

Social Protection in Chile: Building a Life in Dignity?

Viviana Ponce de León Solís

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I. Introduction

Chile has been one of the fastest-growing economies in Latin America in recent decades and is considered a model for development in the region. This growth has allowed the country to significantly reduce poverty, with the proportion of the population living below the national poverty line having fallen from 36% to 10.8% between 2000 and 2020.¹ According to World Bank estimates, by 2020, 0.7% of the national population was

1 World Bank, 'Poverty headcount ratio at national poverty lines (% of population) – Chile' < <https://data.worldbank.org/indicator/SI.POV.NAHC?locations=CL> > accessed 27.10.2023.

living on less than US\$ 2.15 per day² and 1% on less than US\$ 3.65 per day.³ While these figures are relatively positive in comparative terms, they distract attention from the fact that more than 30% of the population is economically vulnerable and income inequality remains high, with the richest 1% of Chileans earning 49.6% of the country's total income.⁴ The high level of economic inequality has negatively impacted many areas of society, including education, health, social protection, and employment.

To a large extent, these results can be attributed to historical factors that have decisively influenced the architecture of social protection in Chile, with a particular emphasis on the objective of enabling 'marginal groups in society as rights-bearing subjects to access the means to meet their own needs'.⁵ In this view, poverty and social exclusion were seen as a direct result of an individual's 'lack of skills or opportunities' to master 'their own destiny', which had to be remedied through social assistance policies that promoted empowerment.⁶ Hence, despite recent efforts to increase social spending and significantly extend social protection, considerable gaps remain in the development opportunities of different population segments, irrespective of whether they live above the poverty line or not.

Against this backdrop, this chapter discusses the extent to which existing social protection policies and benefits in Chile are intended and designed to secure a life in dignity. In order to reach its objective, we will examine the current normative framework in order to answer the following questions: Is there a real system of social protection in Chile or just a loose set of anti-poverty policies? Does the state have an obligation to guarantee a dignified life? How is such an obligation legally constructed? Do individuals have a corresponding subjective right to demand a minimum subsistence level? What does a dignified life entail?

2 World Bank, 'Poverty headcount ratio at \$ 2.15 a day (2017 PPP) (% of population) - Chile' < <https://data.worldbank.org/indicator/SI.POV.DDAY?locations=CL> > accessed 27.10.2023.

3 World Bank, 'Poverty headcount ratio at \$ 3.65 a day (2017 PPP) (% of population) - Chile' < <https://data.worldbank.org/indicator/SI.POV.LMIC?locations=CL> > accessed 27.10.2023.

4 L. Chance, T. Piketty et al., *World Inequality Report 2022* (World Inequality Lab 2022), p. 189.

5 V. Schild, 'Engendering the New Social Citizenship in Chile: NGOs and Social Provisioning under Neo-Liberalism', in: M. Molyneux and S. Razavi (eds.), *Gender Justice, Development, and Rights* (OUP 2002), p. 172.

6 V. Schild, 'Neo-Liberalism's New Gendered Market Citizens: The "Civilizing" Dimension of Social Programmes in Chile' *Citizenship Studies* 4 (2000), pp. 275-305, 286.

To address these questions, the remainder of this chapter is divided into three sections. Section II provides the background for understanding the evolution of the system, its normative basis, and its major structural components. This section is further divided into two parts. The first part presents some relevant milestones in the historical development of social protection in Chile and describes the applicable constitutional and international normative framework. The second part describes in broad terms how the system is organised into different sub-systems and how they relate to each other. Section III develops a detailed analysis of the system's distinctive design features. This section is divided into four parts. The first part reviews the landscape of existing minimum social protection schemes and benefits. The second part describes the technical mechanism for assessing the needs of social protection beneficiaries in Chile: the Social Register of Households. The third part examines the set of non-economic or behavioural conditions to which social assistance is subject and discusses their implications in terms of guaranteeing a decent life. The fourth part examines the activation policies aimed at preventing welfare dependency and promoting the economic self-sufficiency of their beneficiaries. Part IV closes the chapter with concluding remarks.

II. Overview

1. Normative Background

a) Historical Context

Chile has been ranked amongst the pioneering Latin American countries in the development of welfare policies, together with Argentina, Brazil and Uruguay.⁷ Until the 1970s, the country had several social policy regimes, with varying conditions and levels of protection for different classes of workers, covering the vast majority of the population through the social security system, basic health services and extensive levels of access to primary and secondary education.⁸ These developments peaked during the administration of former socialist president Salvador Allende (1970-1973),

7 C. Mesa-Lago, *Social Security in Latin America* (Inter-American Development Bank, Economic and Social Progress in Latin America 1991).

8 F. Filgueira, *Welfare and Democracy in Latin America: The Development, Crises and Aftermath of Universal, Dual and Exclusionary Social States* (UNRISD 2005), p. 13.

when social spending increased by up to 30% and redistributive policies were intensified.

This trend towards the expansion of the welfare state came to an abrupt halt with the military coup led by Augusto Pinochet, which resulted in a dictatorship that lasted more than fifteen years (1973-1989). Pinochet's dictatorship activated several mechanisms of welfare state retrenchment, which included anti-inflationary policies, as well as a so-called long-term development strategy implemented by the military regime that was dependent on the private sector and the reduction of the state to its minimum expression.⁹ In turn, these mechanisms led to a drastic reduction of public social expenditure, decreasing from 24.8% to 14.3% of GDP between 1971 and 1981.¹⁰

To prevent future reforms and secure his political legacy, Pinochet also enacted a new constitution in 1980 that encouraged the market provision of social rights and promoted a 'residual welfare regime' based on targeted public policies for low-income groups and the neoliberal ideal of individual responsibility for welfare.¹¹ This regime led to 'a privatised and highly criticised pension system, segmented education, and healthcare, with lower-quality public services for the majority and expensive private [services] for the well-off'.¹² Ultimately, social policy in Chile took the form of a last safety net, targeted at those living in extreme poverty, offering below-minimum and patchy support. While the dictatorship is credited with positive economic results, its impact on the social agenda was dramatic: by 1989, 44% of the national population was living in poverty.¹³

With the return to democracy in 1990, welfare institutions and the offer of social protection programmes were substantially scaled up. A new strategy of 'growth with equity' (*crecimiento con equidad*) was devised, premised on the continuity of neoliberal policies, but supplemented with

9 J. Arellano, 'Social Policies in Chile: An Historical Review' *Journal of Latin American Studies* 17 (1985), pp. 397-418, 415.

10 J.P. Arellano, *Políticas Sociales y Desarrollo* (CIEPLAN 1988), pp. 45-46.

11 O. Larrañaga, *Las nuevas políticas de protección social en perspectiva histórica. Documento de Trabajo*, 4 (PNUD 2010), p. 11.

12 N. Somma, M. Bargsted et al., 'No Water in the Oasis: The Chilean Spring of 2019-2020' *Social Movements Studies* 20 (2020)4, pp. 495-502.

13 P. Vergara, 'In Pursuit of "Growth with Equity": The Limits of Chile's Free-Market Social Reforms' *International Journal of Health Services* 27 (1997)2, pp. 207-215.

social policies aimed at promoting greater equality.¹⁴ Although there was a substantial reduction in poverty in Chile between 1990 and 2000, the strategy of 'growth with equity' eventually proved to be limited. After 1996, the reduction of extreme poverty remained stagnant¹⁵ and at the beginning of the 2000s, the existence of a 'hard core of poor households, marginalised from the benefits of economic growth and social policy networks' was already apparent.¹⁶ Moreover, inequality in income distribution rose, evidencing the scant redistributive impact of this period's social policy.

During the 2000s, a number of international development agencies began to acknowledge social protection as a policy tool for poverty eradication and development promotion.¹⁷ The crucial milestones in consolidating this new paradigm were the launch of the United Nations' Social Protection Floors, in 2009, and the adoption of the ILO's Social Protection Floors Recommendation N° 202, in 2012. These initiatives were backed by 'ever-increasing calls for a rights-based development agenda',¹⁸ followed by a 'rapid expansion of social protection', amounting to 'a quiet revolution' in the region.¹⁹

Chile promptly joined this trend, expanding and integrating its social protection offer, with a view to ensuring 'universal access to benefits' in education, health, childcare, unemployment, and pensions, from a 'rights-based perspective'.²⁰ Against the backdrop of this universalist momentum, the country saw the emergence of some of the social protection programmes that are still in place to this day. Whereas initially these programmes focused exclusively on eradicating extreme poverty, they progressively began to expand their coverage to other vulnerable sectors of the population.

14 United Nations, *Promoting Inclusion through Social Protection. Report on the World Social Situation 2018* (Department of Economic and Social Affairs 2018), p. 7.

15 MIDEPLAN, *Conceptos Fundamentales Sistema de Protección Social Chile Solidario* (Ministerio de Planificación y Cooperación 2004).

16 O. Larrañaga, D. Contreras, G. Cabezas, *Políticas Contra la Pobreza: de Chile Solidario al Ingreso Ético Familiar* (PNUD 2014), p. 1.

17 United Nations, *Promoting Inclusion through Social Protection. Report on the World Social Situation 2018* (Department of Economic and Social Affairs 2018), p. 7.

18 M. Sepúlveda, *The Rights-Based Approach to Social Protection in Latin America: From Rhetoric to Practice* (Nations 2014), p. 7.

19 Ibid.

20 MIDES, *Análisis de la distribución del gasto en subsidios monetarios y de su incidencia en el ingreso de los hogares 2013 y 2015. Panorama CASEN 2015* (Ministerio de Desarrollo Social 2015), p. 20.

b) Constitutional Law and Constitutional Case Law

The Chilean Constitution does not deal explicitly with the protection of a minimum subsistence. However, a few constitutional provisions could be relevant for the construction of a state obligation to offer the necessary conditions for a life in dignity. For instance, Article 1 paragraph 1 of the Constitution stipulates that ‘individuals are born free and equal in dignity and rights’. Article 1 paragraph 4 also establishes that ‘the state is at the service of human beings and its purpose is to promote the common good, for which it must contribute to create the social conditions that allow each and every one of the members of the national community their greatest possible spiritual and material fulfilment, with full respect for the rights and guarantees established in this Constitution’. Furthermore, Article 1 paragraph 5 imposes on the state the duty ‘to protect the population and the family, to strengthen it, to promote the harmonious integration of all sectors of the nation and to ensure the right of individuals to participate with equal opportunity in national life’.

In addition, the Constitution guarantees several fundamental rights that relate to the protection of a minimum subsistence and the promotion of a life in dignity. Article 19 N° 2 enshrines the right to equality before the law, establishes that in Chile there are no privileged individuals or groups, and specifies that neither the law nor any authority whatsoever may establish arbitrary differences. Article 19 N° 9, in turn, enshrines the right to health protection and places a duty on the state to protect free and equal access to actions for the promotion, protection and recovery of health and rehabilitation of individuals. Finally, and perhaps more significantly for the purposes of this chapter, Article 19 N° 18 guarantees all individuals the right to social security. This article also specifies that ‘state action will be directed to ensure the access of all inhabitants to uniform basic benefits, whether they are granted through public or private institutions’; that ‘the state shall supervise the proper exercise of the right to social security’; ‘the laws governing the exercise of this right shall be of qualified quorum’; and that ‘the law may establish compulsory contributions’.

The vague statements devised in the Constitution depict a weak constitutional commitment to social security in general, unlike other constitutional provisions in Latin America including detailed policy instructions for the

provision of this right.²¹ The Constitution does not list any guidance for social security policy on risk or contingency coverage, level of benefits, and social security system governance or financing. Moreover, the Constitution does not explicitly impose a duty on the state for fulfilling the right to social security. Instead, it limits the state's role to simply supervising its proper exercise and enables the private provision of social security without mentioning any standards for such provision, in alignment with neoliberal policies, such as privatisation and deregulation.²²

In interpreting this provision, the Constitutional Court has defined social security as 'the set of principles that recognises the right of every human being to the essential goods to prevent social contingencies and to cover their effects, and that regulates the institutions necessary for this purpose'.²³ Likewise, the Court has identified four guiding principles of social security that constitute the basis or foundation on which it must be institutionalised, namely: universality (subjective and objective); integrity or sufficiency; solidarity and unity.²⁴

Regarding the connection between this right and other constitutional principles, the Court has also pointed out that the duty of the state to protect individuals against various contingencies constitutes a direct and close projection of human dignity, referred to in Art. 1 paragraph 1 of the Constitution.²⁵ In this sense, social security meets states of need, is aimed at the maintenance of the beneficiaries, and has a social interest component that involves it in the search to protect the weakest.²⁶ Nonetheless, the Court has cautioned that the Constitution does not recognise a right to unrestricted access to a universe of unlimited benefits, but rather a right to the provision of benefits that must be matched by their corresponding legal, equitable and proportionate sources of financing. Accordingly, social rights and, in particular, the right to social security, only seek to guarantee

21 A. Ben-Bassat and M. Dahan, 'Constitutional Commitment to Social Security and Welfare Policy' *Review of Law & Economics* 12 (2016)1, pp. 165-201, 172-173.

22 D. Harvey, *A Brief History of Neoliberalism* (OUP 2005), pp. 64-86.

23 STC 790 c. 33, STC 1287 cc. 25 and 30, STC 2025 c. 41, STC 2275 c. 4, STC 3227 c. 33.

24 Ibid.

25 STC 790 c. 31, STC 3058 c. 12, STC 7442 c. 7, STC 7548 c. 6.

26 STC 576 cc. 29 and 31, STC 3249 c. 36, STC 3058 c. 36, STC 3539 c. 9, STC 3540 c. 9, STC 3541 c. 9, STC 5822 c. 13, STC 6166 c. 14, STC 6167 c. 14, STC 6469 c. 13, STC 5679 c. 7, STC 6879 c. 12, STC 7140 c. 10, STC 7275 c. 10, STC 7400 c. 11, STC 7535 c. 11, STC 7694 c. 8, STC 8134 c. 8.

minimum benefits, which are directly linked to the level of economic development of a country and to political decisions expressed in legal norms.²⁷

To date, the Constitutional Court has never been directly confronted with the issue of whether Article 19 N° 18 also encompasses the right to social assistance or non-contributory social protection, or whether such right could be implied from other constitutional rights or principles at all.

c) International Law and International Case Law

Pursuant to Article 5 paragraph 2 of the Constitution, ‘the exercise of sovereignty recognises as a limitation the respect for the essential rights that derive from human nature. It is the duty of the state bodies to respect and promote such rights, which are guaranteed by this Constitution, as well as by the international treaties ratified by Chile and which are in force’. This provision leads to the conclusion that international human rights treaties ratified and in force are binding on the state and must be considered as applicable legislation by the courts.

To date, Chile is a signatory to two treaties in which legal scholars consider the right to social assistance to be enshrined: the UDHR (Article 25) and the ICESCR (Articles 9 and 11).²⁸ Nevertheless, these provisions have never been invoked before the courts as a source of a human right to social assistance, nor is there any national case law suggesting such an interpretation.

As far as the Inter-American Human Rights System is concerned, the American Convention on Human Rights (ACHR) – ratified by Chile in 1990 – does not contain explicit references to a life with dignity, minimum subsistence, social protection, social security, or social assistance. However, the Inter-American Court of Human Rights has developed an interpretation of the right to life, understood as the right to a life worth living, which could be of interest for our analysis. According to this interpretation, the

27 STC 2337, STC 3, STC 7585, STC 12, STC 14.

28 L. Leisering and T. Böger, ‘Case Study: Social Pensions in the Global South’, in: L. Leisering (ed.), *The Global Rise of Social Cash Transfers: How States and International Organizations Constructed a New Instrument for Combating Poverty* (OUP 2019), p. 219; G. Vonk and M. Olivier, ‘The Fundamental Right of Social Assistance: A Global, a Regional (Europe and Africa) and a National Perspective (Germany, the Netherlands and South Africa)’ *European Journal of Social Security* 21 (2019)3, pp. 219-240, 223.

right to life also includes the integral realisation of individuals, both in the material and spiritual sphere, considering their vocation, aptitudes, circumstances, potentialities and aspirations, which allow them to reasonably set certain expectations and to have access to them.²⁹ Consequently, the state has the duty to generate the minimum living conditions compatible with the dignity of human beings and not to generate conditions that hinder or impede it. Yet, to date, there are no cases in which the Inter-American Court's right to a life worth living has been specifically projected to social protection, and its case law does not provide further indications as to the precise content of the aforementioned minimum living conditions compatible with the dignity of human beings.

We do, however, find explicit references to a life in dignity in the Additional Protocol to the ACHR in the Area of Economic, Social and Cultural Rights, ratified by Chile in 2022. For example, Article 6.1. of the Protocol states that the right to work 'includes the opportunity to secure the means for living a dignified and decent existence', while Article 7.a. adds that remuneration must guarantee all workers 'minimum [...] dignified and decent living conditions for them and their families'. On the other hand, Article 9.1. establishes that the right to social security must secure individuals 'the means for a dignified and decent existence'. In a similar vein, Article 13.2. declares that the right to education 'ought to enable everyone to [...] achieve a decent existence'. Moreover, the Protocol also enshrines the rights to the formation and the protection of families,³⁰ the rights of children,³¹ the right to special protection in old age,³² and the protection of persons with disabilities.³³

The Protocol establishes a monitoring mechanism that requires States Parties to submit periodic reports to the Secretary General of the Organisation of American States on the progressive measures they have taken to ensure due respect for the rights set forth in the Protocol.³⁴ The Secretary

29 *Case of Loayza Tamayo v. Peru, Reparations and Costs*, IACHR Series C No. 42, 27 November 1999, para. 147. Although this judgment was passed in a case to which Chile was not a party, pursuant to the so-called conventionality control, the interpretation contained therein could have a general scope.

30 Additional Protocol to the ACHR in the Area of Economic, Social and Cultural Rights, Art. 15.

31 *Ibid.*, Art. 16.

32 *Ibid.*, Art. 17.

33 *Ibid.*, Art. 18.

34 *Ibid.*, Art. 19.1.

General then forwards these reports to the specialised bodies of the Inter-American Human Rights System, who examine them and formulate the general recommendations they deem appropriate.³⁵ In addition, the Inter-American Commission on Human Rights may formulate observations and recommendations on the status of the economic, social and cultural rights set forth in the Protocol in all or some of the States Parties, which may be included in its annual report to the General Assembly or in a special report, as the Commission deems appropriate.³⁶ Chile has yet to submit its initial report.³⁷

2. Social Benefits

a) Minimum Income Protection in Old Age

In 1980, the dictatorship imposed a mandatory individual capitalisation system, which required each worker to pay a contribution equivalent to 10% of their salary or monthly income into a personal account held by a pension fund administrator (AFP), which invests the pension savings for a return. This system profoundly transformed the Chilean social security landscape, replacing a public defined-benefit system with an individually funded system run by private administrators and regulated by the state. The system also implied a radical change in the understanding of the state's role in social protection, whereby authorities would be concerned only subsidiarily with poverty in old age, through the granting of targeted assistance pensions and guaranteed minimum pensions. Thus, the then-new system rewarded savings and personal effort, as those who contributed the most would get the highest pensions, while leaving the rest of the population behind.

The system's original design envisaged that the pensions of workers who were able to contribute systematically throughout their working lives would be similar to their active income, indexed to inflation. In addition, since

35 Ibid., Art. 19.7.

36 Ibid.

37 According to the General Norms for the preparation of the periodic reports under the Protocol of San Salvador, approved by Resolution AG/RES. 2074 (XXXV-O/05), as updated by Resolution AG/Res. 2713 (XLII-O/12), the first report was due within one year of ratification or accession to the Protocol, i.e. 25 October 2023. As of the closing date of this chapter (August 2024), the first report is in preparation but has not yet been submitted.

there would be a substantially lower contribution compared to the old system, this would increase the worker's liquid income and reduce the cost of labour for employers, which, added to the greater control over accumulated savings, would encourage employment, formality, and contributions on the part of self-employed workers. Meanwhile, by financing pensions with the savings of the workers themselves, the state would be freed from its financial commitments so that it could concentrate its efforts on lower-income pensioners.

However, for these conditions to be met, the system had to behave according to certain assumptions. In particular, dependent and self-employed workers would have an additional incentive to contribute by being able to control and own their capitalisation funds; workers would contribute all their wages throughout their working lives, up to a maximum of UF\$ 60,³⁸ with interruptions only for unemployment; low-income workers would contribute for at least 240 months during their working lives, thus gaining access to the state guarantee of a minimum pension; and women, who used to be mainly housewives, would contribute to the family income during their old age, as they did in previous years. Furthermore, available data showed that without significant changes, more than half of AFP pensioners would not reach a minimum pension and require some public funding.³⁹

These shortcomings were partially addressed by a legal reform in 2008, which created the Solidarity Pillar (i.e. the non-contributory, publicly funded tier of Chilean social security), a state-funded basic invalidity and old-age pension scheme designed to complement the contributory pension system.⁴⁰ The Solidarity Pillar was targeted at the most vulnerable sections of the population who did not contribute sufficiently or at all to any social security scheme, with the aim of preventing poverty in old age, ensuring a

38 The Unidad de Fomento (UF) is an inflation-indexed unit of account, calculated and published by the Central Bank of Chile (BCCCh). It is authorised for pricing credit operations in national currency by banks and credit and savings cooperatives. The BCCCh calculates the value of the UF for each calendar day between the tenth day of the current month to the ninth day of the subsequent month. These values are derived from the CPI month-on-month percentage change, as published by the National Institute of Statistics (INE), or the institution who replaces it, of the month preceding the month in which the UF is calculated and published.

39 Observatorio de Igualdad de Género de América Latina y el Caribe, 'La Reforma Previsional de Chile. Un avance en la garantía de la autonomía económica de las mujeres' (2012) <https://oig.cepal.org/sites/default/files/analisis_reforma_previsional_de_chile2.pdf> accessed 23.3.2023.

40 O. Larrañaga (n 11).

reasonable level of social protection and economic autonomy, and guaranteeing a decent standard of living. The rationale behind its creation was to support those left behind, as ageing and withdrawal from the labour market should not be equated with poverty or an abrupt drop in living standards.⁴¹

While the Solidarity Pillar effectively increased the coverage of population groups excluded from the individual capitalisation system, the quality of benefits was still lacking and the number of pensioners receiving pensions below the minimum wage increased.⁴² In fact, by 2020, around 80% of pensions were below the minimum wage and only 12.5% were above the minimum wage.⁴³ In response to these challenges, a reform introduced the Universal Guaranteed Pension in 2022, a publicly funded ‘universal’ benefit for all adults aged 65 and over who are not in the richest 10% of the population aged 65 and over, with the aim of improving the pensions of current and future pensioners. This new benefit has already proved effective in increasing both the level of old-age pensions and their net replacement rate.⁴⁴

b) Social Protection

Social protection in Chile takes the form of a complex scheme of non-contributory means-tested benefits, integrated through the *Sistema Intersectorial de Protección Social* (Cross-Sectoral System of Social Protection). The System represents an attempt to transition from a targeted approach to a rights-based approach to social protection.⁴⁵ To that effect, it comprises several actions and social benefits, executed and coordinated by different administrative entities, destined for the socioeconomically most vulnerable⁴⁶ national population, to secure them access to better living conditions.

41 Bill N° 558-354.

42 C. Andrade, ‘¿Cuánto más soporta el Pilar Solidario? La experiencia de la vejez en el Chile actual’, in: K. Araujo (ed.), *Hilos tensados: para leer el octubre chileno* (Editorial USACH 2019), p. 232.

43 R. Gálvez and M. Kremmerman, *Pensiones bajo el Mínimo: Los montos de las pensiones que paga el sistema de capitalización individual en Chile (Datos 2020)* (Fundación SOL 2021), p. 5.

44 K. Fernández, N. Rojas, A. Weber, *Impacto de la PGU en las pensiones actuales y desafíos para el debate previsional* (Universidad San Sebastián 2023).

45 Bill N° 1162-356.

46 On the notion of socio-economic vulnerability, see Section III.2, below.

Its key features are laid down in Act no. 20.379, which establishes the System's basic institutional and substantive structure. This Act incorporates the recommendations and methodological guidelines provided by international development agencies, such as the Inter-American Development Bank and the World Bank, thus adopting a multidimensional and dynamic approach to poverty and vulnerability.⁴⁷

A central entity is in charge of administering, coordinating, supervising and implementing the System: the Ministry of Social Development and Family. However, for the operation of the System, the Ministry may enter into agreements with municipalities, with other bodies of the State Administration, or with private non-profit entities.

Three subsystems coexist within the System:

- The *Chile Solidario* (Solidarity Chile) subsystem, aimed at promoting the incorporation of families and individuals living in extreme poverty into social networks and providing them access to better living conditions. *Chile Solidario* was established in 2004, as a first attempt at developing an integrated approach to existing social protection programmes, thus addressing the barriers faced by poor households struggling to access a piecemeal, fragmented and sectoral offer for poverty reduction.⁴⁸
- The *Protección Integral de la Infancia – Chile Crece Contigo* (Integral Child Protection – Chile Grows with You) subsystem, intended to support the development process of children who are treated in the public healthcare system, who study in a public educational system establishment, or whose adult caregivers are deprived of liberty, from their first gestational checkup until they reach 18 years of age. This subsystem was created along with the System itself in 2009, to widen the coverage and to further strengthen the integration of social protection programmes.
- The *Seguridades y Oportunidades* (Safeties and Opportunities) subsystem, devised for vulnerable individuals and families, whose monthly per capita income is less than what is necessary for an individual to meet their food needs. The incorporation of this subsystem in 2012 resulted in two major innovations to the country's anti-poverty strategy: the introduction of socio-labour support programmes and the increase in conditional and non-conditional cash transfers.

47 MIDES, *Informe de Desarrollo Social 2017* (Ministerio de Desarrollo Social 2017).

48 A. Barrientos, 'Protecting Capability, Eradicating Extreme Poverty: Chile Solidario and the Future of Social Protection' *Journal of Human Development and Capabilities* 11 (2010)4, pp. 579-597, 586.

Each of these subsystems involves a set of actions and social benefits – including cash and in-kind benefits – cross-sectorally executed and coordinated by state entities, focalised on a specific group of socioeconomically vulnerable people and/or families. Participation of individuals and households in each subsystem is compatible with participation in other subsystems within the System.⁴⁹ In fact, in some cases, participation in a subsystem entails preferential or guaranteed access – that is, without application – to other subsystems or to one or more of its specific benefits. Conversely, ceasing to participate in one of the subsystems does not necessarily preclude access to or continued participation in other subsystems.⁵⁰

Since each subsystem was created independently, at different times and under different administrations, each reflects a specific set of normative and political underpinnings, whose realisation requires a variety of techniques and approaches. Hence, some subsystems place a strong emphasis on service provision while others focus on cash transfers or impose greater and more stringent conditionalities.

In addition to the benefits of the *Sistema Intersectorial*, Chilean legislation provides for more than a hundred additional scattered benefits in the form of vouchers and subsidies, support for caregivers and persons with disabilities, training and help for entrepreneurship, student support, and care and counselling programmes for victims of sexual violence or crime.

III. Analysis

1. Benefits and Adaptation

a) Chile Solidario

Due to its narrow targeting and modest results in terms of increasing beneficiaries' incomes, *Chile Solidario* was ultimately destined to be phased out and many of its benefits were absorbed by the Seguridades y Oportunidades subsystem.⁵¹ However, the *Chile Solidario* subsystem is still for-

49 Act no. 20.595 Art. 3 para. 4.

50 Ibid.

51 N. Brandt, 'Reducing Poverty in Chile: Cash Transfers and Better Jobs' OECD Economics Department Working Papers, No. 951 (2012)13 < www.oecd-ilibrary.org/reducing-poverty-inchile_5k9bdt4pld6h.pdf?itemId=%2Fcontent%2Fpaper%2F5k9bdt4pld6h-en&mimeType=pdf > accessed 12.3.2023.

mally in place, and some of its benefits remain to this day: psychosocial support, preferential access to the family allowance, access to the Universal Guaranteed Pension or Basic Solidarity Disability Pension, access to a drinking water consumption and sewage service subsidy, and access to a school retention subsidy.⁵²

Preferential access to the family allowance is intended for low-income persons belonging to the 60% of the most socio-economically vulnerable national population, according to the Social Register of Households.⁵³ The monthly amount of the family allowance is CLP\$ 20,328 per each dependent, but it is doubled for persons with disabilities.⁵⁴ Family allowance recipients are also entitled to free preventive and curative medical and dental care. Pregnant women can apply for maternity benefit from the fifth month of pregnancy, after which they must stop receiving the family allowance. The family allowance is granted for three years and is readjusted in the same proportion as the minimum income, according to the variation of the Consumer Price Index (CPI) within a given period, defined by law.⁵⁵

b) Chile Crece Contigo

All the benefits provided by the *Chile Crece Contigo* subsystem are services rather than cash transfers, as illustrated by the Biopsychosocial Development Support Programme, which provides personalised guidance and monitoring of the development of its beneficiaries under the age of seven.⁵⁶ This programme aims to promote, protect and provide multi-sectoral support for exclusive breastfeeding, ideally up to six months for breastfed infants, and its continuation at least up to two years of age, complemented

52 Except for the preferential access to the family allowance, all other benefits of *Chile Solidario* are also included in *Seguridades y Oportunidades* and therefore, in order to avoid redundancies, they will be treated under the latter subsystem.

53 Act no. 19.949 Art. 7 para. 1. For the functioning of this instrument see below, Section III.2.

54 All figures are updated to their value as of October 2023. For reference, the average exchange rate of one Chilean peso (CLP\$ 1) was USD\$ 0.001205 and EUR 0.0010964 in that period.

55 In Chile, there is no regulation that determines the periodicity with which the minimum income must be readjusted, but in practice it is usually readjusted annually (except in 1998 and 2005). Nor is there a rule that determines the criteria according to which the minimum income must be readjusted, although in practice factors such as the Consumer Price Index and GDP growth are usually taken into account.

56 Act no. 20.379 Art. 11 para. 1.

by other foods. Protection also extends to the methods of obtaining human milk other than direct breastfeeding, in particular with regard to hygiene, safety and security in the collection, handling, storage and distribution of human milk to infants.

In addition, this subsystem provides children in vulnerable situations with access to technical aids if they have a disability; free access to crèche or equivalent services; free access to full-day kindergarten or equivalent services; free access to half-day kindergarten or equivalent services if the child's caregiver works from home; and guarantees families of unborn children living in extreme poverty access to the *Chile Solidario* subsystem.⁵⁷ This subsystem also provides beneficiary families with preferential access to public services, according to the developmental needs of their children, in programmes such as educational equalisation, insertion in dependent or independent work, improvement of housing and living conditions, mental health care, family dynamics, legal assistance, prevention of and care in case of domestic violence and child abuse.⁵⁸

c) Seguridades y Oportunidades

The *Seguridades y Oportunidades* subsystem includes a variety of cash transfers that can be divided into three categories. The first corresponds to dignity transfers, which are unconditional cash transfers aimed at providing immediate relief to families in extreme poverty in order to ensure a life compatible with human dignity. The second corresponds to transfers for obligations, which are conditional cash transfers linked to the fulfilment of obligations that contribute to the development of children as human capital. The third corresponds to transfers for achievements, which are also conditional cash transfers and whose aim is to reward the achievement of goals that are crucial for overcoming poverty, such as those related to education and work. Each of these in turn comprises a number of benefits, as explained below.

⁵⁷ Ibid., Art. 12.

⁵⁸ Ibid., Art. 13 para. 1.

aa) Dignity Transfers

Dignity transfers include several unconditional cash transfers that are meant for general subsistence, such as the base transfer and the protection transfer; they can be spent in any way the beneficiary deems appropriate. These benefits are widely labelled in the literature on the topic as unconditional, in contrast to duty transfers (see Section III.1.c.bb, below), the granting of which is subject to the attainment of certain achievements or performances. However, dignity transfers are still subject to certain conditions, in a broad sense, including the signing of a letter of commitment by the beneficiary (see Section III.3.i, below), declaring his or her intention to enter and remain in the subsystem and its programmes.

The base transfer is a benefit for users of the subsystem living in extreme poverty who participate in the Socio-Labour Support Programme or in the Psychosocial Support Programme that are part of the subsystem. Its amount is variable, as its purpose is to reduce the magnitude of the gap between the income of beneficiary households and the extreme poverty line (CLP\$ 152,338 per individual), covering only 85% of the difference. In order to calculate beneficiary households' income, their autonomous per capita income, the estimated amount of their rent and the subsidies received by their members are taken into account. This transfer is provided for 24 months and its amount decreases by one-sixth per month from the 17th month of the contribution, as long as the requirements continue to be met, which is verified on a monthly basis. These values are readjusted on 1 February of each year, at 100% of the variation of the Consumer Price Index (CPI) of the previous year. As per the most recent official figures available, during the year 2021, a monthly average of 68,126 households received the base transfer, at a total of CLP\$ 36,110 million.

The protection transfer, also known as *bono dueña de casa* (housewife's transfer)⁵⁹, in turn, is a benefit for users of the subsystem who participate in its Psychosocial Support Programme, provided that they comply with a commitment letter and an intervention plan set out at the beginning of

59 Although Act no. 19,949, which regulates the protection transfer, does not restrict its scope of beneficiaries exclusively to women, the administrative regulation for the application of the Act establishes that only in the cases of families where no adult is female over 18 years of age, the social protection transfer may be assigned to an adult male member of the family'. Hence the name 'housewife transfer'. See Decree 235 Art. 41.

the program. This transfer is granted for 24 months, and its amount varies according to the following time brackets: the first 6 months, the transfer totals CLP\$ 21,823; from month 7 to month 12, it totals CLP\$ 16,608; from month 13 to month 18, it totals CLP\$ 11,419; and from month 19 to month 24, it totals CLP\$ 20,328. These values are readjusted on 1 February of each year, at 100% of the variation of the Consumer Price Index (CPI) of the previous year. In the year 2021, a monthly average of 111,578 households received protection transfers, at a total of CLP\$ 19,260 million.⁶⁰

Dignity transfers also include tied cash transfers which can only be spent in the context of a specific need.⁶¹ A first illustration of this kind of transfer is the subsidy for the payment of drinking water consumption and sewage services, which favours residential users of scarce resources.⁶² The subsidy is applied to the fixed and variable charges related to the beneficiaries' consumption, which cannot be less than 25% or exceed 85% of these charges and must be the same for beneficiaries in the same region who are subject to the same maximum tariffs and have a similar socio-economic level.⁶³ A second illustration is the educational grant for the retention of students, which is paid to educational institutions that certify that they have enrolled and ensured the permanence in classes or the regular graduation of students between the 7th grade of elementary school and 4th grade of high school who belong to families classified as indigent, according to the Social Register of Households.⁶⁴ This grant is awarded each year in April to the sponsors of subsidised educational establishments that have retained students from 7th to 8th grade of elementary education, amounting to CLP\$ 50,000; from 1st to 2nd grade of high school, to CLP\$ 80,000; from 3rd to 4th grade of high school, to CLP\$ 100,000; and from 4th grade of high school for students that have successfully graduated, to CLP\$ 120,000.⁶⁵ These values are readjusted in January of each year by the same

60 MIDES, *Balance de Gestión Integral* (Ministerio de Desarrollo Social y Familia 2021), p. 57.

61 L. Leisering, 'Basic Social Security: From Poor Relief to Social Assistance, to Social Cash Transfers', in: L. Leisering (ed.), *The Global Rise of Social Cash Transfers: How States and International Organizations Constructed a New Instrument for Combating Poverty* (OUP 2019), p. 81.

62 Act no. 18.778 Art. 1, Act no. 19.949 Art. 2, Act no. 20.595 Art. 15 para. 1.

63 Act no. 18.778 Art. 2.

64 Act no. 19.837 Art. 43, Act no. 19.949 Art. 2.

65 Subsidised educational establishments are those that are financed by state contributions and monthly co-payments from parents.

percentage by which the Educational Subsidy Unit was readjusted in the immediately preceding year.⁶⁶ Users of the *Chile Solidario* subsystem also have access to these benefits.

As for the sufficiency of the amounts of these transfers to meet the objective of enabling the general subsistence of households living in extreme poverty and ensuring living conditions compatible with human dignity, a word is in order. Considering that the base transfer only covers 85% of the difference between the monthly per capita income of the beneficiary household and the value of the extreme poverty line (CLP\$ 151.485), this benefit does not even guarantee that the latter threshold will be reached. There is no justification in Act no. 20.595 or in its draft for the base transfer only covering 85% of the gap that families must bridge to overcome the extreme poverty line. A qualitative study carried out in 2018 on the perceptions of the subsystem's beneficiaries suggests that this 85% cut-off represents an individual rather than collective understanding of the causes of poverty, which assumes that families and individuals are primarily responsible themselves for their situation of poverty and vulnerability, as well as for overcoming it.⁶⁷

For its part, the highest value of the protection transfer (CLP\$ 21,823 for the first 6 months of the total of 24 in which it is granted) only reaches about 15% of the value of the extreme poverty line. As for the tied cash transfers, these only cover up to 85% of the fixed and variable charges related to the beneficiaries' drinking water consumption or are directly given to individuals other than the beneficiaries, as is the case with the educational grant for the retention of students. These observations suggest that the system is not generous enough and may be unable to fulfil its purposes.

66 The Educational Subsidy Unit is a measure that expresses the amount to be subsidised per pupil, which is readjusted in December of each year or when public sector salaries are readjusted by the same percentage.

67 Subsecretaría de Evaluación Social, 'Evaluación de Impacto del Subsistema de Protección y Promoción Social Seguridades y Oportunidades (Ley N°20.595) – Usuarios Egresados' (2018) < http://www.chileseguridadesyopportunidades.gob.cl/docs/Evaluacion_impacto_SSOO_CSP_Informe_final.pdf > accessed 9.8.2024.

bb) Duty Transfers

The *Seguridades y Oportunidades* subsystem comprises two conditional cash transfers for users who meet certain conditions in the areas of health and education: the healthy child control transfer and the transfer for school attendance, respectively. The healthy child control transfer is a benefit intended for households covered by the subsystem who are entitled to the base cash transfer and have children under 6 years of age as members of the family group, with an up-to-date health check-up. In 2021, 31,695 families obtained this benefit, at a total of CLP\$ 3,309,143,000 per year.⁶⁸ The transfer for school attendance is a monthly benefit aimed at families who are users of the *Seguridades y Oportunidades* subsystem who are entitled to the base monetary transfer and whose children from 6 to 18 years of age regularly attend educational establishments recognised by the state, whether they are in elementary or secondary education. To qualify for the benefit, the child's monthly school attendance must be equal to or greater than 85% of the total number of days established in the school calendar. Throughout 2021, these transfers benefited a monthly average of 51,213 families, at a total of CLP\$ 7,983,436,000 annually.⁶⁹

The amount of each of these transfers is CLP\$ 11,000 per month for each child who meets the relevant requirements and the transfer is compatible with the receipt of any other subsidy or transfer provided by the state. This value is readjusted on 1 February each year by 100% of the variation experienced by the Consumer Price Index (CPI) of the previous year.

cc) Achievement Transfers

The *Seguridades y Oportunidades* subsystem includes four kinds of achievement transfers that reward specific accomplishments. The first is the formalisation transfer, a one-time benefit paid to users of the subsystem who have effectively participated in its social and labour support programme and register at least four continuous contributions for health and pensions, or for the Unemployment Insurance established in Act no. 19.728, as appropriate, provided that they are declared and paid within the period of

68 MIDES, *Balance de Gestión Integral* (Ministerio de Desarrollo Social y Familia 2021), p. 57.

69 Ibid., p. 58.

effective participation. Its maximum amount is CLP\$ 200,000, in a single instalment, which is adjusted on 1 February of each year, considering 100 percent of the variation of the Consumer Price Index. In 2021, this bonus reached 3091 beneficiaries, at a total of CLP\$ 648,950 million.⁷⁰

The second is the high school graduation transfer, also a one-time benefit for users of the *Seguridades y Oportunidades* subsystem who are over 24 years of age and who, within the period of their effective participation in the subsystem, obtain a high school diploma or equivalent recognised by the Ministry of Education. Its amount equals CLP\$ 50,000, which is also readjusted on 1 February of each year, considering 100 percent of the variation experienced by the Consumer Price Index. During the year 2021, this transfer reached a coverage of 1306 beneficiaries, at a total of CLP\$ 74,103,000.⁷¹

The third is the effort transfer, which benefits users of the subsystem who belong to the socioeconomically most vulnerable 30% of the population, who show outstanding performance or improvement in the areas of education, health, employment, savings, and monthly adherence to intensive or residential drug rehabilitation programmes. It amounts to CLP\$ 50,000, which is readjusted on 1 February of each year, considering 100 percent of the variation experienced by the Consumer Price Index, and may be received by each beneficiary only once in each calendar year. In case the effort transfer can be granted for two or more achievements, the beneficiary will receive the transfer for only one of them. For 2021, 227,310 effort transfers were issued, totalling CLP\$ 11,735,836,000.⁷²

The fourth and last benefit comprised in this category is the women's employment transfer. This benefit is granted to salaried and self-employed female workers who are between 25 and 60 years of age and belong to the socioeconomically most vulnerable 40% of the population, as well as their respective employers. The monthly payments of this transfer vary according to the minimum and maximum brackets of the gross income of the beneficiary workers, up to a maximum of CLP\$ 570,825 per year and are recalculated year by year. During 2021, 390,763 female workers received this benefit, at a total amount of CLP\$ 54,509,159,000.⁷³

70 Ibid.

71 Ibid.

72 Ibid.

73 Ibid., p. 59.

d) Solidarity Pension System

The Solidarity Pension System is the non-contributory tier of the Chilean pension system, aimed at preventing poverty in old age and invalidity, as well as at increasing the adequacy and equity of pensions. It currently comprises three benefits: the Universal Guaranteed Pension, the Basic Solidarity Invalidation Pension, and the Solidarity Invalidation Pension Contribution. A common denominator of these benefits is that they all target people whose self-financed pension amounts are low or non-existent. By April 2023, the total number of recipients of all the benefits provided by the Solidarity Pension System reached 2,331,467, who collectively received a total of CLP\$ 473,354 million.⁷⁴ Among them, 59% were men and 41% were women.

The Universal Guaranteed Pension is a publicly funded monthly cash transfer that replaces the old-age benefits of the Solidarity Pillar. It is aimed at all persons 65 years of age or older, who do not belong to the richest 10% of the population and have a base pension of less than CLP\$ 1,114,446. The base pension results from adding the beneficiary's self-financed pension and any additional survivor's pensions they may be receiving at retirement age, regardless of whether the beneficiary retires or not.⁷⁵ For those with a base pension lower or equal to CLP\$ 702,101 per month, the benefit will amount to CLP\$ 206,173; while for those with a base pension higher than CLP\$ 702,101 but lower than CLP\$ 1,114,446, its amount will be variable, depending on the beneficiary's vulnerability level.⁷⁶ By April 2023, 1,878,035 individuals received the Universal Guaranteed Pension, a figure representing 80.55% of the beneficiaries of the Solidarity Pension System. The total amount spent on this concept reached CLP\$ 381,693 million.⁷⁷

The second benefit included in the Solidarity Pension System is the Basic Solidarity Invalidation Pension, a monthly monetary contribution for people between 18 and 65 years of age who have a certified invalidity, who are

74 Unidad de Políticas Previsionales de la Dirección de Estudios, 'Beneficiarios del Pilar Solidario – Información del mes' (July 2024) < www.previsionsocial.gob.cl/sps/visualizacion-sistema-de-pensiones/ > accessed 30.4.2023.

75 This benefit is available to all eligible individuals, regardless of whether they continue to work or receive a pension from any pension system, except for CAPREDENA and DIPRECA.

76 See Section 2, below.

77 Unidad de Políticas Previsionales de la Dirección de Estudios, 'Beneficiarios del Pilar Solidario – Información del mes' (July 2024) < www.previsionsocial.gob.cl/sps/visualizacion-sistema-de-pensiones/ > accessed 30.5.2023.

not entitled to a pension under any social security system – whether as a pensioner or as a beneficiary of a survivor’s pension – and who are part of a household belonging to the poorest 80% of the population. Its amount is the same as that of the Universal Guaranteed Pension. Official figures updated to April 2023 show that 187,578 individuals, equivalent to 8.05% of the users of the Solidarity Pension System, have received this benefit. The total amount paid reached CLP\$ 38,652 million.⁷⁸

Finally, the Solidarity Invalidity Pension Contribution is a benefit that supplements an Invalidity Pension⁷⁹ until it reaches a final amount equivalent to the Universal Guaranteed Pension. Therefore, its beneficiaries must meet the same requirements to qualify as for the Basic Solidarity Invalidity Pension, except that they must have contributed to a pension scheme and, in addition, receive a base pension lower than the amount of the Universal Guaranteed Pension. Up to April 2023, 94,790 people have accessed this benefit, which represents 4.07% of the beneficiaries of the Solidarity Pension System. Overall, they have received CLP\$ 16.4 million.⁸⁰

All benefits of the Solidarity Pension System are readjusted every year on 1 February, according to the variation of the Consumer Price Index.

2. Situation of Need

Access to the *Sistema Intersectorial de Protección Social* and the Universal Guaranteed Pension, among other benefits,⁸¹ is determined by ‘socio-economic vulnerability,’ which is the legal term used to describe the respective target population.⁸² Although the law does not expressly define it, the literature on the topic understands the term as referring to the loss of well-being caused by income variability and the risk it poses to households.⁸³

78 Ibid.

79 Invalidity pensions are paid to those who have contributed to any pension scheme, have not reached retirement age, and suffer a permanent impairment in their ability to work due to a common (non-work-related) illness or accident. Its amount depends on the degree of invalidity and is calculated on the basis of the pensioner’s average taxable income, excluding allowances, of the last 6 months preceding the accident or diagnosis of illness.

80 Ibid.

81 Over 160 social benefits are assigned using information from the Social Register of Households.

82 Act no. 20.379 Art. 1.

83 P. Henoch, ‘Vulnerabilidad social. Más allá de la pobreza’ Serie Informe Social 128 (2010), p. 11.

Socio-economic vulnerability is in turn determined by the System of Support for the Selection of Beneficiaries of Social Benefits.⁸⁴ The purpose of the System is to provide information that enables a process to classify the target population of the various benefits, programmes and social services created by law, in order to determine whether they meet the conditions for eligibility. This process, legally referred to as ‘characterisation’,⁸⁵ is carried out using information from the Social Register of Households, a functional database for the storage and processing of self-reported information, as well as information from administrative databases. In order to ensure its accuracy and validity, the self-reported information contained in the register may be subject to verification – mainly by comparison with public databases such as those of the Internal Revenue Service, the Ministry of Education and the Land Registry Offices, among others – and updating, rectification, completion or cancellation.

The characterisation itself involves a socio-economic qualification process, which consists of placing each individual or household in one of seven brackets: 40%, 50%, 60%, 70%, 80%, 90% and 100%. The four lowest brackets – between 40% and 70% – represent the lowest income and most vulnerable individuals and households, while the three highest brackets – between 80% and 100% – represent the highest income and least vulnerable individuals and households. Each individual or household included in the Register is assigned to one of these brackets according to a three-stage procedure and a methodology based on several variables, as laid down in an administrative regulation.⁸⁶

The first stage is to determine the total income of the individual or household, also known as equivalent income. Equivalent income is the average monthly income from dependent or independent work, contributory and non-contributory pensions, and physical and financial capital of each household member aged 18 or over in the previous 12 months. In order to determine equivalent income, information from administrative databases is preferred to self-reported data in the Social Register of Households in order to promote efficiency and reduce the risk of fraud.⁸⁷

The second stage is to determine the needs of each individual or household according to the number of members and their characteristics, such

84 Decree 22.

85 Act no. 20.379 Art. 5 para. 1.

86 Resolución 47 exenta.

87 Ibid., B.

as age, level or degree of disability (mild, moderate or severe), level or degree of dependency (mild, moderate or severe) or special educational needs. A coefficient is applied to these attributes and their interactions in order to accurately reflect the real cost to each individual or household of maintaining their standard of living.⁸⁸ The application of this coefficient also allows for a more precise grouping of individuals or households, taking into account not only their per capita income but also their composition and characteristics.

The third stage involves an assessment of means, which aims to verify the consistency between the income of the individual or household, their socio-economic level and their access to services and goods. This test takes into account the value of one or more of the following: health insurance, enrolment in an educational institution, vehicles, property and the income of parents who are not part of the household of children under 21 years of age or between 21 and 24 years of age if they are students. For these purposes, a distinction is made between 'high value' and 'very high value' resources, according to tranches defined in an administrative regulation.⁸⁹ If two or more of these resources under consideration in the assessment of means are classified as high or very high value, the individual or household will be placed in one of the top four socio-economic brackets, making them ineligible for minimum income support and some social protection benefits.⁹⁰

It should be noted that the vulnerability brackets assigned on the basis of the information entered in the Social Register of Households are relatively independent from the definition of poverty. Thus, some of the target groups for certain benefits or programmes are determined according to socio-economic vulnerability (e.g. the Universal Guaranteed Pension and achievement transfers), while others are determined according to poverty (such as *Seguridades y Oportunidades* benefits) or extreme poverty (such as *Chile Solidario*). The focus of the Register on assessing socio-economic vulnerability allows targeting social assistance benefits not only as a means to respond to poverty but also to prevent it.

Regarding poverty measurement, the value of the poverty line and the extreme poverty line are measured on the basis of the Basic Food Basket, made up of a set of food goods, whose value is the same throughout the

88 Ibid., I.

89 Ibid., III.

90 Ibid.

country and considers a requirement threshold of 2,000 average daily calories per person. The value of the Basket is updated monthly according to the variation of the prices of the products that compose it in the Consumer Price Index (CPI), discounting the food consumed outside the home. Thus, a household in the income poverty bracket is one whose monthly income is below the poverty line per person, or the minimum income established to satisfy basic food and non-food needs in that same period, according to the number of household members. In turn, a household in a situation of extreme income poverty is one whose monthly income is below the extreme poverty line, or with a minimum income established according to the number of household members which corresponds to 2/3 of the value of the poverty line. Although households in poverty or extreme poverty tend to be concentrated in the 10-20% vulnerability brackets, there is no strict correspondence between them.

While the implementation of the system is a step forward, there are still some challenges to overcome. The process of cross-checking self-reported information with information available in administrative databases increased the workload of the bodies responsible for the provision of social assistance and minimum income benefits, which initially hampered their timely delivery.⁹¹ More recently, measures have been taken to reduce delays. However, given that the Register is updated once a month, even if information is reported and cross-checked in a timely manner, it can take up to five weeks to be recorded.⁹²

On the other hand, there is self-reported information that is not verifiable through cross-checking with other public databases and that is decisive for the process of socio-economic qualification and eligibility for certain social benefits, such as the number of household members. As a result of these difficulties, the practice of falsifying information is widespread among beneficiaries.⁹³ The absence of official data to cross-check this information is not only a problem in that it may distort the targeting of the social

91 Boreal, *Estudio Evaluación de la Implementación del Sistema de Apoyo a la Selección de Usuarios de Prestaciones Sociales* (2017) < <https://biblioteca.digital.gob.cl/serve/api/core/bitstreams/de9308c4-a0c7-407c-89ac-1cdf024611a5/content> > accessed 15.4.2023.

92 MDSF, *Informe Final: Panel de Expertos para mejoras al instrumento de focalización* (2022) < https://registrosocial.gob.cl/docs/220117_Informe_de_Comisión_CSE_VF.pdf > accessed 15.8.2024.

93 J. Contreras and K. Figueroa, 'Desde la ficha de protección social al registro social de hogares, el nuevo instrumento de focalización en Chile. Una perspectiva desde los

assistance system, but also because it potentially makes benefit recipients liable to sanctions and loss of benefits, including fines⁹⁴ and exclusion from some of the subsystems of the *Sistema Intersectorial de Protección Social*.⁹⁵

3. Non-Economic Conditions

As with most social protection systems, access to income support and social assistance in Chile is conditional on the fulfilment of specific status conditions, which define the universe of potential recipients of a given benefit.⁹⁶ As a result, it is not enough to establish that a person is socioeconomically vulnerable, poor, extremely poor or, more generally, in need, in order for him or her to have access to social protection benefits. In this regard, membership in a defined support category determines that in practice there are no fully universal social benefits.

a) Age is one of the most common status indicators, as exemplified by the Universal Guaranteed Pension, restricted to those aged 65 and over, and the Basic Invalidity Pension, restricted to those aged between 18 and 65. In the latter case, the status condition of age is accompanied by the status condition of invalidity, i.e. the permanent impairment of a person's working capacity as a result of illness or weakening of the person's physical or intellectual strength. The same is true for the *Chile Crece Contigo* subsystem, which targets children from their first health check-up until they reach 18 years of age. Here too, age is accompanied by other factors, such as being a user of the public health system, being enrolled in public educational establishments, or that the respective significant adult is deprived of liberty. Similarly, some of the potential groups of users of the *Seguridades y Oportunidades* subsystem are defined on the basis of age status together with the lack of support networks – people aged 65 or over, living alone or with a single person – or together with homelessness – people over 18 years of age living on the street. Furthermore, a number of cash transfers provided by the *Seguridades y Oportunidades* subsystem are reserved for individuals belonging to certain age groups, as illustrated by the high school graduation bonus, aimed at beneficiaries over 24 years of age who have graduated from

actores locales' Documentos y Aportes en Administración Pública y Gestión Estatal 30 (2018)18, pp. 129-163, 137-145.

94 Act no. 20.379 Art. 5 para. 2.

95 Act no. 19.949 Art. 10, Act no. 20.595 Art. 25 para. 2.

96 B. Watts and S. Fitzpatrick, *Welfare Conditionality* (Routledge 2018), p. 18.

high school, or the women's employment transfer, aimed at women aged between 25 and 60.

b) While residency is often used as a status indicator for social protection purposes in other countries, in Chile it is not very common for it to be expressly incorporated in the eligibility requirements. An exception to this rule is found in the eligibility requirements for the Universal Guaranteed Pension, which include proof of residence in Chile for a period of at least twenty continuous or discontinuous years since the applicant reached the age of 20, or for a period of at least four years in the last five years immediately preceding the date of application.⁹⁷ Similar requirements apply to the Basic Solidarity Invalidity Pension and the Solidarity Invalidity Pension Contribution, the beneficiaries of which must prove that they have resided in Chile for at least five years out of the last six years immediately prior to the date of application.⁹⁸

Nonetheless, in order to apply for inclusion in the Social Household Register, proof of residence in the country must be provided. This proof may consist of the deed or certificate of ownership in force, tax appraisal certificate or lease contract of the property in which the applicant resides, or the bill of basic services (electricity, water, gas), or statement of account issued by the company providing fixed or mobile telephone, Internet, or television services, among others. Given that inclusion in the Registry is a necessary condition for accessing all the benefits of the *Sistema Intersectorial de Protección Social*, in practice, residence implicitly becomes an eligibility requirement for all available social protection offered.

4. Activation

Contemporary social protection systems are designed with an underlying concern about the risk of welfare dependency. As a consequence, they often include activation policies in which the notions of autonomy, desert and self-responsibility take on special prominence. Based on the systematisation proposed by Besharov and Call, the Chilean social protection system incor-

97 Act no. 21.419 Art. 10 c).

98 Act no. 20.255 Art. 16 c).

porates a number of activation policies⁹⁹ that can be seen as either punitive, undermining citizenship, or as supportive, enhancing citizenship.¹⁰⁰

a) Requirements for Job Search, Job Preparation and Job Training

In order to obtain free access to nursery or equivalent services and free access to extended day nursery or equivalent services within *Chile Crece Contigo*, the parents or carers of the children who require them must be working, studying or looking for work.¹⁰¹ On the other hand, users of *Seguridades y Oportunidades* must undergo a social-work accompaniment programme aimed at improving their ability to generate an independent income, their employability and their participation in the labour market.¹⁰²

b) Reinforced Case Monitoring

Chile Solidario offers its beneficiaries the Psychosocial Support Programme, which consists of personalised coaching by a qualified professional or technician to promote the development of the personal and family skills necessary to meet the minimum conditions of a decent quality of life, and an intervention strategy aimed at strengthening the beneficiaries' effective links with social networks and access to available services.¹⁰³ Failure to comply with the Psychosocial Support Programme is grounds for termination of participation in the subsystem.¹⁰⁴ Similarly, *Seguridades y Oportunidades* includes an axis programme aimed at all its users, with the aim of coaching them and evaluating their performance and achievements during their participation in the subsystem. The programme includes a diagnosis, an intervention plan, a follow-up of the participation and an

99 D. Besharov and D. Call, 'Introduction: European and US Experiences with Labor Activation', in: D. Besharov and D. Call (eds.), *Work and the Social Safety Net: Labor Activation in Europe and the United States* (OUP 2023), p. 7.

100 L. Leisering (n 61), p. 95.

101 Act no. 20.379 Art. 12 para. 2.

102 Act no. 20.595 Art. 8 para. 1.

103 Act no. 19.949 Art. 4.

104 Act no. 19.949 Art. 11 para. 3.

evaluation.¹⁰⁵ Acceptance of the intervention plan is mandatory for participation in the subsystem.¹⁰⁶

c) Incentives

Users of *Seguridades y Oportunidades* who take part in the socio-labour accompaniment programme are entitled to a one-off formalisation bonus, provided that, during their participation in the programme, they register continuous contributions, declared and paid, for a minimum of three months and a maximum of twelve months. Those who meet these requirements will be entitled to the formalisation transfer until the nineteenth month of participation in the programme.¹⁰⁷ In addition, users of the same subsystem who are over 24 years old are entitled to a one-off bonus for obtaining their high school diploma or equivalent, as long as they or members of their household remain users of the subsystem.¹⁰⁸ Finally, *Seguridades y Oportunidades* also includes a publicly financed employment subsidy for female employees and workers aged between 25 and 60 who belong to the most socio-economically vulnerable 40% of the population, as well as for their employers.¹⁰⁹

d) Time Limits on Benefit Receipt

The family allowance included in *Chile Solidario* is assigned for three years.¹¹⁰ Equally, the base cash transfer and the protection transfer included in the *Seguridades y Oportunidades* subsystem are granted for a period of 12 or 24 months, depending on the duration of the user's participation in the Psychosocial Support Programme and the Social Work Accompaniment Programme.¹¹¹ Both programmes have a maximum duration of 24 months.¹¹² However, users who successfully complete the socio-labour

105 Act no. 20.595 Art. 6 para. 1.

106 Act no. 20.595 Art. 6 para. 2.

107 Act no. 20.595 Art. 19 para. 1.

108 Act no. 20.595 Art. 19 para. 2.

109 Act no. 20.595 Art. 21 para. 1.

110 Act no. 19.949 Art. 7 para. 2.

111 Act no. 20.595 Art. 14 para. 2 and Art. 15 para. 2, respectively.

112 Act no. 20.595 Art. 11 para. 2.

accompaniment programme early are rewarded and retain access to the basic cash transfer, conditional cash transfers and other social benefits of the subsystem for up to 24 months.¹¹³ Participation in the *Seguridades y Oportunidades* subsystem ends entirely within 12 months of the end of the axis programme.¹¹⁴ The female employment transfer, on the other hand, is paid to the worker herself for four consecutive years and triggers a subsidy for her employer for up to 24 months.¹¹⁵

e) Benefit Step-Downs

Some of the benefits included in the *Seguridades y Oportunidades* subsystem decrease over time. For instance, the amount of the subsystem's base cash transfer decreases linearly at a rate of one-sixth per month, from the 17th month after its commencement.¹¹⁶ Likewise, the subsystem's accomplishment bonuses decrease linearly at a rate of one-fifth per month, from the 10th month after their first grant.¹¹⁷

f) Other Behavioral Conditions

Some benefits are also linked to the fulfilment of behavioural conditions on the part of their recipients, as illustrated by the large number of conditional cash transfers included in the *Seguridades y Oportunidades* subsystem. The behavioural dimension of this type of conditionality is determined by the fact that it aims at modifying or influencing the behaviour of its recipients, as it is supported by monitoring and sanctioning mechanisms,¹¹⁸ which may amount to social control devices.¹¹⁹ Furthermore, the literature on the subject suggests that behavioural conditions and sanctions can have a significant impact on other rights and can be counterproductive to the social reintegration of their beneficiaries in terms of opportunities to access

113 Act no. 20.595 Art. 9 para. 2.

114 Act no. 20.595 Art. 18 a).

115 Act no. 20.595 Art. 21 para. 1.

116 Act no. 20.595 Art. 14 para. 2.

117 Act no. 20.595 Art. 19 para. 1.

118 B. Watts and S. Fitzpatrick (n 96), pp. 18-20.

119 Ibid., p. 11.

formal employment, potentially leading to homelessness, drug dealing and crime.¹²⁰

Another source of conditionality is reflected in the fact that to enter and participate in both the *Chile Solidario* and the *Seguridades y Oportunidades* subsystems, eligible individuals and households must expressly declare their willingness to do so and to comply with the conditions of the system by signing a commitment letter.¹²¹ The commitment letter is a technical instrument that sets out the conditions of participation in the program, the family's rights and responsibilities, general information about the services and social programmes to which they may have access and the grounds for suspension and termination of their participation. Failure to comply with this letter may result in termination of participation in the subsystem or programme, loss of benefits and, potentially, lack of access to all forms of social protection.¹²² Consequently, some commentators have argued that it is not entry into the scheme itself that ensures access to social protection benefits, but rather compliance with the conditions set out in the commitment letter.¹²³

This is one of the most glaring weaknesses of the system, as it could lead to the total deprivation of the minimum basic level of social assistance benefits for the target population, in open contradiction to international human rights standards and to the system's own fundamental objective of providing better living conditions to the most socio-economically vulnerable national population.¹²⁴ To illustrate the scope of this issue, it should be borne in mind that Chilean social assistance includes benefits related to the provision of drinking water, education, health, housing and access to justice.¹²⁵ Against this background, it is essential to define minimum levels of social protection and to raise awareness of the specific contribution

120 J. Griggs and M. Evans, *Sanctions within Conditional Benefit Systems: A Review of Evidence* (Joseph Rowntree Foundation 2010); M. Adler, *Cruel, Inhuman or Degrading Treatment? Benefit Sanctions in the UK* (Palgrave 2018); WelCond, *Final Findings Report, Welfare Conditionality: Sanctions, Support and Behaviour Change* (ESRC 2018).

121 Act no. 19.949 Art. 5.

122 Act no. 19.949 Art. II N° 2, Act no. 20.595 Art. 18 c).

123 D. Giambruno, *Anti-Poverty Social Policies in Chile and Concerns for Social Justice in Neo-Liberal Times: A View from Below* (University College London 2020), pp. 148-149.

124 Act no. 20.379 Art. 1.

125 Act no. 20.379 Art. 13.

that such minimum levels make to the realisation of all other fundamental rights.

The fact that conditionality is a regulatory technique applied only to the most vulnerable population may be questionable from the perspective of the right to equality and non-discrimination. Through this technique, the state provides resources to beneficiary households in order for them 'to do something they did not do before, from taking children to health check-ups to enrolling them in school, thus breaking the cycle of poverty and giving children more opportunities to overcome their vulnerability in the future'.¹²⁶ While this may be a legitimate objective, there is a risk of succumbing to the irresistible temptation to 'improve' the recipients of the systems by 'imposing virtuous behaviour' on them, rather than simply offering them social assistance.¹²⁷ In the Chilean case, this risk could be illustrated by the regulation of the effort transfer, which is granted to those belonging to the 30% of the most socio-economically disadvantaged segments of the population who achieve outstanding achievements or improvements in the areas of education, health, employment, savings and monthly compliance with intensive or residential drug rehabilitation programmes.¹²⁸

It is also worth noting that some forms of conditionality may end up reinforcing traditional gender roles, for example by targeting social assistance benefits at women, mainly in their role as mothers.¹²⁹ Take, for instance, some of the duties and benefits transfers of the *Seguridades y Oportunidades* subsystem: the healthy child monitoring transfer, the school attendance transfer and the female employment transfer. Given that the majority of social assistance recipients in Chile are single mothers, and that the system does not provide mechanisms for reconciling wage or salaried work with caring responsibilities, the simultaneous fulfilment of these conditions could prove too burdensome, if not impossible. As a result, the potential beneficiaries of these transfers access them at the cost of a double workload or do not access them at all, thus defeating the very purpose of the former.

126 C. Huneeus and A. Repetto, 'Los desafíos pendientes del Ingreso Ético Familiar', in: M. Fantuzzi (ed.), *Ingreso ético familiar: Innovando en la lucha contra la pobreza* (Ediciones LyD 2013), p. 219.

127 C.A. Reich 'Individual Rights and Social Welfare: The Emerging Legal Issues' *The Yale Law Journal* 74 (1965)7, pp. 1245-1257, 1246.

128 Act no. 20.595 Art. 20 para. 1.

129 N. Jones and R. Holmes, 'Why is Social Protection Gender-Blind? The Politics of Gender and Social Protection' *IDS Bulletin* 42 (2011)6, pp. 45-52, 46.

IV. Concluding Remarks

Although the declared purpose of the various components of the social policy system is to adopt a rights-based approach, neither the Constitution nor the case law of the Constitutional Court provides any further parameters for determining exactly what requirements such an approach entails. Nor does the constitutional text in any way indicate that the state has a constitutional duty to ensure a certain level of subsistence and that there is a corresponding individual subjective right to demand it. This gap could be partially filled by international human rights law standards, and in particular the Inter-American system's standards, which could provide some grounds for building the state's obligation to ensure a dignified life.

In practice, the definition of a dignified life encompasses a wide range of transfers and services aimed at enhancing social citizenship of vulnerable segments of the population. Access to education, work, housing, health services and a minimum subsistence level, among others, are at the core of this aim. Nevertheless, structural causes of inequality, such as lack of affordable quality education or healthcare, lack of housing and social mobility, poorly paid jobs, among others, receive scant attention. Thus, while the system has been effective in targeting scarce resources and improving economic growth rates, the high levels of poverty and inequality in the country remain an unresolved challenge.

By and large, the system continues to reinforce an ideal of deservingness that tends to undercut the recognition of the poor as genuine right holders. Traces of this ideal can be found not only in conditional cash transfers, but also in unconditional transfers, as illustrated by the fact that the dignity transfers in the *Seguridades y Oportunidades* system only covers 85% of the gap between household income and the value of the extreme poverty line. Underlying the design of both transfers is an understanding of poverty that emphasises individual responsibility and effort.

On the other hand, it is not entirely clear what level of recognition of individual autonomy a dignified life requires. For example, while in most cases the system allows recipients of cash transfers to freely determine the purposes for which their funds are spent, in other cases access to a life in dignity and to minimum subsistence depends on a series of activation policies and behavioural conditionality. These policies can either have a punitive character and undermine citizenship, insofar as they rely on sanctions and surveillance techniques, or have a supportive character and enhance citizenship, insofar as they aim to educate and help achieve self-sufficiency.

Highlighting this difference is crucial, as over-reliance on the use of punitive policies could render the system unable to provide a floor below which no one should fall. Therefore, sanctions such as permanent expulsion from a subsystem or the loss of and duty to repay received benefits must be carefully assessed.

In conclusion, while Chile's social protection has managed to expand its coverage and benefits over the years, there is still considerable room for improvement. The constant reforms and adjustments to the system, without prior thorough evaluation of what already exists, have led to its inorganic and disjointed growth, complexity and, ultimately, to greater difficulty regarding access to it. On the other hand, although efforts have been made to refine the instruments for assessing socio-economic vulnerability, other factors that should be relevant for access to social protection, such as territorial and cultural context, do not receive any attention. Despite these areas for improvement, the results of the Chilean social protection system in terms of decreasing poverty rates over the years have helped to shield this issue to some extent from public scrutiny.¹³⁰ Consequently, the political and academic debate centres predominantly on increasing old-age pensions, either by raising individual contributions¹³¹ or, at most, by increasing the Universal Guaranteed Pension.¹³² By contrast, a profound reflection on the minimum conditions necessary to allow the most vulnerable to build a life in dignity in Chile is still pending.

130 This phenomenon may be due to the fact that non-contributory social protection in Chile is often seen only as an 'initial nudge' to overcome poverty, which must then be replaced by social security contributions and tax payments. Giambruno (n 123), pp. 186 and 262; N. Martínez, 'Pobreza en Chile: conceptualización, discurso y política' (DPhil thesis, Universidad de Salamanca 2016), p. 377.

131 S. Hormazábal, *9 propuestas para un nuevo sistema previsional* (Horizontal 2022), pp. 15-18; G. Ugarte and R. Vergara, *PGU y tasas de reemplazo* (CEP 2022), p. 19.

132 This is the position officially taken by the government and the National Congress.

