external influences pointing to reforms in social pension systems. This was the case of the World Bank and the IMF recipes to privatize social security systems. Financial crisis especially during the period 1997-1999 made Brazil more vulnerable to the conditionalities of these multilateral agencies which helped financially the country over the moments of turbulence while putting pressure to fiscal adjustment and implementation of reforms.

In this paper we will discuss how these incremental changes in Brazilian social security system involved negotiations to overcome resistance from veto groups. The direction and the pace of the reforms depended on the government ability to negotiate with organized groups and overcome their resistance. It also had to do with the organization of the social security institutions and with their trajectories over time.

Brazilian state had a monopoly over pension system until the 1970's. During the military regime a social security reform was introduced and created, in 1977, the private pension system, of supplementary character. Multinational and state enterprises could organize their own pension institutions for their workers and administrative personnel. Further reforms in the 1990's took the same path, enlarging the private pension system without diverting from the former model.

1. The dual face of the social security system in Brazil

The format of the social security system resulting from the reforms of the last decade combined two systems with separate logics: the *state social pension system*, mandatory to all workers, and the *private pension system*, supplementary to the public system, for workers with high salaries. The latter system was split by the government in two categories: open private pension systems, operated by banks and insurers and closed private pension systems, operated by pension funds, considered non-profitable foundations organized around the principle of solidarity instead of profit.

The 1988 Constitution brought into debate the reform of the Brazilian social security system. The defenders of the private system, inspired by the Chilean reform of 1979-1981, which transferred the pension system to private sector, were linked to the financial sector (banks and insurance companies). Leftist parties, worker unions and civil servant associations supported the public social security regime with universal coverage. During the debates at the Constitutional Assembly, pension funds, organized

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since the 1970's, lobbied the congressmen to keep the dual pension system already existent.

Eventually, despite all the alternatives considered by the constituents at that time, such as the privatist and the public-universal systems, the Constitution adopted the hybrid format, not too distant from the old model coming from the 1970's. Thus the pension system operating since the 1988 Constitution has two main pillars: one public and the other private.

1. The public pension-retirement system has at least two branches, formed by workers in the private sector and by public servants.

The *General Regime of Social Security* (Regime Geral da Previdência Social – RGPS) has universal coverage and is mandatory to all labor force. It is based in a pay-as-you-go system and on intergeneration solidarity. It is operated by the National Institute of Social Security (INSS – Instituto Nacional de Seguridade Social) which deals with contributions and benefits until the ceiling of 10 minimum salaries. Employed urban workers and self-employed (autônomos) are the main population comprised by this regime. Its coverage approaches to 30 million people and its benefits corresponds to nearly 8% of the GDP (R\$ 165 billions or US\$ 91 billions) (Giambiagi, 2007:27 and www.mpas.gov.br) Contributions are jointly paid by employer and employee in the case of employed labor force.

The *Regime of Social Security of Public Servants* (RPPS – Regime Próprio de Previdência dos Servidores Públicos) has a coverage of 4, 8 million people. It works as a pay-as-you-go system but is going through a transition to a capitalization format, with the organization of pension funds for the civil servants. Armed forces have a separate pension system and are not included in the accounts of the Social Security Ministry.

Although not considered as a pillar of the Social Security Ministry, the rural social security system established, since the 1988 Constitution, that rural workers have the right to a retirement benefit of one minimum salary at the age of 65 years or more. The coverage of this system, which does not require contribution to get the benefit, is around 7, 7 millions people. Diversely from the urban public pension system, which requires a minimum contribution of 15 years, the rural social security system transfers income to aged people living in rural areas. This program is not a social assistance policy, because it does not require low income proof. The only requirement is the age (65 years old). The impact of this pension system to small villages in the countryside is significant, corresponding in many cases to a volume or resources greater than the budget of small municipalities.¹

Since 1988 aged and impaired people as well as rural workers were given the right and opportunity to apply for benefits and pensions without having contributed to the social security. This is a social policy aiming at transferring income – the so called Benefícios de Prestação Continuada.

¹ Helmut Schwarzer (2000) Paradigmas de Previdência rural: um Panorama da Experiência Internacional. Brasília, IPEA.

Informal Sector – Despite its universalistic purpose, Brazilian current Social Security system does not provide coverage to all workers. As Table 1 shows, around 52% of employed people do not have any link with public or private pension systems. Millions of people work in the informal sector of economy and do not have neither labor contract nor labor social security.

Table 1

**Contributors to Public and Private Pension Systems 2004
Employed Population**

Contribution to	Number of people	%
Public system	37,682.382	44,5
Private Complementary System	449.212	0,5
Both systems	1.972.898	2,3
Non contributors	44.491.802	52,6
Total Worker Population	84.596.294	100

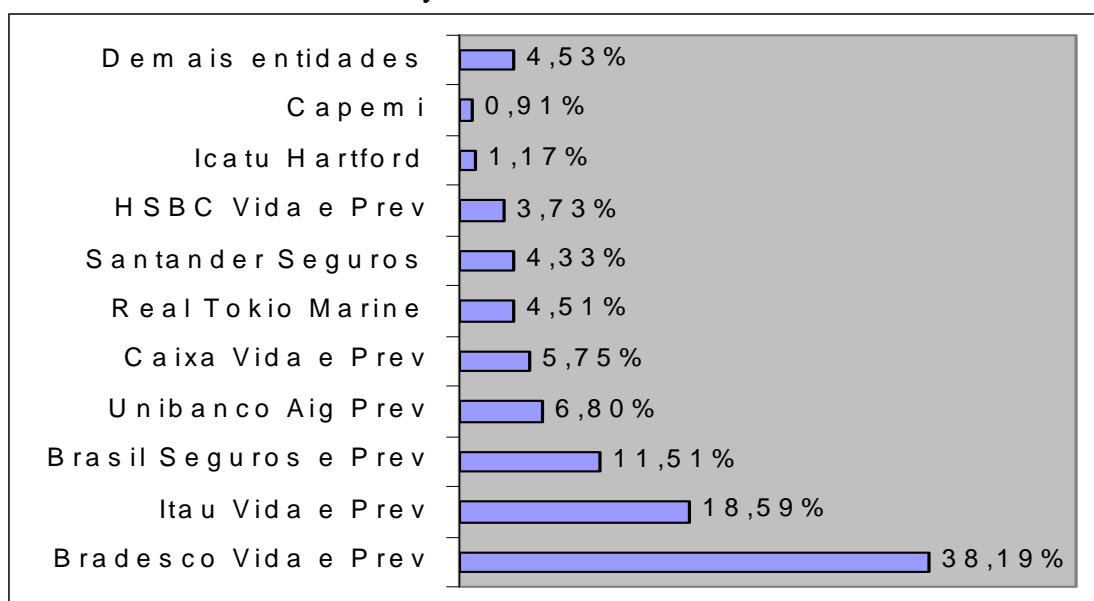
IBGE/PNAD 2004 according to IPEA, *Políticas Sociais. Acompanhamento e Análise* (12) February 2006 p.40

2. Private Pension Complementary System

The other pillar of the Social Security in Brazil is constituted by the private pension system. It has a supplementary character and focuses in the workers earning more than 10 minimum salaries. It is based on capitalization process, through individual accounts. A more individualistic logic of accumulation for the future is behind this system of private accounts. Since the last decade two systems of private pensions live together: one is called the *closed system of pensions* (previdência complementar fechada) and is in existence since 1977. The other is the *open system of pension plans* (previdência complementar aberta) formed since the Real Plan of 1994, which brought stabilization and possibility to save for the future.

Banks and insurance companies operate individual pension plans or corporate collective plans. In the individual pension plan only the saver makes the contribution. It is not necessary to be a worker or a professional. Access to these plans is open to all, including children. Those who opt for the individual plan have income tax exemption. This has been a main incentive for people with high income, who buy these plans to use them as financial investment, diverting its original purposes. These are **the open system of pension plans** (previdência privada complementar aberta). This system is regulated by the Superintendency of Insurance and Private Pensions, SUSEP (Superintendência de Seguros e Previdência Complementar), linked to the Finance Ministry. Coming from 1994, these open plans grew enormously with the end of inflation. Today this is the most profitable area in the banking and insurance sector. 2006 found 7,8 million plans (individual) and more than 100.000 corporate pension plans, involving assets of R\$ 96,6 billions in the sector according to the ANAPP, the Association of Open Pension Plans. 44 companies operate in this sector. They had in 2006 R\$ 102 billion applied in compulsory reserves (required by law) (ANAPP, according to Valor 9/2/2007). Among these 44 companies there are 3 big financial groups which concentrate most of the operations in this sector (68%) as Figure 1 illustrates.

Figure 1
Open System of Pension Plan – Ranking of Banks and Insurers
By Revenue 2006



Total Revenue 2006 R\$ 22,9 billions

Source: Fenaprevi (www.fenaprevi.com.br) - Federação Nacional de Previdência Complementar Aberta. Dados Estatísticos, December, 2006

The **closed system of private pensions** is formed by the pension funds and involves contributions from employer and employee made to an individual account of the worker. As the public social security system requires compulsory contribution of workers until 10 minimum salaries, only those earning beyond this limit get involved in this system. Those who adhere to pension funds are employees of multinational firms and of big corporations (public or private). There are around 2.000 firms operating with this system currently. The coverage of pension funds as of January 2007 was 6,3 million people. In this same year 359 pension funds accumulate assets equivalent to 18% of the GDP (R\$ 353 billions or US\$ 196 billions). At the beginning, pension funds operated exclusively with firms. A Reform in the Social Security Law in 2001 however, extended the capacity to create pension funds to professional categories and civil servants. This new system is still being implemented.

The regulation of the sector of pension funds (closed system) is made by the Ministry of Social Security through its Secretary for complementary Social Security (SPC – Secretaria de Previdência Complementar). The high value of the assets of the pension funds, especially of the state companies pension funds (such as Banco do Brasil/ Previ, Petrobras/Petros) led the state to use its assets or to manipulate their managers to make risky investments or to invest in areas the government needs funding. This was the case of some privatization operations during Fernando Henrique Cardoso's period, when pension funds became investors at Embraer (aviation), Telemar (telecommunication) and Companhia Siderurgica Nacional (steel). Due to faulty supervision by the Ministry of Social Security or because of political interests of some sectors of the Partido dos Trabalhadores (Lula's party) in gaining the support of congress to some government measures, pension funds of state companies were accused of involvement, in 2005, in

illegal operations which led to the formation of two Committees of Investigation in Congress (Comissão Parlamentar de Inquérito dos Correios e CPI do Mensalão). Recently Lula has been showing interest in using private pension system savings to finance infra-structural projects such as roads, dams, harbors.

Figure 2

Assets of the 10 biggest Pension Funds – January 2007

<i>Pension Fund</i>	<i>Assets (R\$ thousand)</i>	<i>% on total assets of all Pension Funds</i>
<i>Previ</i>	R\$ 106.572.063	30%
<i>Petros</i>	R\$ 32.922.189	9%
<i>Funcef</i>	R\$ 23.392.617	7%
<i>Fundação Cesp</i>	R\$ 12.403.078	4%
<i>Sistel</i>	R\$ 8.847.740	3%
<i>Valia</i>	R\$ 8.431.646	2%
<i>Itaubanco</i>	R\$ 7.791.299	2%
<i>Banesprev</i>	R\$ 7.669.324	2%
<i>Centrus</i>	R\$ 7.635.582	2%
<i>Forluz</i>	R\$ 5.759.460	1%
total dos Dez	R\$ 221.424.998	62%
Total all pension funds	R\$ 353.031.317	100%

Source: Abrapp – Associação Brasileira de Entidades Fechadas de Previdência Complementar. Informe Estatístico January 2007

The 1988 Constitution gave the main architecture of this hybrid model, which combines public and private-complementary systems. Further laws (*leis complementares à Constituição*) detailed the working of this dual model. The reforms going on in the social security area have been implemented in an incremental and patchwork strategy, with several mini-reforms being approved by Congress since the 1990's.

Following a period of very high inflation, the main purpose of social security reforms has been to promote fiscal adjustment in the sector, reducing public expenditure with pensions, retirement plans and other social benefits of the INSS (Instituto Nacional de Seguro Social). Fiscal concern was also applied to the reforms of the public servants social security as well as military social security (the latter not linked to the budget of the Ministry of Social Security). Many efforts were made to increase revenue through

attempts to charge enterprises in debt with the public social security system and to combat frauds within the system. There are also attempts to increase coverage of the system including part of the population in the informal sector through a new system of low contribution introduced in 2007.

As far as the ratio contributors/beneficiaries is concerned, both systems (private and public social security) operate in very different circumstances. The public social security currently has a tight ratio, nearly approaching the limit of deficit in its budget. Other factors beyond the relationship contributor/beneficiary bring actuarial disequilibrium to the public pension system: the default of employers with the INSS (around R\$ 108 billions), lack of state contributions to the system, frauds in the system and the increasing aging of population.. Government is also using taxes charged for social security purposes in other state expenses. Due to the reasons mentioned, there is an increasing disequilibrium in the public social security accounts in the last decade: the deficit of R\$ 2,8 billions in 1997 (Cardoso's government) went up to R\$ 40 billions at the end of first Lula government in 2006².

On the other hand, the private social security system, due to the fact of being a recently new system, without many benefits to pay, operating with people with high income, was able to raise the significant amount of R\$ 450 billions (US\$ 250 billions) in 2006. This amount is reached if we add the assets of the open private system, operated by insurance companies and banks (R\$ 96 billions or US\$ 54 billions), to the closed private system assets, formed by the pension funds (R\$ 353 billions or US\$ 196 billions). These resources coming from the private social security system are used in many areas of the Brazilian economy: capital market, real state, participation in industrial companies.

The regulation of both sectors is fragmented between the Ministry of Social Security, responsible for regulation of the closed complementary pension system and the Ministry of Finance, responsible for supervising the open pension system, formed by banks and insurers. All the attempts to concentrate this regulation into a centralized institution at the Ministry of Social Security were frustrated.

The Social Security Reform in the 1990's

The Constitution of 1988 linked the public pension system to the concept of social security. This new concept would integrate sectors until then fragmented: healthcare, pension system and social assistance.

Health care system was established by Constitution as a sector under state responsibility, operating through a public fund, the Universal Health Care Service (Serviço Universal de Saúde – SUS). However, the presence of state in health care should not refrain private health services, which were in operation for decades, providing health coverage to millions of contributors to health plans.

Pension system would be the second pillar of the social security system, including either public and private pension plans. Disability insurance for workers accidented while working has been the responsibility of government since the 1960's, when the

² According to MB Associados Consultancy, published by Valor, December 7, 2006

military government reformed social security and brought this insurance from the private sector to the government. There has been efforts to deregulate this sector and to privatize the disability insurance, but this reform is not enforced yet.

Social Assistance benefits are regulated by the Social Assistance Act, and includes the compensatory benefits to poor families, disabled and old age people.

Seen in a broad perspective, these pillars of social welfare have gone into a more privatizing trajectory in the last few years. Health care private plans and private pension plans are important sectors with millions of people coverage. One can observe a process of financial dominance in this social welfare area, with a large presence of banks, and insurance companies in the pension and health care areas.

The reform of the pension system in the 1990's followed an incrementalist trajectory. It was the first pension reform in Brazilian history which did not emerge from a decree-law issued by an authoritarian regime, as it happened in the 1930's and 1960's³. Negotiations took place in the Congress, between Congress and the Presidency, between the Congress and the vested interests along the period of incremental reform, going from 1995 through 2003.

Although one can envisage changes in the pension system, there are some significant features of the pension policy which will set the pace and the depth of the reforms:

- 1) the strong presence of the state in the pension system history
- 2) the strength of the universal tone of the political discourse, followed in practice by fragmentation of the pension system by sectors (commerce, industry, banks, railway workers) during the 1930's through 1960's. Today this fragmentation appears in the several pension systems organized by sectors: urban workers, self employed, rural workers, civil servants, military, complementary private pensioners, etc.
- 3) there is a complete lack of a tradition of liberal pension system in Brazilian history, based on private individual capitalization. The Brazilian private pension system is voluntary and complementary to the public system. Instead, emphasis is always given on solidarity links unifying sectors and classes.
- 4) the political power of the civil servants defending some conquests obtained along years of campaigning. These conquests are interpreted by many people as privileges, and are represented by the full retirement pension and retirement according the criterium of working years instead of age, causing early retirements for public servants.
- 5) the political power of urban workers unions, defending their conquests such as public pension system, minimum ceiling of 10 salaries linked to mandatory contribution to INSS, linkage of benefits to the value of minimum salary.

These characteristics explain the fact that the new format of the current pension system has more continuities than changes. Thus, although one can see an enlargement of the private pension system, this does not affect the public pension system, which is mandatory and therefore is no losing room for the private system.

³ Former reforms during Vargas first term (1930's and 1940's) and during the military dictatorship (1966 through 1977) were formatted in the Executive and had the rubber-stamp of a subordinated Congress (during military regime) or were enacted by decree-law without the presence of Congress (during Vargas Estado Novo dictatorship).

The reform of pension system involved many interests who participated during the phases of debate and law enforcement. Among these interest groups were the unionized urban workers (CUT, Força sindical), bankers, insurers, industrialists, civil servants and pension fund managers among others. The Executive (Minister of Social Security, Minister of Finance and the President Cardoso and later Lula) made the agenda of the reform, forwarding their proposals to the Congress. In some cases of impasse during the debates in the Congress, the Judiciary, through the Supreme Federal Tribunal (STF) also had a voice in the decision of reform (approving or vetoing the reform measure).

What would be the main factors explaining the need to reform social pension regime in the 1990's? The demographic question poses the first pressure into the system. Brazilian population is living more and the cost of retirement and other welfare benefits tend to increase. This fact explains the pressure of the reform to revise retirement policies, including changes in the age of retirement, in the time of contribution, and in the contribution of already retired people. The deterioration of the ratio number of contributors per one pensioner, the default of employers toward the INSS, frauds in the system and costs of the administration of the whole system of more than 30 millions explain the actuarial and financial imbalances in the government accounts. A fiscal adjustment in the public social security account became necessary in the 1990's and this constitutes the main effort behind the current reform.

Foreign pressures also contributed to changes in pension-retirement regime. There is a clear link between the financial crisis of 1997 – 1999, followed by the pressures from the IMF and the World Bank for reforms in social security in Brazil and the first round of the reform, approved by the Congress. The accomplishment of this reform by Cardoso's government, happened at the end of the critical year of 1998, when Brazil faced a financial turbulence and got a significant loan of US\$ 40 billion from the IMF. Again there was no coincidence between the announcement of the IMF support, in September of 1998, on the eve of the Presidential election which gave a second mandate to Fernando Henrique Cardoso, and the acceleration of the discussion of the reform in the Legislative, leading to its approval in December 1998 (Constitutional Amendment n. 20, 1998)

Other external pressures changing the pension system in the 1990's came from the wave of deregulation of the service sector (financial, insurance, health plans). In many countries, especially in the United States of the 1980's and 1990's, pension funds became institutional investors in the financial market. In Brazil, investments made by pension funds have focused mostly the financial system, especially government bonds. It is a common say in these days that if Brazilian pension funds suddenly withdraw their investments from the capital market, the São Paulo Stock Exchange, BOVESPA, will go into default.

The small withdrawal of the state from the retirement pension system does not mean that Brazil is going to adopt a privatist model of Social Security. On the contrary, the current reform process points to a mixed model of social security which supposes these characteristics:

- 1) the existence of several public funds to subsidize pension and health care systems. This is the case of the INSS, RPSS (public servants fund), rural social security and SUS (for healthcare provisions and expenses).

2) closed complementary pension funds (fundos de pensão, previdência complementar fechada) operating according to firms (Petrobras, Banco do Brasil and others) and according to professional categories (pension fund of lawyers, teachers, civil servants – in process of organization now).

3) open complementary or voluntary private pension plans (previdência complementar aberta) operated by banks and insurers which may involve individual pension or corporate pension plans.

The reform of pension system of 1998 . The Constitutional Amendment n. 20 of December, 15 1998. The first round of a gradual reform

At the beginning of his first term, Fernando Henrique Cardoso sent to Congress a proposal to change the Brazilian pension retirement system. This was his Proposal of Constitutional Amendment n. 33 (PEC 33). This PEC was discussed in many Congressional Committees and was re-submitted again to Congress in 1997, during the Asian crisis. Then, following an intense debate in the press and at the Chamber of Deputies and the Senate, the proposal was approved by the two houses of Congress in December 15, 1998 as the Constitutional Amendment n. 20.

The pension reform of 1998 clarified some points left open by the 1988 Constitution and was a great divide in the history of social security in Brazil. Sectors which existed but were not recognized constitutionally then gained identity. This was the case of the private complementary pension system, which became part of the general pension system established by the Constitution, although in existence since 1977 (the pension fund) and since 1994 (the open pension plans). Therefore, the Amendment 20 ratified the hybrid system of pensions.

Changes and continuities in the public social security system - The format of public social security of 1998 continues to be mandatory, based on contributions and on a pay-as-you-go system. The small changes introduced to the system aimed mostly to obtain actuarial and financial equilibria. However, the philosophy of social protection was also present in the law, which envisaged that social security must provide for protection to the unemployed worker, to maternity, illness and to the disabled.

The financing of public pensions and retirements from then on was based on the following resources:

- 1) mandatory contributions to the INSS from employed workers earning until 10 minimum salaries plus contributions from their employers. The minimum salary was considered the base for concession of benefits.
- 2) voluntary contributions of self employed people as part of the INSS system
- 3) contributions resulting from sale of rural products would form a fund to finance rural workers' pensions, which are not contributory.

For the workers linked to the INSS system the minimum age to retire remained the same: 60 years for men and 55 for women. As far as civil servants were concerned, the 1998 Constitutional Amendment kept the several regimes in existence for the Executive officials, the Judiciary officials, etc. despite the government effort to integrate all civil

servants into a unique system. Civil servants from the Executive and its Ministries (federal civil servants) were classified into a dual system:

- 1) civil servants linked to the *Regime Geral da Previdência Social* (RGPS), contributing to the INSS.
- 2) civil servants of the *Regime Próprio de Previdência dos Servidores Públicos* (RPPS)

Compulsory retirement at the age of 70, voluntary retirement after 10 years of work and proportional retirement remained from the former pension system of civil servants. Accumulation of several retirements by one civil servant was regulated, with exceptions open to some categories (teachers and doctors). Workers on the verge of retirement when the Amendment 20 has passed in Congress maintained their acquired rights to retire. Others went into a transitional rule which included from 20 to 40% increase of working time before retiring.

Although there was an intention by the government to increase the duration of working life for men and women in the civil service and to charge retired people with contributions, the veto power of civil servant associations and their pressure toward congressmen suspended the approval of these measures. The same veto worked as far as the amount of benefits by the civil servants in the RPPS pension regime. Although the government would like to reduce the salary of the retired servants, establishing a difference between the salaries of active and retired people, the full benefit retirement for all remained as before, extended to all sorts of civil servants within the RPPS regime. This was considered a privilege of civil servants, extended to the Judiciary and the Legislative pension system. Thus, the parity system for the benefits of all civil servants (working or retired) was preserved, despite the effort to separate both categories by the Executive. Concerning the question of charging the retired with pension contribution – a manoeuvre of the government to increase revenue - this was not considered by the Amendment 20 of 1998.

The private pension system, complementary to the public system, had some few changes with the Constitutional Amendment 20. This sector will be the focus of the mini-reform of 2001, which will be discussed further in this paper. The model of defined benefit (DB) was changed into defined contribution (DC), according to the pressures of the enterprises responsible for the pension fund (the patrocinadoras). For the beneficiaries, this new system brings more vulnerability, once the retirement benefit is uncertain and will depend on good governance of pension funds in the long term and good regulation from the government. The parity of contribution between employer-employee was established in the closed private pension fund system. The portability of the pension fund was established.

The new legislation reinforced the role of regulatory agencies, responsible for the private complementary system – the SUSEP and the SPC, linked, respectively to the Ministries of Finance and Social Security. Pension funds were submitted to an increased fiscalization after 1999, because of the Amendment 20. The latter established that until the year 2000 pension funds had to adjust to rules of parity, of actuarial equilibrium and new age limit for retirement. According to this new regulation on pension funds, many were suspended and had to pay fines.

Pension funds had been considered as public utility organizations, not aiming profit like banks and insurers and therefore were exempted of taxes. However this was not a consensual issue for the government, anxious to extract revenues. During the Cardoso's government, pension funds were requested to pay taxes. When Lula was elected, government policies went into other direction. Having the pension fund managers as his electoral supporters in the 2002 elections, Lula exempted pension funds from this payment.

In 1999 a new project in Congress proposed the creation of the National Agency of Complementary Social Security (PREVIC), in order to unify the two private pension systems regulation (open and closed). However this proposal was not approved, because of the opposition from the existing agencies and from the Ministry of Finance, who did not want to lose the important agency SUSEP to the Ministry of Social Security.

Another supervising action from the government was focused on pension plans from the open private pension system, operated by banks and insurers. Because the consumers of private open pension plans had a fiscal incentive through exemption of pension contributions from the income tax, these plans of voluntary affiliation were assuming the role of investment funds for short term profits. Changes were made to give incentives only to plans operating in the long run, charging those who would make withdraws in the short term.

The Second Round in the Reform of Social Security: Reforming the INSS and introducing the Social Security Index (Fator Previdenciário) – 1999

Some complementary laws (*leis complementares à Constituição*) emerged after the Constitutional Amendment n. 20 of 1998⁴. They gave new format to the pension system of 1998. The most important measure was the Law n. 9.876 of November 26, 1999 which reached the workers linked to the INSS.

Despite the veto of unions concerning the change of the age to retire and their opposition towards extension of working time, government created, according to this new law an index for the actuarial reckoning of the amount of retirement benefit, combining in this index the time at work, the time of contribution to the INSS and the age of the worker at the moment of retirement. A common situation, shared by all the workers became after this law, a particular situation of each person, which will have a special amount of working years, time of contribution and age of retirement. With this measure there was more incentive to retire later, to contribute more years and to extend the duration of labor life.

The *fator previdenciario* aimed at retaining workers more time at work, once this would give them better salaries when retired. It tried to establish an equilibrium between time of contribution and time receiving the benefit, circumventing the problem of paying pensions during many years for people living until very old age.

⁴ The Constitution of 1998 left many questions open to be regulated by further legislation. The *leis complementares* (complementary laws) regulate these questions. Most reforms from the 1990's onwards were made mostly through these laws or by Constitutional Amendments voted by Congress.

Although received with suspicion by the politicians in Congress and by the worker's unions, the *fator previdenciário* put an end to the debate about the age for retirement and the time of contribution before retirement. Without the awareness of society as well as Congress, the power to indicate when somebody can retire was withdrawn from the Congress and established in the hands of the bureaucrats from the Ministry of Social Security who will reckon the index, tailoring it for each worker of the INSS.

The index *fator previdenciário* was thought to give actuarial equilibrium to the INSS account. It changed the current pay-as-you-go system for the INSS insured worker and established new balance between the contribution and the benefit, allowing an increased control, by the Social Security Ministry, in the concession of benefits, now linked to life expectancy of population. Therefore, the *fator previdenciário* meant a new pact for retirement. It allows periodical changes in the limits of age for retirement without the backing of new legislation. From 1999 onwards, each insured from the INSS has its own history, articulating differently these 3 variables. One could say that the new index represents the end of the pay-as-you-go system for the INSS and the introduction of a capitalization calculus within the RGPS.

The enactment of this index has been done gradually, within a transitional period of five years (2000-2005) and is applicable only for new retirements.

Third Round of Reform: 2001. Reforming the Complementary Private Pension System

The reform of the private pension system came with the Complementary Laws 108 and 109 of 2001.

Complementary Law n. 108 dealt with private pension plans open and closed. It extended the formation of pension fund to professional categories and civil servants (federal level, state government level and municipalities). It allowed that pension fund and banks operating with open pension plans could operate simultaneously with many plans and enterprises (the *multipatrocinadoras*). The right of portability was enacted, giving the worker the possibility to transfer his contributions from one fund to another. Plans with final benefit defined were replaced by plans with contribution defined but final benefit non defined. These last measures, supported by the pension fund sponsoring enterprises (the *patrocinadoras*) were not appreciated by the plan subscribers, creating a silent tension between the contributor to the pension fund and the *patrocinadora*.

Complementary Law n. 109 – dealt exclusively with the closed pension funds of the state companies, the most important in the ranking of the pension funds (Previ, Petros, Funcef, Fundação Cesp, Valia, Centrus – in figure 2). It established the compulsory parity of contribution, 50% from the insured and 50% from the sponsor enterprise (*patrocinadora*). It also restrained either government or state companies to cover losses in the pension fund finances. It also attributed criminal responsibility for the fund managers, aiming to get some transparency and control over the manager's actions.

The main goal of this legislation was to increase regulation over the pension fund sector, to give more transparency for the insured and the society. The new rules had an immediate impact on the growing of the sponsored pension funds (fundos

multipatrocinados) and increased competition between closed pension funds and open pension plans in search for new enterprises and professional categories⁵

The increase of both the financial provision and assets of the open and closed pension systems, seen in Table 2 below, for the years 2002 and 2003, following these new rules are an evidence of its impact on the market of pension plans. The sector of the open pension plans, operated by banks and insurance companies adjusted rather quickly to the new legal rules and expanded more than 80% in 2 years (see column 2, Table 2), whereas the assets of pension funds increased 70% from 2001 to 2003.

Table 2
PRIVATE COMPLEMENTARY PENSION PLANS (OPEN AND CLOSED)
Provision and Assets 1994 to 2003
Thousand R\$

Year	Open private pension plan (previdência aberta) Technical provisions	PENSION FUNDS (CLOSED) (Previdência Privada Fechada) Assets	Assets of Pension funds (closed) as % of GDP
1994	1.230.	72.742	8,3
1995	1.937	74.815	8,2
1996	3.189	86.629	9,2
1997	4.616	101.033	10,3
1998	6.769	101.129	10,3
1999	9.917	125.995	12,5
2000	13.665	144.025	13,2
2001	20.782	171.152	14,4
2002	26.754	189.280	15,8
2003	34.675	240.139	18,2

Source: Fenaseg, www.fenaseg.org.br (2004) for open private pension plans; Abrapp, Consolidado Estatístico December 2003, for pension funds.

In the sector of open pension system, operated by banks and insurers, there was a great increase in individual pension plans, multi-sponsored pension plans (*planos multipatrocinados*) and pension plans for one company only (*planos de patrocinadora*). In the year 2003 open pension plan companies had an expansion of 55% in the revenues coming from contributions (premium) and an increase of 44% in the investment portfolio compared with the year before. This significant growth in one year (2002/2003) was bigger than the growth of the whole period of 1977 to 1999!

Following the mini-reforms of 2001 the Executive issued the **Medida Provisória 2222**,

⁵ The emergence of this new kind of multi-sponsored pension plan (open or closed and complementary to the public pension system) in which one pension fund becomes the manager of many pension plans, linked to several firms or professional categories, was a revolution in the sector of the private pension system. From 2001 onwards, instead of the growth in the number of pension fund organizations, there was an internal growth in the number of sponsorship of pension plans. The big pension funds such as Petros (originally the pension fund of Petrobras exclusively) and Previ (Banco do Brasil) grew enormously becoming multi-sponsored pension funds, under the management of Previ or Petros.

Establishing a new tax regime for the pension funds (closed). In search for more revenue, Fernando Henrique Cardoso created a new tax for the pension funds, so far considered as public utilities and therefore exempted from tax. There was a sound protest by the pension funds and by their sponsor companies (*patrocinadoras*) specially through their association, the ABRAPP (Associação Brasileira de Empresas de Previdência Fechada). A period of tense relations opened between pension funds and the SPC (Secretaria de Previdência Complementar) – the branch of the Ministry of Social Security imcumbend of regulating pension funds. Eventually pension funds had to pay taxes. At the same time that Cardoso's government forced pension funds to be more transparent in their accounts, and to adopt corporate governance, the President charged pension funds with high taxes, creating a difficult relation between the sector and the government. This tension would last until the end of Cardoso's term in 2002.

Social Security During Lula's Government (2002-2006)

Since the first moments in government, President Lula gave evidences that would give continuity to the ongoing reform of the pension system. The complementary legislation regulating the public pension system (INSS) and the private pension plans (open and closed) had been accomplished by Fernando Henrique Cardoso's government. The missing part of the reform referred to the retirement and pension system of the civil servants – the veto power that Cardoso's government had not been able to circumvent. Lula made this reform his first item in the Presidential Agenda.

Civil servants and their associations (especially CUT) had been an important support of Lula in the 2002 election. Lula had a big challenge ahead in facing this sector and forcing changes in their pension system. His strategy however, was diverse from the Cardoso's offensive toward this sector. Lula searched for legitimacy of his reform creating, at the beginning of his term (January 2003) the council of Social and Economic Development, an organization with the representation of various sectors of society with the aim of producing proposals. From this council came the proposal to reform the civil servant sector, which was forwarded to Congress after discussions with state governor. The reform proposal arrived in Congress on April 30, 2003, as Proposal of Constitutional amendmentn. 40 (PEC 40) Following discussion in the Chamber of Deputies and at the Senate, PEC 40 was approved in December, 11 2003 as Constitutional Amendment 41/2003;

Despite protests from the civil servants, Lula accomplished the final part of the reform of the social security system in the first year of his term.

Fourth round of reform: The Constitutional Amendment 41 (2003) and the reform of pension system for civil servants

The Constitutional Amendment n. 41 brought several changes to the pension regime of civil servants. It implemented the tax over the retired civil servant . The age to retire remained the same : 60 years old for men and 55 for women. Limits were established for high retirement pensions, privileges remnants from the old pension system. Some privileges were reduced, bringing more revenue to public social security funds. The press contributed to disseminate information of who earned high pensions and pointing to the unequal system of the pension for civil servants, compared with the INSS system.

Incentives were given to the officials who would stay in office beyond the age of retirement.

Continuities of Lula's reforms compared with the Cardoso's reforms

Lula followed the path of the programmed reform established by the Constitutional Amendment n. 20, which pointed to the architecture of the renewed pension system. All the reforms concerning the INSS and the Regime of Public Servants were implemented by Lula's government. He also took to his social security policies the rigidity of the fiscal adjustment. However he made some concessions to the workers' unions, his electoral and political basis. He increased minimum salary and this was reflected in the increase of pensions of the INSS, linked to the minimum salary. He increased the Social Security deficit, although he refused to consider these expenses as mere deficit, stating that they were social investment. Further changes point to the creation of a National Forum of Social Security in 2007 to discuss reforms of security system for future generations.

Beyond his commitment with Cardoso's reforms and deepening the reform process enacting the Constitutional Amendment 41 for the civil servants pension plans, Lula has been trying to make his mark in the Social Security policy.

Unions linked to pension funds of state enterprises, linked to his party (Partido dos Trabalhadores – PT) made an alliance with Lula since the elections of 2002. Regulation over the pension funds continue, but softer than during Cardoso's government.

At the beginning of his second term, Lula envisages to format a new reform of social security for new generations, stressing that this reform must emerge from a consensus among current retired workers, entrepreneurs and workers in activity.

At the beginning of 2007 Lula declared that in his government, development has to be accompanied by income distribution. "I was reelected and I do not want to repeat what I accomplished in my first term. Now we have to innovate. And for God's sake, do not make the error to use the world development or economic growth without adding the word distribution of income" (Valor December 7, 2006.)

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