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PARTICIPACIÓN SOCIAL EN LOS SISTEMAS DE PENSIONES Y SUS REFORMAS: CHILE, ESPAÑA E ISRAEL*

**SOCIAL PARTICIPATION IN PENSION SYSTEMS AND THEIRS
REFORMS: CHILE, SPAIN AND ISRAEL**

**LA PARTICIPATION DANS LES SYSTEMES DE RETRAITES
ET LES REFORMES: CHILI, ESPAGNE ET ISRAËL**

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RESUMEN: Los países de la OCDE comparten una creciente preocupación tanto por la idoneidad de sus sistemas de pensiones como por su capacidad para proporcionar pensiones decentes a los beneficiarios tras su jubilación. La participación de los futuros beneficiarios en la gestión de los fondos, así como en el proceso de reforma, puede servir para mitigar esas preocupaciones, al tiempo que da legitimidad a los sistemas en cuestión. En el presente estudio se analizan las formas de participación en los sistemas de pensiones y las reformas en Chile, España e Israel. Encontramos que existe la participación en diferentes formas y contextos en los tres países. No obstante, en los tres países es necesario aumentar la participación de los futuros beneficiarios en la gestión de los fondos, así como en las reformas de las pensiones.

Palabras clave: pensión, sindicatos, seguridad social, España, Chile, Israel.

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ABSTRACT: OECD countries share a growing concern regarding both the adequacy of their pension systems and their ability to provide decent pensions to beneficiaries upon retirement. The participation of future beneficiaries in the management of the funds, as well as in the process of reform, may serve to mitigate these concerns, while also providing legitimacy to the systems in question. The current comparative study examines forms of participation in pension systems and reforms in Chile, Spain, and Israel. We find that participation in different forms and contexts is extant in all three countries. Nonetheless, in all three countries, there is a need for increased participation of future beneficiaries in the management of funds, as well as in pension reforms.

Keywords: Pension, Unions, Social Security, Spain, Chile, Israel.

RÉSUMÉ: La pertinence des systèmes de pensions et leur capacité à rémunérer convenablement les bénéficiaires une fois qu'ils ont fait valoir leur droit à la retraite sont des thèmes qui préoccupent de plus en plus les pays de l'OCDE. La participation des futurs pensionnés dans la gestion des fonds, tout comme dans le processus de la réforme, peut être un moyen d'atténuer ces inquiétudes tout en légitimant les systèmes en question. Cette étude analyse les formes de participation dans les systèmes de pensions et dans les réformes au Chili, en Espagne et en Israël et démontre que ladite participation existe bel et bien sous diverses formes et qu'elle s'inscrit dans des contextes propres aux trois pays. Mais il est tout de même nécessaire d'accroître le concours des futurs bénéficiaires en ce qui concerne la gestion des fonds comme dans les réformes des retraites dans ces trois pays.

Mots-clés: pensión, sindicatos, sécurité sociale, Espagne, Chili, Israël.

SUMMARY: I. *Introduction*. II. *Pension Participation*. III. *Three Pension Systems: Spain, Israel, and Chile*. IV. *Three Forms of Pension Participation: Spain, Israel, and Chile*. V. *Comparative Cross Analysis and Conclusions*. VI. *References*.

I. INTRODUCTION

Over the past few decades, European countries have passed major pension reforms. These reforms have included changes in retirement age, changes in contributions to the funds, changes in the sum of benefits, and changes in the combination of the first pillar of pension systems (non-contributory pensions) and the second pillar (contributory pensions).¹ These reforms have dramatically affected the lives of workers and pensioners across all European countries.

These frequent changes in pension schemes have brought about an increased desire for workers and pensioners to regain control of both their lives and their income upon retirement. The participation of workers and pensioners in both the management of pension systems and the process of pension reforms has the potential to meet these desires, leading to more democratic regulations regarding old-age pension protections. Participation will enable regulators to both know and take into account the needs and desires of the savers. Participation may also provide greater social acceptance of certain controversial reforms because of the legitimacy it offers.²

Nonetheless, while participation has many advantages, the question of how best to achieve this is less clear. One main traditional form of participation in both pension reforms and the management of the overall system has been through the involvement of union representatives. However, in light of changes in union density, as well as the privatisation of pension systems, unions' ability to do so is now questionable. Against this background, iden-

¹ OECD, *Pensions at a Glance 2019*, OECD and G20 Indicators, 2019; Bonoli, Giuliano, "Two Worlds of Pension Reform in Western Europe", *Comparative Politics*, 35 (4), 2003, pp. 399-416.

² Tortuero Plaza, J. L. *et al.*, *La reforma de la jubilación: políticas de pensiones y políticas de empleo*, Premios FIPROS – Fondo para el Fomento de la Investigación de la Protección Social, 2010, available in: http://www.seg-social.es/nps/wcm/connect/nss/2e1fajfe5-00af-4b05-9f05-5e7c15ef5267/PF09_34.pdf?MOD=AJPERES&CVID=.

tifying the best forms of participation today has become an increasingly important issue.

Participation is also considered by the ILO. According to article 72.1 of the ILO Convention 102 on Social Security (Minimum Standards), the protected persons shall participate in the management or have a consultative capacity when the administration is not developed by an institution regulated by public authorities; national laws may also consider the participation of employers' representatives. Despite this, some experiences of pension privatization have demonstrated that participation has not improved but has disappeared.³

This article will study the participation of workers and pensioners in both pension reforms and the management of the pension systems in Spain, Chile, and Israel. We chose to compare Spain, Israel, and Chile because they share similarities, but also differences. Chile is an example of a liberal market economy, while Spain has a coordinated market economy. Israel, meanwhile, was once a coordinated market economy, but is now moving towards a liberal market economy.⁴ In all three countries, life expectancy has risen sharply.⁵ Nonetheless, because of differences in their respective fertility rates, the old-age dependency ratio differs substantially across the three countries (31.7% in Spain, 22.7% in Israel, and 19.4% in Chile).⁶ In all three countries, union density is relatively low and continues to decline (14% in Spain, 27% in Israel, and 16.5% in Chile).⁷ Nonetheless, the coverage offered by the collective bargaining agreements in their respective industrial relations systems differs substantially (77% coverage in Spain, 50% in Israel, and 20% in Chile).⁸ Moreover, as will be detailed below, the pension systems in the three countries also differ substantially.

³ Ortiz, Isabel *et al.*, *Reversing Pension Privatizations. Rebuilding Public Pension Systems in Eastern Europe and Latin America*, Geneva, International Labour Office, 2018.

⁴ Hall, Peter and Soskice, David, *Varieties of Capitalism*, Oxford, Oxford University Press, 2001.

⁵ OECD, *Life Expectancy at Birth*, 2019, available in: <https://data.oecd.org/healthstat/life-expectancy-at-birth.htm>.

⁶ OECD, *Pensions at Glance – Old Age Dependency Ratio*, 2019, available in: https://www.oecd-ilibrary.org/social-issues-migration-health/data/oecd-pensions-statistics/pensions-at-a-glance-2011_data-00625-en?parentId=http%3A%2F%2Finstance.metastore.ingenta.com%2Fcontent%2Fcollection%2Fpension-data-en.

⁷ Dirección del Trabajo, “Compendio Estadístico 2016”, Organizaciones Sindicales, Unidad de Análisis Estadístico, Dirección del Trabajo, Santiago, Chile, 2016; OECD, *Trade Unions*, 2019, available in: <https://stats.oecd.org/Index.aspx?DataSetCode=TUD>; Central Bureau of Statistics Data Israel 2016.

⁸ OECD, *Trade Unions*, *supra*; Central Bureau of Statistics Data Israel 2012.

The article proceeds as follows. Part I will discuss the current literature regarding pension participation in terms of management and reforms. Part II describes the pension systems in Spain, Israel, and Chile, while Part III discusses the forms of pension participation in these three countries. Following these national presentations, Part IV compares them in order to analyse possible trends and features that can be used as policy examples.

II. PENSION PARTICIPATION

As noted above, the frequent changes in pension schemes highlight the need for insurers to participate in the reform process, as well as in the management of the funds themselves. Pension participation may take several forms.

One main traditional form of participation in pension reforms and the management of pension systems is through union representatives.⁹ Several scholars have pointed out both the benefits and limitations of unions' involvement in pension system management and reforms.¹⁰ In terms of benefits, unions express the collective voice of the employees in a workplace.¹¹ Bovenberg and Medijdam have previously shown that a union's involvement in pension reforms assists insurers by securing low management fees and high pension coverage.¹² Wiß, meanwhile, claimed that liberal market econo-

⁹ Ebbinghaus, Bernhard, "The Role of Trade Unions in European Pension Reforms: From «Old» to «New» Politics?", *European Journal of Industrial Relations*, 17(4), 2011, pp. 315-331.

¹⁰ Grødem, Anne Skevik, and Jon M. Hippe, "Networking, lobbying and bargaining for pensions: trade union power in the Norwegian pension reform", *Journal of Public Policy*, 39(3), 2019, pp. 465-481; Keune, Maarten, "Opportunity or threat? How trade union power and preferences shape occupational pensions", *Social Policy & Administration*, 52(2), 2018, pp. 463-476; Webber, David, *The Rise of the Working-Class Shareholder: Labor's Last Best Weapon*, Massachusetts, Harvard University Press, 2018; Verma, Anil, and Johanna Weststar, "Token presence or substantive participation? A study of labor trustees on pension boards", *Journal of Labor Research*, 32(1), 2011, pp. 39-60; Beland, Daniel, "Does Labor Matter? Institutions, Labor Unions and Pension Reforms in France and the United States", *Journal of Public Policy*, 21(2), 2001, pp. 153-172.

¹¹ Freeman, Richard B. & James L. Medoff, *What Do Unions Do?*, Basic Books, 1984; Hirschman, Albert O. (1970), *Exit, Voice, and Loyalty*, Harvard University Press, 1970.

¹² Bovenberg, Lans A. & Lex Medijdam, "The Dutch Pension System", in Axel H. Börsch-SupanMeinhard Miegel (eds.), *Pension Reform in Six Countries*, Springer, 2001, pp. 39-67.

mies with weak trade union influence are highly vulnerable to financial market crises.¹³

Nonetheless, the involvement of unions in pension reforms also has several limitations or drawbacks. The participation of unions in the reform process may slow its development, and, in several cases, may even curtail the reform completely. This curtailment effect is especially possible in political systems in which unions have veto power, as well as in cases where pension policies are developed based on a shared policymaking process involving the government and the social partners.¹⁴ Moreover, several scholars claim that unions tend to reflect the preferences of the median worker at the expense of marginalized workers' interests.¹⁵ In several countries, unions have agreed to two-tier collective agreements, which differentiate between groups of workers and provide better pension rights to senior workers.¹⁶

Moreover, following World Bank recommendations, many countries – Chile and Israel among them – have transformed their pension systems into systems with a relatively large second pillar based on mandatory contributions to privately managed funds. These contributory systems, which include privately managed funds, pose new challenges for unions' involvement in both pension reforms and the management of funds.¹⁷

Unions' involvement in pension reforms also faces the challenge of the decline in union density witnessed across most OECD countries, including Chile, Israel, and Spain.¹⁸ In tandem with the decline in union density, many countries face a decentralisation trend in their industrial relations systems.¹⁹

¹³ Wiß, Tobias, "Pension fund Vulnerability to the Financial Market Crisis: The Role of Trade Unions", *European Journal of Industrial Relations* 21(2), 2015, pp. 131-147.

¹⁴ Ebbinghaus, Bernhard, *supra*, p. 319.

¹⁵ Kaufman, Bruce E., "Models of Union Wage Determination: What Have We Learned Since Dunlop and Ross?", *Industrial Relations*, 41, 2002, pp. 110-158; Supiot, Alain, "The Transformation of Work and the Future of Labor Law in Europe: A Multidisciplinary Perspective", *International Labour Review*, 138, 1999, pp. 31-46.

¹⁶ Alon-Shenker, Pnina and Lilach Lurie, "Do Trade Unions Promote Age Diversity and Intergenerational Solidarity in the Workplace? A View from Canada and Israel", *Labor Law Journal*, 70(2), 2019, pp. 3-118.

¹⁷ Keune, Maarten, *supra*.

¹⁸ Dirección del Trabajo, *supra*; OECD, *Trade Unions*, *supra*; Central Bureau of Statistics Data Israel 2016.

¹⁹ Rodríguez, Carlos *et al.*, "Austerity and Collective Bargaining in Spain: The Political and Dysfunctional Nature of Neoliberal Deregulation", *European Journal of Industrial Relations*, 22(3), 2016, pp. 267-280.

This sharp decline in union density, as well as the decentralisation trend, requires policymakers and academics to think of new ways of ensuring insurers' representation in pension systems and reforms. Regulators might think of broadening the range of actors that take part in the reform process to include representatives of several unions, as well as involving NGO representatives. Regulators may also develop new forms of individual representation; for example, through public hearings. This article explores the ways in which Spain, Israel, and Chile are currently dealing with these challenges.

III. THREE PENSION SYSTEMS: SPAIN, ISRAEL, AND CHILE

According to Bonoli, pension systems can be divided into two main groups: social insurance systems and multi-pillar pension systems.²⁰ As will be discussed below, while Spain's pension system is a social insurance system, Chile's and Israel's systems are multi-pillar pension systems.

1. *Spain's Pension System*

Spain's pension system belongs to the social insurance group of countries. This group also includes Italy and Germany, with whom Spain shares both certain similarities and important differences.²¹ Its pension system is comprised of two different public levels of protection: a compulsory social insurance level (on the basis of earnings-related benefits) and a basic social security floor level (including means-tested benefits).

²⁰ Bonoli, Giuliano, *supra*. The ILO multi-pillar model has been recently revised, comprising four different levels of protection: a "0 Pillar" or the Pension floor, recognising an universal pension (old-age social protection floor); the 1st Pillar includes a mandatory social insurance; the 2nd Pillar is related to mandatory/voluntary complementary schemes; and the 3rd Pillar comprises voluntary personal savings. It is based on the following 8 principles: universality; social solidarity and collective financing; adequacy and predictability of benefits; overall and primary responsibility of the State; non-discrimination, gender equality and responsiveness to special needs; financial, fiscal and economic sustainability; transparent and sound financial management and administration; and the last one, having a special importance regarding the issue of this paper, involvement of social partners and consultation with other stakeholders. See ILO, "The ILO Multi-Pillar pension model: Building equitable and sustainable pension systems", *Social Protection for All Issue Brief*, International Labour Office, Social Protection Department, Geneva, 2018, available in: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_645751.pdf.

²¹ Bonoli, Giuliano, *supra*.

The contributory scheme is financed by worker and employer contributions through a pay-as-you-go (PAYG) mechanism. Defined benefits are recognised for workers and their relatives, such as retirement, invalidity, and survivor pensions (widower and orphan pensions).

The pension is not conditioned on alternative sources of income, but on the individual's contribution record. Thus, the final pension amount depends on the average amount of contributions over a certain period of time, as well as the applicable rate, depending on various circumstances (such as the number of months for which contributions have been paid, in the case of the retirement pension). The result of this calculation is then determined. In 2020, the maximum amount permitted was €2,683.34 per month (€37,566.76 per year). Minimum annual amounts are also recognised, depending on the kind of pension and individual's household situation (with dependent or non-dependent spouse, or single-person household)²²; the pension is supplemented through complements to the minimum, awarded on a means-tested basis, to achieve these minimum amounts.²³ It is important to note that the controversial unilateral reform that took place in 2013 introduced a sustainability factor linking the initial amount of the pension to life expectancy at 67. This has been viewed as a de facto change to a defined contribution system regarding its future consequences.²⁴

The non-contributory scheme is financed by general revenues from the state tax system. It includes a retirement and invalidity pension for individuals with an insufficient contribution record, using a means-tested base fixed at €5,538.40 per year in 2020, which is also the maximum amount recognised. The pension amount is the differential between the beneficiary's income and the maximum amount. As a result of this two-level system, where each level

²² All the amounts (maximums and minimums) are available at: http://www.seg-social.es/nps/portal/nss/internet/Pensionistas/Revalorizacion/30434?1dmy&urile=ncm%3a%2FPOIN_Contentidos_en%2FInternet%2F4986%2F30430%2F.

²³ Available in: http://www.seg-social.es/nps/portal/nss/internet/Pensionistas/Revalorizacion/30434?1dmy&urile=ncm%3a%2FPOIN_Contentidos_en%2FInternet%2F4986%2F30430%2F30458%2F.

²⁴ Díaz-Giménez, Javier, "Las pensiones europeas y sus reformas recientes", Documento de Trabajo 7, Instituto BBVA de Pensiones, 2014, available in: <https://www.jubilaciondefuturo.es/recursos/doc/pensiones/20131003/posts/2015-7-las-pensiones-europeas-y-sus-reformas-recientes-esp.pdf>; Monereo Pérez, José Luis & Fernández Bernat, Juan Antonio, "El factor de sostenibilidad en España: ¿un nuevo paso para el cambio silencioso de modelo de pensiones públicas?", *Revista de Derecho Social*, No. 62, 2013, pp. 209-238. However, it should be noted that the entry into force has been postponed to a date no later than 1 January 2023.

is based on a different logic, certain people may fall out of their scope of protection: for example, those whose contribution records do not allow them to achieve a contributory pension despite having low incomes, because their income is below the minimum legally established as the basic floor.

In contrast to Israel and Chile, which will be described below, supplementary occupational pensions are not mandatory in Spain. Despite their promotion by the state through savings for individuals in the form of personal income tax, their importance is almost negligible.²⁵ Two sets of data exist that exemplify this assertion: on the one hand, in 2017, only 20% of the Spanish population had an account within an occupational or individual pension plan. On the other hand, in the same year, the average equity in individual pension plans represented 65% of retirement public pensions for an entire year.

2. *Israel's Pension System*

Israel has a multi-pillar pension system, which consists of three pillars: a first universal public pillar, a second occupational pension pillar, and a third pillar of private savings.²⁶ In terms of the first pillar, all residents of Israel are entitled to a basic old-age benefit (unrelated to their work status) from the National Insurance Institute once they reach the retirement age (62 for women and 67 for men).²⁷ In addition to old-age benefits, the Israeli National Insurance Institute also provides Israel's residents with several insurance programmes, including survivors' insurance and disability insurance. Employers' contributions, employees' contributions, and income tax are financing old-age benefits (as well as other benefits).

The first pillar in Israel is universal and not subject to means testing. The purpose of the first pillar in Israel is to provide Israel's elderly population with a minimum standard of living.²⁸ All Israeli residents are entitled to the same amount of old-age benefits. The sum of benefits —equivalent to ap-

²⁵ Available in: <http://www.observatorioinverco.com/casi-20-los-espanoles-plan-pensiones/>.

²⁶ Lurie, Lilach, "Pension Privatization – Benefits and Costs", *Industrial Law Journal*, 47(3), 2018, pp. 399-430; Lurie, Lilach, "Pension Privatization in Israel", in Amir Paz-Fuchs, Ronen Mandelkern, Itzhak Galnoor (eds.), *The Privatization of Israel: The Withdrawal of State Responsibility*, New York, Palgrave Macmillan, 2018, pp. 101-121.

²⁷ Retirement Age Law 2004, arts. 3-4; The National Insurance Law (consolidated version) 1995, art. 245.

²⁸ Nonetheless, whether the first pillar indeed provides a minimum standard of living remains a contested issue. HCJ 578/02 Rachel Manor v. Minister of Treasury (2004).

proximately €345 per month— is not related to contributions and is lower than that of OECD countries.²⁹ The following increments are added to the basic old-age benefit: seniority increment, pension deferral increment, and increment for dependents.³⁰ Residents without income (or with a very low income) are entitled to receive an income supplement to the old-age pension, based on means testing. The sum of both the basic old-age benefit and the supplement is about €817 per month.³¹ Since the mid-1990s, housewives have been entitled to old-age benefits without having to contribute to the system.³²

The second pillar, consisting of an occupational pension, plays an important role in providing income security for Israeli retirees. The purpose of the second pillar in Israel is to provide retirees with income after retirement: that is, as close as possible to the income they had before they retired (adequate replacement rate). In the past, Israeli workers could join old pension arrangements, which were defined benefit funds. These arrangements have been closed to new workers, who can only join defined contribution funds.

Since 2008, the second pillar of occupational pensions in Israel has been mandatory.³³ Each employer and each employee in Israel must contribute 18.5% of the employee's salary (6% employee contribution, 12.5% employer contribution) to a privately managed, defined contribution pension fund. As of 2012, 85% of Israeli employees were insured in a pension fund.³⁴ Every Israeli employee has the right to both choose his/her pension fund and move from one pension fund to another. Insurance companies and investment houses manage funds and invest employees' savings in the capital market. When an employee retires from work, his/her insurance company converts his/her pension savings into annuities (according to life expectancy tables). In the Israeli second pillar, an insured employee cannot know until the day of his/her retirement the sum of her pension, which depends on the sum of his/her savings, capital market gains, management fees (which insurance companies deduct from their savers), and the life expectancy tables (updated to the

²⁹ National Insurance Institute of Israel Website, available in: <https://www.btl.gov.il/Englisb%20Homepage/Pages/default.aspx>; OECD, *Reviews of Labour Market and Social Policies in Israel*, Paris, OECD Publishing, 2010, p. 188.

³⁰ National Insurance Institute of Israel Website, *supra*.

³¹ *Idem*.

³² Gal, John, *Social Security in Israel*, Jerusalem, Magnes, 2014 (Hebrew).

³³ Gavius, Ilanit *et al.*, "Pension Reform in Israel under Mandatory Pension Law", *Pensions: An International Journal*, 14(1), 2009, pp. 4-13.

³⁴ Central Bureau of Statistics Data Israel 2012.

day of retirement). The design of the Israeli second pillar—based on private pension funds—was influenced in many ways by the Chilean pension system.

3. *Chile's Pension System*

The Chilean pension system is widely known for its private contributory component regarding pension funds. However, since the 2008 reform, it also has a non-contributory component administered by the state.³⁵ Since its origins in the 1980s, this pension system has excluded beneficiaries and unions from participating in determining its structure. This is part of the anti-representation policy established during the dictatorship in Chile.³⁶

While it features different mechanisms (non-contributory, mandatory contribution, and voluntary contribution), the Chilean pension system is based on an overall logic: the ability to save individually.³⁷ This ability determines which mechanism is applicable to a particular case, such that a person without any ability to save will receive a solidarity pension, a person with weak or medium ability will receive the solidarity-based top-up benefit, and those who have a significant ability to save will make voluntary contributions and enjoy their benefits. The Chilean pension system has two main components: one based on contributions and the other tax-funded.

On the one hand, since the '80s, the structural reform of Chile's private pension regime has been studied and used as an example of policies.³⁸ Chilean individual savings accounts were created based on the idea that a worker must be able to move funds from one entity to another at any time.³⁹ The affiliate can also choose in which type of fund he or she wants to deposit their savings. To prevent fraud, ensure free competition between AFPs, and safe-

³⁵ Arellano Ortiz, Pablo, "Las AFPs no son un producto de exportación verdaderamente chileno", *Revista Laboral Chilena*, 162, 2007, pp. 73-80; *id.*, "The Private Pension System. Critic Study Base on the Chilean Case", *Bulletin of Comparative Labour Relations 65 Global Labour Market: From Globalisation to Flexicurity*, ed. R. Blainpan and M. Tiraboschi, Kluwer, 2008; *id.*, "Universalisme et individualisme dans le régime des retraites, l'exemple du Chili", *Logiques Juridiques*, L'Harmattan, Paris, 2012.

³⁶ Ghilarducci, Teresa, and Ledesma Liébana, Patricia, "Unions' role in Argentine and Chilean pension reform", *World Development*, 28(4), 2000, pp. 753-762.

³⁷ Arellano Ortiz, Pablo, 2012, *supra*.

³⁸ Mesa-Lago, Carmelo, "Les réformes de la sécurité sociale en Amérique latine: observations sur le rapport de 2005 de la Banque Mondiale", *Revue Internationale de Sécurité Sociale*, 58(2-3), 2005, pp. 115-140.

³⁹ Article 32 D.L. 3.500.

guard the rights of future pensioners, D.L. 3500 requires AFPs to maintain a separation between their fund assets and those of their affiliates.⁴⁰ The affiliates must contribute 10% of their monthly income to the mandatory saving.

On the other hand, the solidarity pension scheme was introduced by the reformed, consolidated, harmonised, and improved regime of assistive pensions, as well as the regime of minimum guaranteed pensions, which existed before the full enforceability of Law 20.255. These mechanisms were heavily dependent on the government budget, conditioned on resources, had a large deficit in coverage, and were only designed to grant conditional benefits, not rights. The new non-contributory mechanism provides two types of benefits under a legal rights-based approach: the basic solidarity pension (for those who do not have any contributory capacity at all) and the solidarity-based top-up benefit (for those people with a very limited contributory capacity).⁴¹

There is also the possibility of voluntary savings through individual or collective mechanisms.⁴² Nevertheless, in terms of the overall status of the Chilean pension system, the impact of these savings is very low. This is because a large majority of the Chilean population does not have the economic capacity to save more than the mandatory legal obligation.

IV. THREE FORMS OF PENSION PARTICIPATION: SPAIN, ISRAEL, AND CHILE

Duchheim and Weber have classified pension reforms in Europe regarding the participation of the social partners into four broad groups: unilateral reforms, reforms with a previous unsuccessful consultation period with the social partners, countries with a traditional strong social dialogue in which the social partners had a decisive role in reforms, and reforms based on a previous agreement with trade unions that succeeded in having some of their demands met: for example, by accepting an increase in the statutory age.⁴³ As per Duchheim and Weber's classification, Spain belongs to the last

⁴⁰ Articles 23bis paragraph 4, and 33 D.L. 3.500.

⁴¹ For more details about these two non-contributory mechanisms, see Arellano Ortiz, Pablo, *Lecciones de seguridad social*, 2nd ed., Santiago, Librotecnia, 2017.

⁴² For more details about these two mechanisms, see *idem*.

⁴³ Duchemin, Claire and Weber, Tina, Social partners' involvement in pension reform in the EU, European Observatory of Working Life – Eurofound, 2013, available in: https://www.eurofound.europa.eu/ef/sites/default/files/ef_files/pubdocs/2013/691/en/1/EF13691EN.pdf.

group, while Chile belongs to the first group. Israel has moved in recent years from the third group to the second group.

1. *Pension Participation in Spain*

As described above, using Ducheim and Weber's classification, Spain belongs to the last group of reforms, which are based on a previous agreement. Indeed, the main feature of pension reforms in Spain has been the achievement of a relatively high level of political and social consensus. The instrument that has allowed this is known as the Toledo Pact (*Pacto de Toledo*).

Nevertheless, if we broaden the temporal scope to consider the entire democratic era in Spain, there have also been examples of unilateral reform. In effect, there have been at least six major reforms of the Spanish pension system since the Constitution was enacted in 1978, alternating between imposed and consensual changes. The unilateral reforms that took place in 1985 and 2013⁴⁴ share some common features: their imposition by a government with absolute majority support in the Parliament, the context of a major economic crisis and pressure from international organisations to introduce changes in pension regulations, and strong social contestation after these unilateral legal measures.⁴⁵

However, there was a long period between these two unilateral reforms, and in this length of time, a complex political and socioeconomic participatory mechanism was developed: the so-called Toledo Pact. In fact, even though the conservative Government failed to comply with this mechanism in 2013, it is still being used today to discuss new recommendations for fu-

⁴⁴ The Socialist Government passed Act 26/1985, of 31 July, on urgent measures to rationalise the structure and protective action of Social Security. Nearly 30 years later, after a long period of agreed reforms, the Popular Party Government passed Act 23/2013, of 23 December, regulating the sustainability factor and revaluation index of Social Security pensions. One of the most salient and regressive outcomes of the last unilateral reform is a reduction in future pension amounts, which will be 35% lower by 2050. See: Zubiri, Ignacio, "Las pensiones en España: situación y alternativas de reforma", *Papeles de Economía Española*, 147, 2016, pp. 167-187.

⁴⁵ The Socialist Government reform of 1985, and the subsequent legal changes in employment regulations, led to the call for four general strikes in the period 1985-1994. The Popular Party Government reform of 2013 was not as strongly contested in the street as the previous employment and labour reform of 2012, although it did generate a grassroots movement of activist pensioners called "Marea Pensionista", which was locally organised and coordinated at a regional and national level and demanded progressive reforms.

ture reform.⁴⁶ Strictly speaking, it is a permanent parliamentary commission in which all the political groups in the Spanish Parliament participate, where pension reform proposals are discussed and, as a result, declarative principles and recommendations are passed by majority vote. Its creation arose from the political will to divorce such a sensitive question for Spanish society from electoral purposes, thereby aiming to achieve as broad a consensus as possible. An interesting point to underline in terms of its operation is the development of public hearings on different subjects involving lawyers, economists, sociologists, trade unions, and other associations. Nonetheless, it indeed represents a tenuous form of participation whose impact is hardly measurable, since, ultimately, it is parliamentary groups that agree on and pass a set of recommendations.

Broadly speaking, the Toledo Pact is a ‘consensual method of reforms’⁴⁷ that also implies social actors. After declarative principles and recommendations are passed within this parliamentary commission, a second approval is required through a plenary session of the Parliament.⁴⁸ This is the starting point for a second stage, in which the government plays a decisive role by opening a bargaining process with the most representative national trade unions and employers’ associations. The resulting social agreement forms the basis of a final stage, in which the government promotes a bill in the Parliament based on the specific contents agreed with the social actors.⁴⁹

⁴⁶ A new set of recommendations was about to be approved by the commission in early 2019. However, the dissolution of parliament by the call for elections impeded it.

⁴⁷ Tortuero Plaza, J. L. *et al.*, *supra*.

⁴⁸ The set of all recommendations passed until now within the Toledo Pact are: 1) Separation and clarification of funding sources; 2) Maintenance of purchasing power and improvement of pensions; 3) Reserve fund; 4) Financing, simplification, and integration of special regimes; 5) Adaptation of contribution bases and periods; 6) Incentives to employment; 7) Modernisation and information to the citizen; 8) System management; 9) Mutual Societies for Occupational Accidents and Professional Illnesses; 10) Fight against fraud; 11) Contributivity; 12) Retirement age; 13) Widow and orphan benefits; 14) Tax treatment of pensions; 15) Solidarity and guarantee of sufficiency; 16) Complementary systems; 17) Women and social protection; 18) Disability; 19) Immigration; 20) Parliamentary control and budgetary treatment of Social Security resources; 21) Monitoring, evaluation and reform of the Toledo Pact. For an in-depth analysis of the contents of the Toledo Pact, see Panizo Robles, José Antonio, “Dos décadas de reformas de la seguridad social: del Pacto de Toledo de 1995 al Acuerdo Social y Económico de 2011”, *Revista de Trabajo y Seguridad Social*, 336, 2011, pp. 5-122.

⁴⁹ The original 15 recommendations of the Toledo Pact (1995) led to two social agreements, each with a subsequent Parliamentary Act: an agreement on the consolidation and rationalisation of the Social Security system, of 9 October, 1996, and subsequent Act 24/1997,

All of these reforms share two common features: on the one hand, the gradual deterioration of traditionally generous pension requirements and amounts achieved in the early 1980s, which converges with legal changes that have been taking place in Western Europe;⁵⁰ and on the other hand, the euphemistic use of language by the legislator, with expressions such as “rationalisation”, “consolidation”, “adaptation”, or “modernisation” to describe actually regressive reforms.

One of the most important strengths of this process is the greater social acceptance of certain controversial reforms due to the legitimacy it offers.⁵¹ Proof of this can be found in the fact that the same measure (an increase in the calculation period for retirement) caused a general strike in the 1985 unilateral reform, but was not controversial in the agreed reform of 1997.

This participatory mechanism of pension reform also contains several weaknesses. First, trade union involvement does not ensure the best results in terms of maximising the effectiveness of social rights. The initial articulation of the Toledo Pact and implementation of its recommendations had a financial rather than a social goal; therefore, the protection delivered by the system has decreased because of the prioritisation of economic aims. In this sense, González Ortega has criticised the introduction of the separation of funding sources (contributory benefits are only funded by contributions made by workers and employers) because of possible future consequences regarding the cyclical problems of economic sustainability that a PAYG system presents.⁵²

of 15 July, on the consolidation and rationalisation of the Social Security system; and an agreement on the improvement and development of the social protection system, of 9 April, 2001, and subsequent Act 35/2002, of 12 July, establishing measures for a gradual, flexible retirement system. The amendment of the Toledo Pact in 2003 added five new recommendations, and this was followed by an agreement on Social Security measures, of 2 June, 2006, and Act 40/2007, of 4 December, on measures within the field of Social Security. After the final documents were passed by the commission, the follow-up to the Toledo Pact (2003-2008) and report of the Toledo Pact (2011), almost in parallel with the social and economic agreement for growth, employment, and pension guarantees, was passed in 2 February, 2011, and a few months later Act 27/2011, of 1 August, on the adaptation and modernisation of the Social Security system.

⁵⁰ Bonoli, Giuliano, *supra*.

⁵¹ Tortuero Plaza, J. L. *et al.*, *supra*.

⁵² González Ortega, Santiago, “La reforma de las pensiones públicas a través de la definición de sus principios organizativos”, *Cuadernos de Relaciones Laborales*, No. 12, 1998, pp. 35-53.

Second, both the mechanism's existence and its maintenance depend on political will. There is no legal basis for its enforceability, as shown by the latest unilateral reforms in 2013. The will of the social actors is also important for enhancing social legitimacy and consensus. The first two social agreements were not signed by all the social partners: the first was not signed by employers' associations, while the second was not signed by one of the two most representative national trade unions.

Third, this process takes into account the specific role that the Spanish Constitution assigns to trade unions and employers' organisations in the Preamble in Section 7⁵³ as essential actors of the 'social and democratic State, subject to the rule of law', as recognized in Section 1.1, with political parties mentioned in Section 6.⁵⁴ These are the main mechanisms of individual participation in the political and socioeconomic arenas. It must be noted, however, that union density has traditionally been low in Spain, where union activities are upheld by law. The recognition of a trade union as the most representative allows it to bargain *erga omnes*, or to be the institutional representative of all workers in a specific area (national or autonomous community). Consequently, in the Toledo Pact process, the positions of other trade unions are not considered as the most representative at a national level. This was the case with the general strike called by some important trade unions in certain autonomous communities against the pension reform of 2011, which was agreed by the two most representative trade unions.

2. Pension Participation in Israel

Using Ducheim and Weber's classification of participation in pension reforms, in 2003, Israel moved from a group of countries with a traditional social dialogue, in which the social partners had a deceive role in reforms, through a group of countries where reforms are passed after a previous

⁵³ Section 7: "«Trade unions and employers» associations contribute to the defence and promotion of the economic and social interests which they represent. Their creation and the exercise of their activities shall be free insofar as they respect the Constitution and the law. Their internal structure and their functioning must be democratic".

⁵⁴ Section 6: "Political parties are the expression of political pluralism; they contribute to the formation and expression of the will of the people and are an essential instrument for political participation. Their creation and the exercise of their activities are free insofar as they respect the Constitution and the law. Their internal structure and their functioning must be democratic".

unsuccessful consultation period with the social partners, and towards the group of countries to introduce unilateral reforms.

Israel's social partners —employers' associations and trade unions— have a formal participation role in the management of Israel's first pillar of non-contributory pensions as members of the National Insurance Institute Council.⁵⁵ Nonetheless, this is not the case regarding the second pillar of mandatory occupational pensions. As mentioned above, since 2008, the second pillar in Israel is mandatory and plays an important role in insurers' savings.

Israel's social partners do not participate in any way in the management of the country's second pillar. Until 2003, The *Histadrut*, Israel's major union, owned and managed most Israeli pension funds. Union representatives, who sat on pension fund boards, represented the savers' interests. All union pension funds were non-profit funds, and the *Histadrut* invested pension contributions mainly in conservative investments. It also acted as a pension consultant, deciding in which pension fund each employee would be insured.

Until the mid-1990s, the *Histadrut* was a very powerful union and was highly involved in both pension policy and pension reforms. During the 1980s, eighty percent of Israeli workers were unionised, most of them in the *Histadrut*. Besides its ownership of pension funds, until 1995, the *Histadrut* also owned healthcare services (*Kupat Holim Clalit*).⁵⁶

Bovenberg and Medijdam have previously shown that a union's involvement in pension reforms assists insurers by securing low management fees and high pension coverage.⁵⁷ The *Histadrut's* pension funds indeed provided generous defined benefit pensions to their insurers. The *Histadrut's* pension funds also collected low management fees from the insured, compared to

⁵⁵ The highest authority of the Israeli National Insurance Institute – which manages old-age benefits, as well as other benefits – is its Council (Israeli National Insurance Law [consolidated version] 1995, Article 8). The Council has nineteen members: four union representatives, three employers' representatives, a representative of the self-employed, five experts, two representatives of NGOs, and four government representatives (National Insurance Regulations [the Institute Council] 1958). The council monitors the National Insurance Institute and provides advice to the Minister (Article 12). In addition to the council, a subcommittee for old-age benefits includes union representatives, government representatives, NGOs' representatives, and experts. See: National Insurance Institute of Israel Website, *supra*.

⁵⁶ Haberfeld, Yitchak, "Why do Workers Join Unions? The case of Israel", *ILR Review*, 48(4), 1995, pp. 656-670; Mundlak, Guy, *Fading Corporatism: Israel's Labor Law and Industrial Relations in Transition*, Ithaca, Cornell University Press, 2007.

⁵⁷ Bovenberg, Lans A. & Lex Medijdam, *supra*.

the management fees that are collected today.⁵⁸ Nonetheless, pension funds suffered from heavy actuarial deficits.

In the years 2002-2004 —by which time union density had already dropped and the *Histadrut* had lost much of its power— the state nationalised all pension funds (both defined benefit and defined contribution funds), taking them out of the *Histadrut's* grasp. Since 2004, the state has continued to manage DB funds (which in 1995 were closed to the entry of new members because of an actuary deficit). On the other hand, the state privatised all of the DC funds and sold them to private insurance companies. Since the reform, new employees can only join DC funds, which are managed by private insurance companies. Unions have no voice in the new system.

The 2002-2004 reform was also the first pension reform without union involvement; in fact, it included a severe reduction of union members' rights. While the government consulted with the unions, and even signed collective agreements with them regarding previous reforms, the 2002-2004 reform did not include union consultation or any other form of members' participation. The *Histadrut* did try to object to the reform, such as through demonstrations and by submitting a petition to court, but was ultimately unable to truly influence it.

To understand this change, it is first important to recognise the sharp decline in union power over the years. In the last twenty years, union density has dropped dramatically in Israel.⁵⁹ After losing its control over healthcare in 1995, the *Histadrut* also lost much of its power, including the power to influence pension reforms. Currently, only 27% of the workers in Israel are unionised.⁶⁰

Since 2004, members have been unable to participate in the system through their union representatives. However, in 2005, legislators provided members with a new individual right to participate in deciding on their pension savings track. According to the Provident Fund Law of 2005, 'An employee... has the right to choose any pension fund...'. Moreover, an employee also has both the right to choose his/her own investment track and the right to bargain over the management fees they pay to the fund. Lastly, individuals also

⁵⁸ Lurie, Lilach, "Pension Privatization in Israel", *supra*.

⁵⁹ Cohen, Yinon *et al.*, "Unpacking Union density: Membership and Coverage in the Transformation of the Israeli IR System", *Industrial Relations: A Journal of Economy and Society*, 42(4), 2003, pp. 692-711. Cohen, Yinon *et al.*, "The State of Organized Labor in Israel", *Journal of Labor Research*, 28(2), 2007, pp. 255-273.

⁶⁰ Central Bureau of Statistics Data Israel 2016.

have the right to comment on pension reforms. The Ministry of Treasury publishes drafts of pension reforms on its website, and every individual has the right to leave comments on the draft.

However, new data show that, in fact, individuals do not participate in the design of their pension in any meaningful way. In a Central Bureau of Statistics survey from 2012, most individuals (81%) reported that they had not moved from one pension fund to another,⁶¹ while most individuals (61.7%) reported that they did not know the amount of management fees they were paying to the funds.⁶² The right to comment on pension reforms is exercised mainly by pension funds, and not by individuals. While employees in Israel have lost their collective voice in the pension system, they have also failed to gain an individual voice instead.

3. *Pension Participation in Chile*

In 2008, when the scope of coverage was extended through a non-contributory mechanism, an attempt was also made to raise participation levels through the creation of a series of advisory councils.⁶³ These councils provide advice when the state acts, and not all of them feature participation by, or representation of, workers and unions. Furthermore, in this reform, Chilean legislation incorporated the possibility of pension funds being established at the company level for the first time. However, this measure has had very little success. In general, in this reform, the incorporation of participation in pension fund administrators was expressly excluded.

The Chilean pension fund model has raised many questions concerning the ILO's international social security standards. The Chilean approach to covering the country's population against old-age risk has hit a wall in the shape of the classic social security principles set by ILO standards. With regard to pensions, Chile ratified the Old-Age Insurance (Industry, *etc.*) Con-

⁶¹ Central Bureau of Statistics Data Israel 2012.

⁶² *Idem.*

⁶³ Arellano Ortiz, Pablo, 2012, *supra*.

vention, 1933 (No. 35), in 1935.⁶⁴ In March 2000, the ILO's governing body⁶⁵ made the following recommendations concerning the Chilean situation: (i) that the pension system established in 1980 by Law Decree No. 3.500, as amended, should be administered by non-profit organizations; (ii) that representatives of the insured participate in the administration of the system under conditions determined by national law and practice; and (iii) that employers contribute to the financing of the insurance system. These recommendations are still valid for Chile after the reform in 2008, since the pension fund mechanism has not been reformed,⁶⁶ and these recommendations were repeated in the CEACR reports of 2010⁶⁷ and 2011.

The 2008 reform has added three commissions: the Users' Committee, the Technical Board of Investments, and the Pension Advisory Board.⁶⁸ Even today, however, 10 years after this reform, affiliates, beneficiaries, and users are represented on only one of the three collegiate committees in the system: the Users' Committee. Furthermore, even this participation is very limited, having limited influence on the administration of funds.

Another way to analyse participation in the pension system is by assessing union involvement in these matters. A union representative serves on the Users' Committee, but the impact of this organ is very limited. With regard to general participation through union membership, the union density rate in Chile is currently very low, comprising only 16.5% of the workforce,⁶⁹ including private sector unions and public associations of civil servants. If we consider only private sector unions, the rate drops to approximately 8%. This

⁶⁴ This convention is now considered shelved and no longer open to ratification. Chile is one of ten countries that ratified it. Obviously, the Chilean pension model does not meet these standards, since they are too old. However, this argument should be rejected, since the principles contained in Convention no. 35 are included in all the standards concerning pension protection.

⁶⁵ Governing Body, 277th Session, March 2000 (GB.277/17/5, March 2000).

⁶⁶ These arguments are developed in Arellano Ortiz, Pablo & Cifuentes Lillo, Hugo, "Legislación chilena de pensión e indicaciones de la Comisión de Expertos de la OIT", *Revista Chilena de Derecho de Trabajo y de la Seguridad Social*, 1(1), 2010, pp. 123-130.

⁶⁷ See: CEACR: Individual Observation concerning Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35) Chile (ratification: 1935) Published: 2009 document Ilolex number 062009CHL035.

⁶⁸ For more information regarding the composition of these committees, see: Arellano Ortiz, Pablo 2017, *supra*.

⁶⁹ Dirección del Trabajo, *supra*.

rate has been stable for at least the last 25 years, showing one of the effects of the dictatorship period on the union movement.

Considering this very low union affiliation in Chile, it is perhaps not very surprising that from 2015 onwards, a very strong movement of opposition to the pension funds began in Chile, with several demonstrations taking place in the country's major cities. This led the second Bachelet government to rethink the pension reform. In this process, the incorporation of the insured into pension funds was considered. This was reflected in a bill that was put before the Chilean Congress in 2017, although this legislation ultimately failed to gain approval. President Piñera has also announced a pension reform, the content of which remains unknown.

When we look at the processes experienced in Chile in recent years, a significant lack of participation is evident. This even goes against the indications of the ILO in 2000. Over the past few years, grassroots pressure has been growing in the streets of Chile, but this popular movement has not yet attained the expected outcome.

V. COMPARATIVE CROSS ANALYSIS AND CONCLUSIONS

In Spain, Israel, and Chile, there is growing concern regarding both the adequacy of the pension system and its ability to provide decent pensions to beneficiaries upon their retirement. Participation of future beneficiaries in the management of funds, as well as in the process of reform, may serve to decrease these concerns and provide legitimacy to the systems.⁷⁰

We found that participation in different forms and contexts is present in all three countries. In this sense, all three countries provide examples of ways in which insurers may gain a voice in the administration of their pension systems, and other countries may fruitfully adopt these practices. In Spain, the Toledo Pact is an example of a “consensual method of reform” in the pension system, which includes the participation of the social partners in the

⁷⁰ Despite the importance of participation established in the ILO framework, different experiences of privatization in Central and Eastern Europe and Latin America have shown a low level of participation in reforms, leading to problems of legitimacy, eliminating participation in managing new private systems. See ILO, “Social Protection for Older Persons: Policy Trends and Statistics 2017-19”, *Social Protection Policy Paper*, No. 17, International Labour Office, Social Protection Department, Geneva, 2018, p. 35, available in: https://www.ilo.org/wcmsp5/groups/public/--ed_protect/--soc_sec/documents/publication/wcms_645692.pdf.

process of reform, thereby providing legitimacy to the process. Another important practice in Spain is the development of public hearings for different subjects. These hearings involve lawyers, economists, sociologists, trade unions, and other associations. In Spain, meanwhile, public hearings have been used in reforms regarding the first pillar, and other countries could also utilise this approach regarding second-pillar reforms. Moreover, public hearings may also be an alternative form of participation in countries in which union density has dropped dramatically.

In Israel, participation is mostly confined to the first pillar of the pension system, taking the form of union representation in the National Insurance Institute Council. In the second pillar, participation occurs mostly at the individual level, consisting of savers making decisions regarding their individual pensions and providing comments on proposed reforms. This individual form of participation might serve as an alternative to participation through union representation.

In Chile, since 2008, beneficiaries and unions have been represented by the Users' Committee. Chile is a particularly interesting example regarding participation in pension management and reforms, largely due to the fact that Chile passed unilateral pension reform at a very early stage compared to Spain and Israel. The Chilean form of participation serves as an example that could be adopted by countries with a multi-pillar pension system. Moreover, in the absence of strong unions in Chile, workers and pensioners manage to push towards pension reforms through demonstrations – a grassroots form of participation.

As noted above, we found that participation in different forms and contexts is extant in all three countries. Nonetheless, while each country has participation policies, which could be adopted by other countries, a one-size-fits-all solution is very hard to imagine when it comes to old-age protection. Every country has a unique pension and industrial relations system. In Spain, the Toledo Pact must be understood in the context of both an industrial relations system that provides a certain level of power to unions and a 'social insurance' pension system⁷¹ in which the first pillar plays a very important role and is managed by the state. In Israel, the participation of the social partners in the management of the first pillar was established in 1957, at a time when Israel was a coordinated market economy. In Chile, the relatively new

⁷¹ Bonoli, Giuliano, *supra*.

form of participation through representation on the Users' Committee was introduced as part of the 2008 reform.

Moreover, the existing forms of participation in all three countries face major challenges. First, union density is currently in decline in all three countries. The decline in union density poses challenges regarding the continuity of unions' involvement in pension reforms in Spain (through the Toledo Act), in Israel's first pillar (through the National Insurance Institute Council), and in Chile (through the User's Committee). Second, the decentralisation trends of the industrial relations systems in Israel and Spain presents a challenge to their social partners, making it necessary to include representatives of more unions within the participatory process. Third, the examples of Chile and Israel emphasise the problems manifested in multi-pillar pension systems with a large pillar consisting of privately managed occupational pension funds. Lastly, as the examples of Spain and Israel show, alternative forms of individual participation do not achieve the robust participatory level achieved by employee unions. In other words, these alternative forms of participation do not truly replace the strong voice achieved by union representation.

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