

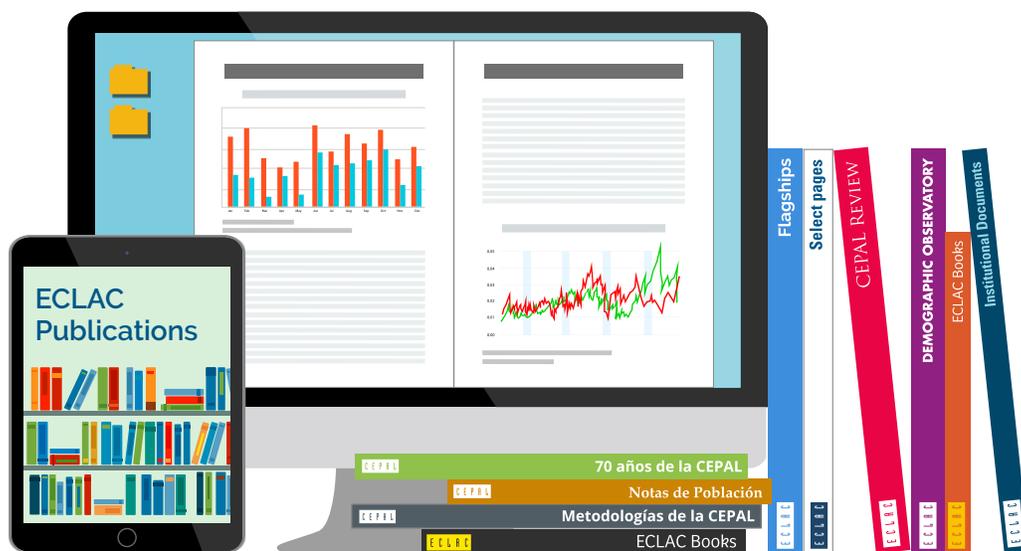


From beneficiaries to citizens

Access by and treatment of women
in Latin American pension systems



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From beneficiaries to citizens

Access by and treatment of women in Latin American pension systems



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Foreword

The countries of Latin America and the Caribbean face a range of challenges: demographic change, in particular the ageing of the population and the increased preponderance of women among older adults; labour markets characterized by informal and precarious employment; cycle-dependent economies that are unable to resolve their funding problems; and public policies and regulations that are grounded on gender bias.

Women make up a majority of older adults but, with a few exceptions, they are underrepresented among the pensioned population. Women aged 65 and above are less likely than their male peers to receive a pension or any form of retirement benefit. Although the region has made progress with inclusion through non-contributory pensions, the benefits such pensions provide are among the lowest and they do not enable women to overcome poverty.

The comprehensive incorporation of the gender dimension in the design of pension system reforms is a challenge. Including women in pension systems is essential for addressing the new structure of the age pyramid, the demand and need for economic autonomy and the exercise of rights. It is also a requirement for ensuring that those systems are sustainable.

The information contained in *Social Panorama of Latin America, 2017* (ECLAC, 2018) highlights the different gender gaps found in the region's countries as regards old-age pensions. Those systems still create gaps that perpetuate inequality between men and women and, in many cases, accentuate it. They are systems based on male experiences of the job market and, in addition, on uninterrupted histories of formal employment that ceased to be the rule some time ago.

However, as this document sets out, recent pension system reforms undertaken in some countries have made progress in including the gender dimension in the pension systems.

ECLAC aspires to broad social protection systems that, in addition to old-age pensions and health care, must contain pillars for poverty relief and for caregiving.

Likewise, social security must be based on broad social compacts that must necessarily include new gender compacts. Such compacts require both the redistribution of the unpaid care services still mostly provided by women and some degree of recognition of and compensation for that type of work within pension models.

As shown in this study, recognizing care work within pension systems is vital in ensuring greater gender equality in this area. Such forms of positive action are being introduced into the pension systems of some of the region's countries, although they have a greater impact in systems that follow the logic of redistribution.

Alicia Bárcena

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Introduction

To be seen as citizens within social security systems; for citizenship to be the foundation for rights; for care work to be recognized as a public good and, consequently, a matter for public policy, and for its redistribution between men and women and between the State and the family to be a priority; for the unpaid care provided primarily by women to be recognized as subsidizing the State and, therefore, for that contribution to be acknowledged within social security: all these are demands of feminism and aspirations to which this document seeks to contribute with arguments, considerations of law and evidence.

Social security can basically adopt two main paths. One of them is a model of social security based on citizenship and funded through general taxation, with no connection to the labour market. The other is a model funded by contributions made by the beneficiaries themselves from their own wages and salaries: contributory regimes, wherein retirement pensions are expressed as a proportion of the worker's salary. Clearly, these two paths allow for a wide range of combinations and, in turn, each of those can follow different designs.

As this study shows, the region's pension systems are contributory; most of them contain a non-contributory component, but the benefits thereof are intended for members of the poorest sectors of the population and are therefore subject to means testing. Consequently, these are not systems based on citizenship, since the entitlement does not arise from a person's status as a citizen but rather from his or her condition of poverty.

In this context, women are in a worse situation than men in terms of coverage, both as active system members—that is, during the periods they are contributors—or during the passive phase in which, as older people, they draw their pensions. Women are also worse off in terms of the adequacy of benefits, in that they invariably receive less than men and are overrepresented among the beneficiaries of non-contributory or social pensions, which are worth less than their contributory counterparts. The document explains the reasons behind those inequalities, shows how some of them have been exacerbated by specific pension reforms and also identifies other reforms through which progress has been made.

The study is divided into eight chapters. The first of these summarizes the legal grounds for equality as a right and as a principle of international human rights law in the area of social security. It describes how it has been enshrined in human rights conventions and other instruments, and it presents further explorations of the topic produced by the agencies responsible for overseeing those conventions.

Chapter two summarizes the knowledge accumulated through the collective constructions of gender studies, revealing the causes of pension inequalities and describing how they were accentuated with the individual capitalization reforms implemented in the region, particularly during the 1990s.

The following chapter describes the reforms undertaken in the present century that have contained specific measures to improve equality and inclusion. Chapter four then offers an overview of the situation in the region following those pro-inclusion reforms.

The fifth chapter examines the relationship between care work and social security. It posits that the situation entails a paradox, in that it is on account of the contribution that women make to social security through their unpaid work that they are penalized with exclusion or lower pensions. Nevertheless, and albeit slowly, that relationship is evolving from paradox to recognition.

The next chapter deals with the regulation of domestic employment in pension systems and describes the precarious pension situation faced by workers in that sector. Chapter seven identifies a series of good practices within pension systems, many of which coexist alongside major challenges. Finally, conclusions and a number of proposals are offered in chapter eight.

I. Equality in social security

Equality within social security must be understood through the lens of the interdependence and inseparability of human rights, which are principles that, beyond merely ethical considerations, have concrete legal implications for States. Thus, once economic, social and cultural rights have been recognized, social citizenship cannot be placed in a secondary position vis-à-vis civil or political citizenship. For the same reason, the rights system challenges the linear conception of rights, invalidating calls to first secure civil and political rights before promoting and ensuring economic, social and cultural rights (Cecchini and Rico, 2015).

The right to social security —and, within that, the right to a pension— are basic rights and are acknowledged as such by both international human rights instruments and the constitutions of the region's States, either explicitly or through the incorporation of human rights treaties into the constitutional corpus.

In turn, equality is a right in and of itself and, being relational in nature (equal to something or someone), the other side of its coin —or how it is translated into the regulatory framework— is the right of non-discrimination (Feres, 2009). As a principle, it guides the whole of international human rights law in a cross-cutting way. That means that all rights must be exercised under conditions of equality.

A. Conventions and other international human rights instruments

The right to social security is recognized in the Declaration concerning the aims and purposes of the International Labour Organization (Declaration of Philadelphia) (1944), the Universal Declaration of Human Rights (1948), the Social Security (Minimum Standards) Convention of 1952 (ILO Convention No. 102), the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966), the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), the Inter-American Convention on Protecting the Human Rights of Older Persons (2015) and other instruments that are binding on the region's States.

In addition, the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities (1999), which aims to ensure that disabilities are not an obstacle to the full exercise of rights, ratifies the right to social security. Likewise, the International Convention on

the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) stipulates that migrant workers and their families are to enjoy the same social security treatment granted to nationals insofar as they fulfil the requirements provided for in the applicable legislation of the State of employment and the applicable bilateral and multilateral treaties. Similarly, the United Nations Declaration on the Rights of Indigenous Peoples (2007) ratifies the right to social security of persons belonging to indigenous peoples.

This right, like the others, must be guaranteed by States in equality of conditions, in accordance with the international instruments cited and with the rulings and recommendations of the agencies charged with interpreting those treaties. Likewise, the Convention on the Elimination of All Forms of Discrimination against Women (1979) requires States to adopt all appropriate measures to guarantee women the right to social security on an equal basis with men.

Equality in the exercise of rights means eliminating the direct and indirect forms of discrimination that may arise from policies, programmes, legal norms and official or social practices. This Convention and the recommendations of the Committee on the Elimination of Discrimination against Women (CEDAW) define direct discrimination as unequal and prejudicial treatment based on gender, which is specified in a policy, norm, regulation or any kind of administrative or other provision. In contrast, indirect discrimination can arise from a formally neutral treatment that, because of its effects or results, is harmful to a specific population or part of it. These concepts will be further explored below.

In turn, the Regional Gender Agenda, comprising the governmental agreements adopted at the sessions of the Regional Conference on Women in Latin America and the Caribbean held between 1977 and 2016, contains various State commitments on economic and social rights, in particular the right to social security and fair access to pension systems.

The Regional Gender Agenda relates the obstacles faced by women in exercising these rights to the social organization of care, the barriers and discrimination that women experience in employment and other impediments to their economic autonomy.¹ As regards pension systems, the commitments undertaken by governments in the framework of the Regional Conference on Women in Latin America and the Caribbean (ECLAC, 2017) include the following:

- Universal, comprehensive and efficient coverage, through solidarity-based financing.
- The linking of pension systems to a broad spectrum of public policies that guarantee well-being, quality of life and a decent retirement, thus strengthening the full exercise of women's citizenship.
- The inclusion of female domestic workers, rural women, female self-employed, informal and contract workers, as well as different family structures.
- The incorporation of mechanisms to recognize and remunerate unpaid care provided predominantly by women in their homes, by bringing them within the scope of social security systems.
- Increased public investment in social security, so as to comprehensively address women's specific care and social protection needs in situations related to illness, disability, unemployment and the stages of the life cycle, especially in childhood and old age.
- The adoption of measures to uphold the right to care and produce a fairer distribution of care between society, the State and families, together with the need to progress labour legislation and social security systems to provide for leave periods for both men and women, leading to a fairer distribution of care duties within families.

¹ The treatment given to these rights in each of the cited instruments can be consulted on the Regional Gender Agenda libguide [online] <https://biblioguias.cepal.org/RegionalGenderAgenda/>.

B. Equality in social security according to the convention oversight agencies

In line with the universality of the rights of equality and non-discrimination and with the cross-cutting nature of the principle of equality in international human rights law, several agencies entrusted with the monitoring of international human rights instruments have issued comments, rulings and reports in support of those principles. Some of these are outlined below.

1. Committee on Economic, Social and Cultural Rights, United Nations

As acknowledged by the Committee in paragraph 10 of its General Comment No. 6 on the economic, social and cultural rights of older persons (1995), “The International Covenant on Economic, Social and Cultural Rights does not contain any explicit reference to the rights of older persons, although article 9, dealing with ‘the right of everyone to social security, including social insurance’, implicitly recognizes the right to old-age benefits” (Committee on Economic, Social and Cultural Rights, 2018). That approach is reiterated in other parts of the general comment, which additionally identify the obligation of States to fulfil this right to the maximum of their available resources and in accordance with the terms of the applicable International Labour Organization (ILO) conventions.

Similarly, paragraph 20 of the General Comment states: “In accordance with article 3 of the Covenant, by which States parties undertake ‘to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights’, the Committee considers that States parties should pay particular attention to older women who, because they have spent all or part of their lives caring for their families without engaging in a remunerated activity entitling them to an old-age pension, and who are also not entitled to a widow’s pension, are often in critical situations” (Committee on Economic, Social and Cultural Rights, 2018). The Committee therefore recommends granting non-contributory benefits to all persons, regardless of their sex, on attaining the retirement age specified in law.

Similarly, in General Comment No. 16 on the equal right of men and women to the enjoyment of all economic, social, and cultural rights (article 3), the Committee states that the non-discrimination enshrined in article 2, paragraph 2, and the equality enshrined in article 3 of the ICESCR are provisions that should be read in conjunction with each other and in light of each specific right and article of the Covenant. It further emphasizes that the elimination of discrimination is fundamental to the enjoyment of all rights.

The Committee recognizes, as barriers to women’s enjoyment of economic, social and cultural rights, all forms of explicit and concealed discrimination, gender roles and intersecting forms of discrimination (gender with ethnic or racial origin, religion, age, marital status and other factors). The Committee further notes that the equality set forth in the Covenant is substantive or real equality, but then adds: “The enjoyment of human rights on the basis of equality between men and women must be understood comprehensively. Guarantees of non-discrimination and equality in international human rights treaties mandate both de facto and de jure equality. De jure (or formal) equality and de facto (or substantive) equality are different but interconnected concepts. Formal equality assumes that equality is achieved if a law or policy treats men and women in a neutral manner. Substantive equality is concerned, in addition, with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience” (Committee on Economic, Social and Cultural Rights, 2018, “General Comment No. 16”, para. 7).

It then offers arguments for the adoption of affirmative action measures and policies to address prevailing inequalities: “Substantive equality for men and women will not be achieved simply through the enactment of laws or the adoption of policies that are, prima facie, gender-neutral. In implementing article 3, States parties should take into account that such laws, policies and practice

can fail to address or even perpetuate inequality between men and women because they do not take account of existing economic, social and cultural inequalities, particularly those experienced by women” (Committee on Economic, Social and Cultural Rights, 2018, “General Comment No. 16”, para. 8).

The comment continues with definitions of direct and indirect discrimination and cites the main reason for affirmative action: “The principles of equality and non-discrimination, by themselves, are not always sufficient to guarantee true equality. Temporary special measures may sometimes be needed in order to bring disadvantaged or marginalized persons or groups of persons to the same substantive level as others. Temporary special measures aim at realizing not only de jure or formal equality, but also de facto or substantive equality for men and women. However, the application of the principle of equality will sometimes require that States parties take measures in favour of women in order to attenuate or suppress conditions that perpetuate discrimination. As long as these measures are necessary to redress de facto discrimination and are terminated when de facto equality is achieved, such differentiation is legitimate” (Committee on Economic, Social and Cultural Rights, 2018, “General Comment No. 16”, para. 15).

The Committee also explains the State’s obligations regarding equality and non-discrimination in economic, social and cultural rights and, consequently, in the right to social security, which it categorizes as obligations to respect, to protect and to fulfil.

Those of the first group, obligations to respect, entail refraining from all forms of discrimination, including the obligation of repealing discriminatory laws and eliminating institutionalized discriminatory practices carried out by the State.

Obligations to protect imply the adoption of measures to combat prejudices, practices and customs that undermine the exercise of rights by women. Those obligations also include the obligation of legislating for, regulating and monitoring the conduct of non-State actors.

Finally, obligations to fulfil cover actions for the effective exercise of economic, social and cultural rights, including ensuring access to forms of reparation, restitution and compensation when the principles of equality and non-discrimination are breached; establishing legal and administrative mechanisms for redress; establishing mechanisms for oversight over the enforcement of rules and principles related to the fulfilment of economic, social and cultural rights; implementing policies and programmes for the exercise of economic, social and cultural rights, including affirmative action measures; undertaking training and outreach programmes; and including gender equality and non-discrimination in development planning.

For greater clarity, the Committee explains what enforcing the right to social security in conjunction with the right to equality entails: “Article 9 of the Covenant requires that States parties recognize the right of everyone to social security, including social insurance, and to equal access to social services. Implementing article 3, in relation to article 9, requires, inter alia, equalizing the compulsory retirement age for both men and women; ensuring that women receive the equal benefit of public and private pension schemes; and guaranteeing adequate maternity leave for women, paternity leave for men, and parental leave for both men and women” (Committee on Economic, Social and Cultural Rights, 2018, “General Comment No. 16”, para. 26).

Lastly, the Committee notes that although it acknowledges that each State must identify the policies and strategies that best suit it for ensuring the equal exercise of economic, social and cultural rights, retrogressive measures constitute a violation of the Covenant.

Similarly, in its General Comment No. 20 on non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), the Committee offers its interpretation of the right of non-discrimination enshrined in article 2, paragraph 2, of the ICESCR.

In that document, the Committee notes that equality and non-discrimination are substantial and fundamental components of human rights law. It also defines discrimination, pursuant to CEDAW and other treaties, as “any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination² and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights” (Committee on Economic, Social and Cultural Rights, 2018, “General Comment No. 20”, para. 7). It also specifies the definitions of formal and substantive discrimination that correspond to breaches of formal and real or substantive equality. In addition, it reiterates the classification of direct and indirect discrimination set out above.

One clarification must be made regarding the scope of differential treatment that is applicable to the forms of direct discrimination in which several of the region’s pension systems incur. Thus, the Committee notes: “Differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights” (Committee on Economic, Social and Cultural Rights, 2018, “General Comment No. 20”, para. 13).

The question that must therefore be asked is whether the difference in average life expectancy between women and men—which, as will be seen below, is used as a parameter in calculating pensions in several countries—constitutes reasonable and objective grounds to justify differences in treatment and, additionally, whether that difference is compatible with the nature of those rights. Apparently not, according to the findings of another United Nations committee, CEDAW, as outlined below.

2. Convention on the Elimination of All Forms of Discrimination against Women

Within the United Nations, the Committee on the Elimination of Discrimination against Women (CEDAW) is charged with overseeing compliance with the Convention and has formulated, for the States parties, a series of observations and recommendations on the situation of women in social security systems—and, in particular, in pension systems—in response to the reports submitted by the countries on the actions they have taken to implement the Convention’s provisions.

In its 2002 comments on Argentina, the Committee spoke of the adverse effects on women of the pension reforms of 1993. It said that the individual capitalization subsystem used earnings and differentiated life expectations as its main parameters, which was clearly detrimental to women, all the more so in light of their lower retirement age (CEDAW, 2002).

In its observations on the combined second, third and fourth periodic reports from the Plurinational State of Bolivia, the Committee noted that family allowances, pension system benefits and the rest of the social security system did not cover female own-account workers, who constituted the majority of working women (CEDAW, 2006). Similarly, in its concluding observations on the fifth and sixth periodic reports (CEDAW, 2015a), the Committee recommended that the State adopt temporary special measures to accelerate substantive equality between women and men within social security.

The Committee recommended that Colombia guarantee access to social services and social security by women working in the informal sector; adopt effective measures to eliminate occupational

² As is to be expected, the prohibited grounds are racial or ethnic origin, sex, age, disability and others: “Since the adoption of the Covenant, the notion of the prohibited ground “sex” has evolved considerably to cover not only physiological characteristics but also the social construction of gender stereotypes, prejudices and expected roles, which have created obstacles to the equal fulfilment of economic, social and cultural rights. Thus, the refusal to hire a woman, on the ground that she might become pregnant, or the allocation of low-level or part-time jobs to women based on the stereotypical assumption that, for example, they are unwilling to commit as much time to their work as men, constitutes discrimination. Refusal to grant paternity leave may also amount to discrimination against men” (Committee on Economic, Social and Cultural Rights, 2018, “General Comment No. 20”, para. 20).

segregation, both horizontal and vertical, based on stereotypes related to gender; and closely monitor the working conditions of women in the informal sector (CEDAW, 2013a).

The Committee, in its concluding observations on Chile's 2012 country report, expressed satisfaction at the positive impact of the country's pension reforms. However, it also noted its concern about the discriminatory pension calculation system, which, by using gender-specific life expectancy tables, results in lower monthly pensions for women who have contributed the same as men (Bareiro, 2018).

In its concluding observations on Ecuador's eighth and ninth periodic reports, the Committee noted the steps taken by the State to recognize domestic work and to ensure access to social security for domestic workers, but it expressed concern about the lack of information on the real situation of women employed in that sector (CEDAW, 2015b). Likewise, the Committee urged Ecuador to take appropriate legal measures to include intangible property (i.e. pension funds, severance payments and insurance) accumulated during a spousal partnership in the joint property to be equally divided upon dissolution of the relationship. It also called on the State to adopt, in consultation with the private sector, a national action plan to increase the coverage of social security schemes for women working in the informal sector (CEDAW, 2015b).

As regards El Salvador, the Committee expressed its concern at the critical labour rights situation of women in maquiladora industries, particularly their lack of access to social security. It also recommended that the State adopt legislative, administrative and other measures to guarantee women's access to social security (CEDAW, 2008).

In its concluding observations on the combined seventh and eighth periodic reports submitted by Honduras, the Committee recommended that the State strengthen measures to close the gender pay gap, enforcing the principle of equal pay for work of equal value, and implement laws so that women and girls in the informal sector are covered by labour legislation and social protection (CEDAW, 2016a). In its 2007 comments, the Committee had already urged the State to ensure that women employed in the informal sector and in domestic work were not exploited and were afforded the benefits of social security (CEDAW, 2007).

In its final observations on Guatemala (2009), CEDAW recommended that the government adopt temporary special measures to address women's disadvantaged situation in the labour market, along with measures to guarantee access to social security by female domestic and rural workers and those working in the maquiladora industry and in the informal sector of the economy (Bareiro, 2018).

In the case of Mexico, the Committee noted that federal civil law excluded funds saved for old-age pensions from the communal property regime. In other words, the law established an optional marital communal property regime, whereby all property acquired during the time of the marriage was considered joint property, to be divided equally upon divorce; however, that provision was limited only to tangible assets (movable and immovable property) and did not include intangible assets or work-related benefits (such as pensions and insurance benefits). The Committee further noted that neither did it adequately redress the economic disparities between spouses resulting from the existing sex segregation of the labour market and women's greater share in unpaid work, as evidenced by the 2009 National Time Use Survey. CEDAW therefore recommended that the State take the legislative measures necessary to recognize both tangible and intangible property, such as pensions and insurance benefits, as part of the union's joint property to be divided in the event of divorce (CEDAW, 2012).

It also called on the State to revise the legal social protection framework to formulate a comprehensive policy that would ensure domestic workers equal access to equal remuneration and treatment for work of equal value, including benefits, as well as equal access to social security and safe working conditions.

With respect to Panama, as with other countries, in its final observations the Committee expressed its concern that the equal sharing of marital property upon divorce related only to tangible property (movable and immovable) and did not include intangible property such as pensions, savings funds and other work-related benefits (CEDAW, 2010). It expressed a similar concern regarding Paraguay and the Bolivarian Republic of Venezuela. In the latter case, it made specific reference to the definition of the communal property regime and recommended that the State expand the definition of that regime and of common marital property in order to compensate women for their dedication to unpaid work (CEDAW, 2017 and 2014b).

In the case of Peru, in contrast, the Committee noted that the country's marital property regime was one of deferred community property that also took into account women's non-monetary contributions and included intangible assets, such as pension rights, as part of the property to be equally divided between the spouses. However, the Committee noted its concern at the low level of awareness among women about their economic and social rights, at the failure to enforce the legislation and at the alarmingly low level of property ownership among women (CEDAW, 2014a).

In its concluding observations on the Dominican Republic's combined sixth and seventh periodic reports, the Committee noted its concern at the discrimination women faced in the work of work, particularly the obstacles encountered by domestic workers in obtaining access to social security (CEDAW, 2013b). On the same topic, the Committee recommended that Uruguay organize a national campaign to encourage employers of domestic workers and caregivers to enrol in and make periodic contributions to the social security system and to raise awareness about social security among women (CEDAW, 2016b). As explained below, the State of Uruguay duly implemented this recommendation.

Lastly, it is significant that in most cases, the Committee urged the States to include, in their reports, sex-disaggregated statistics on their pension systems and, in general, on their social security benefits.³

3. Special Rapporteur on extreme poverty and human rights

In his 2017 report to the Human Rights Council, the Special Rapporteur on extreme poverty and human rights put forward a proposal for a universal basic income to replace or supplement existing social protection systems that would, in its most comprehensive and ideal form, address the shortcomings of most existing social security systems (United Nations, 2017a). The payments made under this proposal would be regular, adequate for ensuring a minimum level of subsistence for all recipients, universal and unconditional. The Rapporteur also requested that the human rights mechanisms emphasize the right to work, to social security and to an adequate standard of living.

One of the central justifications for this proposal was equality and non-discrimination, which the universal and unconditional nature of a basic income would ensure. Moreover, because it is intended for a country's entire resident population, it would be available to all age groups and, ideally, could therefore replace or supplement old-age pensions.

It should be noted that conditional transfers —and even non-conditional transfers— differ from the different universal basic income models that exist. Non-conditional cash transfers, while not subject to requirements, differ from universal basic income systems in several respects. First of all, they are generally given to households, not to individuals, and they can vary according to situational considerations. Second, they are generally intended for the poor or other population groups, such as children or older persons, and are thus not universal. Third, the amounts transferred can vary in accordance with the beneficiary's situation (United Nations, 2017a).

³ Notable efforts in this regard include those made by Paraguay's Ministry of Labour, Employment and Social Security. For the past year, it has been publishing a statistical social security bulletin with strings of data series on coverage and amounts, all disaggregated by sex. Similarly, Uruguay's Social Insurance Bank extracts that information from its administrative records, processes it and publishes it, broken down by sex, on its website.

4. Special Rapporteur on the rights of persons with disabilities

In her 2015 report to the United Nations General Assembly, the Special Rapporteur on the rights of persons with disabilities spoke about a range of topics, including social protection. This, she said, covers “a variety of interventions designed to guarantee basic income security and access to essential social services, with the ultimate goal of achieving social inclusion and social citizenship” (United Nations, 2015, p. 5, para. 5).

She was clear on the question of equality and social security, stating that “the right to social security entails an obligation for States to prohibit any form of discrimination related to the enjoyment of this right” (United Nations, 2015, p. 8, para. 17).

Similarly, the Special Rapporteur also made it clear that “to achieve universalization and inclusiveness, social protection must be as mainstreamed as possible, and as specific as necessary” (United Nations, 2015, p. 18, para. 50). That statement has implications for the realization of the principle of equality and for the right of care, in that while general programmes support access by persons with disabilities to benefits and general services on an equal footing with others, specific programmes afford them access to mobility aids, technical devices, support technologies and other forms of assistance, including, if necessary, care as a benefit of the social protection system.

5. Independent Expert on the enjoyment of all human rights by older persons

The 2016 report of the Independent Expert on the enjoyment of all human rights by older persons to the Human Rights Council (United Nations, 2016) notes that since contributory pensions are related to employment and people’s job histories, they can heighten gender inequality; in contrast, non-contributory pension systems or basic universal pensions, which bear no relation to prior labour status, are more egalitarian.

The Independent Expert’s report also addresses equality in social security and the relationship with women’s autonomy and responsibilities for caring for older people. It recommends day-care centres and home-care services to avoid social exclusion and ensure equality, since both assist ageing at home: people’s preferred option, according to the report.

It also calls for the allocation of care credits in the calculation of the old-age pensions of informal caregivers: this would be a way to recognize both the unpaid work performed by those persons, who are generally family members, as well as to reduce the risk of old-age poverty among them.

6. Working Group on the issue of discrimination against women in law and in practice

The 2014 report to the United Nations Human Rights Council by the Working Group on the issue of discrimination against women in law and in practice addresses social security inequalities from several viewpoints. It acknowledges that fewer women across the world receive pensions than men and that the guarantees of social security for women are weakened at times of financial crisis. It also notes that lower public care budgets, unemployment benefits and pensions affect women disproportionately because they assume the greatest unpaid care burden and because they are overrepresented among the poor.

In addition, it states that “Good practices include gender-specific compensatory measures such as continuing pension contributions during maternity and childcare leaves, unisex calculation of benefits, equalizing mandatory retirement age and mandatory joint annuities. All these measures, with quite wide margins of difference in the extent of their generosity and with some caveats as to the categories of women who do not benefit from each of these measures, have some marginal impact in reducing the pension gap. Of these gender-specific measures, the only one that almost closes the gender pension gap is mandatory joint annuities. This suggests that the way to rectify women’s

relative poverty in old age is through mandating joint annuities with their husbands. However, this does not solve the problem for single or divorced women. Furthermore, it leaves the problem of engineering a system that is equitable for traditional dependent marriages and yet can still incentivize economically independent women” (United Nations, 2014, p. 22, para. 101).

The Working Group recommends:

- Providing adequate non-contributory pensions.
- Ensuring that women are not forced to take early retirement.
- The adoption of compensatory measures during periods of maternity and care work.
- Benefit calculation formulas that do not differentiate by sex.
- Equal retirement ages.
- Mandating joint annuities within marital unions.

7. Working Group on the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, OAS

Following guidelines set by the Inter-American Commission on Human Rights (IACHR), the Working Group on the Additional Protocol to the American Convention on Human Rights in the Area of Economic (“Protocol of San Salvador”) developed a series of progress indicators to measure economic, social and cultural rights, which were approved by the General Assembly of the Organization of American States (OAS) on 4 June 2012. States are required to make use of those indicators in reporting on their implementation of the Additional Protocol.

The indicators mainstream a gender perspective and are categorized into three types: (i) structural indicators, indicating measures related to institutions, laws or plan; (ii) process indicators, which measure the coverage of programmes and improvements to management; and (iii) outcome indicators, which evaluate the impact of policies on the exercise of the right in question. In turn, each type of indicator covers the following aspects: incorporation of the right, State capabilities and budgets. In addition, the indicators consider three cross-cutting principles: equality and nondiscrimination; access to justice; and the access to information and participation (OAS, 2015). Furthermore, for the right to social security, there are specific indicators for assessing equality and non-discrimination (see OAS, 2015).

II. Accumulated knowledge

A. Pension Systems in Latin America

The data collected about pension systems in Latin America over the past 15 years reveals that women are worse off than men in most of the region's countries and that they face particular difficulties in ensuring their economic autonomy in old age.

Lower rates of coverage among women and lower pensions for women are common phenomena in the region; another is the overrepresentation of women in the systems' non-contributory components and widows' pensions. That situation is not, as was once extensively claimed, the result of happenstance or of the choices made by women during their working years; instead, it is the result of political choices and a particular distribution of resources.

However, the region has made some significant progress. The first step was to acknowledge that pension systems are not gender neutral and that the privatization reforms that favoured individual capitalization had a particularly harmful effect on women. The ECLAC Division for Gender Affairs was a pioneer in that effort⁴ (ECLAC, 2002 and 2003a; Birgin and Pautassi, 2001; Marco, 2002 and 2004; Pautassi, 2002), and its work was combined with that of other specialists and organizations to generate a wealth of knowledge on the subject (Arenas and Gana, 2001; Bertranou and Arenas, 2003).

The accumulation of knowledge has allowed progress to be made towards reforms in pursuit of inclusion that, to varying extents, take on board the rights-based proposals contained in the different studies, analyses and discussions held in different venues over the past 15 years, as will be seen in section III of this document.

One of the first general conclusions was that the reproduction of social and gender inequalities was one of the outcomes of systems that correlate contributions and benefits more closely but fail to address the factors behind pension gaps. This effect is particularly pronounced in individual capitalization systems.

⁴ This began with the project "Gender Impact of Pension Reforms in Latin America" carried out by the ECLAC Division for Gender Affairs in 2002 and 2003.

1. Individual capitalization, pay-as-you-go (PAYG) and defined benefit systems

Systems based on individual capitalization and defined contributions are generally privately managed and the pensions they yield primarily reflect the amount accumulated through the contributions made and the profitability of those funds on financial market. In other words, individuals prepare for their own futures, and the pension system transfers the risks of the financial market to them.

Such systems were introduced in by many of the reforms implemented in the region between 1990 and 2010 to replace, either totally or in part, pay-as-you-go (PAYG) and defined benefit systems.

Pay-as-you-go and defined benefit systems are publicly run. They yield fixed-amount pensions and other benefits that are funded through the contributions of active members, which are set progressively according to the calculation formulas contained in each country's laws, generally supplemented with public funds. The formulas used to determine benefits normally include mechanisms for some degree of solidarity-based redistribution, with transfers within and between generations. PAYG systems thus offer more of a margin for redistribution, although there is no system or model that intrinsically guarantees equality (Amarante, Colacce and Manzi, 2017).

Essentially, for ideological reasons. There were, undeniably, problems of fiscal sustainability, primarily due to demographic factors, labour market dynamics, aspects of system design, administrative efficiency problems and, in some cases, a chaotic legal structure arising from countless rules that set different benefits for different classes of workers. Systems of this kind are particularly sensitive to what is known as “demographic risk” —that is, the ageing of the population, which reduces the ratio between active contributors and pensioners— but they are not affected by the need to maintain reasonable financial profitability over the long term (Jiménez, Quezada and Huete, 2014).

The reforms could have taken another path, but the driving force behind the privatizations and paradigm changes was ideological: the pension reforms were part of a package of fiscal reforms and other major changes in the course of States' economic policies, introduced at a time that saw a major uptake of the solutions offered by the Washington Consensus.

Changes in the Chilean model

Individual capitalization systems are a regional invention. In 1981, during the dictatorship years, Chile decided to implement this innovation and introduced such a system. The model was then imported by several other of the region's countries, as well as by others further afield. In many of those cases, however, significant changes were made to the design: basically, these entailed preserving a redistributive component —PAYG with defined benefits, or other mechanisms— so that the individual capitalization components had to compete with or complement PAYG. Nevertheless, with the passage of time, and with the exceptions of the Costa Rican and Uruguayan systems, the individual capitalization component assumed the leading role.

Thus, not all the individual capitalization systems implemented in the region were the same. In the most extreme cases, such as Chile, the aim was for the system to be the only one in place, even though the previous system still applied to members of the transition generation and to the special regimes for the military and the police. Other countries that chose this extreme included the Dominican Republic, El Salvador, Mexico and the Plurinational State of Bolivia. There were, however, others that kept a PAYG component, either to compete with individual capitalization (Colombia and Peru) or to produce a combination of the two systems (Argentina, Costa Rica, Panama and Uruguay).

These reforms were structural in that they changed the nature or design of the system. The region also saw non-structural reforms (parametric reforms) that, instead of adopting individual capitalization, modified the parameters used to calculate benefits and introduced other changes of an administrative nature.

2. Notional account systems

For the financial management of its resources, a pay-as-you-go pension system can also adopt a system of notional accounts as a way to provide benefits (Uthoff, 2017). These are “notional” in that they are virtual accounts that represent the individual contributions of each system member and the fictitious returns on those contributions. However, their yields and profitability are not determined in the same way as in private schemes or individual capitalization models. Returns are calculated by means of a notional rate, such as the growth rate in gross domestic product (GDP), in average earnings, in income from contributions or some other parameter. Upon retirement, the person receives a benefit derived from the accumulated notional fund, life expectancy (usually the same for women and men), the notional rate used and any redistributive component included in the system. It is, however, a pay-as-you-go model, in that the contributions of active members fund the retirements of their passive counterparts and, additionally, as noted above, in that other solidarity-based components are generally included in the actuarial factors used, which take the form of an equation. Of course, there is no single formula; instead, different countries (for example, Germany, Italy, Finland, Portugal, Sweden and, in the region, Brazil) have devised various mathematical formulas for setting their pensions.

By following a defined contribution model (as in individual capitalization systems), this approach tightens the relationship between contributions and benefits, and it includes life expectancy in the calculation; in principle, it is therefore more likely to reproduce inequalities. However, it can incorporate corrective measures to narrow the gaps found in the world of work and to recognize unpaid care work, along with using gender-neutral tables as a parameter for benefits.

B. Direct and indirect discrimination against women

All the reforms that introduced an individual capitalization component, either exclusively or as one element within the system, resulted in both direct and indirect forms of discrimination against women.

1. Direct discrimination

As explained in the previous section, direct discrimination occurs when a policy or rule introduces an explicit and unfavourable distinction for women. This happens, as interpreted by CEDAW, when old-age pension benefits are calculated using tables that discriminate between male and female life expectancy.⁵ Thus, the region’s individual capitalization systems penalize women’s longer lifespans. In addition, the situation is exacerbated in those countries that have a lower retirement age for women, since the amount accrued in the welfare account must be spread over a longer number of years.

This is a common practice in private insurance that has been extended to social security. There, however, it is not only discriminatory but also perverse, because life expectancy differs according to socioeconomic status and by occupational categories and areas of residence, the lowest-income sectors end up subsidizing the wealthy.

This pension calculation method has been widely criticized. As noted below, it was banned in the legislation of the Plurinational State of Bolivia in 2010, and it was a subject of debate in the National Social Security Dialogue held in Uruguay in 2006 for the 2008 reform, within the Presidential Advisory Council for Pension Reform of Chile in 2014 and 2015 and in the recent September 2017 reform of El Salvador’s pension system.

Some of the countries pursued initiatives aimed at differentiating between population groups, either by income levels (in the case of Chile) or by groups of workers (between administrative and

⁵ Simply put, in lifetime income schemes, upon retirement an amount of money equal to the funds accumulated in the pension account is divided by the number of years corresponding to average life expectancy, using one total for women and another for men.

construction workers in Uruguay, for example). The rationale behind these initiatives was that sectors with better living conditions and higher incomes were being subsidized by the lower-income population, because of the latter's shorter life expectancy. Nonetheless, proposals to establish tables that make no gender distinction have not found favour (Marco, 2016).

The European experience has shown that using differentiated tables for calculating benefits can have a significant impact, both in public and private individual capitalization systems and in PAYG models. Harmful impacts for women were identified, and so differentiated mortality tables have been considered openly discriminatory and have been banned in private insurance plans by the Court of Justice of the European Union, while public pension systems were already using tables without gender distinction (Arza, 2017).

2. Indirect discrimination

As explained above in the section on international human rights mechanisms, indirect discrimination occurs when a rule or policy is not intended to nullify or impair women but is ultimately discriminatory by reason of its effects or outcomes. Such discrimination arises in pension systems when unpaid women workers are excluded and when the system reproduces the inequalities of employment structures.

Women's access to pension systems is not based on citizenship rights or on the contributions they make to their countries' development. Owing to the persistent sexual division of labour, women continue to be primarily responsible for unpaid care, which means they participate in economic activity to a lesser extent than men. Moreover, those who do not participate in the labour market remain outside pension systems, except as widows of male beneficiaries or through non-contributory pensions. In principle, therefore, pension systems exclude those who devote themselves exclusively to reproductive work, which means that around 50% of women have no access to them or can only receive a widow's or welfare pension.

Throughout the region, the labour participation of women is systematically lower than that of men, and those "inactive" women are virtually uncovered by pension systems. This situation, of course, differs significantly from one country to the next, even between those in the same subregion. Thus, a study into gender inequalities in the countries of the Southern Cone (Amarante, Colacce and Manzi, 2017) showed the positive evolution of women's labour participation in all cases between 2000 and 2013, but also the persistence of differences between the countries. Male participation rates, meanwhile, showed no such differences. In contrast, the results for women range from Chile at one extreme, where slightly under 50% of those aged between 15 and 64 participated in the labour market in 2013, to Uruguay at the other extreme, with a female participation rate of almost 70%.

Moreover, women's employment histories, which are heavily affected by the care obligations that society assigns them, involve more movements and changes than those of men, and this has a significant impact on their contribution density. This involves not only periods of absence from employment for maternity reasons, but, above all, changes in the type and quality of their labour market participation caused by motherhood and caregiving, such as when women move from being formal wage earners to being own-account workers or even informal employees.

The gender differences and inequalities that have the greatest impact on the gaps in coverage and in retirement and pension amounts are the gaps in participation, in social security contributions and in wages (Amarante, Colacce and Manzi, 2016).

Individual capitalization systems reproduce the differences found in the labour market, and so large groups of workers, particularly women in informal, temporary and discontinuous jobs, have little chance of joining and staying in the system.

Likewise, unemployment, which is systematically higher among women, also detracts from the continuity of their social security contributions; and, in addition, wage gaps are also transferred to

the pension system, since contributions are based on pay. These inequalities are also present in PAYG systems, but to a much lesser extent, since solidarity-based redistribution mechanisms attenuate inequalities between different income levels, between women and men and between generations.

C. Diverse models, diverse effects of individual capitalization reforms

As already noted, not all the structural reforms were the same, and so their effects and the degrees of discrimination they produced also differed. In practice, the purer the system—in other words, under the most exclusive systems of individual capitalization—the negative effects of the reforms for women were more pronounced.

Cases in this category include the Plurinational State of Bolivia and El Salvador and, to a lesser extent, Mexico and the Dominican Republic. At the start of the reform process, the Plurinational State of Bolivia did not even have a minimum pension; in addition, as in El Salvador, its rates of informal employment were—and still are—above the regional average, and so the inequality and exclusion within the labour market that were transferred to the pension system were more pronounced than in other cases. Chile, of course, also adopted a pure system and its reforms therefore had drastic effects that are felt and protested against to date, with the proviso that the country never completely abandoned the non-contributory component (albeit only in residual form in the reforms implemented in the 1980s) or a minimum pension.

In contrast, in countries such as Costa Rica and Uruguay, the harmful effects of the individual capitalization reforms were less intense, because they preserved a redistributive PAYG component as the central pillar of the system, with the individual capitalization mechanisms introduced playing only a secondary role, at least for medium- and low-income sectors. In Argentina, meanwhile, the individual capitalization component grew in importance in the years after the reform, before being gradually reverted; this case is examined in greater detail below. Panama chose a design similar to the Uruguayan model, in which employees who earned up to a certain amount contributed solely to the PAYG component, whereas those who earned more contributed up to the PAYG ceiling and then paid an individual capitalization component on the remainder of their incomes.

There was also a third group of countries that, although they maintained a PAYG component, did not do so to institute pensions funded by a combination of PAYG and individual capitalization; instead, they introduced both components and encouraged competition between them. Thus, workers had to choose which system to join and contribute to. In simple terms, medium-high- and high-income earners chose the individual capitalization system, and the low-income population—and most medium-income women—opted for PAYG. Obviously, this led to funding constraints in the State component and placed major obstacles on the systems' redistributive and social solidarity functions (Marco, 2004).

From the viewpoint of this analysis, and in light of the range of effects described, the individual capitalization reforms had a regressive impact on human rights. This was true in most cases because they heightened exclusion and social and gender inequality and because the other side of the progressive coin to which States are bound as regards economic, social and cultural rights is non-regressiveness.

III. Reforms in pursuit of inclusion in the twenty-first century⁶

The individual capitalization reforms did not yield the results their proponents had promised: increased coverage, highly profitable funds and improved benefits. Quite the contrary: pension indicators entered a gradual decline. Although there were differences among the countries—some closed the 2000s with dramatically low rates of coverage, while others succeeded in maintaining coverage thanks to major State support through non-contributory and minimum pensions— inadequate benefits and low replacement rates were constant factors. All this increased fiscal pressure.

Thus, between 2008 and 2010, Chile,⁷ Argentina, Uruguay and the Plurinational State of Bolivia, in that order, reverted their reform processes. With the exception of Uruguay, where the changes were deemed parametric, the countries adopted structural reforms that modified the models they had adopted. Costa Rica had also previously implemented parametric reforms over 2004–2005, with the participation of the National Institute of Women (INAMU) and with a timid but ground-breaking affirmative action measure.

These processes occurred in a very different context from the privatization reforms. Obviously—and fortunately—it was no longer a time of dictatorships or structural adjustments, but there is also one constant social policy factor: instead of the withdrawal and restriction of the State's social action that characterized the 1980s and 1990s, the new century has seen an expansion of State action on social matters (Cecchini, Filgueira and Robles, 2014).

⁶ This chapter and the next follow the ideas developed by ECLAC (2018) and Marco (2016).

⁷ For example, in Chile, in 2005, one year before the Presidential Advisory Council for the Pension Reform was set up and at a time when the reform's usefulness was already being discussed by academics and policy agencies, the Superintendency of Pensions published a report revealing that if the country continued with the system then in force, between 50% and 60% of the members would fall short of the contributions needed to fund the minimum pension, of whom around 70% would be women. These figures were reported in the press in November 2004, when, for the first time, gender inequalities were cited as grounds for a reform and the conference "Challenges of the Chilean Pensions System: Competition and Coverage" was held on 11 and 12 November 2004 in Santiago, organized by the Centre for Public Studies and the Superintendency of Pension Funds Administrators of Chile. In connection with this, see Yáñez (2010).

Moreover, women and their organizations were absent from the reforms of the late twentieth century, either because they were unable to express an opinion and participate, or else because they were unaware of the pension reforms' potential effects on their autonomy and rights. In contrast, the most recent processes draw on greater cumulative knowledge, since evidence of these impacts now exists. In some cases, the participatory processes promoted by the States, together with the work of national mechanisms for the advancement of women and the commitments of the Regional Gender Agenda, made it easier to respond to demands for gender equality and take account of the specific situations that affect women.

A. Argentina

Argentina's structural reform of 1994 added an individual capitalization component and defined contributions to the public PAYG system. This reform excluded numerous population groups dominated by women: domestic workers, rural workers and the vast number of informal workers (Pautassi, Giacometti and Gherardi, 2011). Although the system was kept in place for over a decade, the model's public PAYG component meant that its effects on gender equality were less pronounced than in other countries, at least in terms of coverage.

1. Background

In 1981, at a time of military dictatorship, the Government undertook a reform process that gave rise to the financial problems of the PAYG-based pension system by eliminating employers' contributions (which amounted to 15% of worker earnings). Some time later, in 1985, a portion of the system's contributory income was redirected from the family allowance programme to pensions, employers' contributions were gradually reintroduced, and new funding sources were created through levies on basic services. Nevertheless, this did not resolve the pension system's financial problems (Roca, Golbert and Lanari, 2012).

Thus, in 1986, Decree 2196 on the "pensions emergency" was adopted to address the collapse of the system. This decree froze all law suits and court rulings on pension payments and established a retirement entitlement equal to a legal minimum plus a percentage depending on earnings; it resulted in reduced benefits and a drop in retirees' living standards (Roca, Golbert and Lanari, 2012).

Five years later, Law No. 23982 of 1991 began the process of consolidating the pensions debt, which reached a record amount in 1993. This ongoing mismanagement of the pension system, together with poor macroeconomic management, prepared the way for the individual capitalization reform.

Thus, through Law No. 24241 of 1993 and following the recommendations of the International Monetary Fund (IMF) and the World Bank, the country embarked on a structural reform of the system. The Integrated Retirement and Pension System (SIJP) was created, with "integrated" indicating the coexistence of two systems within a single legal structure: the public pensions regime with a PAYG component, and a privately managed individual capitalization regime, run by pensions and retirement fund management companies (AFJPs), which generated a form of captive savings that was used to shore up the domestic money market. The two subsystems were based on different funding methods. Under the PAYG regime, following the reform, the State offered five types of benefit: (i) basic universal benefit (PBU), payable to all SIJP beneficiaries upon reaching the age of 60 (women) or 65 (men) with 30 or more years of creditable employment regardless of the regime chosen; (ii) compensatory benefit (PC), intended for those who were members of the previous pension system; (iii) additional service benefit (PAP), available to those beneficiaries choosing to remain under the PAYG regime; (iv) old-age benefit, available to system contributors failing to meet the requirements set for any of the previous benefits; and (v) invalidity retirement and survivor's pension.

Starting in 1993, a series of decrees reduced the employers' contributions and, by 1998, the average rate had fallen to 10.9%. Independent workers were required to contribute 27% of their assumed incomes. In addition, it was decided in 2001 that by means of a minimum contribution, employers could register their domestic workers in the Integrated Retirement and Pension System and a regime of basic medical coverage (Pautassi, Giacometti and Gherardi, 2011).

Once the individual capitalization subsystem was implemented, the National Social Security Administration (ANSES) —the agency in charge of the PAYG component— took control of the accumulating benefits and all the invalidity benefits of a generation of the population. In addition to that expenditure, the reform itself also entailed a major fiscal burden (Roca, Golbert and Lanari, 2012).

The public component gradually lost importance within the system and, instead, the individual capitalization subsystem was placed at the forefront. Although the negative effects were lower than in other cases, the proportion of women receiving pensions fell from 74% to 67% between 1992 and 2006 (Hohnerlein, 2013, cited by Amarante, Colacce and Manzi, 2017).

2. The return to PAYG (2008–2015)

Adjustments were made a decade after the implementation of individual capitalization schemes, including the temporary possibility (for six months) of contributors channelling their funds solely into the PAYG component and the pension inclusion programme, better known as the "pension fund moratorium". Finally, in 2008, the privately managed individual capitalization component was shut down, leaving the PAYG model with defined benefits, tripartite funding, and State management as the sole option.

Law No. 26425 abolished the individual capitalization pillar and created the Argentine Integrated Pension System (SIPA), thereby establishing the current structure of the pension system within the Single Social Security System (SUSS). In addition, Law No. 26970 of 2014 introduced what was known as the new pension fund moratorium, to assist with the retirements of around half a million people.

The current pension regime uses tripartite funding. Employers contribute 10.17% for SIPA (of a total of 23% paid into social security, including the National Employment Fund, family allowances and the National Institute of Social Services for Retirees and Pensioners), while workers contribute 11% (plus an additional 3% for the National Institute of Social Services for Retirees and Pensioners and another 3% for social programmes). Retirement requires 30 years' contributions upon reaching the age of 60 for women and 65 for men. The retirement age can be lowered by one year for two years of additional contributions. Old-age retirement is also available at the age of 70 with 10 years of contributions, or at least 5 years' contributions for independent workers.

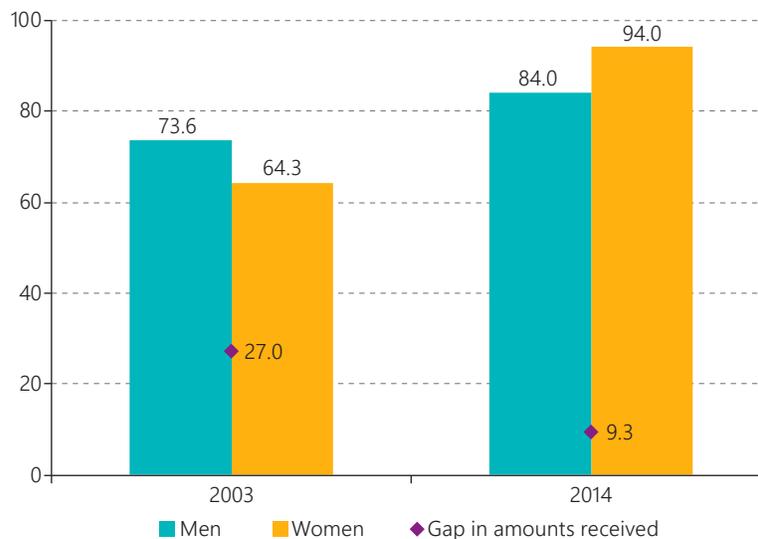
Both the return to a PAYG system and the previous measures —particularly the pension fund moratorium— had a clear positive impact on women's coverage. The return to PAYG also helped narrow the gender gap in benefit amounts. This situation indicates the importance of pension system design for women's inclusion and gender equality.

The results of the pension fund moratorium thus provide a convincing example of how disparities in the labour market are reproduced in the pension system unless compensatory measures are adopted: 87% of individuals who applied for the moratorium pension in 2009 were women, with an average age of 72 years, and three quarters of them did not have any previous pension benefit. For these reasons, this moratorium is commonly referred to as the "housewives' pension", although it did not specifically target that sector of the population (Pautassi, Giacometti and Gherardi, 2011).

As figure III.1 shows, there was a notable expansion of coverage among women, along with a sizeable reduction of the gender gap in the average benefit amount.

Figure III.1

Argentina: proportion of men and women aged 65 years and over receiving contributory or non-contributory pensions, and gender gap in the amounts received, 2003 and 2014
(Percentages)



Source: Economic Commission for Latin America and the Caribbean (ECLAC), *Social Panorama of Latin America, 2017* (LC/PUB.2018/1-P), Santiago, 2018.

Note: The data refer to 31 urban agglomerations. The gap between the amounts represents the difference in average income received in contributory and non-contributory benefits by women and men of 65 years of age or over.

The benefit gap is an indicator of income inequality between women and men in the context of retirement and pensions. To some extent, therefore, it also indicates the prevailing situation regarding the economic autonomy of women.

Between 2008 and 2014, there was an increase of 2.3 percentage points (from 51.4% to 53.7%) in the general coverage of the pension system among the active population (those paying in as a proportion of all persons in employment). The increase for women was 4.7 percentage points between 2008 and 2014, which was higher than the 0.5 percentage-point increase recorded for men over the same period. As a result, in 2014 more women (54.8%) had coverage than men (52.8%) (ECLAC, 2018).

3. Recent parametric changes (2016–2018)

Law No. 27260 of 22 July 2016 created the National Historical Reparations Programme for Retirees, which set new criteria for the adjustment of entitlements and the cancellation of outstanding pension debts. It also introduced a non-contributory pension, the Universal Pension for Older Adults (PUAM), which is equal to 80% of the minimum pension and is intended for people aged over 65 without any other contributory or non-contributory pension. This programme also enables family allowances to be collected and allows access to the services of the National Institute of Social Services for Retirees and Pensioners.

With the enactment of this law and following their registration with the programme, all retirees who made correct contributions and who were receiving less than their due will receive updated entitlements. Those who brought legal action and have received judgments in their cases are to be paid 50% of their backdated entitlements as a lump sum, with the remaining 50% in updateable instalments. Around 50,000 people are in that situation.⁸

⁸ According to data from the National Social Security Administration (ANSES). See [online]: <http://www.anses.gob.ar/reparacionhistorica/>.

Those who have initiated legal action but have not yet received judgment can collect up to 48 months retroactive entitlements. That situation applies to some 250,000 people. The process will be deployed gradually until all retirees are covered, beginning with those aged over 80 and the seriously ill. In both cases—that is, both those with and without court decisions—the retirees must sign agreements with ANSES, which must be ratified by the judiciary. The new benefits and adjustments will be funded by selling stock in companies held by ANSES and its Sustainability Guarantee Fund.

In 2018, Law No. 27426 and its regulatory decree established a new retirement mobility index, based on changes in the consumer price index and in the average taxable incomes of stable workers. It also empowered employers to suggest to their employees that they begin retirement formalities, if they have reached the age of 70 and meet the requirements for receiving the Basic Universal Benefit.

In addition, it restricts access to PUAM by those who choose to continue working after the age of 65. The regulatory decree stipulates that for those who receive PUAM and continue to work to complete the 30 years of contributions or to accumulate more years of contributions, the contribution years during which PUAM was paid will be used “exclusively” to calculate the total years of service but not to calculate their entitlements. Therefore, the contributions from additional years of work do not entitle those who were working and collecting PUAM to increase their retirement entitlements by the 1.5% of the average updated earnings over the past ten years for each year of contributions, as specified by the law.

4. The importance of a historical perspective

Argentina’s experience and the changes implemented since the 1980s illustrate several phenomena over a relatively short period and provide some important lessons.

The country was a pioneer in implementing a social security system, with its first funds dating back to the start of the twentieth century; it was no doubt for that reason that it undertook its individual capitalization reforms with greater sensitivity, perhaps as much as Uruguay did. Argentina introduced individual capitalization in the early 1990s, but it kept the PAYG and defined benefit components. As a result, privatization’s effects on gender equality were milder than in other cases. Nevertheless, as the importance of individual capitalization was consolidated and that of the PAYG and defined benefit subsystems declined, negative effects arose.

While it is undeniable that PAYG and defined benefit systems are particularly sensitive to demographic pressure, it is equally true that the determining factor behind the crisis in the system was mismanagement and that the reason for the adoption of individual capitalization was ideological.

Between 2004 and 2008 the opposing path was followed, with a series of measures intended to bolster the PAYG and defined benefit component. This had an almost immediate impact on female coverage, highlighting the damaging role that individual capitalization had played in that regard. A full return to PAYG and defined benefits and the elimination of individual capitalization took place in 2008. The effects of that reform on the inclusion of women and the amounts they received in benefits were pronounced.

At least three lessons can therefore be drawn. First, the importance of the legitimacy of social security systems based on broad social compacts, and their corresponding fragility in the event of non-negotiated changes. Second, that the failure of a model or the emergence of a crisis within it is not always because of shortcomings in its design or because the system itself was not fit for purpose; mismanagement can also be a factor. Third, that the type of system chosen is of the utmost importance for gender equality.

In other words, if a new crisis were to arise in the current system, the fact that financial problems are not necessarily due to the system’s design would have to be borne in mind. Instead, questions would have to be asked about its management and administration and about other matters relating

to its sustainability, such as the exceptions permitted and the different administrations in place within the country's federal structure. Attention could also be paid to the need to counterbalance the temptation to further tighten benefit access requirements or to adopt modifications back in the direction of individual capitalization in pursuit of a more favourable actuarial balance against the risk of worsening coverage rates and benefit adequacy, which would clearly mean a deterioration in older people's quality of life and would, in the long term, demand fiscal spending, either within the social security system or elsewhere.

B. Plurinational State of Bolivia

The Plurinational State of Bolivia set up its first social security institutions in the 1950s. Although all aspects of the system (family allowances, health, maternity provisions) suffered from administrative and financial problems, the least developed component was long-term social security: in other words, the pension system.

1. Background (1997–2009)

The Plurinational State of Bolivia's individual capitalization pension system was established in 1997 (Law No. 1732 of 1996), along with the Collective Capitalization Fund,⁹ which gave rise to the Solidarity Bond (Bonosol), a universal and non-contributory benefit initially intended for those aged over 65. Both the Collective Capitalization Fund and the Individual Capitalization Fund were managed by pension fund management companies (AFPs).

The individual capitalization mechanism granted entitlement to an old-age pension, which could take the shape of a variable monthly income for life, managed and paid out by an AFP, or life-time insurance, a fixed amount paid by an insurance company. Members contributed 10% of their monthly earnings, plus 1.71% as a premium for common risk insurance and 0.5% as the AFP commission. An additional 0.23% of the total accumulated balance was discounted on a yearly basis as a portfolio management fee. In total, therefore, members paid almost 13% of their wages. Employers contributed just 1.71% for the professional risk insurance and 2% for the housing fund: in other words, there were no employers' contributions to the retirement system.

With the passage of time, a minimum pension that had not been provided for in the 1997 reforms was introduced. Entitlement was dependent on having reached the age of 60 (for both women and men), having paid in over 180 periods or more and having a reference pension worth less than the minimum pension.

In the Plurinational State of Bolivia, as in other countries, pensions were (and still are) determined by contribution density and base earnings. Retirement required accumulating a fund equal to 70% of base earnings, calculated from the average of the five years immediately prior to retirement, with 180 monthly contributions (15 years' worth). When those requirements were met, pensions were calculated on the basis of the accrued capital and the actuarial discount factor, which took into account life expectancy upon retirement—one figure for women and another for men—along with the existence of dependants: in other words, inheritors, who would mostly receive widows' pensions.

In line with the regional trend, the Bolivian reforms were designed on the basis of a series of assumptions about the profile of the target population: male workers with stable incomes who were paid regularly and in sufficient amounts to allow contributions to be made; this primarily meant those employed in the formal sector of the economy with long-term employment contracts. Although that paradigm is far from the reality seen across almost all Latin America, the disparity is particularly pronounced in the Plurinational State of Bolivia, one of the region's countries with the highest rates of labour informality.

⁹ The Collective Capitalization Fund was managed by the AFPs, and it comprised approximately 50% of the capital stock of ten privatized public companies.

Similarly, all the gender impacts identified for Latin America in general were felt in the Bolivian experience, only more intensely. Because of that situation, in 2009, one year before the second-generation reform, only 35% of contributors were women, and women accounted for only 17.9% of retirees (Escóbar, 2014).

As in other countries, the actuarial factors set by the regulations to the Pensions Act used sex-differentiated mortality tables. As noted above, such tables discriminate against women; in addition, however, the ages used did not reflect the country's reality and were around 20 years too high for both sexes.¹⁰

The initially estimated fiscal cost of this pension reform rose by a factor of 3.8, from US\$ 2.36 billion at present value for the 1997–2060 period to US\$ 8.93 billion at present value for the 2007–2060 period: an almost four-fold increase (Gamboa, 2014).

2. State administered individual capitalization (2010)

In 2010, in response to a constitutional mandate, the country introduced a State-run individual capitalization scheme with a solidarity-based component. The 2009 Constitution of the Plurinational State of Bolivia acknowledges the right to social security and stipulates that the State has the duty of ensuring the universal, solidarity-based and equitable right of retirement. It also provides that the management and administration of social security is a function of the State.

The system was still based on individual capitalization but the AFP industry was nationalized and pension fund management duties were transferred to the Public Management Body for Long-Term Social Security;¹¹ pensions were still determined by individual contributions and their profitability but, when applicable, those funds were supplemented to provide a solidarity-based pension, funded through increases in workers' contributions and through the employers' contributions introduced by the reform. In addition, the *Renta Dignidad* mechanism was maintained as a non-contributory universal benefit.

To receive the old-age benefit, workers older than 50 (women) and 55 (men)¹² must fund 60% of what is known as the reference wage, which is calculated according to the balances in their personal pension accounts on the basis of the previous two years' earnings and contributions, together with the contributions compensation (CC) for those who contributed to the pay-as-you-go pension system that has not yet been completely eliminated.

Contributions are at levels similar to those in place prior to the reform. The workers contribute 10% of their pay, plus 1.71% as the common risk premium, 0.5% as an administrative fee and an additional 0.5% to the solidarity fund that finances the solidarity-based pensions introduced by the reform. Better paid workers also pay between 1% and 10% of their earnings to this fund, to which employers also contribute with 3% of their total employee payroll. Those contributions —the ones made by employers and the differential rates for better paid workers— are this reform's innovations. Employers also continue to pay 1.71% as a labour risk premium (which, in the case of independent workers, is assumed by the workers themselves).

¹⁰ Argentina and the Plurinational State of Bolivia —and perhaps some others— used actuarial tables devised for countries with other demographic structures, including longer life expectancies. These were standardized templates, specifically the 1971 Group Annuity Mortality Table, designed for the United States (ECLAC, 2003a and 2003b).

¹¹ The Public Management Body for Long-Term Social Security continues to manage the universal old-age pension fund (*Renta Dignidad*), while the contributory funds are still handled by the AFPs, since their transfer to the Public Management Body has been postponed on several occasions. Supreme Decree No. 3333 of 20 September 2017 extended once again the deadline for the administration of the contributory (retirement fund) and semi-contributory (solidarity-based fund) components for an additional 18 months (i.e. until March 2019).

¹² The qualification ages are reduced for mineworkers in both underground and above-ground jobs, and for occupations deemed dangerous and unhealthy.

Entitlement to the solidarity-based pension requires having reached the age of 58 and having made 120 contributions; and, for each 12 additional contributions, the amount of the pension rises by 6%.

In response to the demands of the women's movement, Law No. 065 of 2010 established gender protection policies, which addresses some of those claims. It establishes a maternity bonus for recipients of the solidarity-based pension, for whom an additional 12 contributions are credited for each child (up to a maximum of 36 contributions) or, alternatively, who are offered a reduction of up to three years in the age for claiming this pension.

Although under these provisions the benefit is available only to women of limited resources in order to support them in their role as caregivers, it is also true that it is intended to recognize unpaid care work and compensate its effects on the continuity of contributions. The demand made by women's organizations was not for the contributions to be credited according to the number of children, but rather extended to all women as a universal entitlement. The rationale for this was that it is well known that all women provide care—not only to their own children, but also to their parents, younger siblings and elderly partners—and they devote themselves to household chores, which in some cases harms their employment career and, in others, restricts the type of jobs they can obtain.

There are another two other measures that are not included in the section of the law on gender protection policies but that nonetheless directly affect women workers. One is the explicit decision to calculate pension amounts using the same mortality tables for both sexes, a provision that was subsequently ratified in the regulations to the law.¹³ The other is the payment of a minimum wage in addition to the invalidity pension for persons classified as having "major disability". This measure is considered to benefit women indirectly, given their role in caring for dependent persons.

On the other hand, the challenge of including domestic employees remains unaddressed, since the law ignores those workers. Another challenge is to find a way to calculate the reference wage—in other words, the years considered for calculating the pension—that is consistent with women's earnings history. Evidence shows that the gender wage gap widens in the years leading up to the age of retirement,¹⁴ yet the reform specifies the last two years of a person's employment record are to be used to calculate the base wage.

The reform's biggest shortcoming remains the absence of mechanisms for attracting independent workers; in addition, such workers have to meet the costs of their own labour risk insurance which, for other workers, are covered by their employers.

This deficiency underscores the fact that the origin of the right to a pension is still formal-sector earnings, whereas social security should be seen as a new vector for social integration, through the consolidation of social security networks that are unrelated to waged employment (Pautassi, 2007, p. 43). The *Renta Dignidad* mechanism goes some way in that direction, but it operates as a cash transfer outside the pension system in the strict sense, and the amount it provides is not enough to live on.

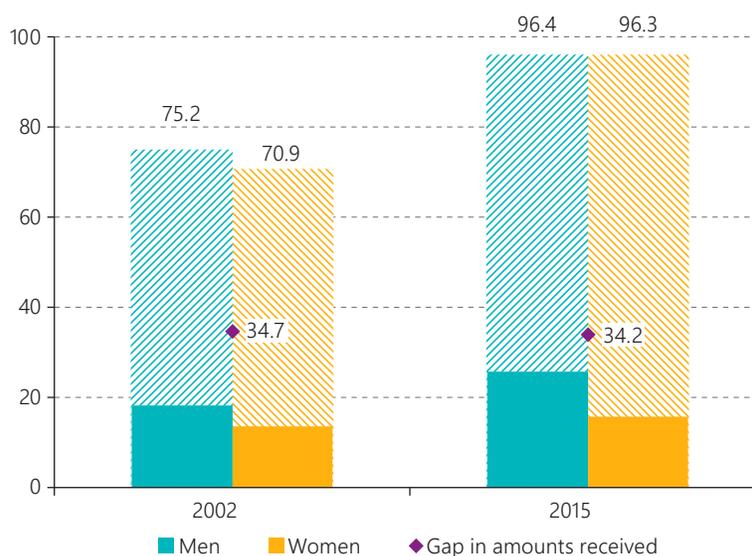
Since the enactment of the new law, efforts have been made to bring a small sector of independent workers on board—albeit the privileged sector of consultants—by requiring payment of their contributions by the persons or companies who contract their services. Thus, contributions have become compulsory for online or product-based consultants. It should also be noted that there are many workers who are formally employed in those categories although they are really employees, obeying work schedules and regularly attending their workplaces. This form of disguised employment intended to avoid social levies is even found in the public sector, as revealed by a number of researchers (Marco, 2015).

¹³ The regulation also provides that the calculation will assume a drop of four years in life expectancy among mine workers.

¹⁴ According to the data of the Quarterly Survey of Employment of 2009—one year prior to the reform—women between 40 and 49 years of age received an average income equivalent to 63% of that received by men; the corresponding figures for the 50–59 and 60–69 age brackets were 54% and 41%, respectively (Marco, 2016).

Figure III.2 shows the coverage of contributory and non-contributory benefits. The proportion of persons receiving contributory pensions is still remarkably low; following the reform, the coverage rate among women did not improve and, at the same time, the gender gap in the amounts received grew. However, non-contributory benefits report high rates of coverage; here the challenge is the adequacy of the benefit, since the amount paid is more akin to a bonus than to a social security pension.¹⁵

Figure III.2
Plurinational State of Bolivia: proportion of men and women aged 65 years and over receiving contributory or non-contributory pensions, and gender gap in the amounts received, 2002 and 2015
(Percentages)



Source: Economic Commission for Latin America and the Caribbean (ECLAC), *Social Panorama of Latin America, 2017* (LC/PUB.2018/1-P), Santiago, 2018.

Note: The gap between the amounts represents the difference in average income received in contributory and non-contributory benefits by women and men of 65 years of age or over. The shaded portion represents the additional coverage of non-contributory pensions. The surveys make it possible to specifically distinguish the receipt of income through the *Bolivida* programme in 2002 and through *Renta Dignidad* in 2015.

The reform has led to a slight increase in the enrolment of both men and women: expressed as enrolled workers as a proportion of the employed population, the combined (men and women) figure rose from 15.4% in 2009 to 18.9% in 2015. The increase was exactly the same for both sexes: 3.4 percentage points between 2009 and 2015, with men's enrolments increasing from 17% to 20.4% and those of women rising from 13.4% to 16.8%. Increasing affiliation rates remains a key challenge, since a majority of the population that participates in the labour market (81.1%) remains outside the pension system (ECLAC, 2018).

This illustrates the fact that the design and logic of a pension system is the determining factor, regardless of how it is administrated. In other words, if individuals solely look out for their own futures, solidarity-based mechanisms are not enough and they cannot reach a majority of the population; it is not enough for the State to manage the resources of the few workers who are enrolled in the system.

¹⁵ *Renta Dignidad* pays 250 or 300 bolivianos per month, depending on whether or not a contributory pension is available. The national minimum wage is 2,000 bolivianos.

C. Chile

The Chilean experience warrants particular attention. Not only because it was where the individual capitalization model was first devised, but also because more than two years ago, it embarked on an as-yet unfinished reform process, which reveals the essentially political nature of such undertakings.

Although assessing and modifying pension systems involves thornier technical questions than other areas of public policy, pension reform processes reflect a struggle for the distribution of resources; in this case, they also show the power of the AFP industry and the wide-ranging views of different political sectors regarding the model that the social security system should adopt. Therefore, in spite of the demands for reform made by organized civil society, seen in numerous mass demonstrations and the “No More AFP” movement, and despite the installation of a presidential advisory commission on reform and the presentation of several legislative bills to amend the pension system, the reform process is not prospering.

An empowered citizenship, whose old-age pension shortfalls would be greater were it not for the 2008 reforms that improved the situation for much of the population but was not itself enough, is demanding its social rights.

1. Background

The reforms that privatized Chile’s pension system were introduced in the early 1980s under the dictatorship of Augusto Pinochet. There was therefore no possibility of broad social compacts to facilitate the legitimacy and sustainability of the pension system. The Chilean reform replaced the PAYG system with an individual capitalization model, affecting the entire population except for the transition generation and members of the police and the military.

Decree Law No. 3500 of 1980, which introduced the system, described it as obligatory for employees and optional for independent workers. System members are required to deposit 10% of their earnings and disposable income into their individual capitalization accounts, along with any additional voluntary contributions and the fees charged by the pension fund management companies (AFPs).

The basic pension models available are programmed withdrawals and lifetime incomes. Under the former, workers maintain their accounts with the AFP of which they are a member, and the amount of their pension is recalculated each year in line with factors such as the accumulated balance, life expectancy, legal dependants and the account’s future profitability. In contrast, under the lifetime income model, members can contract for the payment of their pensions with a life insurance company, which then undertakes to pay them a monthly income of constant real-term value for the remainder of their lives and to pay survivors’ pensions to their dependants. Retirement ages are 60 years for women and 65 for men.

Variants on those models also exist. Thus, the temporary income is a payment made by the AFP from the balance left by the member in his or her account after transferring the premium for the deferred lifetime income to the insurance company. Unlike the programmed withdrawal model, no mortality tables are used in its calculation. However, the insurance companies do use mortality table to calculate their reserves.

The system also provided the Welfare Pension Programme (PASIS) for invalids or persons of either sex aged over 65 in extreme poverty, and the guarantee of a minimum pension for those who did not succeed in funding their own retirements, requiring 240 contributions (20 years).

At the close of the twentieth century, and in spite of an increase in the coverage of the non-contributory component during the 1990s, the great challenge facing the pension system was

increasing the coverage of the contributory component, particularly among independent workers of both sexes, low-income sectors and women in general (Arenas and Benavides, 2003).

After remaining in force for more than two decades, this system failed to yield the promised results and, as noted in the background section, had a negative impact. Thus, in 2006, only 59% of the workforce were making contributions to the system. Poor coverage and small pension amounts affected those who, being affiliated and having made contributions, obtained very low benefits; those who, despite being affiliated, did not contribute on a regular basis; and those who simply were never affiliated. In addition, women accumulated funds equivalent to 50% of the amounts accumulated by men, and the female replacement rate fluctuated between 52% and 57% of the male rate. As a corollary, at one point it was concluded that, in the medium term, over half of all the persons affiliated and nearly three quarters of the women affiliated would be unable to meet the minimum pension requirement, making them potential beneficiaries of the welfare pension (Yáñez, 2010).

2. Return to social security

Against the backdrop of a rapid ageing process¹⁶ and in response to the alarming figures for coverage and benefit adequacy and to the forecasts indicating the sizeable fiscal spending that the system would require, in 2006 the country embarked on a pension reform process.

The focal point of this process was an inter-institutional and intersectoral commission, made up of specialists representing different schools of thought, that held hearings with representatives of different sectors of civil society. The commission's work led to the reforms set out in Law No. 20255 of 2008, which preserved the individual capitalization system but introduced modifications to improve equity and inclusion.

The main changes in the reforms were the inclusion of a solidarity-based pillar and measures to promote gender equity, to encourage competition among AFPs, to expand coverage to include independent workers and to bolster fiscal responsibility.

The basic solidarity-based pension (PBS) replaced the PASIS and the minimum pension, with a substantial increase in the amounts provided, and two contributory pillars were created: an obligatory one for employees and independent workers, and a voluntary one. That pension is available to those aged 65 years who belong to the poorest 60% of the population and have been resident in the country for 20 years. Thus, the PBS is available without any prior contribution requirement. Another benefit is the solidarity-based old-age welfare contribution (APS), which decreases to cut-off point at which the APS is eliminated. In other words, the protection afforded is greater in terms of both coverage and the benefits provided.

The basic solidarity-based pension and the solidarity-based welfare contribution were devised as part of the efforts to reduce gender inequalities: by eliminating the minimum contribution requirement, they would benefit those workers not engaged in the labour market who dedicate their energies to caregiving and domestic chores, informal and temporary female workers and, in general, all women workers with lower contribution densities and accumulated amounts. In line with this, a bonus was also established for each child, whether born or adopted, equivalent to 18 contributions at the minimum-wage level. This is a universal right, so the woman's level of income, or whether or not she has made contributions, is irrelevant.

Compensation of care work has had significant effects on the female replacement rate, after the first-generation reforms tightened the relationship between contributions and benefits. That has been the case in the countries of Europe and, within the region, there is evidence of it in Chile's experiences (Arza, 2015).

¹⁶ In 2050, almost a third of Chile's population will be older than 60 (Comisión Asesora Presidencial sobre el Sistema de Pensiones, 2015a).

The reform also made provision for the balances accumulated in spouses' individual accounts to be divided in the event of divorce or annulment. In such cases, the judge in question is empowered to make this division when one of the parties is disadvantaged, such as when, as a consequence of taking care of the children and performing household chores, the person in question was unable to undertake a paid activity or did so to a lesser extent than he or she might have wished or could have. The compensation can amount to up to 50% of the accumulated pension funds (Yáñez, 2010).

Separation by gender was also established in bidding for disability and survival insurance, since women's longer life expectancy means they are less likely to be survived by beneficiary widowers; and, given their lower accident rate, they are less likely to make a claim on disability insurance. This led to a reduction in women's premiums that was equivalent to an increase of around 5% in self-funded pensions (Yáñez, 2010).

Similarly, the minimum taxable income for female domestic service workers was made equal to that of other workers, and the fees charged for the deposit of contributions and for the transfer of funds between AFPs were eliminated.

No employers' contribution was introduced for old-age pensions. In fact, there are no employers' contributions in the general regime, except for those jobs categorized as onerous and for the invalidity and survival regime. Employers contribute to fund the invalidity and survival insurance of their employees (1.15% of taxable income). The scheduled withdrawals and lifetime income retirement options were also maintained. The special and preferential regime for members of the armed forces and the police was also kept in place. Thus, neither the armed forces nor the Carabineros participate in the Chilean system's contributory pillar.

The armed forces and police continue to enjoy a privileged regime, in that their contributions are funded by State resources. In fact, the fiscal cost of this subsystem in 2012 was equal to 0.9% of GDP: a figure higher than total spending on the solidarity-based pension system which, according to 2013 figures, accounted for 0.7% of GDP (Comisión Asesora Presidencial sobre el Sistema de Pensiones, 2015a, p. 58).

In 2008, forecasts were issued that calculated the total effect (cost) of the 2008 reform at 1.4% of GDP and the incremental effect (cost) of the reform at 1% of GDP, both figures as of 2025 (Arenas and others, 2008). In 2015, the incremental cost of the 2008 reform was 0.75% of GDP, and it was forecast to be around 1% of GDP in 2025, in particular because of its demographic effects.

In contrast, the cost of the reform of the 1980s was more significant and is still being paid today. Thus, the spending arising from the transition that began in 1981 (recognition bonuses, operational deficit and State guaranteed minimum pension) accounted for almost 5% of annual GDP in 1984. Although that spending has fallen as most of the costs associated with the change of system have been paid off, at present values the cost of the transition was estimated as the equivalent of 136% of 1981 GDP and it has been assumed by the State through a combination of tax reforms, spending cutbacks and debt issues (Comisión Asesora Presidencial sobre el Sistema de Pensiones, 2015a).

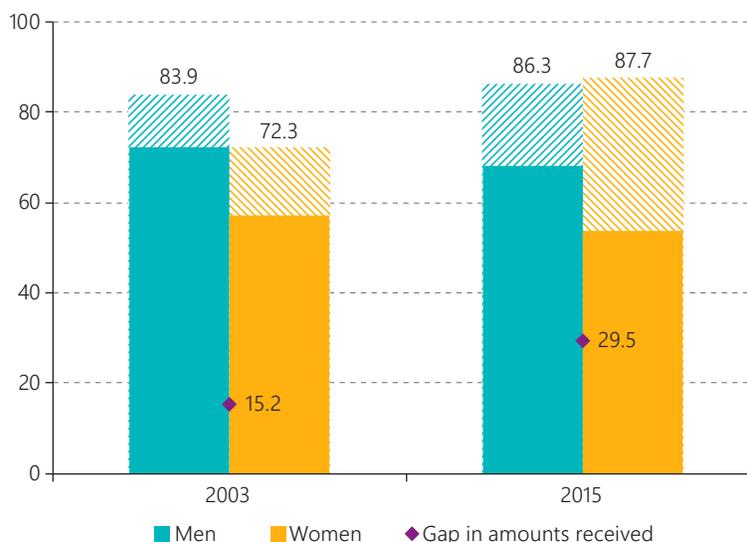
A few years after the reform, there are notable results in terms of expanded coverage and the narrowing of the coverage gender gap.

This can be seen in figure III.3, which combines both contributory and non-contributory pensions. However, figure III.3 also shows that the bulk of the increase came from non-contributory pensions and among women, and that is the reason for the widening gap in the amounts. That is because non-contributory pensions (where women are overrepresented) pay less than their contributory counterparts.

Figure III.3

Chile: proportion of men and women aged 65 years and over receiving contributory or non-contributory pensions, and gender gap in the amounts received, 2003 and 2015

(Percentages)



Source: Economic Commission for Latin America and the Caribbean (ECLAC), *Social Panorama of Latin America, 2017* (LC/PUB.2018/1-P), Santiago, 2018.

Note: The gap between the amounts represents the difference in average income received in contributory and non-contributory benefits by women and men of 65 years of age or over. The shaded portion represents the additional coverage of non-contributory pensions. The surveys make it possible to specifically distinguish the receipt of income through the old-age welfare pension in 2003 and the basic solidarity old-age pension in 2015.

At the same time, coverage among people engaged in the job market (active workers) has also improved. The data reveal a positive trend in the employed population's affiliation rates between 2009 and 2015, which rose from 63.7% to 70.7%. Affiliation rates increased among both men (from 66% to 71.9%) and women (from 60.3% to 69.1%), and the gender gap decreased. Most notably, coverage increased even in low-productivity sectors, where women's coverage grew by 6.3 percentage points between 2009 and 2015 (ECLAC, 2018).

This was clearly a positive reform, but with the passage of time it became apparent that it was not sufficient. Forecasts indicated that seven years following implementation, 50% of those retiring in 2025 and 2035 would obtain replacement rates of 15% or less of their average incomes over the previous ten years (Comisión Asesora Presidencial sobre el Sistema de Pensiones, 2015a).

Of course, if the system remained unchanged, those results would be more alarming among women. Between 2007 and 2014, the average replacement rate for women's self-financed pensions was 24%, compared to 48% for men. With the inclusion of the APS, the average replacement rates rise to 31% for women and 60% for men (Comisión Asesora Presidencial sobre el Sistema de Pensiones, 2015a).

3. The failed reform plan (2015–2018)

In 2014 President Michelle Bachelet installed a new technical advisory commission, with some social participation mechanisms and pluralistic in terms of its political ideologies, replicating the methodology used in the previous reform process. This was the Presidential Advisory Commission on the Pension System, made up of 24 Chilean and foreign specialists. The Commission held internal and expanded meetings, public hearings and dialogues around the regions, and its work was also based on technical studies it ordered, an international seminar and a survey into public perceptions of the pension system. It also set up a web page that provided not only information but also a channel for public participation.

According to Supreme Decree No. 718 of the Ministry of the Treasury, whereby the Commission was created, one of its functions was to hold hearings to encourage citizen participation, which was to be understood in the context of a diagnostic assessment of the situation facing the pension system. The Decree also stipulated that the Commission's conclusions were not to be binding (Comisión Asesora Presidencial sobre el Sistema de Pensiones, 2015a).

The Commission's work was recorded in an extensive report, along with several other documents called "context chapters", one of which was titled *Gender gaps and pensions in Chile* (Comisión Asesora Presidencial sobre el Sistema de Pensiones, 2015b). That document highlights the challenges that women face in securing pensions within the Chilean labour market. Its analysis of numerous employment histories revealed that a large proportion of people, particularly women, were out of the labour market for significant portions of their working lives, whereas at other times, when they were employed, they were primarily independent workers. That means that women are the main recipients of non-contributory benefits. Thus, in December 2014, women received 66.5% of the PBS and 57.6% of the APS. Accordingly, in the specific context of the gender problem, the Commission found that the existing pension system faced three main challenges: (i) the amounts provided through the PBS¹⁷ and the APS, (ii) coverage rates, and (iii) the targeting strategy for access to benefits. This third problem entails both problems of inclusion, when people entitled to the benefit do not apply for it, and the cancellation of the benefit, when the conditions required are no longer met.

The discussions held within the Presidential Advisory Commission on the Pension System in Chile highlight the coexistence of different approaches to how the country's pension challenges should be addressed. Proposal A is based on a continuation of the current pension system. Fewer reforms would be introduced than in 2008, when a solidarity-based component was brought on board, in that proposal A would be limited to strengthening that non-contributory component. That strengthening would raise hopes for better coverage among women, but perhaps also a deeper segmentation of benefits, with women at the forefront in the non-contributory subsystem and men in the contributory sector. A slight improvement in gender equality could also be expected on account of other aspects in proposal A set out as specific proposals, such as the proposed use of gender-neutral mortality tables for calculating benefits. However, the hypothesis that this document hazards to offer is that the improvement produced by a reform along the lines of proposal A would be short in duration, as occurred with the 2008 reform, and then, if the goal is inclusion and equality, another pension system would have to be put forward.

Proposal B, in contrast, is based on a system of notional capitalization and PAYG with defined contributions. In other words, it would entail a change in the basic design of the pension system that would certainly allow greater redistribution among different income levels within the population and between men and women, as occurred in Brazil's reform process. In addition, such a model implies greater weight for the system's contributory component and could be combined with some affirmative action measures to assist women.

The proposal presented by the country's executive branch to Congress in August 2017¹⁸ creates a system of collective public saving with solidarity-based transfers within and between generations. It also includes a compensation bonus for women, to offset the negative effect of the gender-differentiated mortality tables used to calculate pensions in the individual capitalization component that would be maintained by AFPs. Nonetheless, the compensation is only partial, since all of this benefit is accessed at 65 years of age rather than at the legal retirement age of 60.

In January 2018, the bill that would have created the collective saving pillar, a main component of the reform, was rejected by the Chamber of Deputies.

¹⁷ Equal to around 40% of the minimum wage.

¹⁸ Three legislative bills cover the reforms to the pension system: the New Collective Savings Act, the Act Regulating the Individual Capitalization System and the constitutional amendment creating the Collective Savings Board of Trustees.

D. Costa Rica

For a number of decades, Costa Rica has been notable within the subregional context for its social policies. Albeit with variations over time, they are intended to have a direct bearing on the promotion of social peace, which is seen as a distinctive or even defining value of the State and its society.

Because of that, it was logical that the privatizing thrust of the 1990s arrived late and was adapted to the country's particular situation.

1. Background

The first legal steps towards social security in Costa Rica date back to the 1920s, with a provision to protect workers from workplace accidents. Social security as such, however, did not emerge until 1941, with the creation of the Costa Rican Social Security Fund (CCSS), which was followed, a few years later, by a pension system.

A mixed pension system was created in Costa Rica in 2001, which maintained the PAYG system but added additional components: one mandatory, based on individual capitalization, and the other voluntary and complementary. Shortly after the structural reform, some of the system's parameters had to be modified to make it more sustainable.

2. Changes to the benefit access rules and additional modifications (2004–2005)

In 2004 a social dialogue was launched to design the reform, as a part of which a cross-sector commission comprising government institutions and civil society organizations was created.

In that context, the National Institute for Women (INAMU) drew attention to the sources of gender inequality present in the system, both those stemming from employment inequalities and those that were due to the design of the system (for example, the fact that the widow's pension was equivalent to 60% of a pension received by a person registered with the system in their own right); the Institute also demanded the inclusion of self-employed women (own-account workers), affirmative action measures and recognition of the unpaid care work done by women.

Although the resulting reform changed the benefit access parameters, it is considered more than merely parametric, because of the participatory process through which it was developed and two types of measures it adopted that are considered good practices: affirmative action in favour of women, and tiered replacement rates based on income levels. The most important changes were an increase in contributions (from workers, their employers and the State); a change in the reference wage; a change in the replacement rate, from a fixed proportion (60%) to tiered rates (between 43.0% and 52.5%) based on income level and contribution density;¹⁹ and the adoption of the same replacement rate for disability and old-age pensions.

There was also affirmative action enabling women to take early retirement: they are credited with six contributions, both in the event of early retirement on a reduced pension and if they have made sufficient contributions for a full pension.

In the specific case of Costa Rica, this early retirement possibility is useful for individuals who started working in formal jobs at very early ages, who have a high density of contributions and reach 60 or 62 years of age with many more contributions than those required at age 65 (Martínez, 2006). In other words, although the affirmative action measure included in this reform was not significant, since it only involved six months of contributions and only affected women with a long and continuous

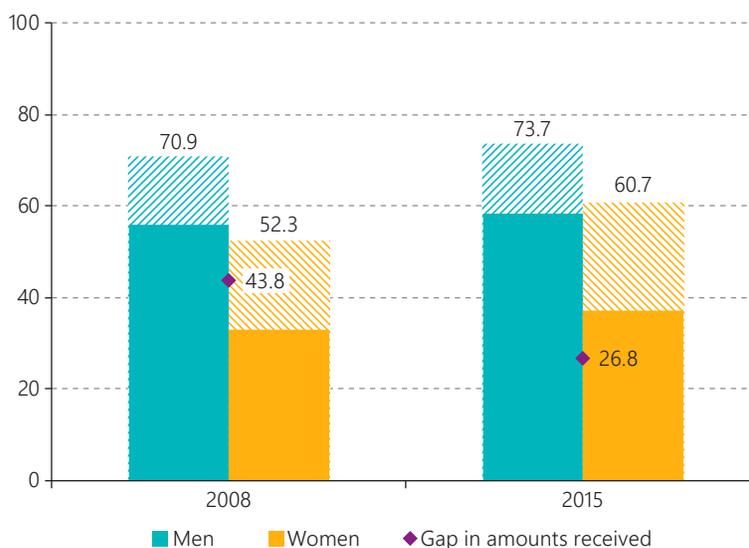
¹⁹ The replacement rate is 43.0% for the higher income brackets and rises in steps to 52.5% for individuals with lower incomes, while some correlation with the density of contributions is also maintained.

employment career, it represented the second time in the region that measures of this type were included in a pension system (the first was in Brazil).

The tiered replacement rate is another positive development, since it has direct redistributive effects: the higher the income level, the lower the replacement ratio, and vice versa; similarly, the lower the labour income, the higher the percentage of earnings that the pension replaces.

This reform had a positive effect on equality indicators for women and men: the proportion of women receiving both contributory and non-contributory pensions increased, and coverage in low-productivity sectors rose among men and women alike (Marco, 2016). The gender gap in benefit amounts also improved.

Figure III.4
Costa Rica: proportion of men and women aged 65 years and over receiving contributory or non-contributory pensions, and gender gap in the amounts received, 2008 and 2015
(Percentages)



Source: Economic Commission for Latin America and the Caribbean (ECLAC), *Social Panorama of Latin America, 2017* (LC/PUB.2018/1-P), Santiago, 2018.

Note: The gap between the amounts represents the difference in average income received in contributory and non-contributory benefits by women and men of 65 years of age or over. The shaded portion represents the additional coverage of non-contributory pensions.

3. Most recent changes (2016–2017)

In 2016, during a debate on the system's financial and actuarial sustainability, it was decided to abolish the possibility of early retirement with a proportional or reduced pension that had been introduced by the affirmative action measure for women. In 2017, in accordance with a resolution adopted by the CCSS Board, contributions were raised one percentage point to reach 12.16%.²⁰

Following the adoption of this measure, a new intersectoral working panel was set up to pursue a broader reform than the contribution increases that had already been agreed on. Ultimately, that mechanism chose not to make any further changes. INAMU also played an active role in that process: its position was against any hardening of the access requirements and against changes to the system, which was what ultimately occurred.

²⁰ For the waged sector: employers contributed 5.75%, the workers 4.50% and the State 1.91%; and for the own-account sector, 10.25% from the workers and 1.91% from the State.

E. Uruguay

Like Argentina and Chile, Uruguay was one of the region's social security pioneers, and its system is perhaps the best consolidated and most legitimate. Because of that, the individual capitalization reforms of the 1990s had to proceed with greater caution than in other cases and, even though the process was not participatory, it had to follow certain guidelines and take steps to avoid any loss of prestige and legitimacy. Even so, it had an impact on equity and inclusion and finally, in 2008, a series of corrective measures were implemented, which yielded highly positive results.

1. Background

The pension reform that Uruguay adopted by means of Law No. 16713 of 1995 established a mixed system with a PAYG and defined benefit component and an individual capitalization scheme administrated by Welfare Savings Fund Managers (AFAP), in addition to the institutionalization of workers' employment histories. This was the greatest institutional transformation of the 1990s, in a context defined by the constitutional amendment of 1989 that, in response to public demands, had introduced a mechanism for the periodic adjustment of retirement benefits and pensions. The reformers were forced to adapt their strategies to this "constitutional shielding" and the prevailing national mood in the wake of the constitutional referendum. The public did not react favourably to the reform and a citizens' movement for the repeal of the legislation was launched; that movement was not stopped until 1999, when the Electoral Court disqualified the signatures needed to submit the law to a referendum (Quirici, 2009).

Under the mixed regime adopted, higher-income workers were required to contribute to both components; meanwhile, for those with lower incomes, paying in half their contribution to the AFAPs was optional (for those who made the irreversible choice to select that option). Within that framework, the contribution years required were raised (from 30 to 35), women's retirement ages were increased (from 55 to 60 for ordinary retirement and from 65 to 70 for old age) and a system to record employment histories was introduced to keep track of the number of years during which contributions were actually made. The replacement rates were also modified and those of men and women set at the same level (previously, the women's rate was higher); under the new model they vary from 52.5% to 82.5%, depending on retirement age and contribution years.

Significantly, a State-run pension fund management company was established, in an attempt to address the mistrust felt towards the private fund managers and the legitimacy problems of the reform process. This innovation with respect to the Chilean model—and above all the mixed nature of the system, combining PAYG and defined benefits with individual capitalization—led to references to "Uruguayan-style reforms".

The reform's benefits and requirements were as follows: (i) retirement, after 35 contribution years and reaching the age of 60; (ii) old-age retirement, at the age of 70 with 15 contribution years; (iii) survivors' pension, equal to between 50% and 75% of the basic retirement salary, given primarily to widows—and, exceptionally, to widowers—who proved economic dependence on the beneficiary, and to disabled parents and children; and (iv) welfare pension, given to those aged over 70 with no resources of their own.

In addition, there was an affirmative action component in the replacement rates: prior to the reform the ordinary retirement levels stood at 75% for women and 65% for men, but they were revised downwards to a unisex rate of 50% (Amarante, Colacce and Manzi, 2016).

The adverse effects that individual capitalization had on social and gender equality in the other countries that embraced it in its purest form were mitigated in Uruguay's case because of the system's public component. In contrast to the situation in other countries of the region, Uruguayan women are not underrepresented among the recipients of old-age benefits. They were overrepresented in

the benefits provided by the Social Insurance Bank (BPS) and in the non-contributory subsystem (and men are in the AFAPs), and they accounted for a majority of widows' pensions.

2. Reforms that consolidated a process (2008)

In spite of the historically high coverage rates of the Uruguayan pension system and although the negative effects of the individual capitalization reform were mitigated, the system's sustainability remains an issue because of the population's age structure, given that Uruguay is one of the region's most rapidly ageing countries.

In that context, efforts were made to increase coverage among both passive and active system members: in other words, among both benefit recipients and people still making contributions. That undertaking required reaching sectors of the labour market that were excluded from the pension system, such as domestic employees and informal workers in general.

Prior to the 2008 reform, therefore, several initiatives were carried out. These included the enactment of Law No. 18065, which regulated wage-earning domestic work in 2006 and extended all social security benefits to that sector; and that of Law No. 18246 of 2007, the Hetero-affective and Homo-affective Concubinary Union Act, which equated the rights of widowers and widows with those of male and female cohabitants (with five years of cohabitation). At the same time, a wide-ranging campaign to publicize acquired rights was carried out, which led to a considerable increase in coverage, especially among poor working women.

In 2007, the Government launched the National Social Security Dialogue to evaluate the social security system and receive suggestions for modifying it. This participatory political and technical process was organized on the basis of five thematic round tables: (i) demographics and health; (ii) inclusion, work and social security; (iii) social security and social protection; (iv) coverage and social security; and (v) funding. Working panels were also set up to deal with the topic "The contribution of women's unpaid work to the economy and social security". In addition, as part of the participatory process and similar to the approach adopted by Chile, a website was set up for members of the public to submit proposals.

As a result of that process, Law No. 18395 of 2008 relaxes the access conditions, encourages the inclusion of more women, credits them with an additional year's work in their employment histories for each biological or adopted child and increases the minimum benefit amounts, which are mostly paid out to women.

The measures contained in the pension reform included a drop from 35 to 30 in the number of years' work needed to qualify for ordinary retirement; they also entailed a reduction in the benefit amounts, as the replacement rate was lowered to 45%, with 1% increases for each additional year. For old age retirement, the threshold age was reduced from 70 to 65 years and, as age increases, the minimum years required fall: 25 years of work are needed at age 65; 23 at age 66; 21 at age 67; 19 at age 68; 17 at age 69; and 15 at age 70. The minimum replacement rate was not changed: it remains at 50% for both sexes, plus 1% for each year in excess of the minimum required for each age, with a maximum of an additional 14%. This measure is believed to favour around 70% of private-sector workers, who will be able to retire under that mechanism at the age of 65 (Aguirre and Scuro, 2010).

Similarly, the requirements for invalidity pension were loosened, with the abolition of the requirement of having worked during the six months prior to the disability; and the non-contributory old-age pension was made available at the age of 65 to those in critical financial straits, combining it with the non-contributory pension for those aged 70 and over, which already existed for the poorest sectors of society.

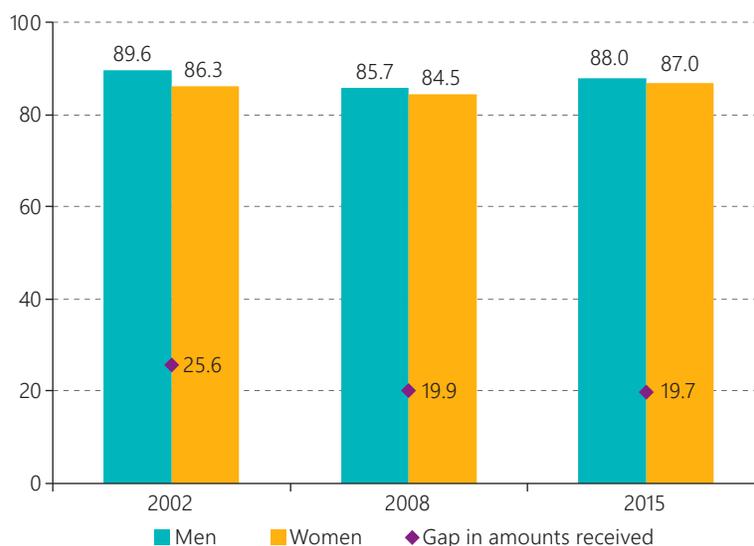
The one-year credit granted for each child is given to all mothers, up to a maximum of five years, which is then used to calculate the PAYG component. The initiative was devised as a form of affirmative action to address the discontinuities in women's employment histories caused by periods

spent on childcare. The data already show that women who had not accumulated the necessary years are using this rule to qualify for retirement and that others are using it to improve the pension amounts they receive.

One assessment has revealed that the main effect of the child credits granted to women was an improvement in their pensions: over the period from 2009 to 2015,²¹ 44% of the women taking ordinary retirement with the inclusion of child credits improved their pension amounts, while 47.7% of women who retired at a more advanced age and were credited with contributions for each child also received higher amounts. Women who take old-age retirement or who earn lower incomes are more likely to have credits for children included in their pension calculations than those who are entitled to ordinary retirement. In 2015, 86% of the women in the first four deciles received child credits, compared to only 61% in the top decile. The women retirees who receive the lowest pensions mostly used their child credits to reach the pension threshold, while those receiving more improved their pensions with those credits (Lavallega and Tenenbaum, 2017). In 2010, in the first years of the reform, 43.6% of those taking retirement used the child credit and, by 2016, that figure had fallen to 34.6% (BPS, 2017).

Figure III.5 shows the positive evolution of coverage rates under the reform, together with the persistence of gaps in pension amounts.

Figure III.5
Uruguay: proportion of men and women aged 65 years and over who receive contributory or non-contributory pensions, and gender gap in the amounts received, 2002,^a 2008 and 2015
(Percentages)



Source: Economic Commission for Latin America and the Caribbean (ECLAC), *Social Panorama of Latin America, 2017* (LC/PUB.2018/1-P), Santiago, 2018.

Note: The gap between the amounts represents the difference in the average income received from contributory and non-contributory pensions by women and men of 65 years of age or over.

^a Urban area.

²¹ Ordinary retirement applies once the legal requirements (60 years of age and 30 years' contributions) have been met. If the required contribution years have not been met by the legal retirement age, retirement is postponed for a further five years, after which retirement becomes mandatory even if the number of years of contribution required under the ordinary system have still not been met.

The assessment of the effects of Uruguay's reform referred to above (Lavallega and Tenenbaum, 2017) identified major positive impacts in reducing gender inequalities. In 2009, 77% of the benefits received by women corresponded to pension amounts below the poverty line, compared to 56% among men; by 2015, these percentages had fallen to 28% and 15% respectively. Moreover, following the reform, the gender breakdown of persons receiving pensions in their own right became more equal, having previously been predominantly male.

The reform's positive effects can also be seen in coverage rates, as indicated by the official figures for contributors. That increase is significant both for workers' rights and for the system's sustainability. The effects on the contributions made by individuals employed in low-productivity sectors are substantial, especially in the case of women, where the rate increased from 30.6% in 2002 to 48.8% in 2015. This 18.2 percentage point rise in the rate for women is closely related to the regularization of domestic employment, which is almost entirely female (ECLAC, 2018).

IV. Better than before, but still facing exclusion and discrimination

On account of a new wave of inclusive reforms, women are today in a better pensions situation than they were a decade ago. This is true both in terms of their enrolment rates as members or contributors and in terms of their inclusion as recipients of retirement benefits and pensions.

Nevertheless, significant challenges still remain to be addressed. First, there are still some countries with systems based on the logic of individualism and exclusion that do not reflect the reality of the region's labour markets; and, second, those countries that have made great efforts to close social and gender gaps still suffer from gender inequalities arising from the inadequate recognition of caregiving, the lack of strategies for the redistribution of care work and the continued failure of social security systems to respond to people's status as citizens, as a result of which their systems continue to perpetuate the inequalities and differences found in the world of employment.

Figure IV.1 indicates the vast proportion of women employed in low-productivity jobs, which is a proxy indicator for informal employment. It also shows that of this vast proportion of women workers, only a tiny percentage are enrolled in or contributors to —according to the individual countries' coverage reporting methods— pension systems. Particularly notable are the cases of Brazil, Chile, Costa Rica and Uruguay, largely on account of the reforms described in the previous section.

In contrast, there are other countries where coverage for that segment of the employed population is very low or practically non-existent: the Dominican Republic, Guatemala, Honduras, Nicaragua, Paraguay, Peru and the Plurinational State of Bolivia.

The challenge is particularly notable in the case of the Plurinational State of Bolivia, given the country's productive structure and the proportion of its population who work on an own-account basis or as employees in microenterprises. The 2010 reform did not address this enormous challenge, because the solidarity mechanism it brought on board works for those already within the system but offers no incentives for including the vast numbers of people engaged in informal work.

Figure IV.1

Latin America (17 countries): proportion of women aged between 15 and 64 years working in low-productivity sectors relative to the total number of women in employment, and proportion of women who are affiliated or contribute to the social security system, around 2015^{a,b}
(Percentages)



Source: Economic Commission for Latin America and the Caribbean (ECLAC), *Social Panorama of Latin America, 2017* (LC/PUB.2018/1-P), Santiago, 2018.

Note: The household surveys in each country report on affiliation in or contribution to a pension system. Those that present data on affiliation are the Bolivarian Republic of Venezuela, the Dominican Republic, Ecuador, El Salvador, Guatemala and the Plurinational State of Bolivia.

^a The data refer to 2015, except in the cases of Argentina, the Bolivarian Republic of Venezuela, Guatemala, Mexico and Nicaragua, where they refer to 2014.

^b The data report national totals, except in the case of Argentina, where they represent 31 urban agglomerations.

In Colombia, one initiative aimed at changing that situation is the Regular Economic Benefits (BEPS) programme, which entails voluntary saving for old age and has been promoted by the Government to favour that segment of the population unable to make contributions or that, having done so, was unable to obtain pensions upon reaching the required age. The programme is not targeted specifically at informal workers, but it is intended to reach them by providing old-age protection for those of limited resources, in the shape of a personal and individual income paid every two months for the remainder of their lives following a request for their savings to be used for that purpose.

This flexible system aims to encourage workers to participate voluntarily in accumulating funds to improve their incomes in old age by saving what they can at the present time, and the Government rewards those efforts with a 20% subsidy. The programme is open to those at levels I, II and III of the System for the Identification of Potential Social Programme Beneficiaries (SISBEN), in accordance with the cut-off points defined by the Ministry of Labour and the National Planning Department (DNP). Workers can be members of both the BEPS programme and the General Pensions System simultaneously, but they cannot both deposit savings into the BEPS and make contributions to the General Pensions System in any given period or month.²²

²² Further information is available on the programme's website [online] <https://www.colpensiones.gov.co/beps/>.

El Salvador still has to meet the challenge of developing initiatives to attract this vast sector of workers. A reform of the pension system carried out in late 2017 failed to include specific measures to expand coverage among those workers.²³

In Paraguay there is no specific regime, but older people who worked in the informal sector and failed to gain access to the pension system during their working lives would be covered by a pension for poor older people, provided that they qualify as such. This issue here, as in the Plurinational State of Bolivia's case, is the adequacy of the benefit, given that it is worth slightly more than a third of the minimum wage.²⁴

Peru, in contrast, created the Social Pension System, a voluntary scheme for workers and managers of microenterprises. The provisions of the law are not available to workers who are members or beneficiaries of any other pension regime. The monthly contribution of each member is capped at 4% of the corresponding minimum living wage, based on the 12 contributions a year that are deposited in the member's individual account with the Social Pension System, created for that purpose, which records both contributions and accrued returns and is managed by an AFP, insurance company or bank. Records of the Social Pension System are kept by the National Pensions Office (ONP).

The State will also make contributions to the Social Pension System, in an amount equal to the total obligatory monthly contributions made by the members. Members are entitled to receive a retirement pension upon reaching the age of 65 with at least 300 contributions made to the Social Pensions Fund. The amount of the retirement pension is calculated as a function of the money accumulated in the member's individual capitalization account, with the State's contribution, and its profitability.

The Dominican Republic's laws provide two regimes for own-account workers: (i) a subsidized regime, primarily funded by the State, to protect own-account workers on unstable incomes and earnings below the national minimum wage, along with the unemployed, people with disabilities and the extremely poor; and (ii) another subsidized contributory regime, to protect independent professionals and technicians and own-account workers with average incomes equal to or higher than the national minimum wage, contributions made by those workers and a subsidy from the State to make up for the absence of an employer.

At the same time, if the average age at which a person enrolls in the social security system is compared to the minimum number of contribution years required to obtain a pension under each country's legislation, the result is alarming. As shown by figure IV.2, in countries such as Paraguay and the Plurinational State of Bolivia, only a quarter of the women working today will obtain the retirement pensions for which they are required by law to have made, respectively, 25 and 15 years of contributions. Coverage rates for the 25 to 29 and 30 to 34 age groups in those countries barely reach 25% in the Plurinational State of Bolivia and 34% in Paraguay. Moreover, this calculation assumes that the women in question have no interruptions in their employment records, and that this pattern of affiliation or contribution will not be affected by withdrawals from the labour market on account of childbearing or changes in the economy, crises or other causes (ECLAC, 2018).

²³ In 1998, El Salvador undertook a structural reform of its pension regime that involved the implementation of a system based exclusively on individual capitalization. In 2009, a decade after its introduction, the country was forced to include a non-contributory component and, after almost two years of parliamentary discussions, in 2017 it implemented a reform that merely changed the benefit calculation parameters but not the design of the system, which remains an individual capitalization model. Along with increases in workers' and employers' contributions, its innovations were a unisex table for scheduled retirement, the creation of a solidarity-based guarantee fund managed by AFPs to cover longevity pensions (requiring 20 years of contributions and then 20 years of receiving a pension) and minimum pensions (for those with 25 years' contributions) and multifunds with different risk levels (ECLAC, 2018).

²⁴ In 2009 Paraguay enacted Law No. 3728 on non-contributory access, in force since 2010 and targeting poorer older people of over 65 years of age not in receipt of other pensions, retirement payments or monetary income. The pension for poor older people has had a major impact in terms of coverage and has reached a percentage of older people similar to those covered by the pension system: in 2013, only 12.4% of older people had access to retirement pensions, while another 11% received the non-contributory benefit on grounds of poverty (Minoldo and others, 2015).

Figure IV.2

Latin America (11 countries): proportion of employed women affiliated or contributing to the social security system, by age group, around 2015^{a, b, c}
(Percentages)



Source: Economic Commission for Latin America and the Caribbean (ECLAC), *Social Panorama of Latin America, 2017* (LC/PUB.2018/1-P), Santiago, 2018.

Note: The household surveys in each country report affiliation or contribution to a pension system. Those that present data on affiliation are the Dominican Republic, Ecuador, El Salvador, Guatemala, Panama and the Plurinational State of Bolivia.

^a The data refer to 2015, except in the cases of Guatemala and Mexico, where they refer to 2014.

^b The data report national totals, except in the case of Argentina, where they represent 31 urban agglomerations.

^c In the case of Guatemala, the data refer to the proportion of women wage-earners.

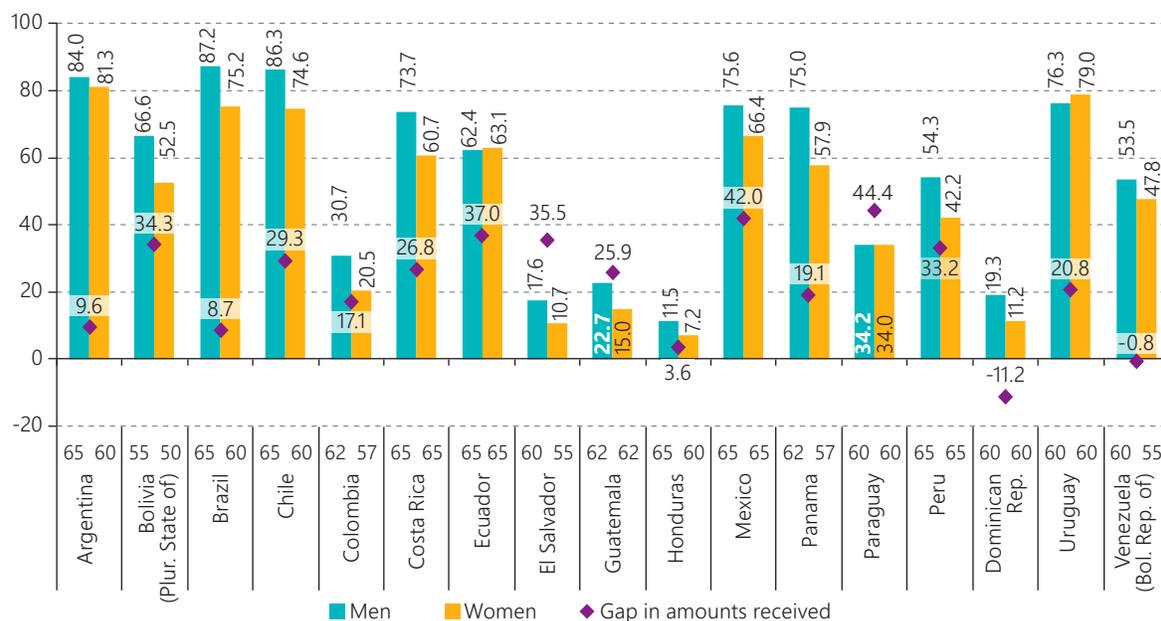
Women have systematically lower levels of coverage, which means they are less likely to receive social security benefits in old age. The sole exceptions are Uruguay and Ecuador, with differences of less than 3 percentage points.

Note that as employment in low-productivity sectors is a reason behind exclusion from pension systems, higher levels of education increase the probability of greater enrolment. Thus, one study has shown that membership is higher among more educated women in Argentina, Brazil, Chile and Uruguay (Amarante, Colacce and Manzi, 2016).

In contrast, if coverage is measured in terms of the situation of older women—that is, those who should already be receiving social security benefits and those who effectively are—the results are more encouraging. Figure IV.3 covers women of retirement age (which varies from one country to the next) and both contributory and non-contributory pensions.

Figure IV.3

Latin America (17 countries): proportion of men and women over the legal retirement age receiving contributory or non-contributory pensions, and gender gap in the amounts received, around 2015^{a,b}
(Percentages)



Source: Economic Commission for Latin America and the Caribbean (ECLAC), *Social Panorama of Latin America, 2017* (LC/PUB.2018/1-P), Santiago, 2018.

Note: The gap between the amounts represents the difference in average income received in contributory and non-contributory benefits by women and men at the respective legal retirement age. The figures shown above the country names indicate each country's legal retirement age for men and women respectively. In constructing the graph, 65 years of age was used as the retirement age in the case of Ecuador, where there is no mandatory retirement age.

^a The data refer to 2015, except in the cases of Argentina, the Bolivarian Republic of Venezuela, Guatemala and Mexico, where they refer to 2014.

^b The data report national totals, except in the case of Argentina, where they represent 31 urban agglomerations.

Figure IV.4 below shows higher levels of coverage than the previous figure, particularly among women, for two reasons: first, because it shows people aged over 65 years without considering the legal retirement age, which, is below 65 in most of the countries, at least for women; and second, because it shows non-contributory pensions which, in most cases, become available later than the legal age set for regular contributory retirement.

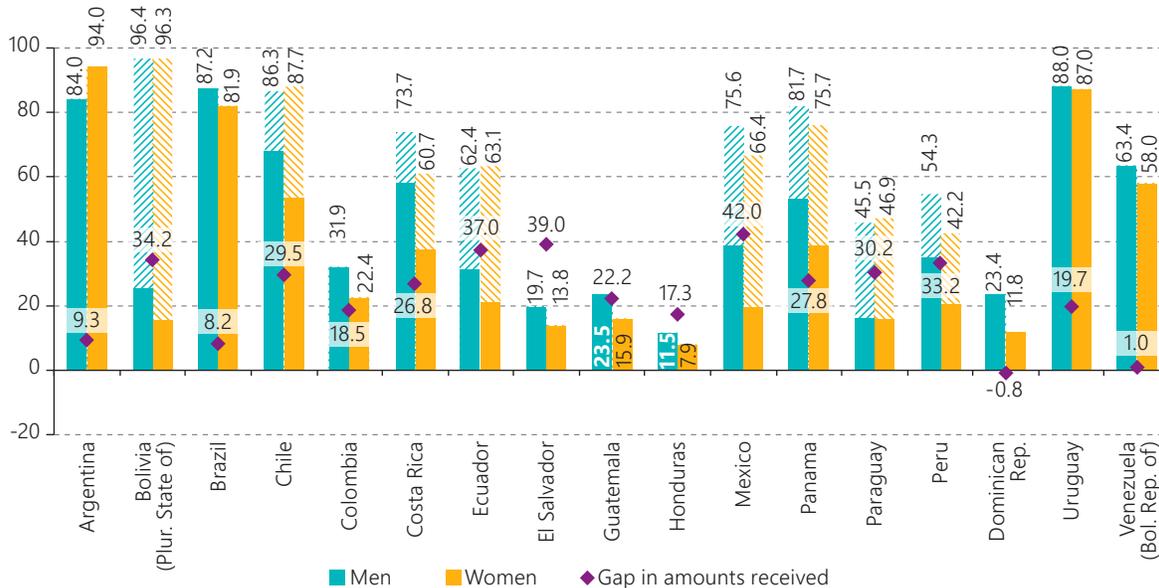
If contributory and non-contributory pensions are considered jointly, the coverage rates for both men and women increase significantly; at the same time, however, the gaps between the amounts of the benefits widen. This is because women are overrepresented among the recipients of non-contributory benefits and because the amounts of those pensions are a lot lower than contributory pensions.

Distinguishing between contributory and non-contributory pensions is not always possible. As shown by figure IV.4, it can be done in Chile, Ecuador, Mexico, Panama, Paraguay, Peru and the Plurinational State of Bolivia.

Figure IV.4 also shows the gaps in the amounts received. The results for Argentina and Brazil are notable, with the narrowest gaps in combination with high rates of coverage. There are other countries with slender gaps in their benefit amounts but very low rates of coverage, such as the Dominican Republic and Honduras.

Figure IV.4

Latin America (17 countries): proportion of men and women aged 65 years and over receiving contributory or non-contributory pensions, and gender gap in the amounts received, around 2015^{a,b}
(Percentages)



Source: Economic Commission for Latin America and the Caribbean (ECLAC), *Social Panorama of Latin America, 2017* (LC/PUB.2018/1-P), Santiago, 2018.

Note: The gap between the amounts represents the difference in average income received in contributory and non-contributory benefits by women and men of 65 years of age or over. The area shown in a lighter shade represents the additional coverage of non-contributory pensions. The darker area includes survivor pensions in cases where they can be distinguished in the data source.

^a The data refer to 2015, except in the cases of Argentina, the Bolivarian Republic of Venezuela, Guatemala and Mexico, where they refer to 2014.

^b The data report national totals, except in the case of Argentina, where they represent 31 urban agglomerations.

In the cases of Chile and Uruguay, it was possible to distinguish between contributory, widows' and non-contributory pensions. In Chile, one fifth of women receiving pensions receive a widow's pension, and more than a third receive a non-contributory pension: in other words, half of all older women with benefits of this type receive a non-contributory or widow's pension and less than half receive a contributory pension. In Uruguay, nearly half of the women who receive pensions do so in their capacity as widows, while a much smaller proportion (6%) receive a non-contributory benefit (Amarante, Colacce and Manzi, 2016).

At the same time, it is interesting to examine inequalities in retirement benefits and pensions within households, since such an analysis illustrates the economic autonomy of women at the micro level. Accordingly, the study by Amarante, Colacce and Manzi (2016) analyses information from household surveys in Argentina, Brazil, Chile and Uruguay, focusing on households in which there is at least one heterosexual couple aged over 64 years, which account for around a quarter of those countries' total households. Their analysis reveals that with the exception of Argentina, retirement and pension coverage is lower among older women living as part of a couple than among women in general. The opposite applies in the case of men: those living as part of a couple have higher coverage rates than the average for older men. In any event, there was an increase in coverage among older women living as part of a couple across the board between 2000 and 2013, and most notably in Brazil.

It can therefore be seen that significant progress has been made, but persistent forms of exclusion still remain in place. The clear truth is that contributory access models imply restrictions, and that universal access schemes offer potential (Minoldo and others, 2015).

V. Care work and social security: from paradox to recognition

The starting point for any discussion of care work within social security is the recognition of the significant contribution made by unpaid care work—which is predominantly performed by women—to social security systems in all the countries. That leads to the acknowledgement that if women did not take charge, within their families and without cost, of the care of children, older people needing attention, people with disabilities, people with chronic illnesses and others requiring support and care, it would fall to the State to do so. Women therefore subsidize social security systems and social protection in general. For that reason, social security must recognize and compensate unpaid care work.

Of course, care work performed within families is not really free. Although such care has no cost for States and those who receive it, it has an extraordinarily high cost for the women who provide it, in terms time, quality of life and even health, but above all in terms of lost opportunities: in other words, the activities they are unable to pursue because they are performing unpaid care work. A part of that opportunity cost is not participating in the job market, or participating under different conditions than men.

Because they are subsidizing the State, because their dedication to unpaid care work means they do not participate in the world of employment or, at best, do so under “women’s conditions”, women are penalized or excluded from social security or their rights in that regard are constrained, with their access to old-age or health-based pensions based on derived rights (widows’ pensions). This is the paradoxical relationship that exists between care and social protection, including social security.

Regional gender studies, which already have a consolidated body of thought regarding care, agree with the demands for the State to assume the role of regulating and providing care services, while not neglecting the cultural change strategies needed to deconstruct gender roles.

The State performs its role as a care provider through institutionalized services for the target population (childcare centres, day-care centres for older persons, home-care services by the hour or day, etc.) or, failing that, by distributing the money needed to purchase such care services. Its regulatory role involves promoting the redistribution of care work between men and women, making companies jointly responsible and acknowledging, in different ways, the importance of care services

in sustaining societies. One way is by providing for leaves of absence for care duties, and other similar mechanisms, in employment law. Another aspect of this role is regulating the quality of care services, whether they are publicly or privately provided. The other way is social security. Labour laws must provide for the right to provide care and the redistribution of care work. Within social security regimes, as indicated above, care must be recognized and rewarded.

Although this paradoxical relationship between care and social security is still in place, it has evolved. Some progress has been made: instead of penalizing women for dedicating themselves to care by excluding them from welfare systems, there is now a growing recognition of that unpaid work, and the region's countries are adopting various models for compensation or payment.

Notable in this regard is the Framework Law on the Economy of Care, adopted in 2013 by the Latin American and Caribbean Parliament (PARLATINO). It provides that States are to take the steps necessary so that their social security systems include persons who perform unpaid care work in the home.²⁵

A. Recognition of unpaid care work in the region's pension systems

Recognition of unpaid care work in pension systems requires affirmative action: differentiated treatment, in laws or policies, to compensate for the inequalities of reality. The aim is to treat those who are facing inequality differently, on a temporary basis until that inequality can be overcome. Affirmative action measures have been recommended extensively by CEDAW and the Regional Gender Agenda.

The affirmative action mechanisms in the region's welfare systems intended to acknowledge the unpaid care work primarily performed by women include the following:

- Notional contributions for all women; that is, without making the benefit contingent on the presence of children. This approach is found only in Brazil.
- Care recognition bonuses, which are dependent on the number of children. This is the most common mechanism and is used in Chile, the Plurinational State of Bolivia and Uruguay.
- Special regimes for unpaid work. These are used solely in Ecuador.
- Differentiated retirement ages. This mechanism was not devised as a form of recognition and its effectiveness is debatable, but it is found in half of the region's regimes. It will be explored in the following section.

As noted above with reference to the most recent pension reform, the laws of the Plurinational State of Bolivia add one year of contributions for each child, up to a maximum of three, for recipients of the solidarity pension (persons who have made 120 contributions and have attained 58 years of age). In addition, recipients of this semi-contributory pension can bring their retirement forward by three years, although this is not compatible with the per-child bonus.

Brazil's affirmative action for women entails a five-year reduction in the required contribution, relative to men, with the difference being funded by the system. These are notional contributions, in that it is the State that actually covers them.

Also as noted above, Chile's 2008 reform included a bonus for each child equal to 18 months of contributions at the minimum wage. This State contribution is extended to all women, with no requirements regarding income or prior contributions to the pension system.

²⁵ See [online] http://parlatino.org/pdf/leyes_marcos/leyes/ley-economia-cuidado-pma-19-oct-2013.pdf.

Ecuador's 2008 Constitution states that unpaid work done in households represents a contribution to the country's economy and that persons performing it must be covered by social security. This constitutional recognition has given rise to special legislation, which was preceded by citizen demands and parliamentary debates.²⁶

To enable the integration of these workers into the pension system, beneficiaries are classified in four socioeconomic levels. The contribution of the person who performs unpaid work in the household is calculated on the basis of the family's total income, and there is also a State contribution depending on the family's socioeconomic situation. The rates differ according to the socioeconomic level of the affiliated women's households. Replacement rates also range from 90% to 62.5%, with the aim of implementing the principle of solidarity between different socioeconomic levels. These contributions are mandatory and are paid to the Ecuadorian Social Security Institute (IESS). Similarly, recipients of the Human Development Grant²⁷ are automatically affiliated to the pension system for unpaid work in the household; a small amount (US\$ 2) is deducted as a contribution, while the State contributes another larger amount.

The 2008 reform in Uruguay included a bonus for each child: as previously mentioned, the law establishes that women will be entitled to claim an additional year of services for each biological or adopted child, up to a maximum of five. These notional contributions are credited to the PAYG and defined benefit component.

The experiences described above indicate that several issues must be taken on board in implementing any mechanism for the recognition of care within pension systems:

- The period for which credit is given (as noted above, the region has mostly opted for one year's notional contributions per child, through the bonus mechanism).
- The basis on which the benefit is calculated (which can be the minimum wage, as in Chile; a specified larger amount; or the worker's contribution at the time employment is interrupted, as in Uruguay).
- Whether the credits or other recognition mechanisms apply to all the components of the pension system.

B. Differentiated retirement ages as a recognition mechanism

Different retirement ages for women and men originated as a protection mechanism, stemming from labour law protectionism in the face of women's exploitation at the time of the European industrial revolution. The difference was also intended to enable heterosexual couples, the male members of which were usually older, to share their retirement years (ECLAC, 2018).

Nonetheless, legal mechanisms clearly evolve and acquire new connotations; and, as noted in earlier points of this chapter, this happened with the essential principles of social security. Thus, in a context of longer life expectancy and problems in financing the system, the retirement age difference has come to be seen as compensation for the unpaid work done by women of all ages (ECLAC, 2018).

²⁶ Thus, between 2009 and 2014, eight draft laws were presented to incorporate individuals who do unpaid work in the household into social security. This allowed the Government to gauge the interest existing in the country for the State to guarantee full and effective exercise of the right to social security by all people, regardless of their employment status, including those who perform unpaid work in homes and provide care (Maldonado and Vallejo, 2015).

²⁷ Since 2009, the Human Development Grant has provided a grant of US\$ 35 to older people and persons with disabilities. This transfer was initially created in 1998 as the *Bono Solidario* ("Solidarity Bond") for mothers in households living in poverty, and it was subject to health-care and education conditionalities. Subsequently, over the years, the programme's recipients and purposes grew.

Ten countries in Latin America have different retirement ages for women and men, even when the difference does not apply to the receipt of non-contributory pensions.

From the point of view of this document, retirement ages differentiated solely on gender grounds, even when seen as a form of affirmative action, should be reviewed, because one of the defining features of affirmative action is its temporary nature. In the case at hand, it is not because equality has been attained—which is clearly not the case—that such a review is warranted; instead, a review would allow consideration to be given to other mechanisms that recognize care work more effectively, to address the possibilities of diversifying retirement ages and to give due consideration to pension system sustainability.

A case could be argued for differentiated ages if they addressed diversity in a broader sense. Thus, they would not be based so much on gender as on employment conditions and different realities: differentiating between urban and rural areas, for example, as occurs in Brazil, or between different types of jobs. In any event, if differentiated ages are used, there should be compensation mechanisms to resolve disparities in contribution years.

At the same time, over and above legal retirement ages, this debate should examine whether opportunities and constraints in the labour market are a determining factor in workers' retirement. Because of this, in various contexts, legal retirement ages and the actual age of retirement do not coincide. In some cases the actual age is lower because of the discrimination suffered by older people as they are forced out of employment; in other cases, the actual age is higher because of the contribution years required. The key appears to be incentives for contributors and companies to meet, at the least, the legal age.

In any event, retirement should not be mandatory, as stipulated by the ILO Older Workers Recommendation of 1980 (No. 162), and governments should support measures that help people make a gradual transition into retirement, in keeping with the Inter-American Convention on Protecting the Human Rights of Older Persons of the Organization of American States.

Similarly, General Comment No. 6 on the economic, social and cultural rights of older persons, adopted by the Committee on Economic, Social and Cultural Rights in 1995, invites the States Parties to set flexible retirement ages, depending on the occupations performed and the working ability of elderly persons, with due regard to demographic, economic and social factors (Committee on Economic, Social and Cultural Rights, 2018, "General Comment No. 6", para. 28).

Therefore, perhaps the legal retirement age should be approached from the viewpoint of active ageing, giving due consideration to alternatives such as partial retirement on a partial pension and part-time employment or working a limited number of days a week. This option could make transition into retirement much easier for the many people for whom it is traumatic, and could help preserve the capacities and autonomy of older people.

C. The European experience²⁸

The reforms undertaken in Europe over the past two or three decades have increased the complexity of European pension systems. The evolution has been towards the parallel existence of several pillars, where the State is no longer the sole provider of retirements and pensions: instead, State benefits, publicly administrated contributory and occupational benefits, and benefits from either publicly- or privately-run individual capitalization schemes are combined in different proportions, depending on the country.

²⁸ This section summarizes the consultants' report prepared by Camila Arza for the ECLAC Division for Gender Affairs (see Arza, 2017).

Those reforms tightened the relationship between contributions and benefits, brought individual capitalization components on board (obligatory in some cases, voluntary in others), raised the retirement age, changed or froze benefit indexing mechanisms and, in many cases, introduced life expectancy based on gender-neutral mortality tables as a parameter in calculating pensions.

This coexistence of subsystems has revealed that gender gaps in coverage are more pronounced in occupational pensions than in State ones, because the former correlate earnings to the benefit received and that relationship has been strengthened by the reforms.

In this context, unpaid care work is recognized through different formulas while compensation for social and gender inequalities is also addressed through basic or minimum universal pensions or other non-contributory benefits.

“Care credits” are instruments within pension systems intended to reward or recognize the care work that causes the interruption of employment histories. In some cases, they involve leaves of absence (for maternity, illness, unemployment or similar causes), while in others, they entail crediting a specific number of contribution periods to parents following the birth of a child that go beyond the duration of the maternal or paternal leave of absence.

Some of these credits involve actual transfers (material contributions made by the State on the worker’s behalf), and others assign benefits by recognizing a given period as if contributions had been made. Care credits were introduced in some European countries many years ago (Sweden in the 1970s in, Germany in 1986, Norway in 1992), but the reforms in question strengthened those programmes in a bid to mitigate the negative effects of a tighter relationship between contributions and benefits.

In Sweden, for example, the system entails notional accounts and an occupational retirement component, both funded by workers and employers, but it also contains a basic State retirement for all individuals unable to fund adequate pensions for themselves and, in addition, care credits for which the State pays the contributions.

At present, practically all the countries of Europe offer some form of recognition for time spent on childcare within their obligatory pension systems. The periods covered vary from one country to the next, ranging from a few months up to three years.

In some pension systems, care credits replace workers’ contributions more completely than in others. In Belgium, Italy, Finland and Hungary, the reference point is the carer’s previous wage or salary (although Finland uses 80% of the carer’s previous earnings and Hungary uses 70%). In Austria and Germany, a flat, predetermined value is used as the basis for all such calculation. In Poland, the State pays contributions for periods of childcare in accordance with the minimum wage and previous earnings (with a ceiling of between 60% and 75% of the average wage, depending on the duration of the absence from work).

In addition, there are different types of care credit programmes or options available for different family arrangements. Thus, the Swedish system offers three credit alternatives for families with children:

- (i) If one of the parents withdraws from the labour market to take care of their child or reduces the hours worked in order to provide childcare, care credits calculated on the basis of his or her wages are granted. This option is useful for those parents with relatively high earnings over the year prior to the birth.
- (ii) Another option is to receive credits on 75% of the average income earned over the year prior to the birth. This alternative is useful for those with relatively low incomes, when both parents stop working or reduce their paid activities significantly during the child’s first years of life.

- (iii) Care credits are available to people who continue to work as much as they did before the birth or adoption. In such cases, the credit is a uniform amount that corresponds to a reference amount.

Credits are allocated to the parent with the lower earnings but, at their request, they can be transferred to the other parent.

Credits for taking care of other family members are less common. Germany is one notable exception, with a long-term care programme under which caregivers who dedicate at least 14 hours to the care of a programme beneficiary are given credits. Austria provides another example, where people who care for a disabled or dependent family member can make voluntary contributions to the pension system and the State pays for up to four years of their contributions, depending on the type and amount of care needed. Credits for the long-term care of older persons are also available in Czechia (Arza, 2017).

Another mechanism to prevent women who dedicate their time to caregiving from being punished by the pension system involves joint savings by a heterosexual couple in a single fund; this offsets employment inequalities or other inequalities in contribution density caused by care work (Amarante, Colacce and Manzi, 2016). Thus, in Germany, the points that make up both spouses' savings are divided in half in the event of separation or divorce. If only one of the spouses has acquired retirement rights at the time of a divorce, a new account is opened and half the accumulated points are transferred to the other spouse. This splitting of funds applies in all the pillars of the pension system.

The German system's fund-splitting option is not only available in the event of divorce, but also as an (exclusive) alternative to widows' and survivors' pensions. Thus, when one of the spouses reaches retirement age, they must enter into a signed agreement indicating whether they prefer a division of the retirement funds or a survivor's pension in the event of the death of the other spouse.

In Austria, in contrast, retirement rights can also be shared but if care work is invoked, during the four years following the birth of a child, a father or mother providing care can transfer up to 50% of his or her funds to the other parent.

The reforms notwithstanding, there are still countries where access to social security in general and to pension systems in particular is determined by a person's status as a citizen. There are no gender inequalities in those universal pension benefits, because they are unrelated to the individual's employment history and life path, and so care work is not penalized (Denmark, Sweden, Finland, Netherlands). In any event, since those universal pensions are topped up by occupational pensions in which the inequalities of the labour market—along with the influence of care work in employment histories—are a determining factor, mechanisms to recognize caregiving are provided.

One variant, known as complementary basic incomes, involves the introduction of a modest income in parallel to the existing social security system, as occurs in Germany.

In addition, some countries adopted individual capitalization reforms, following the Chilean model; this was particularly common among the nations of Eastern Europe, although most of them have by now overturned those reforms. For example, Hungary fully readopted the PAYG and defined benefit system in 2011, with closure of the individual capitalization system and the transfer of its funds to the PAYG and defined benefit component. Poland's return to PAYG as the system's sole obligatory component was more gradual, and individual capitalization was maintained as a voluntary option.

VI. Domestic employment: paid care work and more

Three quarters of all paid care work is performed by domestic employees, who are almost exclusively female. The remainder is provided by agencies of the health and education systems, especially those in the State sector. Thus, one peculiarity of care work is that it is waged, either in the public sector or through domestic employment (ECLAC, 2013).

At their inception and until very recently, labour laws and social security did not afford protection to paid domestic workers. Domestic employment was covered by special regulations, which were a source of direct discrimination: labour laws allowed longer working days, shorter vacations, shorter periods of notice for dismissals and workers engaged in the sector were practically excluded from social security.

Steps are now being taken to settle this historical debt, and progress is being made in the region, albeit slowly. The ILO Domestic Workers Convention of 2011 (No. 189) marked a milestone in this process by committing States to extend social security protection to domestic workers, under conditions that are no less favourable than those that apply to workers generally. A total of 13 Latin American and Caribbean countries have now ratified the Convention, the largest number in any region of the world.²⁹ Nonetheless, several countries still have pension systems that exclude domestic workers, and their reforms have not made progress on that front; others meanwhile, including Brazil, Chile, Costa Rica, Ecuador and Uruguay, have settled their debt to these women by making their pension rights legally equivalent to those of other workers.

In Latin America, domestic workers have traditionally been excluded from social security in general, including pension systems (Miranda, 2018). As shown by figure VI.1, the situation in the region is far from uniform. The data show the percentage of women employed in domestic service and the proportion of them who are affiliated to—or, as applicable, contribute to—the pension system. On average, 10.7% of Latin America's working women are engaged in domestic service, while only 26.9% of those paid domestic workers belong to a pension system: in other words, 73.1% have no pension coverage.

²⁹ Argentina, Colombia, Chile, Costa Rica, Dominican Republic, Ecuador, Guyana, Jamaica, Nicaragua, Panama, Paraguay, Plurinational State of Bolivia and Uruguay.

Figure VI.1

Latin America (17 countries): proportion of women aged 15 and over employed in domestic service, with respect to the total number of employed women, and proportion of women affiliated or contributing to the social security system, around 2015^{a,b}
(Percentages)



Source: Economic Commission for Latin America and the Caribbean (ECLAC), *Social Panorama of Latin America, 2017* (LC/PUB.2018/1-P), Santiago, 2018.

Note: The household surveys in each country provide information on affiliation or contribution to a pension system. The countries that present data on affiliation are: Bolivarian Republic of Venezuela, Dominican Republic, Ecuador, El Salvador, Guatemala and Plurinational State of Bolivia.

^a The data refer to 2015, except in the cases of Argentina, Bolivarian Republic of Venezuela, Guatemala, Mexico and Nicaragua, where they refer to 2014.

^b The data report the national total, except in the case of Argentina, where they represent 31 urban agglomerations.

Those low coverage rates are largely due to different forms of legal exclusion that domestic workers face within pension regimes. One type of exclusion affects those who work less than the maximum working day, or those who work for a number of employers or on a day-to-day basis, even though in many instances they could join the system as independent workers. In such cases, the pension systems are not adapted to allow a worker to contribute in a uniform fashion when she has more than one employer and works incomplete days. Under Peruvian law, for example, inclusion in the obligatory social insurance regime is available when the employee works days of four hours or more. In other countries, such as Paraguay, exclusion arises because the legal minimum wage does not apply to domestic workers. In that country, they are covered by the obligatory general social insurance regime, but in practice they cannot be covered because all the pension contributions are actuarially calculated on the basis of the legal minimum wage (ILO, 2015). The same problem exists in some where voluntary enrolment is possible, such as Panama and Mexico, where domestic workers are covered by public social insurance, but under a special regime in which employers are not legally required to insure their workers (Miranda, 2018).

Some legal systems also contain direct forms of exclusion. Domestic workers in the Plurinational State of Bolivia are excluded from the right to retirement by omission: in other words, they are not explicitly included in the special legislation that regulates paid work in the home. In Nicaragua and Guatemala, they are expressly excluded from the long-term pension regime (old-age and survivors'

pensions). In El Salvador, Honduras and Guatemala, while they are theoretically covered by the law, the current regulations of the public social security institutions exclude them. In Guatemala, coverage is limited to a special programme that provides for certain specific short-term risks. Finally, in the Dominican Republic, no component of the social security regime includes domestic workers (ILO, 2015).

Some of the countries where labour regulations provide lower coverage for domestic workers or where affiliation is voluntary report lower rates of contributions to their social security systems (Honduras, El Salvador, Mexico). However, as the data show, obligatory social security coverage is not itself enough. Even in countries with obligatory coverage, social security contribution rates among domestic workers are low (Peru, Paraguay, Guatemala, Bolivarian Republic of Venezuela, Colombia) (Miranda, 2018).

In contrast, countries such as the Dominican Republic, Honduras, Mexico, Paraguay and the Plurinational State of Bolivia display an alarming situation with affiliation rates among paid female domestic workers of below 2% (ECLAC, 2018).

In Uruguay, the formalization of domestic service employment, which includes affiliation to the pension system, covered three out of every 10 workers a decade ago; by 2017, however, the proportion had been reversed, and now seven out of every 10 women employed in domestic employment are registered with the Social Security Bank (BPS, 2017).

A recent initiative of the Costa Rican Social Security Fund served to attract a large contingent of new beneficiaries, through an amendment that specifies a minimum contributory floor: in other words, the funding required from employers was lowered, and that cost was assumed by the State. The increase also entailed a simplified affiliation process, which is the employer's responsibility, including the possibility of online affiliation and for a single worker to receive contributions from several employers.

In addition to Costa Rica, Chile and Uruguay also allow a worker to receive contributions from several employers.

VII. Coexisting good practices and challenges

The knowledge accumulated by the ECLAC Division for Gender Affairs helps identify a number of good pension system practices, most of which have already been analysed in this document since, with the exception of Brazil, they were introduced during the pension reforms of the twenty-first century. This section provides a brief overview of those experiences and includes additional examples from Brazil, where the efforts in pursuit of equity and inclusion have been exemplary.

A. Plurinational State of Bolivia

In the reform undertaken in 2010 and as a result of demands made by women's movement, the country adopted a series of affirmative-action measures. Their impact has, however, been negligible because the system is still structurally exclusionary and its redistributive potential is limited.

As already noted, the most recent reform nationalized the AFP industry and instituted a solidarity-based fund, in addition to what are known as its gender-protection measures. However, the logic is the same: each worker saves for his or her own future. Accordingly, who manages the funds (in this case, the State) is not a determining factor. While it is true that the solidarity-based fund allows a degree of redistribution, that only applies to those who are already covered by the system. The main problem is still the vast majority of the population who remain outside.

Worthy of note in this context are the specific measures adopted to strengthen the position of women; reference was made to them previously in connection with this reform, but a brief overview is offered below. They involve:

- The adoption of a single set of mortality tables for calculating pensions.³⁰
- An additional pension for serious invalidity, intended to allow a caregiver to be hired.
- The recognition —albeit partial— of unpaid work in the pension system for recipients of the solidarity-based pension, with notional contributions of one year's duration for each child up to a maximum of three.

³⁰ El Salvador also adopted uniform tables for calculating its life-time pensions, but in the context of an essentially parametric reform process that took no account of the recognition of care work or redistributive measures.

B. Brazil: a pioneer in affirmative action

As noted in previous sections, Brazil boasts high coverage rates among both active contributors and older persons receiving pensions. It also has the one of the region's lowest pension system gender gaps. This is the result of a positive evolution that took place over a period of 15 years following the redesign of the system. That reform was implemented in 1999 and was the result of the 1998 constitutional amendment; it enshrined social security as a right and provided that social security benefits cannot be lower than the minimum wage. It also instituted mandatory coverage for rural women workers (previously social security covered male heads of family) and for domestic workers. The resulting pension system is a PAYG scheme but with defined contributions.

In this system, people can retire for reasons of age (different for women and men) or length of contribution period; in the latter case, women need to make five fewer years of contributions, as an affirmative action measure to compensate for inequalities (Schwarzer and Costanzi, 2011).³¹ The benefits calculation in the general regime applies a pension factor (*fator previdenciário*). This is a mandatory calculation formula for pensions based on the contribution period and it uses a gender-neutral mortality table. In the case of retirement for age reasons, the pension factor can be applied if the beneficiary so wishes. The reference value for calculating the pension is 80% of the best monthly earnings (and not those of the last, or last few, months). This is especially important for women, because, as noted above, their wages usually follow a downwards trend.

In other words, although the 1999 reform tightened the correlation between contributions and benefits, it also adopted corrective measures to address inequalities. In addition to these measures in the design of the system itself, the falling gap in benefit amounts appears to be the result of a sharp increase in minimum pensions—where women are overrepresented—between 2000 and 2013, together with a rise in the number of women obtaining benefits higher than the minimum (Amarante, Colacce and Manzi, 2016).

A special regime (*Previdência Rural*) is applied in rural areas, which has lower retirement ages for men and women than those in force in urban areas to take account of different working and living conditions in those areas. This is a formally semi-contributory regime with a high State contribution, which has also had significant effects on gender equality (Schwarzer and Costanzi, 2011).

Brazil is thus the first country in the region to include affirmative action measures for women in its pension system, apart from the differentiated retirement age. Doubts still surround these measures, however, since a draft pension reform has been tabled in Congress that would eliminate the affirmative action for women (debate postponed and scheduled for a fresh debate since February 2018 in the Chamber of Deputies), in spite of 71% of the population opposing any reform.³² The initial proposal required a constitutional amendment in that it would have eliminated the special treatment afforded the rural regime and the benefit currently received by rural populations; however, the proposal has undergone modifications, including the replacement of that regime and a reduction in the contribution years needed to qualify for the reduced pension (the initial bill required 25 years, which has been lowered to 15).

³¹ Subsequently, the parametric reform of 2015 added the "85/95 rule", whereby the sum of the contribution years and years of age must be 85 in the case of women and 95 in the case of men.

³² Survey of 2,781 people in 172 Brazilian municipalities conducted by the Datafolha Institute (see [online] <http://datafolha.folha.uol.com.br/>).

C. Chile

Chile's 2008 reforms incorporated a series of good practices. The reform process was preceded by a technical and political mechanism with citizen participation in the shape of an ad hoc commission set up for the reform, which in itself was a noteworthy measure.

The reform's innovations that impacted equality were:

- The inclusion of the solidarity-based contribution and pension, which were intended expressly to reduce gender inequality and yielded a significant increase in the number of women receiving pensions.
- The recognition of care work through the child bonus that credits contributions worth 18 times the minimum wage for each child born or adopted.
- The recognition of care work by splitting the accrued balances in the spouses' individual accounts in the event of divorce or annulment when, as a consequence of caring for the children or taking charge of household chores, one of the parties was unable to pursue paid work or had to do to a lesser extent than he or she would have wished or would have been able to.

With the passage of time, it became apparent that these measures were good but insufficient, and criticisms were levelled at the design of the system's structure based on individual capitalization. As a result, a new commission for a new reform process was set up in 2014. On that occasion, three proposals emerged, but with no consensus: there was a virtual draw between two of the proposals (with a one-vote difference), while the third position was maintained by one single member of the commission. The first proposal focused on reforming the system's solidarity-based and non-contributory component while keeping individual capitalization as the main component; the second backed a system in which individual capitalization would be complemented with a tripartite PAYG component (possibly based on defined contributions); while the third called for a pure pay-as-you-go and defined benefit pension system.

None of the proposals of the Presidential Advisory Commission on the Pension System was fully adopted. More than two years went by, public discontent rose, and the Government attempted to present a reform proposal to the legislature that would have complemented the current individual capitalization system with a collective public savings subsystem that provided for solidarity-based transfers within and between generations. The proposal also included a compensation bonus for women, to offset the negative effect of the gender-differentiated mortality tables used to calculate pensions in the individual capitalization component that would be maintained by AFPs; however, that compensation would only be partial, since all of this benefit is accessed at 65 years of age rather than at the legal retirement age of 60. The bill was rejected in the Chamber of Deputies in early 2018 because it failed to meet the special quorum required.

D. Uruguay

Uruguay has the best coverage rates in the region. While that fact is understandable given how social security evolved in the country and its tradition as a welfare State, it remains particularly notable in light of the advanced demographic transition of its society and the resulting ageing of its population.

In this case, the good practices of the most recent pension reform cannot be examined without reference to the previous experience, since it explains part of the success. This overview of good practices therefore also covers the measures adopted prior to the reform.

- Law No. 18065 of 2006, which regulated paid domestic work and recognized all pertinent social security benefits, leading to a historical increase in coverage among domestic workers.
- Law No. 18246 of 2007, on Hetero-affective and Homo-affective Concubinary Unions, which equalled the rights of widowers and widows with those of male or female cohabitants (with five years of cohabitation).
- An extensive campaign to publicize acquired rights, which led to a considerable increase in coverage, particularly among lower-income female workers.
- The installation in 2007 of the National Social Security Dialogue as a mechanism for both citizen participation and technical support to evaluate the social security system and agree on parameters for its modification.

As part of the reforms:

- The recognition of unpaid care work by crediting notional contributions equal to one year for each child, up to a maximum of five.
- The softening of benefit access requirements, which, as noted above, enabled large numbers of women to take retirement.

VIII. Conclusions and proposals

Gender inequalities in pension systems arise from a series of inequalities that emerge during the life cycles of women and men. However, each type of system processes the inequalities of the labour market and of the gender breakdown of work in a different way. How systems are designed, access requirements, and benefit calculation methods can therefore become essential public policy tools (Arza, 2017).

Contrary to the orthodox line preached by economic institutions in recent years, what is needed is renewed support for the central role of the State, along with recognizing the importance of fair and progressive fiscal policies and the need for policies that guarantee redistributive justice (United Nations, 2017a).

Thus, the region is gradually acknowledging that contributory funding does not have to be solely dependent on people's employment status and that progress towards equity requires a combination of contributory and non-contributory resources in the funding of social protection systems and, within them, of social security. But in addition to that, it is the architecture of these systems that determines how they are stratified and fragmented, above and beyond the source of financing, even though it can be maintained that some sources are regressive (such as indirect taxes) and others that are not (such as general taxation) (Sojo, 2017).

The aim is clearly to consolidate social security systems that ensure economic and social rights, within the framework of a social protection policy with a rights-based approach, in which the State plays a central role (Cecchini and Rico, 2015). In that undertaking, experience shows that when being a citizen and not being a worker is the vector of social security, economic and social rights are more strongly guaranteed and women enjoy equal access (Pautassi, 2002 and 2005; Pautassi, Giacometti and Gherardi, 2011).

The accumulated knowledge indicates that system design is not indifferent to gender equality. The supposition put forward decades ago by feminists that there are no neutral policies and that they are male-centred unless they explicitly include the perspective of gender equality now has an empirical foundation both in the region and in other parts of the world. It can be maintained that systems that tighten the relationship between contributions and benefits are harmful to women. The

extreme case is a pure individual capitalization system, whereas those models that enable solidarity and redistribution are more favourable for the inclusion of women and for ensuring that the benefits they provide are adequate.

In addition, both the recent past and experiences from further back in time clearly indicate that social security and, more specifically, pension systems, which manage significant volumes of resources, must incorporate accountability mechanisms and, as applicable, mechanisms for redress, which are themselves a component of human rights standards.

In view of the above, comparative experience leads to the following lessons and proposals (ECLAC, 2018):

- Guaranteeing the financial sustainability and legitimacy of pension systems means ensuring that large population groups are included in the contributory component, in particular women of different occupational profiles and men in the informal sector. This poses a set of challenges:
 - Striking the difficult balance between the contributory and non-contributory components of systems, always remembering that their main purpose is to guarantee the economic and social rights of older persons; so, while contributory components also need to be strengthened, non-contributory ones should be used to guarantee these rights. This is particularly important in the case of women, since their pension coverage has increased mainly through the non-contributory component.
 - Applying incentives to attract self-employed workers, among whom women are overrepresented, preferably under regimes of progressive compulsory affiliation.
 - Addressing women’s low contribution densities with mechanisms that encourage permanency in the system following a change of occupational category. Thus, affiliation must have the flexibility to encourage workers to move between alternative jobs, and ensure that the contribution rate supports sufficient benefit levels (Uthoff, 2017).
 - Equalizing the rights of wage-earning domestic workers in countries where they are still excluded and, for those States that have not yet done so, ratifying the ILO Domestic Workers Convention of 2011 (No. 189).
 - Integrating paid caregivers —that is, women employed in caring for children, the sick, persons with disabilities or the elderly— into the programmatic supply of care services by public institutions in the region (Rico and Robles, 2016), since they do not always have a defined legal status (as public employees, for example) and are therefore not always affiliated to pension systems.

At the same time, the implementation of affirmative action mechanisms to recognize unpaid care work, which is chiefly performed by women and which harms their pension histories, ideally through notional contributions and without requiring the presence of children, has proved to be an efficient mechanism for partially compensating inequalities. If this is not possible, conditioned recognition —such as the mechanisms known as “care recognition bonuses” or “per-child bonuses”, awarded on the basis of the number of children— also have a positive effect.

Effectively, to put an end to the paradox in the relationship between care and social security, so that women are no longer punished for subsidizing the State through their unpaid work, progress must be made towards recognizing that form of work. This is an imperative of justice that can be addressed from several angles; if it is separated from the gender agenda, however, there is a risk of returning to a maternalistic approach instead of equality policies that take due account of the rights of both the people providing and receiving care. For that reason, mechanisms to recognize unpaid care work must be accompanied by strategies for cultural change that promote the redistribution of care duties and deconstruct gender roles.

These and other forms of recognition are possible in any type of pension system, but their effects are amplified in those with redistributive elements.

Another form of recognition or redress is the splitting of accumulated funds between spouses following separation or divorce as a way of compensating those partners who dedicated their energies to domestic chores and care work and, as a result, suffered delays or changes in their employment histories. This measure has been recommended to several States by CEDAW, as noted at the start of this document.

Similarly, lower retirement ages for women have been put forward as a recognition mechanism. In line with this document's perspective, however, retirement ages do not have to be uniform and rigid. Different ages can be adopted according to area of residence or type of work; arrangements that enable active ageing are also possible, such as partial retirement, in which a reduced pension is combined with working on a part-time basis or on certain days of the week only. This option can also make the transition to retirement more bearable for many people for whom the change is traumatic. In any event, in keeping with ILO Recommendation No. 162, retirement should not be obligatory.

In direct relation to care, the obligation of making contributions during pre- and post-natal periods and leaves of absence for caregiving must be explicitly established. Many legal regimes omit to address this point and, as a result of the legal vacuum, contributions are not demanded, which leads to gaps in pension coverage. The countries that expressly require obligatory contributions at such times are Chile, Colombia, Costa Rica and Uruguay.

Finally, two specific proposals for benefit calculation parameters, which are feasible under certain regimes that are not exclusively dependent on individual capitalization. First, staggered replacement rates, differentiated by income levels, which have a significant redistributive effect; and, second, due consideration of the years used to calculate the average reference wage. This latter parameter has a direct impact on the benefits women receive because, in general, the years prior to retirement are used as the reference point and, in many cases, women's earning histories, unlike those of men, follow a downward course. Moreover, considering only the last few years' earnings can encourage underreporting in earlier periods.

To summarize, the goal is for women to exercise their citizenship completely, for them to evolve from being beneficiaries of social assistance to become citizens in full enjoyment of their economic and social rights.

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Women constitute the majority of the older adult population, but, with some exceptions, they are underrepresented among pension recipients. Although progress has been made in the region with regard to women's inclusion in non-contributory pension programmes, these pension payments are lower and do not allow women to escape poverty.

Mainstreaming the gender dimension into the design of pension system reforms is a challenge. Women must be included in pension systems in order to address the population's new age structure, to meet women's demand and need for economic autonomy, and to exercise their rights. It is also essential for the systems' sustainability.

As this study will show, recognition of care work is key to achieving greater gender equality in pension systems. Such affirmative action is starting to be enforced in the pension systems of some countries of the region, although it has a greater impact on systems with a redistributive approach.



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