COVID-19 and the right to education in Chile: An opportunity to revisit our social contract

Denisse Gelber¹ · Carolina Castillo¹ · Luciano Alarcón² · Ernesto Treviño¹ ·
Rosario Escribano¹

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Abstract

The COVID-19 pandemic is pushing the world into a devastating economic and social scenario. The consequences of this crisis largely impact children and teenagers, both now and in the future. School closures have particularly affected vulnerable children, deepening the effects of their unequal socio-economic circumstances. In this context, the actions governments are taking to protect their citizens' right to education will be crucial to reducing or exacerbating inequality in the long term. The authors of this article analyse the case of Chile, one of the most successful countries in Latin America regarding educational achievement and enrolment, as well as the most segregated educational system among member countries of the Organisation for Economic Co-operation and Development (OECD). How is the right to education being guaranteed for all during the COVID-19 pandemic? Are the measures taken by the Ministry of Education mitigating or intensifying long-term inequalities? Based on the *4-A scheme* described by Katarina Tomasevski, which conceptualises national governments' obligations to guarantee the right to education, the authors examine the normative basis of Chile's market-oriented educational system (1980–2013) as well as the latest educational reform (2014–2017), which aimed to promote the right to quality education, and critically analyse the measures adopted by the Chilean Ministry of Education in response to the pandemic. The authors conclude that Chile is facing a major challenge to ensure the right to education for all. A new social contract is required to reduce structural inequalities, and to avoid a potential setback in human rights.

Keywords Human right · Education · COVID-19 · Inequality · Chile

Résumé

La COVID-19 et le droit à l'éducation au Chili : l'occasion de revisiter notre contrat social – La pandémie de COVID 19 entraîne le monde vers un scénario économique et

✉ Denisse Gelber
denisse.gelber@gmail.com

Extended author information available on the last page of the article

social dévastateur. Les conséquences de cette crise impactent fortement le présent et l'avenir des enfants et des adolescents. Les fermetures d'écoles ont particulièrement affecté les enfants en aggravant les effets des inégalités socio-économiques. Dans ce contexte, les mesures que prennent les gouvernements pour protéger le droit des citoyens à l'éducation seront capitales en ce qui concerne la réduction ou l'aggravation des inégalités à long terme. Les auteurs de cet article analysent le cas du Chili, l'un des pays latino-américains qui connaissent le plus de succès en matière de réussite scolaire et de scolarisation, et dont le système éducatif est en même temps le plus ségrégatif de tous les pays membres de l'Organisation de coopération et de développement économiques (OCDE). Comment le droit à l'éducation pour tous y est-il garanti pendant la pandémie de COVID-19 ? Les mesures prises par le ministère de l'Éducation atténuent-elles à long terme les inégalités ou les creusent-elles ? Les auteurs s'appuient sur le schéma des 4 A (selon lequel l'éducation doit être abordable, accessible, acceptable et adaptable – n.d.l.t.), dans lequel Katarina Tomasevski conceptualise les obligations des gouvernements de garantir le droit à l'éducation. Ils l'utilisent non seulement pour examiner la base normative du système chilien de l'éducation axé sur le marché (1980-2013) et la dernière réforme de l'éducation (2014-2017) visant à promouvoir le droit à une éducation de qualité, mais aussi pour livrer une analyse critique des mesures adoptées par le ministère de l'Éducation chilien en réponse à la pandémie. Ils concluent que pour garantir le droit à l'éducation pour tous, le Chili doit relever un défi d'importance. Un nouveau contrat social est nécessaire pour réduire les inégalités structurelles et éviter une régression potentielle des droits humains.

Resumen

COVID-19 y el derecho a la educación en Chile: Una oportunidad para revisar nuestro contrato social – La pandemia del COVID-19 está empujando al mundo a un escenario económico y social devastador. Las consecuencias de esta crisis impactarán sobremanera a la niñez y adolescencia, tanto en el presente como en el futuro. El cierre de los establecimientos educativos ha afectado particularmente a la población vulnerable, profundizando los efectos de su desventaja socio-económica de origen. En este contexto, las acciones que tomen los Estados para proteger el derecho a la educación serán cruciales para reducir o exacerbar la inequidad en el largo plazo. Los autores de este artículo analizan el caso de Chile, uno de los países de América Latina con mayores tasas de matriculación y completitud, a pesar de contar con el sistema educativo más segregado entre los países de la Organización para la Cooperación y el Desarrollo Económicos (OCDE). ¿Cómo se está garantizando el derecho a la educación durante la pandemia del COVID-19? Las medidas tomadas por el Ministerio de Educación, ¿están mitigando o agudizando las inequidades en el largo plazo? Los autores abordan ambas preguntas en base a las 4-As definidas por Katarina Tomasevski, en que se conceptualizan las obligaciones de los Estados para garantizar el derecho a la educación. En primer lugar, examinan las normativas que sentaron las bases del sistema educativo orientado en el mercado (1980-2013) así como las modificaciones propuestas por la última reforma educativa (2014-2017), que buscaron promover el derecho a la educación de calidad. Luego, los autores analizan las

medidas adoptadas por el Ministerio de Educación en respuesta a la pandemia. Concluyen que Chile está enfrentando un gran desafío para poder asegurar el derecho a la educación para todos. Por lo tanto, se requiere un nuevo contrato social para reducir las inequidades estructurales, y para evitar un potencial revés en materia de derechos humanos.

Introduction

The COVID-19 pandemic is pushing the world into a devastating scenario. The global economy is facing the deepest recession since the Great Depression (World Bank 2020), and chances of economic recovery are uncertain, likely to worsen with every additional wave of infection (OECD 2020).¹ Recent studies estimate that the sanitary crisis will be accompanied by increases in unemployment (CEPAL-OIT 2020; ILO 2020) and poverty rates, especially in developing countries (CEPAL 2020), and consequent retrogression in human development (UNDP 2020).

Despite low COVID-19 mortality rates among children, several reports estimate they will suffer the most due to social and economic effects of the pandemic, including hunger, domestic violence, school dropout (Sanz et al. 2020), child labour (ILO and ECLAC 2020; ILO and UNICEF 2020) and preventive diseases with an increasing rate of child mortality (UN 2020). Moreover, school closures are mainly affecting vulnerable children unable to access formal education, meals, vaccines, emotional support, and shelter. In this scenario, the actions governments are taking to protect their citizens' right to education are crucial, since they may reduce or exacerbate losses in the long term (Reimers and Schleicher 2020a, 2020b).

From a human rights perspective, governments have to *respect* (by avoiding any action that might deny access to school), *protect* (by eliminating cultural barriers and violence in schools) and *fulfil* the right to education (by making it available for everybody) (UNICEF 2007). While several international treaties describe governmental obligations, the most comprehensive mechanism is the *4-A scheme* conceptualised by the United Nations Committee on Economic, Social and Cultural Rights (CESCR 1999).²

In her *Manual on rights-based education*, human rights specialist Katarina Tomasevski (2004) labels the scheme “4-A” because it is based on four essential and interrelated features of education. The first two, *availability* and *accessibility*, were included in Article 13(2) of the *International covenant on economic, social and cultural rights*. (ICESCR) adopted by the United Nations in 1966 (UN 1966). In 1999, Articles 13 and 14 of the Covenant, both concerning the right to education, were elaborated with “general remarks”, including the other two features,

¹ This article was drafted in August 2020. Therefore, we consider all the measures applied by the Chilean Ministry of Education between March and July of 2020. It is important to mention that the vast majority of schools (more than 90%) remained closed throughout the entire school year.

² The 4-A scheme is considered in rulings by the Inter-American Court of Human Rights on cases regarding discrimination in the educational system (IACHR 2020a).

acceptability and *adaptability* (CESCR 1999, pp. 2–3). First, education should be *available*. Governments should ensure educational provision from early childhood education onwards, with adequate infrastructure, amenities, information and communications technology (ICT), libraries, trained and well-paid teachers. Also, governments should not interfere with private sector initiatives and academic freedom, as long as they meet the national standards of education (UNESCO 2019). Second, education should be *accessible*. An educational system cannot discriminate by ethnicity, religion, socio-economic background, or gender. Moreover, education should be economically and geographically accessible (free at primary level and progressively free in secondary and tertiary education). Third, education should be *acceptable*. Governments should provide quality education, fulfilling the aims of education defined in international treaties, to ensure that every child has an equal chance to develop her or his full potential, providing pertinent and culturally adequate contents. Therefore, parents are entitled to choose an education for their children based on religious or moral beliefs, while minorities are free to create their own schools. Finally, in accordance with the key principle of children's rights, education should be *adaptable* to the specific needs of each student, providing the assistance they require to promote their best interests (Tomasevski 2004).

Based on the 4-A scheme, our study analyses the case of Chile, one of the most successful countries in the region regarding educational achievement, universal enrolment and attainment (Gelber et al 2016; OECD 2016), but also one of the most segregated and unequal educational systems among member countries of the Organisation for Economic Co-operation and Development (OECD) (UNDP 2017), where educational attainment is primarily determined by household income (OECD 2010). The questions guiding our study were:

- *How is the right to education being guaranteed for all during the COVID-19 pandemic?*
- *Are the measures taken by the Ministry of Education mitigating or exacerbating long-term inequalities?*

To answer these questions, we examined the normative basis of Chile's market-oriented educational system (1980–2013), as well as the latest educational reform (2014–2017), and the measures adopted by the Chilean Ministry of Education in response to the pandemic.

Our methodological approach included the identification, collection and systematisation of all the national laws that set the basis for the market-oriented educational system, such as the National Constitution (GoC 1980), and other laws and decrees; furthermore, we considered the norms defined by the latest structural educational reform (GoC 2015a, 2016a, 2017), as well as the measures adopted by the Ministry of Education in response to the sanitary crisis caused by the COVID-19 pandemic. To analyse and interpret the data, we applied a *categorical thematic analysis*

(Strauss and Corbin 2002),³ we critically analysed each of these categories and contrasted them with the 4-A scheme (UNESCO 2019).

We begin by introducing the case of Chile, describing the legislative origins of the Chilean market-oriented educational system and evidencing the segregation and inequality it produced. Second, we analyse how the latest educational reform (2014–2017) aimed to promote the right to education for all, in terms of the 4-A scheme. Next, we critically analyse the measures implemented by the Chilean Ministry of Education during the first five months (March–July 2020) of the COVID-19 pandemic, and we assess the remaining challenges to guaranteeing delivery on the right to education for all. Finally, we present concluding remarks and recommendations.

Context: a market-oriented educational system which reproduces inequality

During the 1980s, the dictatorship of Augusto Pinochet initiated a neoliberal reform in Chile that dismantled public services, not only through several legislations but mainly by implementing a new Constitution (GoC 1980), which is still in effect. It was during this period that the basis for a subsidiary state and a market-oriented educational system was set (Torche 2005). First, the governance of public schools was decentralised to municipalities, which, instead of ensuring minimal resources or quality, left educational supply reliant on the unequal resources municipalities obtained from local revenues in a highly segregated territory (Flores 2008). Second, private and independent actors were authorised to easily open and manage a new type of school, privately owned but subsidised by the Chilean government. Third, vouchers were introduced to finance every public and private-subsidised school, based on enrolment and attendance (Bellei 2015). By the end of the 1980s, the competition between these schools not only increased but also became unfair. In 1988, the Ministry of Education started implementing the Educational Quality Measurement System (SIMCE) to gather information on students' academic performance at the national level, and publicly release schools' performance to inform parents on their school choice (Falabella and Ramos Zinche 2019). A hefty competition between schools was generated not only for resources, which were dependent on enrolment, but also for efficiency, measured with SIMCE results. Even though private government-subsidised schools had comparative advantages, the government provided the same resources for them as for public schools regarding school texts, infrastructure resources and technical support.

On the one hand, schools were allowed to select students (e.g., based on previous academic performance, religious background, family income) without transparent and public admission criteria. On the other hand, private-subsidised schools were authorised to charge an extra monthly fee from families at every educational level, as

³ Categorical thematic analysis is used to identify categories through a rigorous and systematic coding process.

well as receive private donations (Law 18.768, GoC 1988). The government did not control the use of these funds until 2011 (Law 20.529, GoC 2011). By 2013, only daytime municipal high schools were allowed to charge extra fees (i.e. co-payment), subject to several restrictions (Law 19.247, GoC 1993). To make matters worse, private school owners were able to profit from public funds (in 2016, 52% private-subsidised schools were for-profit), while municipal schools were barely able to keep up with their operational costs (Holz and Castro Paredes 2014; Treviño 2018).

These unequal conditions promoted a highly segregated educational system, even more pronounced than socio-economic segregation among households (Valenzuela et al. 2014). The number of municipal schools was reduced by half (80% in the 1980s and 37% in 2015) (Falabella 2015), teaching only one-third of the national student body, while private-subsidised schools increased to 50%, covering 60% of the national enrolment by 2014 (Treviño 2018). The high costs of co-payment, the restrictive admission criteria of private-subsidised schools, as well as the lack of supply of quality municipal schools in vulnerable areas, led to a concentration of vulnerable students in municipal schools and a massive exit of low-income high-performing students to the private-subsidised sector (Bellei 2013; Carrasco et al. 2017; Flores and Carrasco 2016). By 2013, 70% of students attending private-subsidised schools were required to pay extra fees (co-payment) compared to 17.3% of the students who attended municipal schools (Holz and Castro Paredes 2014).

Moreover, arbitrary selection already began in the early stages of students' trajectories. For pre-kindergarten and first grade admissions (primary school), 54% of private-subsidised schools selected students based on their previous academic performance, and 71% schools considered family income, compared to 32% and 41% respectively of municipal schools (Godoy et al. 2014). Even though evidence has shown that co-payment does not contribute to better academic results (Elacqua et al. 2011, 2013; Mizala and Torche 2012), the educational system is divided into three realities based on students' socio-economic level and the type of school they attend (ACE 2019; Treviño et al 2018). Results from the OECD's Programme for International Student Assessment (PISA) show that Chilean students from municipal schools perform as low as students from Thailand, students from private-subsidised schools perform just as well as Mexican students and students from non-subsidised private schools (which represent 9% of enrolment) perform on the same level as students from Finland (Rosas and Santa Cruz 2013).

To make matters worse, teachers are also segregated by school sector and area. While the most prepared teachers work in urban areas and private schools, the least trained teachers work in municipal schools (MINEDUC 2019). The segregation of human and economic resources by type of school is also reflected in students' differential academic trajectories (Larrañaga et al. 2014). While retention and dropout are more common in municipal schools (MINEDUC 2018a), students from municipal schools achieve lower scores in the university admission test (PSU), even worse in municipalities with low economic resources (DEMRE 2018; UNDP 2017; Quiroz Reyes 2020) and, therefore, have lower chances of being admitted to certified higher education institutions (Contreras et al. 2007).

After a massive student movement in 2006 against inequality and the privatisation of the educational system (Donoso 2016), legislative changes began. The most

relevant of these changes was the substitution of the *Organic Law of Education* (Law 18.962, GoC 1990), inherited from the dictatorship, with the *General Law of Education* (Law 20.370, GoC 2009) which, among other aspects, regulated the ownership and management of private-subsidised schools for the first time. First, it increased the regulations to open private-subsidised schools. Second, the selection of students by public and private-subsidised schools was forbidden in primary education, even though schools maintained this practice (Carrasco et al. 2015). Third, in 2008, the *Preferential Voucher Law* (Law 20.248, GoC 2008) changed the value of the voucher in two ways. First, it established an increase of nearly one third in the individual value of the voucher for students with low socio-economic status (priority students). Second, the law provided resources to schools based on their concentration level of priority students. In 2011, the Quality Assurance System (SAC) was created to define and supervise learning and achievement standards, schools' and students' progress annually (with standardised tests in maths and reading), provide guidance for schools to improve their results, as well as rank schools based on their results (Law 20.529, GoC 2011). These laws established the current high-stakes accountability system, which requires schools to prepare an improvement plan aimed towards increasing average school performance, and after repeated low scores, schools can be closed (Treviño et al. 2019, 2020).

The measures prompted by students' protests in 2006 were insufficient to adjust the inequalities because they did not tackle the basis of the market-oriented educational system. Therefore, a new wave of social movements erupted in 2011. Between 2014 and 2017, a structural educational reform was implemented. In the following section, we describe its main aspects and how it intended to promote the right to education for all considering the 4-A framework.

The latest educational reform (2014–2017): moving towards guaranteeing the right to education for all?

According to the Committee on Economic, Social and Cultural Rights (CESCR 1999), every "State party" (i.e. national government) must guarantee the right to education for all in four dimensions. As mentioned earlier, the 4-A scheme (Tomasevski 2004) determines that education has to be *available* from early childhood education onwards, with adequate infrastructure, amenities, ICTs, libraries, trained and well-paid teachers. Second, education must be *accessible*, guaranteeing that there are no economic barriers to accessing education and that no student is discriminated against due to their ethnicity, religion, socio-economic background, or gender, among other criteria. Third, education should be *acceptable*. Governments should provide quality education, ensuring that every child has an equal chance to develop her or his full potential, providing pertinent and culturally adequate contents. Fourth, education should be *adaptable* to the specific needs of each student, providing the assistance they require to promote their best interest.

Matching the evidence presented above against the 4-A scheme to identify *which aspects required attention* in order to guarantee the right to education for all, we find the following: The market-oriented and hyper-segregated educational system

reproduced socio-economic inequality (Valenzuela 2008; Valenzuela et al. 2010). Students' academic performance and trajectory was largely defined by the type of school they could access. Therefore, education was *not accessible* for every student due to economic barriers (co-payment fees), arbitrary admission policies among private-subsidised schools, and the lack of supply of quality public schools in vulnerable areas. Moreover, quality teachers were *not available* for every student, because the most trained ones worked in private and private-subsidised schools. Third, for the same reasons, the quality of education was also segregated by school sector. Hence, public education was *not necessarily acceptable*. *Adaptability* was mainly guaranteed for students with special educational needs (SEN), ensuring not only flexibility and adjustments in curricular programmes and teaching strategies in regular and special schools (Decree 170, GoC 2010a; Decree 83, GoC 2015b; Law 20.422, GoC 2010b), but also human and material resources to achieve educational goals (DFL 2, GoC 2010c). However, special programmes for SEN students were not mandatory, so access was not universally guaranteed for SEN students.

The latest educational reform (2014–2017) took care of each of these elements, aiming to guarantee the right to education for all. In this section, we analyse how the educational reform has improved the regulation of the right to education, in three main aspects. Since its implementation is gradual and has been delayed due to several obstacles, availability of information on its effects so far is still scarce.

Accessibility

According to recent data (OECD 2019a), Chile is the OECD member country which spends the most on education (17.4% of total government expenditure); 12% on primary and secondary levels, and 5.4% on tertiary education, while schools are mainly funded by the government (63% of the total budget). However, the expenditure per student is fairly low at primary and secondary level compared to other OECD member countries (USD 5,300 and USD 9,400, respectively). Moreover, early childhood education is funded by 1.2% of the Gross Domestic Product (GDP), covering 82% of the pre-primary institutions (compared to 69% in OECD countries) (OECD 2019a).

To guarantee every student's *access* to schools in the compulsory levels,⁴ a centralised application system was designed to eliminate arbitrary selection and co-payment in public and private-subsidised schools. The Educational Admission System (EAS) is an online platform where parents define their school preferences (Law 20.845, GoC 2015a). Schools are not allowed to ask for socio-economic background information, SEN tests, interviews, academic references or religious certificates to admit students. If there are available places, students are automatically assigned to their preference. If there are no available places in any of their preferred schools, an algorithm determines the best match between parental preferences and school

⁴ Education in Chile is free and compulsory from kindergarten to the end of secondary school. Children enter primary school (grades 1–8) at age 6. Secondary level, comprises 4 years of formal education, with different orientations in the last two years (either humanities and sciences or technical-professional subjects).

availability. In these cases, students with siblings in their preferred schools, as well as students whose parents work in their preferred schools, are prioritised. EAS has been gradually implemented by region and educational level. In the first and second year of its implementation, eight out of ten students were accepted into one of their top three preferences (82% in the first year and 79.3% in the second year), revealing a similar success rate as those experienced in comparable systems in other countries (Carrasco and Honey 2019a, b).

To eliminate economic barriers, the reform is gradually replacing *co-payment* with increasing government subsidies which, after a gradual implementation period, will allow free access to every public and private-subsidised school. Also, the reform eliminated *profit* in private-subsidised schools, making private-subsidised schools choose between becoming non-profit or private schools (without any financial support from the government). By 2017, 93.9% of private-subsidised schools had become non-profit schools (Treviño 2018).⁵

Despite these improvements, the educational reform does not guarantee universal access to SEN students. To enrol SEN students, private-subsidised and public schools must offer the Educational Integration Programme (*Programa de Integración Escolar*; PIE), which is not mandatory in every school. On the contrary, schools have to apply to include this programme, but they are not required to offer it. Therefore, the pool of accessible schools for SEN students is reduced (Treviño 2018).

Availability

The educational reform also aimed to promote *quality teaching*. It designed a new system for teachers' professional development and recognition which (1) increased selection criteria to apply for a teaching career; (2) defined more rigorous graduation criteria; (3) established that every institution and initial training programme had to be certified by the Ministry of Education; and (4) designed a professional development track, ensuring continuous training, external evaluations accompanied by pay rises and improved teaching conditions (Law 20.903, GoC 2016a).

The installation of a new system of professional development for teachers in 2016 included both public and private-subsidised school teachers for the first time since 1981. It incorporated measures for initial teacher training, in-service training, access to free training for trainee teachers, a significant salary increase of nearly 30%, and the provision of paid time for planning and evaluation.

⁵ This article focuses on compulsory education up to the end of secondary level, but the educational reform also took care of post-secondary and tertiary education, creating vocational institutes and public universities, and a system to ensure the quality of the educational supply at this level. For more information about the establishment of higher education institutions (HEIs) etc, see GoC (2015c, 2016b, 2018).

Acceptability

To increase the quality of public education, the educational reform introduced a new governance system, which is gradually substituting municipal administration of public schools with a centralised system dependent on the Ministry of Education. Public education will be transferred from 345 municipalities to 70 Public Education Local Services (PELS) (Law 21.040, GoC 2017). These aim to guarantee the provision of public quality education nationwide for compulsory levels. The recently approved *National Public Education Strategy* will improve the quality of education in the public system, considering enrolment, attendance, inclusion, school coexistence and curricular implementation, among other aspects (Educación2020 2020a, 2020b). Despite this improvement, the educational reform does not modify the competition between private-subsidised and public schools for students, because funding is still dependent on enrolment, and especially attendance (Treviño et al 2019). Moreover, schools maintain their competition for high-performing students because the high-stakes accountability system was not altered.

Second, to ensure that parents can freely choose the school for their children (UNESCO 2019), EAS ensures that parents have the last word deciding which (voucher or public) school their children will attend. However, the first EAS evaluation reports conclude that parents have not changed their preferences, partly because structural inequalities remain (residential segregation, transportation difficulties) and parents still have to decide among the available options in their surrounding areas (Carrasco and Honey 2019b). Among low-income families, parents tend to choose schools based on proximity (Flores and Carrasco 2016; Hofflinger et al 2020). Since the educational reform does not consider increasing the supply of schools in disadvantaged areas, low-income families remain dependent on the quality of their nearby schools.

To sum up, Chile's educational reform has made legislative progress in order to ensure accessibility, availability and acceptability. However, the success of these improvements is limited due to the lack of changes in structural inequalities, and the maintenance of the basis of schools' competition for students. Moreover, students are still not at the centre of the educational process. The *absence of adaptability measures* in the educational reform maintains the disadvantage of vulnerable groups, especially SEN students.

Measures to fulfil the right to education during COVID-19 in Chile: still far away from students' needs and context

Due to the pandemic, the vast majority of Chilean schools remained closed during 2020.⁶ This implies that 3.6 million students have been trying to learn remotely (91% enrolled in public schools), while 200,000 teachers have been trying to teach

⁶ A reduced number of schools (903 out of a total of 11,574) located in specific areas with low levels of infection reopened by the end of the year (MINEDUC 2021).

remotely since March. In the context of a highly segregated educational system, as demonstrated above, our particular interest lies in investigating *what measures have been implemented to guarantee the right to education for all*. Even though international and national agencies recommend flexible, heterogeneous and interdisciplinary responses adjusted to local and school situations (Meneses et al. 2020; Montecinos et al. 2020; Reimers and Schleicher 2020b), the Chilean Ministry of Education implemented centralised, unilateral and uniform measures for the public and private-subsidised educational system. Moreover, despite socially segregated access to and usage levels of the internet, the vast majority of the adopted measures were implemented online only. Below, we match the measures promoted by the government against the 4-A scheme, investigating to what extent they guarantee the right to education for all, as well as identifying the remaining challenges.

Availability-

Most of the measures implemented by the Chilean government during the first months of the COVID-19 pandemic aimed to guarantee *the availability of infrastructure* for remote education, through four main mechanisms: (1) technological tools (ICT scholarships from JUNAEB);⁷ (2) online platforms for every educational level (a *Learning on Line* website)⁸ and free access to Google Suite (a collection of tools and software resources), as well as several platforms for early childhooding (the *Del Jardín a la Casa* website,⁹ App *Mi Jardín*, IntegrApp); (3) schemes for increasing internet access (*Solidary plan for connectivity*; *Connectivity for Education 2030*);¹⁰ and (4) TV programmes (TV Educa Chile).

Second, the Ministry of Education has made *pedagogical and didactic resources* available not only for early childhood teaching and learning (school supplies, activity guidelines and reading materials for families living in isolated areas), but also for primary and secondary education (a digital library to download free e-books; a *Learning at home* plan with printed materials to study at home; a *Pedagogical support plan* for high-performing public high schools).¹¹

⁷ Junta Nacional de Auxilio Escolar y Becas (JUNAEB) is the National School Aid and Scholarship Board. For more information, visit <https://www.junaeb.cl/becas-junaeb-old?lang=en> [accessed 10 January 2021].

⁸ The Learning on Line website is at <https://www.curriculumnacional.cl/estudiantes/Ingreso> [accessed 22 January 2021].

⁹ The *Del Jardín a la Casa* [from the garden to the house] website is at <https://www.junji.gob.cl/del-jardin-a-la-casa/> [accessed 17 January 2021].

¹⁰ The *Solidary plan for connectivity* (MTT 2020) was launched on 1 April 2020. It allows users struggling to pay their bills to temporarily suspend their regular telecom service charges and activate a free 60-day connectivity bundle to browse the web and access e-mails, albeit excluding the use of data-intensive activities such as video streaming and online gaming. The *Connectivity for Education 2030* project (MTT-MINEDUC 2020) was launched on 17 June 2020. It fast-tracked the provision of high-speed broadband access to several thousand schools in Chile.

¹¹ High-performing public schools are a small group of exemplary schools in terms of quality and status, all of which are located in Santiago de Chile. For more information, see Quaresma (2017).

Finally, to promote *quality teaching*, several programmes are being offered to train teachers in distance teaching (an *Action plan for tertiary education institutions*; the provision of training and online seminars by the Ministry of Education's Centre for Retraining, Experimentation and Pedagogical Research [CPEIP];¹² the provision of mentorships for principals by the Education Quality Assurance Agency [ACE]),¹³ and also to promote collaborative teaching through the website of the Ministry of Education and its dependencies. Part of these strategies include the dissemination of successful practices in different schools, as well as providing access to online resources from different countries (*Action plan for tertiary education*) and guidelines for teachers to support online teaching at kindergarten, primary, secondary and tertiary levels (MINEDUC-UCE 2020a; MINEDUC-DEG 2020a, 2020b; MINEDUC 2020a; MINEDUC-SdES 2020).

Accessibility

The measures mentioned above are mostly digital. However, not every student or teacher has adequate access to the internet, digital equipment, and few have competent digital skills. Therefore, the measures listed above are not accessible to all. The first hurdle is unequal access to digital equipment. According to the latest nationally representative household survey (CASEN 2017), 65.19% of impoverished persons and 65.3% of individuals living in rural areas do not have a computer in their households. Moreover, almost half of the students in Chile (45.7%) do not have digital equipment in their homes nor internet connection, and those who do have internet can only access it through their phones (Educación2020 2020a)

Second, households' structural conditions also affect accessibility. In Chile, access and use of the internet and ICTs are largely determined by income level, age, area of residence, and educational level (León and Meza 2018). Furthermore, while 41% of individuals who did not complete primary education do not use the internet, the proportion of individuals with graduate studies who do not use the internet is less than 2% (CASEN 2017). Moreover, students who can only access printed materials require guidance or support from an adult to complete their tasks. Considering that almost 20% of Chilean households are single-parent families, a large number of students may not be able to rely on this support.

Third, inequality is reflected in digital skills. Chile presents a higher level of inequality in internet use than the OECD average, and it is one of the countries with the lowest level of digital skills and education in the group (OECD 2019b). According to the *Digital Readiness Index* (Yoo et al. 2018), a holistic approach which

¹² The *Centro de Perfeccionamiento, Experimentación e Investigaciones Pedagógicas* (CPEIP) sets the guidelines and standards for teachers' and principals' professional development, provides leadership and training courses, and also evaluates teachers' performance. For more information, visit <https://www.cpeip.cl/> [accessed 21 January 2021].

¹³ The *Agencia de Calidad de la Educación* (ACE) designs and implements standardised evaluation tests for students at the national level, and also provides guidelines to schools to improve student achievement. For more information, visit <https://www.agenciaeducacion.cl> [accessed 21 January 2021].

considers the technological adoption and infrastructure among other aspects, Chile is geographically segregated, and only three out of fifteen regions (the Metropolitan Region of Santiago, Antofagasta, and Magallanes) have achieved a high level of digital readiness (León et al. 2019).

A fourth critical aspect is whether students have adequate space to study. According to a recent survey, the vast majority of students (67%) do not have materials at home to complete their homework and tasks, do not have a space to study (63%), do not have a place in their households where they can concentrate on their school tasks (80%), cannot count on an adult at home (76%) or a teacher for help (63%) (Educación2020 2020a).

Considering these unequal structural conditions, it is worth questioning the pertinence of the measures implemented by the Ministry of Education to guarantee the right to education during the pandemic. If students and teachers cannot access the internet smoothly, have no digital equipment and do not necessarily have high digital skills, they may not be able to take advantage of measures which are all online. It is not surprising that only half of the teachers are using the school's texts provided by the Ministry of Education (49%), and only 27% use the Ministry's digital platform #AprendoenCasa (Hinostroza et al. 2020).

Acceptability

A central aspect of fulfilling the right to education is that students access *quality education*. In an attempt to ensure quality education and diminish the impact of the pandemic in learning achievements, the Ministry of Education has reduced and prioritised the learning goals and objectives in primary and secondary level curricula (MINEDUC-UCE 2020a, 2020b), and also provided technical-pedagogical strategies to adjust the curriculum for early childhood education (MINEDUC 2020b).

An acceptable education recognises children and adolescents as persons with rights (UNESCO 2019). Therefore, the government and the individuals in charge of children and adolescents must provide conditions which adequately protect their rights (UN 1989). However, during the pandemic, 63% of students report feeling bored, and 41% feel anxious or stressed due to the sanitary crisis (Educación2020 2020a). To promote students' well-being, an aspect which the vast majority of teachers consider pivotal today (Elige Educar 2020), the Ministry of Education offers a set of guidelines not only for students and their families, but also for teachers. These guidelines include recommendations for teachers' self-care, video capsules with experts providing key elements for socio-emotional support, online conferences focused on the provision of student support, guidelines to balance academic and household demands, and assistance for the return to schools, among other aspects (MINEDUC-DEG 2020b). The office of the Childhood Secretary has also offered guidelines and recommendations to support and disseminate topics related to the sanitary crisis (MINEDUC 2020b).

The Ministry of Education has made efforts to promote students' physical well-being during the pandemic, elaborating protocols to reduce COVID-19 infection in day-care centres, schools and tertiary education institutes, as well as to disseminate

strategies to prevent and monitor the spread of COVID-19 (MINEDUC-UCE 2020c).

Adaptability

To guarantee the right to education, the supply of education must be *adapted* to the specific needs of each student, providing the assistance they require to promote their best interests. This is particularly relevant in the Chilean case, where 5.12% of students have special educational needs (Holz 2018), and the enrolment of immigrant students has almost quadrupled between 2015 and 2017 (113,585 students) (MINEDUC 2018b). However, during the pandemic, the Ministry of Education has not properly prioritised these groups. It has only provided complementary guidelines for immigrant students and remote teaching strategies for special needs students (MINEDUC-DEG 2020b; 2020c; MINEDUC-SdES 2020).

To sum up, the educational measures implemented by the Chilean government during the pandemic of COVID-19 attempted to make education available, ensuring the provision of online platforms, digital pedagogical resources, and teacher training for online courses. However, the accessibility of these resources could not be granted for every student and teacher due to the high segregation of the educational system and the structural inequality of Chilean society. As in a domino effect, the government measures related to acceptability and adaptability were not universally accessible either. Based on the evidence we have presented above, we have found that the right to education is not being guaranteed for all during the pandemic, partly because the measures adopted by the government do not consider the high segregation of society and the educational system.

Conclusions

Chile continues to be characterised by a market-oriented educational system, where socio-economic disadvantages are reproduced (García Huidobro 2007; López 2014). The recent educational reform aimed to ensure the right to quality education for all. However, despite its efforts, the right to education in Chile is still not guaranteed for all, because structural inequalities remain intact. The reform eliminated the economic and administrative barriers to access public schools, as well as privileging parental freedom to choose schools, forbidding schools' arbitrary selection processes. Nonetheless, the lack of investment in the provision of public education for all, as well as the lack of adaptability measures, maintain the disadvantages of vulnerable groups (namely immigrant, Indigenous, low socio-economic status and special needs students). Moreover, the educational reform did not address the inefficiency of the high-stakes accountability system (based on standardised tests), maintaining the competition between public schools for high-performing students. Briefly, Chile is still struggling to guarantee two of the four components of the right to education. Without ensuring availability and accessibility to all, achieving acceptability and adaptability may not be possible.

The measures adopted by the Ministry of Education during the early stages of the COVID-19 pandemic exposed – and to some extent exacerbated – existing structural inequalities of the educational system, revealing the impossibility of its transformation without tackling the basis of inequality in Chile. The focus on remote education is not sustainable without universal high-quality connectivity, as well as teachers' and students' complex digital skills. The best interests of every student are not being prioritised, despite the recommendations of the Inter-American Court for Human Rights (IACHR) which compel governments not only to limit or affect human rights (in necessary temporary regulations such as physical distancing etc.) based on scientific criteria, but also to guarantee social, cultural and economic rights especially for the most vulnerable groups, such as children and adolescents (IACHR 2020b). Despite the sanitary crisis, the government must protect and guarantee the normative content of the right to education defined in the different legal instruments. New legislations and programmes should be encouraged in order to progressively guarantee education for all.

A central aspect of human rights is progression. Once certain rights have been achieved, they should not be reversed (Courtis 2018). A great challenge which Chile is facing today, in the context of COVID-19, is to avoid a setback in the right to education, moreover in the context of an economic and social backlash. Considering the legislative progress achieved by the educational reform in establishing the basis for a universal right to quality education, it is still necessary to complement this reform with others that can promote an equal society. Chile's constitutional debate allows us to imagine what type of social contract we need to fulfil the right to education for all, in consonance with others. Re-defining the right to education in the Constitution may restore the Chilean government's responsibilities with regard to education and set the basis for the development of a state which not only guarantees the right to education, but also *fulfils* it (Cortés and Villalobos 2018).

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Denisse Gelber PhD (University of Texas, Austin), is a researcher at the Centre of Advanced Studies on Educational Justice at the Pontifical Catholic University of Chile, in Santiago, Chile. For the last 15 years she has specialised in education, poverty and social mobility, with an increasing focus on pedagogical practices and inclusion.

Carolina Castillo is an anthropologist (University of Chile) with a Master's degree in sociology (University of Barcelona). She is currently a researcher at the Centre of Advanced Studies on Educational Justice at the Pontifical Catholic University of Chile, in Santiago, Chile.

Luciano Alarcón is a lawyer (University of Chile) and is currently taking two diplomas in Human Rights and Public Law (University of Chile).

Ernesto Treviño PhD (Harvard University), is the principal researcher of the "Pedagogical inclusion" unit at the Centre of Advanced Studies on Educational Justice, and is also the director of the Centre for Educational Transformation at the Pontifical Catholic University in Chile.

Rosario Escribano PhD (Pontifical Catholic University of Chile), is a researcher at the Centre of Advanced Studies on Educational Justice at the Pontifical Catholic University of Chile, in Santiago, Chile. She specialises in quantitative analysis, classroom observations, quality of pedagogical practices, and teacher evaluation.

Authors and Affiliations

Denisse Gelber¹ · Carolina Castillo¹ · Luciano Alarcón² · Ernesto Treviño¹ · Rosario Escribano¹

Carolina Castillo
carolina.castillo@uc.cl

Luciano Alarcón
lucianoalarconflores@gmail.com

Ernesto Treviño
ernesto.trevino@uc.cl

Rosario Escribano
mdescrib@uc.cl

¹ Centre of Advanced Studies on Educational Justice, Pontifical Catholic University of Chile, Santiago, Chile

² Human Rights Programme, University of Chile, Santiago, Chile