

**WORKSHOP ON EXPLICIT GUARANTEES FOR THE
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The explicit guarantee model in Chilean public policies

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THE EXPLICIT GUARANTEE MODEL IN CHILEAN PUBLIC POLICIES*

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This report reviews the Chilean health system from the point of view of human rights. First, it examines the main elements that inform the public policies from the perspective of rights, along with the international and national norms that regulate the right to health. Next, it situates the state of health in Chile through the main sanitary indicators of the country up to the time of discussion of the reform.

Since the 1980s, the health system has been characterized by a public-private duality, with little interaction and high rates of discrimination, inequity and segmentation. In order to start the process, the first step was to establish sanitary objectives for the decade, the base of the reform. Then, the main elements of the health system reform were promoted. These are covered in the study, with special emphasis on the Explicit Guarantees (EG) and the modifications to the institutional framework, followed by an analysis of its discussion and the interesting political strategy that was used for its approval.

Later, the analysis is divided into two parts: one answers the question about the contribution of the reform to the achievement of the right to health, and the other, answers the question if the reform is a policy focused from the perspective of the rights. Although the policies focused on rights are based on the obligations of the States to the International Human Rights Law (IHRL), it is possible to make the analysis from two different perspectives. One that measures to what degree the State has fulfilled its obligations with international instruments and the accomplishment of the law thanks to the new policy, and a different one that evaluates to what extent the policy is designed from the perspective of rights. Both views present elements in common that can overlap; nevertheless, it is convenient to make the distinction with the aim of covering a greater range of elements that are useful for the discussion.

The answer to the first question is that the reform holds the obligation of carrying out the right to health and progresses with more or less decision in different international obligations. For the second question, it is possible to establish a mechanism of sanitary priority (or a general public priority) through the recognition of rights.

Finally, based on the background studied, some of the obtained lessons are discussed, , including the intrinsic value of the point of view of rights, the explicit guarantees and the policies centered on people, to finish with some recommendations for the elaboration of policies inspired under the principles of explicit guarantees.

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At the same time, the reform establishes a policy focused from the perspective of rights. It establishes a mechanism of sanitary priority through the acknowledgement of rights. It places people at the center of the policies, it empowers them, it establishes a rendering of accounts which takes the shape of a legal requirement, it promotes the universal execution of the law in a specific manner and it improves fairness, although it doesn't end with the inequity that results from the dualism of the system. It benefits the poor, because those who benefit most from the acknowledgement of a right are those to whom it has been denied with greatest severity; the logic of rights improves non discrimination in the private system, although the reform was designed and implemented with insufficient citizen participation. This logic is established "from the bottom up", being introduced according to the available resources through a mechanism that gives them priorities.

The logic and language of rights in the EGs have an intrinsic value. People don't benefit due to a concession from an authority, but are entitled to rights which result in obligations to others. In the studied case, this is achieved in a compatible way with a public priority strategy, in the framework of resource restriction. Also, the empowerment that the system gives allows a better management of pressure and capture groups, strengthening the political position of the beneficiaries. The fact that the policies are centered on the people can constitute an efficient system of strategic orientation of financial, human and physical resources. At the same time, the EGs open the possibility of modifying the manner of private insurance provision, not offering health plans but packages of health global solutions. The use of the legal instrument also provides a superior level of legitimacy and political stability, free of the present authorities discretionally.

The explicit guarantees system (EG) can be used in other areas as a mechanism that sets priorities through the acknowledgement of rights. A group of renderings are given priority by guaranteeing access, quality, opportunity, and attainability, seeking to establish a line of equality in the renderings, particularly in areas in which there is insecurity, discrimination or asymmetric information. They must be established universally, gradually and giving them priorities, they must be funded on fairness, and be completely exigible. The reform of the Chilean health system is an example that it is possible to focus public policies from the perspective of rights in a feasible way, from which to build development with equity.

I. THEORY AND CONTEXT

A. ELEMENTS OF A POLICY FOCUSED FROM THE PERSPECTIVE OF HUMAN RIGHTS

"Lawyers shouldn't be the only voice in matters of human rights, but at the same time, economists shouldn't be the only voice in matters of development. The challenge is to demonstrate how the assets represented by the principles of international law of human rights, a form of international public goods, may be valuable at the moment of pursuing the higher goal of development, the eradication of poverty." (BM, 2001).

1) People at the center of the policies

The International Human Rights Law establishes a group of obligations that States should carry out in order to make the effective the exercise and enjoyment of all the human rights. Based on these obligations, not only do they commit to respect and protect them, but also to adopt and apply all types of measures that lead them to the achievement of those rights.

These measures, from an integral view of human rights, aren't reduced to isolated and occasional actions. On the contrary, they must be continuous, respond to a global strategy that involves all the Nation's organisms and contemplate the evaluation of its progress.

The objective is to include a focus on human rights in governmental actions, through which public policies should turn into suitable means for the realization of human rights. What it seeks is to always reaffirm that the final objective of all public or governmental policy is the human being.

In this way, the essence of a policy from the perspective of human rights places the people and the acknowledgement of their rights in the center of the design of public policies. It means that the strategy of development of countries and the social policies which are implemented to overcome poverty and promote equity are based explicitly on the regulations and values established by the international human rights law. (OACDH, 2004).

This implies that there must be a change in the normal view of the processes of the elaboration of the policies. The starting point isn't any longer people with needs who must be assisted, but subjects with the right to demand from others certain renderings and behaviors (Abramovich, 2004). Thus, the relationship of the Government with the receiver of the policies changes; the one that appears as the receiver is not a passive agent anymore, a mere beneficiary of a discretionary decision, product of clientage or favored by focalization. The policies start to acknowledge people as entitled to rights and establish the State as the principal agent that holds the duty to respect, protect, promote, and guarantee these rights.

2) The concept of poverty

From the perspective of rights, poverty constitutes the denial or lack of fulfillment of human rights (OACDH, 2004). This concept is related to the focus on capability developed by Amartya Sen, and these capabilities are linked to rights. Most human rights are related to fundamental liberties, such as avoiding hunger, avoidable illnesses and illiteracy. The capability focus defines poverty as the lack or insufficient realization of these liberties, and the evaluation of the social dispositions must be carried out regarding its faculty to promote human liberties (OACDH, 2004). This way, the overcoming of poverty should be seen as the realization of those rights that are fundamental so as to eradicate it.¹

3) Empowerment

The main effect of a human rights focus is the empowerment of people (OACDH, 2004). The acknowledgment of rights empowers individuals and communities, by granting rights that impose legal obligations on others. The fact of including the notion of rights permits the inversion of a relationship that was based on the power of the executive authority vis à vis the passive need of the beneficiary, to turn this beneficiary into an active individual entitled to rights and the authority into the entity forced to guarantee them.

Thus, the empowerment is produced in first instance by the explicit introduction of the concept of rights (OHCHR, 2002). Under this concept, the foundation of social policies and of the reduction of poverty is no longer found in the mere fact that the poor have needs, but is based on the proof that the poor are entitled to rights from which derive correlative legal obligations for others (OACDH, 2004).

¹ At the same time, the pertinence of these rights in the strategies for development and overcoming poverty can be distinguished as constitutive (if they correspond to capabilities considered basic and their lack is due to insufficient availability of resources, such as the right to food and health), instrumental (they avoid the social processes that produce poverty, or enable the indispensable processes of consulting and evaluation, such as some civil and political rights) and restrictive (they limit the types of permissible behaviors, such as forbidding forced sterilization).

They are entitled to these rights by virtue of the dignity and value of the human being, expressed in the IHRL that has obtained obligatory force and even legality in the international ambit, and thanks to the State of Law in force in the country they live in. The express and explicit acknowledgement of the immanent rights of the people, as demandable legal obligations, empowers them in front of the Government.

4) Explicit recognition of the standard framework of human rights

IHRL is based on universally acknowledged moral values that acquire strength through the legal obligations established by the international treaties on fundamental rights. These obligations enable those entitled to rights to demand from others certain behaviors and certain renderings.

In an implicit or explicit manner, policies and institutions are inspired on rules and values related with human rights. Public policies focused on human rights must make this connection explicit, sustaining its formulation in the standard framework of imperative character offered by the IHRL.

5) Types of obligations

Certain obligations of different character arise from the IHRL. The basic nature of these obligations is of four types:

- *To respect*: The State should not interfere, obstruct or impede, directly or indirectly, the free exercise of rights. It must abstain from exercising or tolerating any act of any of its agents that constitutes the violation of a right.

- *To protect*: The State should impede third parties to interfere, obstruct or impede the free use and exercise of rights.

- *To promote*: It must facilitate and promote the means and conditions so that those entitled to rights may make effective use and exercise their rights.

- *To guarantee*: To ensure that those entitled have free access to use and exercise the right when they can't ensure it on their own. The obligations of promoting and guaranteeing are grouped in carrying out.

These obligations of respecting, protecting, promoting, and guaranteeing imply different stages in the fulfillment of the rights. The obligations of respecting and protecting are immediate for the State, while those of promoting and guaranteeing imply attaining progressively through the establishment of public priorities.

A policy focused on human rights should be informed by orienting principles or articulating axis of these rights. The obligations that arise must be fulfilled under this main axis, where the most relevant for the design of social policies are the ones that give account of, that do not discriminate, and that promote progressive equity, participation, and progressive execution.

6) Giving account

Rights and obligations demand rendering account and responsibility. Without a system for giving account, these turn into a rhetoric declarations without content (OACDH, 2004); those who are entitled to obligations should be held as responsible of their behaviors regarding the IHRL. Rights confer attributions that originate legal obligations for others, with the consequent tutoring, guaranteeing, and responsibility mechanisms (Abramovich, 2004). The mechanism for giving account may be legal, quasi legal, administrative, or political, normally each jurisdiction considering a combination of them.

The condition to make rendering mechanisms useful for the purposes of a policy focused in rights is that they must be accessible, transparent and efficient.

7) Non discrimination and equity

These twin principles are fundamental to the IHRL. The policies can't be established in arbitrarily discriminatory terms. But they may also take special care of those vulnerable individuals or groups that are marginated, disadvantaged or socially excluded, paying more attention to the effects than to the intentions of the policy (OACDH, 2004). It connects with the principle of inclusion of development public policies, and when the time comes to evaluate the global impact of these public policies, these principles are expressed in equity.

8) Participation

Internationally, the standard framework of human rights includes the right to participate in the conduction of public affairs. This goes further than the democratic processes of election of authorities, and it requires the active, well documented and effective participation of the receptors of policies in the different stages of its development. These stages include revealing preferences, election of the policy, implementation, supervision, evaluation, and the giving account of it.

It is not necessarily about taking part in the underlying technical deliberations of the formulation of the policy, but that the receptors of that policy, and especially the poorest, participate in the selection of the priorities and goals that guide those deliberations (OHCHR, 2002).

Effective participation is connected to empowering, but it does not consume it completely.

9) Progressive execution

Although the focus on rights establishes specific obligations in social matters, it does not impose obligations further than what is reasonable, where all human rights must be fulfilled immediately and simultaneously (OHCHR, 2002). A progressive or gradual execution is permitted in time, and the establishment of priorities between rights, in the context that not all of them can be ensured with the same vigor at a given time.

This gradual advance establishes a temporary framework, this is, it is acknowledged that the complete fulfillment of rights may and must be fulfilled in a period of time. This temporary dimension and the establishment of priorities must be carried out under certain conditions:

First, with the existing resources, immediate fulfillment must be given to the obligation of respecting. In the obligations of protecting and executing, which are connected to the use of resources, all the necessary measures must be taken immediately for the better use of the available resources. Second, in the extent that there exists dependence in the gradual expansion of resources, plans of action must be elaborated to achieve the fulfillment of rights and to set the time for its implementation. Third, these plans must count with intermediate goals to measure their progress. Fourth, national and itemized goal achievement indicators or points of reference must be established.

As to the definition of priorities, it must be participative. One particular human right cannot be understood as holding an inherent value that is superior to another, but one can be given priority for practical or strategic reasons. But, when assigning more resources to the fulfillment of a right, there must be care in that the other rights are not damaged and that they remain at least at their present level of accomplishment; this is, exercise the principle of *non regression*.

Likewise, certain minimum levels of free use of human rights must be guaranteed, such as the access to proper feeding and health, not suffering of hunger.

In this way, the focus of rights implies placing people in the center of the design of policies, it involves acknowledging their rights explicitly, causing their empowerment; it causes immediate obligations, and forces to a determined progressive and gradual fulfillment, under the parameters of rendering account, non discrimination and equity, and participation.

B. THE FULFILLMENT OF OBLIGATIONS OF THE STATE AND POLICIES WITH A FOCUS ON RIGHTS

The States, when subscribing the international instruments on human rights, are taking on the responsibility of their execution. For this, they count on a series of alternative policies from which they try to progress in the fulfillment of rights. It is possible that they actually achieve the improvement of essential indicators like, for example, health and education. But not all policies, just because they improve those indicators, can be considered policies focused from the perspective of rights.

Public policies focused from the perspective of human rights should definitely be directed toward the fulfillment of the obligations in human rights matters, but at the same time they should be endowed with the principles and orientations that arise from these standards. They should produce empowerment, not be discriminatory, produce an effective participation, establish real mechanisms for the giving account, gradually seek a determined fulfillment of rights.

So then, it is about policies not only being useful to improve life conditions related to the fulfillment of economic and social rights, but that in themselves they contribute to make real the fundamental axis of human rights.

II. PROMOTION OF SOCIAL POLICIES FOCUSED FROM THE PERSPECTIVE OF HUMAN RIGHTS

Public policies are focused on rights if they are based directly on standards and principles that arise from the international law of human rights. If they are empowered, they promote non discrimination, giving account, and civil participation. But they also gain a special force if their design is structured under the logic of rights, if they acquire their language, the system of active and passive subject, if they are endowed with the characteristics that guide the rights.

This system places the people in the center of the policies with great effectiveness by establishing them as active individuals with rights, establishing in a correlative way a passive subject of the right, responsible of rendering account of its compliance. This logic, if it is immersed in the design, has the virtue of inverting the State-beneficiaries relationship.

Now, we will review the elements that enable us to evaluate the Chilean health reform as a policy focused from the perspective of human rights.

A. THE ASPIRATIONS OF THE POPULATION

The change in the epidemiologic profile and the evolution of the people's expectations drive the need for a reform. The health policy considers two great lines of action: prevention-promotion of health (considered public benefits) and the healing attention (of direct individual attribution).

The positive results in the areas of prevention-promotion, expressed in the general sanitary indicators, were not correlative to the high levels of dissatisfaction of the people toward

the health system, with a strong component of complaint toward the healing attention. (Inostroza, 2005).

This attention is usually considered as less relevant, due to its relative impact on the general levels of health well-being in the population. The preventive aspects and the conditioning factors of health have a much greater influence in sanitary results such as life expectancy at birth, infant death rate and others of similar nature. Nevertheless, these indicators had been improving significantly, although this was not expressed in a better perception by the citizenship about the health system. The low impact of the healing attention was not considered enough not to modify its mechanisms of attention and fulfill the aspirations of the citizens.

In other words, Chile would have done it in a strategically correct way. In the year 2000 it took place 33 in the report of the WHO which evaluates the performance of the health systems (WHO, 2000), in spite of spending in direct medical health care less than half (315 dollars per capita) of what 31 of the antecedent countries spend (800 dollars). This reflects certain efficiency in the intervention of the determinants in health and it allows us to presume that the general planning's and the decisions at a strategic level have been the correct ones.

However, the contrary may be observed at a tactical level, since despite the good biomedical indicators, high levels of dissatisfaction persisted in the population. This dissatisfaction existed both in the public and in the private sectors, basically at the level of medical health service and the contractual relationship of the clients with the insurance companies.

This bad perception was centered, in public health, basically in the uncertainty of the opportunity of health care, and in private health, in the financial insecurity, and the possibility of falling into poverty due to illness.

As a matter of fact, from the point of view of the user, public health presents a high level of uncertainty in the opportunity of health care. According to the Feedback survey (2001), at the time of evaluating the quality of health service, for the general population, the speed of health care is the second element of importance, only after the knowledge and experience of the doctors. After controlling the socio-economic level and the type of system in which they receive health services, those with lower income levels and who are beneficiaries of FONASA, value the speed in health care and the knowledge and experience of the doctors at the same level. The evaluation carried out for the Sanitary Objectives 2000-2010, contextualizes these results showing that it is about "postponement" both in the opportunity of health care as in the information that the users receive, along with the dedication and commitment of those who offer the service.²

The great demand that the public system faces, that not only has to give service to those affiliated to FONASA and those who don't count with insurance, but also to those who must leave the private health insurance, ISAPRE due to skimming, results in less funds *per capita* in the sector, having to assign them based on waiting lists. This happens mainly in elective surgeries and specialist consulting. Although there are no evident effects in sanitary terms, it represents a factor that is resented by people.

As a counterpart, always from the perspective of the citizen's point of view, the private sector does not present difficulties in the opportunity of health care, but in the level of financial protection that is given in the situation of a serious or catastrophic illness or during old age.

² The greater investment in the sector set forward during the nineties did not change the citizen evaluation about the public sector, and in fact, in some way, they became worse since the expectations increased and were not satisfied (Artaza, 2005). According to some opinions (Organismo Andino, 2004) this can also be explained by the identification of social ascents and well-being with the consumption capacity that a market economy would provoke. In the case of health care, the population assimilates the consumption capacity with access to services for sicknesses, and not to a wide concept that incorporates prevention, promotion and impulse of health. Because of this, the people's demands for a guarantee of financial backing to gain access to medical attention increases.

According to the same research, the higher the age or the lower the income, the stronger the perception of vulnerability is in the private system. Looking at the system globally, 60% considers that the public system gives better protection (Feedback, 2001).

This way, to tackle this dissatisfaction of the citizenship, a change in the healing attention paradigm used up to the moment is chosen, establishing the GE (Inostroza, 2005). This is, a specific policy design is chosen, a form of sanitary priority that, endowed by the acknowledgement of specific rights to the people, impulses explicit guarantees to offer security in the areas that were most sensitive to the people.

B. THE PEOPLE AT THE CENTER OF POLICIES

The mechanism chosen to change the paradigm makes it possible to place the people, in their condition of persons entitled to rights, at the center of the policy.

The reform is oriented from a sanitary or public health optic, in such a way that the management and assignment of resources is based on illnesses. But at the same time, this perspective is endowed by entitling or empowering people so that they can demand, no matter what system they belong to. In this way, what are important become the fulfillment of the guarantee and not the entitlement of who offers the rendering, avoiding discrimination and giving the greatest relevance to the final result for the citizen, who demands that the right is fulfilled.

On the axis of the reform is the creation of a legal particle that did not exist before, the EG. This particle enables the creation of a right that becomes part of the patrimony of the person at the moment of the diagnosis or suspicion of pathology. This right becomes demandable, creating *ad hoc* mechanisms to ensure the replevy. Before the reform, the State was responsible, within its resource limits, for offering health care. People had the right to seek healing care, but with vague exigibility, which translated into waiting times without the beneficiary's control. For those affiliated to the private system there was no clear limit for the maximum costs to be taken upon, creating pecuniary responsibility situations that many times would exceed the capacity of the insured, passing on to a situation of insolvency and poverty.

Now people are acknowledged by the EG as entitled explicitly to rights, and the State apparatus and/or corresponding private sector are responsible for fulfilling them. Universality, exigibility and the standards of opportunity and quality are defined explicitly; they are incorporated in the people's patrimony as rights, even for those who do not contribute with the financing of the system.

From the point of view of the State's task, the EGs also allow to drive a reorganization of its tasks. It articulates and organizes the elements of resources establishing a result that can be evaluated in its impact. It gives order to management, as it has to give an order to the means for the fulfillment of the EGs; and it orders the sanitary priority, since the EGs are established within a framework of sanitary objectives, all in a way that makes it possible to cover the people's aspirations directly.

C. THE NATURE OF EGs

From the point of view of policy design, the EGs constitute an instrument of priority assignation of resources, as would happen in any social policy. In the case of health, the resources are assigned according to the sanitary priorities that are established in a strategic framework of policies destined to improve the population's health conditions.

Nevertheless, the instrument has the power to carry out the sanitary priority process through the acknowledgement of explicit rights in a universal way, exigible, based on equity,

placing the people at the center of the policies, empowering them. The priority process is carried out by introducing a new particle to the legal order, the 'EG', acknowledging that the individual has the power to demand from others, the State and the ISAPREs, the obligation of doing. It is the mechanism of priority itself that incorporates the language and the logics of rights, putting in order resources, attributions and institutions for their fulfillment of the rights.

The EGs do not constitute themselves the execution of rights, but are an instrument which enables to establish priority through their acknowledgement.

D. GIVING ACCOUNT - EXIGIBILITY

In the way in which the EGs are designed, rendering account takes one of its most severe forms, that of legal exigibility. The control is no longer institutional, administrative or political. The control passes from the reindeers themselves, to the control of the persons who exercise the right that is linked to social renderings. The sanitary norm gives EGs a character of right whose compliance is demandable from FONASA and the ISAPREs (Inc. 2 Art. 2, Law 19 966). They are constituted as a legal obligation, establishing mechanisms of tutelage, guarantee and/or legal responsibility for its fulfillment.

An account giving that takes the shape of a demandable legality, enables to change the existing logic between the State (or the reindeers) and the beneficiaries of the policy, leaving the role of beneficiaries of assistance to become entitled to rights with the legal power to demand from the State and the responsible private institutions, certain behaviors, the fulfillment of and obligation to do. FONASA and the ISAPREs remain obliged to the granting of – they are passive subjects of the obligations—, having, according to article 4 letter a) on access guarantees to: "insure the granting of health care guaranteed to the beneficiaries of laws N° 18.469 and N° 18.933, respectively..." Giving account is taken to a level of direct attribution to people.

The existing institutional organization is modified for this, creating new instances and managerial procedures which ensure their fulfillment, leaving the legal procedures to make the responsibilities for not fulfilling the right effective.

Another characteristic of this exigibility is that it makes it possible not to restrict the flexibility in the policy design. The Law and the institutional order are established by setting the rules through which the priorities and characteristics of the rights that will arise from the declaratory will be selected. The Advisory Counsel is created; the determination mechanism of the EGs is established; access, opportunity, quality and financial protection guarantee is instituted, but to which pathologies these will apply to are left to flexibility

The EG decree and the EG attention protocols, with the specific renderings of each pathology –medicines, treatments and financial aspects– are useful as codification in the administrative and contractual ambit, in the case of the ISAPREs. This enables to establish true personal rights, limiting the space to the discretion of those responsible of its fulfillment.

The EG attention protocols, also allow, to certain extent, to overcome the information asymmetries of this market, in which the person who demands its right does not have knowledge over the true need of his demand,³ nor the quality of the product being acquired.⁴ Based on the diagnosis, the bearer of the EG has the right to receive total fulfillment of the protocol, elaborated under available scientific evidence, being able to verify its fulfillment.

In this way, specific predetermined consequences follow the non fulfillment of the right, supervised by an authority that is independent from the obliged entity, in order to make the

³ It is doctors who point out what to consume and when.

⁴ Without a system of accreditation or health care protocol, only the price is the specific signal of quality for who acquires a medicine.

obligations be complied with or impose sanctions for not fulfilling it. It is about a level of legality, administrative and eventually judicial exigibility, creating a power field for the bearers.

By giving faculties to solve controversies between beneficiaries and the insurance companies, including FONASA, to the Health Superintendence it is possible to make the EGs effective in a more expedite and accessible way than with a purely legal system. Also, declaring that they are responsible of negligent non fulfillment of their obligation to ensure health care is a sign that their responsibility reaches even the indemnification of the consequences of their non fulfillment.

Declaring expressly the damage that the public health reindeers cause to particulars due to lack of service - of action and omission - as a responsibility of the State, recognizes the responsibility beyond that of the individual action of its representatives, strengthening the position of the patients of the public area. They will be able to pursue the responsibility not only from the persons who were responsible of the negligence, but also directly from the State. Nevertheless, the deficiencies of the system of mediation represent a serious obstacle.

E. UNIVERSALITY

The EGs serve as a reference point, a sign for the effectively universal fulfillment of a right to health attention, in a determined and specific way. The general system establishes a universal access that starts from Law 18.469, but without attributing quality and opportunity standards. Because of its own nature, when a particular illness is included as an EG, its universal coverage under certain guaranteed parameters is defined as obligatory. Thus, the universality begins to be ensured under a specific mode, extending it to a higher standard with the aim of giving account of the people's aspirations.

F. EQUITY

From the perspective of human rights, poverty denotes a state of deprivation of rights (OHCHR, 2002), and the poor are who gain most when they are explicitly established. The poorest begin to enjoy the same rights of the rest, elevating their conditions, reaching a line of equality along with the rest of the population. This fits in the constitutive relevance of human rights for poverty. If the lack of direction of the person upon the economic resources plays a role in the realization of rights (OHCHR, 2002), it can be presumed that the EGs enable changing the direction, the power on the right to health care of persons.

The right is designed –the EGs– from a universal perspective, without establishing a specific focalization.⁵ In this way, a minimum line of fairness is established that favors the poorest directly. Thus, fairness is achieved through universality and equality in access to health attention, independently of the payment capacity of persons, with certain standards of quality, opportunity and financial access. Additionally, an element of fairness for public and private systems is incorporated, since granting EGs is obligatory in both systems.⁶

1) Inequity among socioeconomic groups

In giving priority to illnesses or health situations to be included in EGs, illnesses that affect with more severity lower income groups or illnesses that do not contribute to vary the breach may not be considered, so the poor person's profit through the recognition of its right is

⁵ In spite of including, as it was mentioned, the equity factor within the determination mechanism. But everyone, no only the poor, are entitled to the EGs.

⁶ It is worth mentioning here that the mechanism was not necessarily installed in the agenda of struggle against poverty, but in a wider one of fairness and social security for the population. In the political debate within the Parliament and the support of the Christian Democracy, the search for support to the middle class had a special emphasis.

minimal. However, at least for the first guarantees, the determination algorithm includes the fairness of a given health situation, given the identification of illnesses with mortality breaches by socioeconomic extremes. This implies a policy so that the equality line can have impact mainly in the groups of persons that suffer more severely certain pathologies by socioeconomic condition.

2) Inequality in financial access

The financial protection guarantee can contribute to strengthen a perspective of equity. Financial protection is based in the fact that the illness constitutes an unpredictable *shock* for individuals, which affects their income in an important way, and that can undermine its consumption capacity for other essential goods. In this way, the co-payment in the public system is built on two criteria; one, which considers that they should be independent from the effective use of the services and relate, instead, with the individual's payment capacity. The second considers that homes should not commit more than a determined absolute amount or percentage of its income so that health expenditures do not impoverish them or keep them in poverty.

In the private system, the amount of the AUGE premium is determined by each ISAPRE, but must be unique and the same for all its insured, independently from their relative risk. In this way, although in a very limited way, a solidarity element is introduced in the private system, so the determination of the EG's price cannot discriminate by risk factor.

3) Inequality in quality

The mechanism opens the possibility that every service have a base line of equality in the quality (independently of the fact that the service materializes in the public or private sector), and these quality rules must be the same for any of the service renders. This is the finality of the mechanism of accreditation and external control that was created for this, under the Health Superintendence and the regional ministerial secretariship's authority, which means an impartial third party which controls quality, saving information asymmetry difficulties,⁷ and not leaving price as an exclusive sign of quality.

However, the component is still not in effect and the real will to advance in its realization is in doubt. This uncertainty is especially serious when exposing an adjustment of service through quality, as it cannot adjust by price. It can happen that the differences produced between costs and resources be bridged adjusting the quality variable.

4) Geographic inequality

Although in the sanitary objectives and in the system's evaluations a serious inequality was posed in the geographic localization, the reform does not present a clear component in this matter.

This inequality is linked to access and quality in primary attention, with great differentials associated to the income level of municipalities and to geographic access to greater levels of complexity. The reform did not face this inequality directly, evaluating this as a deficit. However, the matter was looked into in the political discussion (not legislatively), expressing this in a presidential commitment to increase the resources that are assigned to primary health care from 12% to 30% of the public health resources.

⁷ Which make the user not be able to count, at a reasonable cost, with the necessary information to evaluate the quality of service, through a signal different to its price.

5) Inequality provoked by the system's duality

The poor and sick are concentrated in the public system, while those who are healthy and have higher incomes, in the private sector; in a dual and fractioned system, because of skimming⁸ and reinsurance of the public sector. As was mentioned, there clearly was no political capacity to modify this model, which is the reason why the reform is referred to as non foundational, but only as an improvement of the private market regulation and generation of EGs based in sanitary priorities. There was an unsuccessful attempt to intervene the model, through the Solidary Fund that was frustrated by the parliamentary process, resulting in the Interisapre Compensation Fund that was reduced to compensating the risks among those affiliated to the private system. Thus, with certain shades, the global inequality present in the system remains.

G. *NON DISCRIMINATION*

The model, when assuming the language of rights, allows recognizing equality before the Law, through which the norm must be formulated in general terms, apply to all and be demanded by all. In this way, and thanks to the use of logic and the language of rights, there is an *a priori* prohibition to discriminate arbitrarily.

But this legal equality can keep on being formal equality if non discrimination is not expressed materially, through a greater fairness and the inclusion of individuals or marginal groups. The public system's actions are not evaluated with relevant levels of discrimination, as the duality of the system and the inside of the private system are.

— *Discrimination in the public sector.* The designed EG mode, since it establishes a universal access in equal basic conditions of quality and opportunity, because of its own nature, implies the arbitrary non discrimination towards individuals and vulnerable groups, marginated or socially excluded. The used logic of rights has that merit, but does not necessarily promote a special preoccupation for them. The model does not consider a positive discrimination towards excluded groups nor a focalization of special resources in them. It could be said that this policy can benefit discriminated persons in a similar way to the one that favors poor people in matters of equity. The ones that benefit more with the explicit recognition of a right are those that have been deprived with more severity.

— *Discrimination inside the private sector.* The nature of the ISAPRE system is based in the possibility of segregating among the insured by establishing health plans based in individual risk. This system, with its intrinsic discrimination, was kept because of the political impossibility of modifying it, which—as was mentioned in the previous chapter—represents the main deficiency of the reform in matters of discrimination.

But at least, the EG pathologies were established in such a way that it is not possible to discriminate by risk, and the right logic used, along with the introduction of elements of financial solidarity—through the Interisapres Fund—allows to decrease arbitrary discrimination inside the private sector.

⁸ Selection by risks that the insurer makes through which persons with bigger expected expenses are avoided, trying to attract less risky clients, through several discriminatory mechanisms. In the Chilean case, this skimming, added to the costs of the private system, make the distribution of population by system be segregated by income, sex and age differences. The ISAPREs concentrate the masculine, young and higher income population, and FONASA concentrates the feminine population, the lower income sectors and the higher risk ages (CASEN Survey of 2000).

H. PARTICIPATION

The precarious citizen participation is the main deficit of the reform from the point of view of rights, and according to the evaluation on a good part of those interviewed.

In the stage of preference revelation, clearly, all the citizen opinion polls established the health topic among the three main preoccupations of the population. In the election of the new policy, although there were instances of participation, mainly with workers and sector guilds, this did not have a significant repercussion. When the government's design was presented, the dynamic with the health associations was of confrontation, negotiation and political agreement/defeat. At least the people's aspirations were considered in the policy's design, thanks to the results of the poll that was commissioned during the elaboration of the proposal (Feedback, 2001). The results of at least one poll were also considered in the determination of the EGs, and were used as a factor for calculation in its algorithm (MINSAL, 2002). But there clearly was no direct relevant citizen participation in the process of policy formulation.

In the operation phase, participation is also evaluated as lacking. The new institutional order created several instances of collegiate consultation, where only one considers the users directly: the Advisory Councils of users of the establishments of network self-management. However, a number of advisory instances were created, which allow incorporating at least an indirect level of participation. One of them is the Advisory Councils of the SEREMI, which have been formed in some regions, such as the Metropolitan, Ist and VIIIth. Their functions include giving their opinion on the regional public health Plan, participating in the elaboration of proposals tending to improve the health of the population and propose them to the SEREMI. They are just being constituted recently, so it is not possible to evaluate if they are an effective instance of effective participation.

Other instances are a technical coordination, such as the technical Advisory Committee of primary health care, the health care network integration Council, and the technical Council of the establishments of network self-management.

The AUGE Council merits a special mention. This organism should legitimate the decisions in relation to new EGs, through its public discussion, and the representativity and authority of its members. To a certain extent this Council can allow a level of legitimacy that can be recognized socially, but in an indirect way, only based in its members' authority.

I. GRADUALITY

The graduality element in the execution and establishment of rights was incorporated in the EG mechanism design, and the institutional order and transparent mechanisms of priority fixing in time were created. The mechanism considers, on the one hand, the sanitary priorities, the magnitude and severity of the problem on the population, the inequality and people's aspirations and, on the other hand, it incorporates the resource restrictions, effectiveness of its expenditures and the real availability of physical and human infrastructure to face the health situation.

In this way, it is possible to presume that the system makes the progressive execution at least relatively transparent. It gives it a known framework, national points of reference from which to measure advances in the execution of the right, always centering in the results that the persons can expect. The determination process is technical and political, admitting the incorporation of different visions. The substance of the result is previously framed within the Law.

J. PERSPECTIVE OF RIGHTS CONSTRUCTED 'FROM THE BOTTOM UP'

The South African case “Government of the South African Republic and others against Irene Grootboom and others” is a paradigm of the operative incorporation of the international instruments of Economic, Social and Cultural Rights (ESCR) in the national normative. The case uses the international norm directly to interpret the internal regulation in the light of whether the existing policy complies with the right to housing. It can be said that the incorporation of the rights focus is ‘downwards upwards’, the exigibility is directly derived from the international norm to the national public policy.

On the contrary, the construction of the EGs was done ‘from the bottom up’. The paradigm of the normative framework of human right is in the horizon, but it was not chosen to recognize directly the international law, the judicial exigibility. What was done was to evaluate the capacity of the existing resources in order to later discern, through a process of priority fixation, which of the rights considered abstractly and without explicit exigibility could become totally exigible rights, creating a specific juridical instrument for that effect, the EGs.

III. LESSONS AND RECOMMENDATIONS

A. INTRINSICAL VALUE OF THE RIGHTS FOCUS AND OF THE EG PARTICLE

The EGs are a sanitary priority assignation mechanism that seeks to give priority to the investment of resources to strategically follow the obtainment of certain sanitary results. However, a different system could have been used. A mechanism that did not mean to assume greater levels of responsibility for the State could perfectly have been chosen. The resources could have been increased based on the sanitary priorities, without them having become EGs.

When the logic of rights is incorporated, the policy allows ascribing to persons the character of active subjects of rights and the complete system must make sure they are accomplished in a direct, explicit and specific way. Since an explicit guarantee mechanism was selected, the form that the policy acquires allows a twist in the way of facing the priorities and the manner that the public and private sector have of relating with patients, with it acquiring a value in itself. This form is logics, language and rights characteristics.

The policy begins to center in persons; its construction is based on them, taking into account their aspirations and putting those responsible for the service at their service. The persons are empowered by the introduction of the rights concept in itself. They are no longer only “needy” that are the objective of a policy, but entitled to rights from which juridical correlative obligations for others are derived. Because of the existence of this right there is the obligation of giving account of its compliance, of observing without any discrimination, establishing it in a universal way. The use of the rights focus has an intrinsic value, and incorporating it in the design of the policy has a merit in itself.

In the specific case of EGs, with their limitations, the rights focus is integrated in a compatible way with a strategic orientation of public priorities, in a framework of resources restriction. This is reached by defining previously the sanitary objectives to be achieved, making explicit in the EG selection process the framework of resources available to finance them, and establishing a clear institutional order and scheme to increase them in time.

What underlies in this policy is the use of the rights focus as a means for directing resources strategically to obtain sanitary and user satisfaction results. The standard of service is elevated to an EG guarantee in those services that are evaluated as having more impact in the improvement of indicators such as incidence, AVISA (loss of life years adjusted by discapacity)

and mortality, within the offer capacity, available resources framework, etc., with the goal of obtaining better results in the proposed goals. But the use of the rights focus in this framework has a value in itself.

B. VALUE OF EMPOWERING AS A MECHANISM OF PRESSURE AND CAPTURE GROUPS MANAGEMENT

From a perspective of the public decision theory, some economic analysis emphasize the inefficiencies in the provision of public services, including the health provision, by the capture suffered by the State by different pressure groups (Gauri, 2003). In the studied case, the Medical Guild, the pharmaceutical industry, and ISAPREs, along with the other involved guild associations, represent important pressure and capture groups for their own interests, which are not necessarily aligned with the public ones.

The economic solutions for the interest and capture groups pass by strengthening the political and market position of beneficiaries of policies, through the offer of alternatives, exposing providers to the competence pressure or allowing a greater participation of beneficiaries in the decision making and monitoring. In other words, promote the empowering of the final receptor, so that intermediaries do not distort the means and objectives of the services provided publicly in virtue of their own interests.

Through empowering, the economic solution is aligned with the expected effect by the perspective of human rights. The introduction of the rights concept in an explicit form allows the empowering of persons. The public policies no longer recognize only beneficiaries, but persons entitled to rights, and the State as the main agent forced to respect, protect, promote and guarantee these rights. The express and explicit recognition of immanent rights of persons, as exigible legal obligations, empower them vis à vis the State.

C. VALUE OF THE POLICIES THAT ARE CENTERED IN PERSONS AS A STRATEGIC ORIENTATION OF FINANCIAL, HUMAN AND PHYSICAL RESOURCES MECHANISM

The rights perspective drives policies to center on persons, which makes it easier to focus financial, human or physical resources on goals defined around them.

This produces an effect that is similar to the one that management theories focused on clients seek, situating the means to obtain consumer satisfaction. The way in which goods and services are provided is looked at from the perspective of the client, directing the resources on the results they receive.

The pressure that complying with the explicit guarantees and protocols means, stimulates looking for the best management systems within the public sector. The coordination of the multiplicity of involved organisms, technology and cost efficiency of the actions must bring results to the insured.

There is the risk in the EGs of centering management only in the pathologies qualified as such, postponing the rest of the illnesses. However, it is possible that the contrary effect can be produced.

Putting in motion the EG system implies improving the general integration of the system. The improvement of elements that are common to EG and non-EG pathologies can occur, such as equipment, infrastructure, information systems, monitoring and follow-up, distribution of specialists, etc., with positive effects on both. At the same time, it can stimulate the generation of synergies and new forms of management with efficiencies that do not necessarily distinguish between EG and non-EG.

D *VALUE OF THE EGs AS AN INCENTIVE TO CHANGE THE MODALITY OF PROVISION OF PRIVATE INSURANCE*

From the economic point of view, health is a superior good. The proportion of income allotted to this good increases as the persons' income increases. This feature, in a private insurance environment, with insurance-provider association models based on payments for service (*fee for service*), without a clear sanitary focus, contributes to provoke a spiral of costs and increase of costs of the system.

The EGs allow introducing in the private market an obligatory product, an explicit basic health plan⁹ as counter rendering of services to the payments under the logic of managed health. This constitutes an opportunity for ISAPREs to stop buying and selling exclusively isolated services to providers – laboratory exams, medical consultations, one by one – according to the demands of their health plans, but to begin to offer integral health solutions by pathology – the service package that implies, for example, caring for diabetes. Through new and different arrangements with the providers, they can offer packages of cost effective certified quality solutions to care for EG pathologies. These packages correspond to the integral solution for each pathology, following the medical prescriptions based on evidence through putting into effect the service protocols of certified and controlled providers. Each ISAPRE can compete, sharing risks with providers, in offering more and better integral solution packages that can go beyond the prescribed EGs. (Sánchez, 2005a; Inostroza, 2005).

Under this scheme, it is possible to imagine in the future a *private* sector under a unique insurance that does not discriminate by risk. The ISAPREs could receive payments for offering better health integral solution packages where the incentives to efficiency, the surplus, would be based in attracting clients by the best integral solution by pathology.

E. *VALUE OF USING THE LEGAL INSTRUMENT*

In a moment it was popular to use 'letters of citizen rights' as a good practice of the administration to empower persons and subject them to the rigors of the 'rights' of users. However, they became useless because of the obligation's weaknesses. These were established in an administrative and unilateral way, being the authority the one who regulated the level of demand that it established. On the contrary, EGs are established by Law. It is not possible to reduce the established framework by the discretionary will of the political authority on duty, since it requires a parliamentary agreement. The EGs, and their updating mechanism implied a high level political agreement that forces authority to comply with it. Because of this, some point out that the EGs correspond to the 'big brother of citizen letters' (Inostroza, 2005).

This is linked with the concept of 'strong sense standards' that Quintana employs (Quintana, 2004), where the central aspects of policy are regulated by permanent standards and are not given to an increased discretionary action of the agents in charge of its implementation, which would be, for this author, the essence of the rights focus (Quintana, 2004). On the contrary, policies based on a weak, or minimal, standard, such as social programs created through regulatory authority, are not capable of recognizing permanent rights.¹⁰ The effective benefit of these rights is given to the decision of the political-administrative authority.

⁹ EG plus FONASA coverage in relation to financial protection in its 'free choice' mode.

¹⁰ A budgetary authorization will always be required, which is a matter of law. However, this is not enough to be considered "standard in the strong sense", because of its temporary character and absence of commitment for long term financing (Quintana, 2004).

This standard in the strong sense in the present case is given by the reform's constitutive laws, especially Law 19.966 on RGGG (General Regime of Health Guarantees), as it explicitly establishes the EGs as rights.

Thus, the use of the Law as an instrument of installation of policy has a value in itself, beyond the instrumental.

It also allows reinforcing the non-regressivity since, in order to reduce the reach of this policy, it is required to achieve a new political agreement. But, at the same time, it can make slower the updating of the policy, and more rigid its implementation. The legislative way also makes it natural that it takes the form of rights. The Law is necessarily based in a constitutional mandate, express or tacit, of legislating in a determined matter. The Law will necessarily have to make reference to the internal or international framework that regulates the matter, where the constitutional guarantees and human rights international treaties will be in the first place, all of which take the form of rights. It only seems natural that the corresponding legislation takes a similar form and structure, based in a system of rights recognition.

IV. USE OF THE EXPLICIT GUARANTEES MECHANISM AS A METHOD TO PRIORIZE PUBLIC POLICIES BY THE RECOGNITION OF RIGHTS

Putting in effect the health reform in Chile coincided with the beginning of the debate for the presidential and parliamentary elections of December, 2005, which had a strong component in matters of equity and re-distribution of income. Different persons, from different angles and emphasis, began to propose the mechanism of EGs in public policies as a way to promote equality.

The former minister of economy, and current senator, Carlos Ominami, in the discussion about equality, sustained that “we have – rather – to commit with a basic fairness of results expressed in reassuring certain rights and guarantees in matter of access, quality and financing, certainly in health, but also in education, housing and pensions” (Ominami, 2005). The former Minister of Justice, former Secretary of State and current senator, Soledad Alvear, also said: “... the challenge resides in making the public policies be impregnated with the recognition of rights of persons and force them to respect them ..., the challenge is to generate, in different areas of the State's action, policies that establish rights as EGs for persons. This is, a number of services that are totally guaranteed that are translated into concrete rights... independently of all social condition” (Alvear, 2005).

In these positions there is an underlying opinion that the country has been achieving an important advance in the decrease of poverty since the return to democracy,¹¹ along with an improvement of a diversity of indicators of life quality. But the distribution of income and the indicators of equity were positioned in worrying levels.¹² Therefore, the country is increasingly less poor, but more unequal, and the policies must consider this situation. The possibility of establishing public policies in the EG framework is seen as a policy that allows to fight poverty, but introducing a strong element of equality.

Following the experience generated from the health reform in Chile, it is possible to think in designing policies that establish EGs for persons, as a particular form of public policy from a rights focus.

¹¹ Poverty decreased from 38,6% in 1990 to 18,7% in 2003, (MIDEPLAN, 2000-2003).

¹² In the ranking of 124 nations, Chile appears as the 12th most unfair country in the world, with a Gini that increased from 56,5 in 2000, to 57,1 in 2005 (WDI Report of 2005).

A. *GUIDELINES FOR AN EXPLICIT GUARANTEE (EG) POLICY*

A policy based in EG means to give priority to a number of services that will be totally guaranteed in its access, feasibility, quality, opportunity and other elements that are valued as necessary to be guaranteed, that translate into concrete rights for persons. In this way, persons are no longer considered merely ‘beneficiaries’, but citizens with guaranteed and demandable rights. There are no cut lines, no persons are discarded because they are not ‘objects of benefits’, but the line is constituted by the guarantee of these rights, for which all, without distinctions, are subjects. This mechanism enables persons as protagonists, actors with power and decision, respected in dignity and rights.

B. *INCREASIBILITY*

At the same time the country grows, society, through the State, can become able of guaranteeing more and better services, and the EGs can be a mechanism to make this progress effective. Thus, policies designed as explicit guarantees can be consistent with a number of policies that aim at economic development, but is capable of introducing an element of equity and empowering, making it easier for development to reach everyone effectively.

C. *PURPOSE OF AN EXPLICIT GUARANTEE (EG) POLICY*

The purpose of a policy based in EG will be to establish a line of equity and give security to the public service provisions, especially those of social character, through the empowering of persons and the express recognition of rights. In this way, it is a policy framework that allows benefiting the poorest directly, but in a scheme of promotion of social equity in a general way, so it can also be in its purpose to benefit middle class sectors. The EGs supply a mechanism to establish priorities that takes place through the recognition of rights and empowering. Public services that are invested with the EG features must be given priority according to the national development strategy that is chosen, considering the country’s possibilities along with the aspirations and participation of the population.

D. *POLICY AREAS: WHERE TO APPLY*

In general, the use of the EG instrument will have effect in areas where personal or family services are established, such as health, housing and education services. They will not have the same effects in areas where what is provided are public goods not ascribed exclusively to an entitled person, as the environment’s quality or public infrastructure.¹³

1) State monopolies

Where the State acts as an only provider, the possibilities of capture by the public bureaucracy are increased. As receptors have no alternatives, and public servants don’t have to give account of their actions, receptors submit to the service they are given. The recognition of rights of the service’s recipient, its empowering and the correlative effect of giving account for the actions, collaborate to neutralize this effect and improve service.

2) Information asymmetries

In environments where there might be competition, but there exists an important information asymmetry, the use of EG framework can have positive effects. In the case of health, the information asymmetry was evident: the patients do not have a way to know, in an attainable way, the type of service they need, or the pertinence or quality of the one they are receiving. In

¹³ Although in these areas political structures can be thought under the structure of collectively demandable, as *class action*, or actions of collective active, indeterminate or diffuse subject.

matters such as housing construction, or even education, the use of EG can be useful because of this.

3) Insecurity

The EGs can produce a much more relevant impact in those areas where citizens feel more insecure of the State's action – because they do not have the tools to demand its fulfillment – especially in matters of opportunity of the service or its financial impact within the family. In this way, if the 'when' is relevant, the use of this mechanism can be greatly useful, or if it is about one of the *shocks* that families can suffer and that make poverty keep on, come back or get worse.

4) Discrimination, inequality

Services that are currently given in an unfair or discriminatory way, explicitly or implicitly, where there are great quality differentials, at geographic level or by income. In case that, because they are public type services, they are provided through private or mixed entities, there exist great differences among them, or where the product has a degree of indefiniteness that allows to give it in very different ways that result in discrimination.

5) Citizen's aspirations

The aspirations of the population must be a part of all public policies priorities. However, those valued subjective aspects become especially relevant from the perspective of citizens, and in certain aspects they can be deteriorated. These include being and feeling respected, treated with dignity and fairness, be considered as a citizen with rights and liberties. Policies structured in the framework of EG can serve to revert this situation.

E. PREVIOUS CONDITIONS AND ASSUMPTIONS

Establishing the EGs requires an important degree of public management development. It must be an advanced stage of a continuum of policies. It is necessary to make a systematic effort of improvement of management that leads to a more complex stage of installation of the EGs. The case of the Chilean reform was the product of trials and errors since 1990, which only in 2005 were translated into a reform that installed the concept of EG. It is about advances in systematization and standardization of products, management models, information systems, registry and statistics, monitoring, evaluation and goal control and results.

F. ESSENTIAL FEATURES OF A POLICY BASED ON EG

In order to achieve the desired empowering, equity and security effects, the EGs must be:

1) Universal

The whole population has a list of defined services that must be guaranteed under any situation, giving total security that, once certain conditions and requisites are achieved, the public sector's action will be done in a previously known mode, in a previously communicated moment.

2) Established with priorities and gradually

They are installed one by one. Its priority, impact and effectiveness are balanced with the resources that are available in the country and the citizen and community's aspirations through a participative process. That is, the importance of the presented public problem is put in the balance along with the real impact it currently has on the population and the effectiveness or efficacy of the State's action in this matter with the resources that exist to finance the service, along with the social consensus that backs it up. In this way, the guarantees are periodically

evaluated, since as the country acquires greater resources and more capacity, new ones can be added.

3) Founding itself in fairness

The establishment of EG is done to give an equitable response to situations that citizens currently value negatively, because the services are provided in a discriminatory, non egalitarian or segregated way. The foundation of equity must be explicit, as a starting point to recognize inequality and begin to make it decrease.

4) Fully exigible

The EG system allows all citizens to know the guarantees to which it is subject, the times and form in which this must be provided. They must have expedite, available and transparent tools to claim them. This instance must be separated from the entity responsible for giving the service, must be known by everyone, count with the respective faculties, and must be subject to the due process basic principles. The mechanisms of exigibility can take different forms: judicial, quasi judicial or managerial. What is important is that they guarantee effectiveness in the compliance of services, speed, accessibility, transparency and impartiality.

5) Be precisely determined

Itemized protocols must be established, pointing out each of the steps that must be taken faced to a specific EG. Once the situation that originates the guarantee is produced, the protocol must be strictly complied with, without leaving space to arbitrariness.

6) Must be established through the Law

They must be established through a law that is the product of an ample debate that counts with the required social and political legitimacy, as well as stability in time that guarantees the permanence of the rights. However, it can also be recommendable that the Law establishes the guarantees that the policy involves, but the services be determined in a way that allows flexibility and fluid updating, following the AUGÉ Council's line.

7) EGs can imply citizen's duties

Rights and duties are correlated. Thus, if the citizen does not comply with the conditions established to make the EGs effective, he or she will not be entitled to demand them. It is not about the citizen's loss of right to attention or to the determined service. The right cannot be denied, it can only not be demanded in the mode established as 'explicit guarantee', and the residual mechanism is always in force. It involves complying with requisites or conditions so the guarantee becomes effective in the pre-established times and forms, with the objective of inducing certain conducts considered socially beneficial.

These duties to make the EGs exigible cannot mean such a burden that the right becomes laughable, and must be linked to efficiency and economy necessities or avoid damaging or costly behaviors.

G. FUTURE TO BE EXPLORED

Incorporating this criterion to matters such as social housing subsidy provision, quality of education, citizen security, employment or other areas can be thought about. In housing, an established EG can be the provision of subsidies for housing within a time limit that, although long, is pre-established, with a basic result of the subsidy that complies with standards of quality, size and basic features that are verifiable by a third party, if the family maintains the requirements that were demanded during the waiting period. In education, an established EG can be minimum standards of quality in public schools, providing alternative establishments where families can

send their well performing children if the quality standard is not achieved. In citizen security, for example, the State can commit preventive vigilance actions through the police, with verifiable and exigible standards that citizens can check. In employment, a basic training in new technologies and in the basic domains of the modern work environment every given amount of years, under predetermined quality standards, can be thought of as a EG in favor of workers

The health reform in Chile is an example that proves it is possible to focus public policies from the point of view of rights in a viable way, with a new road from where to build development with equality, transferring power to persons, dignifying their condition as citizens and putting them at the center of public policies.

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