

LAW, POLICY, & POVERTY: ENTREPRENEURSHIP IN CHILE BY AND FOR URBAN POOR FEMALES

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Executive Summary

Chile is currently attempting to jumpstart its entrepreneurial sector. This government initiative is optimally planned given the Chilean economy has been growing at an average rate of 4.1% over the last ten years, has experienced positive net growth on a yearly basis for the last twenty years, and is generally perceived as less of an investment risk than any of its southern cone neighbors. In spite of its record growth, Chilean society remains highly stratified. More than 40% percent of the country's wealth is concentrated in the coffers of the top 10%, creating not only the third largest income gap in Latin America but also a charged political climate where the competing interests of a mass of urban poor and an extremely small elite in large part dictate law and policy. The income disparity is often cited as the driving factor behind poverty in Chile. Thus, most of the public policy promulgated by recent administrations addressing poverty has aimed at narrowing the gap.

In recent years, Chile's approach towards poverty reduction has blended pre-existing public welfare programs with newer programs aimed at supporting and promoting domestic entrepreneurs as well as incentivizing foreign entrepreneurs to launch their ventures in Chile. Under this plan, a great deal of the resources are earmarked for innovative and scalable start-ups and those services supporting the growth of these high-potential businesses such as Start-up Chile and CORFU. Among the various reasons for pursuing this course, one of the country's goals is that the economic benefits of these start-ups as well as the 'business know-how' of the entrepreneurs themselves will trickle down through the middle and lower classes and help to narrow the income gap.

One of the pre-existing programs the government has continued to fund is *El Fondo de Solidaridad e Inversion Social* ("FOSIS"). Created in 1990, FOSIS targets the poor and places a heavy emphasis on helping female heads of household start micro- and small-businesses. Despite the fact that the FOSIS program has had positive results, the overall tide of state action with regard to entrepreneurship and poverty appears to be gravitating away from 'entrepreneurism by the poor' and towards 'entrepreneurism for the poor.' The difference being that scalable start-ups are receiving more state support based on the assumption that the benefits of their successes to the economy will filter down to the other classes. Two questions, which frame this report but are beyond its scope, are whether this 'entrepreneurism for the poor' model will sufficiently impact the poverty level given Chile's economic imbalance? Secondly, what are impoverished would-be entrepreneurs to do until such benefits are realized?

Unlike the methodology used in many African and Asian countries, where individuals living on USD\$1/day or less are categorized as impoverished, Chile designates individuals as impoverished ("*pobreza*") or indigent ("*indigencia*") based on their ability to afford a Basic Food Basket ("*Canasta Basica de Alimentos*"). The fictionalized basket, updated monthly by the National Institute of Statistics, is representative of the products necessary to meet a person's minimal daily caloric needs. Families whose net incomes are at or below 200% basket value are deemed

impoverished while families at or below 100% basket value are said to be indigent. The category in which one falls is important because it qualifies one for varying levels of public assistance. The Chilean government has set the aspirational goal of eliminating indigent poverty by 2014. However, progress towards this goal has been slow as the purely income-based definition of poverty does not address the additional personal and systemic factors affecting poverty.

Some systemic factors that make it more difficult for impoverished female heads of household to launch businesses as a means of lifting themselves from poverty include:

- Limited support for programs such as FOSIS which focus on the poor;
- Lack of a personal bankruptcy framework
- Insufficient access to funding/credit markets;
- Poor communication between government offices;
- A complicated formalization process for businesses; and
- Wide discretion on the part of health inspectors.

Personal factors exacerbating this problem include:

- Underdeveloped and/or ineffectively used social-networks among the impoverished classes;
- A general society-wide misunderstanding of the role failure plays for many successful entrepreneurs;
- Lack of education on economic regiments and how the choice affects a female's rights to her property.

Acknowledging the specific scope of the research, and therefore the inability to consider *all* of the factors implicated in discussions on poverty and entrepreneurship in Chile, my recommendations for improving the experience of impoverished female entrepreneurs can be separated into three categories: Legal, Process, and Execution.

Legal

In order to better address the problem of poverty, it would be beneficial to reevaluate the method for determining poverty with an eye towards expanding the criteria considered in the determination. The current structure fails to adequately capture those families that experience poverty in transience (as opposed to the chronically poor). As such, many entrepreneurs who could benefit from public aid programs are categorically disqualified.

Secondly, the government can re-energize micro- and small-scale entrepreneurship through reform of Chile's bankruptcy laws and tax structure. The absence of a personal bankruptcy framework deters many entrepreneurs in Santiago. Were it that some legal mechanism existed to off-set the high risk of life-long debt, the numbers of successful businesses launched would likely increase over time. A reform of the tax structure could also prove beneficial. Given the bare profitability of most micro-enterprises started by the poor, it is not uncommon for the entrepreneurs to avoid formalizing their businesses as it triggers tax obligations that further undercut profits. It would be fruitful to investigate the possibility of a tiered taxation system, tax breaks, or a roll-over tax credit system for micro- and small-businesses which would incentivize more owners to formalize their businesses.

Third, despite the initiatives being taken by the state to educate society on the economic regiments available during marriage, interviews suggest that many poor women do not sufficiently understand the implications of choosing one over another. A problem made worst by the fact that the *Sociedad Conyugal* regiment remains the default in spite of a report by the Inter-American Commission on Human Rights that found it to further economic inequality between genders. The government should increase its education campaign on the options available with attention given to each spouse's property rights under the three options.

Process

The formalization process for businesses should be reviewed, and where possible, streamlined to facilitate easier use by applicants. This can be done by: 1) improving communication and the exchange of application materials between offices; 2) reducing paperwork required of applicants; 3) clarifying directions, what documentation is required, and what needs to be notarized; and 4) making available to the public the standards and guidelines used by health inspectors.

Execution

Of the public programming aimed at entrepreneurship and the poor, the FOSIS program has shown the most potential for facilitating the entrance of impoverished women into the entrepreneurial sector. However, its work is limited by a lean budget. Increased funding over the short term (e.g. until the benefits of the administration's scalable entrepreneurship focus are reaped) will enable the *Fondo* to reach a larger percentage of the poor. Similarly, given the success of the FOSIS model, it may be worthwhile to explore the possibility of rolling-out a larger state program aimed at lower- and middle-class entrepreneurs built from the FOSIS model.

Conclusion

Chile has done a great deal of work to increase the levels of civic participation, educational attainment, income levels, and the overall sense of equality experienced by the poor. However, while progressive, the changes have not moved the country far enough along to reach its goal of eliminating indigence by 2014 and significantly decreasing the poverty rate. While the environment for start-ups in Chile has improved and job creations as well as incomes are rising, the benefits from these actions have yet to have a pronounced impact on poor and at-risk communities.

In deciding to build-up its entrepreneurial sector, the country has focused its resources mainly on improving conditions so as to attract scalable entrepreneurial ventures. Without comment on the 'correctness' of this social policy, one result is that the needs of the poor are not being adequately addressed. Although the Chilean government has taken large steps to support entrepreneurship by impoverished women as a means of tackling the poverty problem, barriers remain that prevent these women from using micro-enterprise as a way to lift themselves and their families from poverty. Similar to the proverb, Chile is at a point where it must decide whether it will give these women a meal today or equip them with the skills and training to lead independent lives the remainder of their days.

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Part A. Country Profile

Chile is a country of remarkable differences - from the driest desert on earth to the tundra of Patagonia, the mountainous Andes to temperate rainforests of the south.¹ This polarization extends beyond the physical amenities and natural resources of the country, it can also be found in the economic disparity and stratification of Chilean society. The Chilean economy has been growing at an average of 4.1 % for the last ten years. Despite being an economic beacon in Latin America, only Brazil and Guatemala have less equitable income distributions.² More than 40% of Chile's wealth is concentrated in the hands of the



wealthiest top 10%, “this huge disparity has created a large social divide in which a relatively small middle class is caught between a huge mass of urban and rural poor and a small and extremely influential elite.”³ “Fundamental to the shifts in economic policy over the years is the importance attached to income distribution by the changing administrations”⁴ and its use as the primary indicator of ‘poverty’ in Chile.

i) Determining Poverty in Chile.

Unlike many Asian or African countries which apply the UN-based framework to define poverty as the situation of those persons living on USD\$1 or less a day,⁵ in Chile, poverty is defined as living below a preset level of monthly income.⁶ This poverty line of sorts is measured by the ability to afford a Basic Food Basket (“*Canasta Basica de Alimentos*” or CBA) and beyond categorizing the poor is also distinguishes between poverty and extreme poverty.⁷ Taking into account local food consumption habits, other ‘necessary’ expenses, and the fluctuating cost of goods, the National Institute of Statistics puts together a fictional basic food basket composed of a representative group

¹ This report was made possible through support from the University of Notre Dame Law School’s Program on Law and Human Development. The author is grateful to Un Techo for providing space and local know-how during my two months in Santiago; the Notre Dame Office in Chile for ensuring that I was taken care of on the ground; and Casa Jazz Montt for housing, company, and putting a face to entrepreneurs in Chile. The content of this report is the sole responsibility of the author and does not necessarily reflect the opinions of the Program on Law and Human Development, Un Techo, nor any the interviewees.

² Encyclopedia of the Nations. *Chile – Poverty and Wealth*. citing United Nations, Human Development Report 2000; Trends in Human Development and Per Capita Income. Available at <http://www.nationsencyclopedia.com/economies/Americas/Chile-POVERTY-AND-WEALTH.html> (last visited October 19, 2012).

³ *Id.*

⁴ *Id.*

⁵ Jacobo Schatan, *Poverty and Inequality in Chile: Offspring of 25 Years of Neoliberalism*, 30 DEV. & SOC. No.2 57, 73 (December 2001) Available at <http://isdpr.org/isdpr/publication/journal/30-2/03Jacobo-%EC%82%BC.pdf>.

⁶ The Chilean methodology for determining poverty was formulated by the Economic Commission for Latin America of the United Nations (CEPAL) in 1987.

⁷ *Id.*

of products that together should provide a person's minimum caloric needs.⁸The cost of this food basket is the poverty line for the given month.⁹

In Chile, extreme poverty/indigence (“indigencia”) is addressed separately from poverty (“pobreza”). Poverty describes those persons whose incomes are less than twice the value of the CBA for a given month in urban areas¹⁰ or one and three-quarters the value of the CBA in rural areas.¹¹ Indigent applies to those persons whose per capita incomes do not cover their nutritional needs – the value of the CBA.¹² For December 2011, the CBA was Ch\$36, 325.¹³ The chart below identifies the categories included in the CBA as well as sample pricing.

Table 1. Cost of the Canasta in December 2011 and its composition		
Food Group	Cost in Ch\$	% of Canasta price
Bread and Cereals	10, 975	30.4
Meats	6,773	18.8
Fish	799	2.2
Milk products and eggs	3,923	10.9
Oils	2,148	6.0
Fruits	1,908	5.3
Vegetables, legumes, tubers	5, 125	4.2
Sugar, coffee, tea, sweets, and condiments	2,197	6.1
Drinks	1,822	5.1
Food and drink outside of the home	656	1.8
	Cost per person per Month: Ch\$36,325 (~US\$76.00)	Total 100%

⁸ *Id.*

⁹ *Id.* at 74.

¹⁰ *Pobreza en Chile* (Poverty in Chile), at slide 2. Nov. 12, 2006. Available at <http://www.slideshare.net/clio/pobreza-en-chile>. (Last visited October 19, 2012).

¹¹ *Id.* at 3.

¹² *Id.* at 2.

¹³ Ministerio de Desarrollo Social, IPC de La Pobreza, Costo de la Canasta Basica de Alimentos Diciembre 2011 (Chilean Poverty Index Cost of the Basic Food Basic for December 2011). Available at http://www.ministeriodesarrollosocial.gob.cl/casen/publicaciones/2011/diciembre_2011.pdf

Source: Ministerio de Desarrollo Social with information from CEPAL and INE.

Since the 1990s, the levels of poverty and indigence in Chile have been decreasing.¹⁴ However, in 2009, and for the first time in twenty-three years, the results of CASEN – a national poverty census¹⁵ – showed that poverty rose to 15.1% from the 13.7% in 2006.¹⁶ Female headed households accounted for 33.1% of the overall poverty rate.¹⁷ This said the methodology used to determine this number has recently come under scrutiny with critiques arguing that the figures are misleading; another calculation showed higher poverty and indigence levels than the official figures.¹⁸

ii) **Historical Overview of Chile's Progress in Reducing Poverty**

Beginning in 1990, on the heels of Chile's economic meltdown, the newly elected government of Patricio Aylwin placed the fight against poverty atop his agenda.¹⁹ The Chilean government's 'Growth with Equity' approach, which would continue throughout the decade, was "based on an explicit pro-growth strategy balanced by aggressive social policies."²⁰ The seven-part strategy included:

- Opening the Chilean economy to world trade
- A conservative fiscal policy aiming for both a budget surplus and a reduction of public debt
- Expansion of the domestic capital markets
- Increasing employment levels
- Modernizing the government via technological improvements
- Promoting private-sector competitiveness (including bankruptcy reform).
- Reform of labor and tax policies, including a tax increase that allowed the government to increase public spending by than 200 percent throughout the 1990s.²¹

After a large initial drop in between 1990 and 1996, the rate of poverty reduction slowed down. (See, Table 2). However, the Chilean economy continued to grow at 6% per year during the decade and the poverty level was eventually reduced from 40% of the population to 20%.²² This combination of "high growth and active redistributive policies" also



¹⁴ *Pobreza en Chile*, supra note 8, at 5.

¹⁵ Ministerio de Planificación, *Situación de la Pobreza e Indigencia 1990-2009, CASEN 2009 Encuesta de Caracterización Socioeconómica Nacional*, (13 July 2010) Available at <http://www.slideshare.net/nelson3108/resultados-casen-2009>. (Last viewed October 19, 2012).

¹⁶ *Id.* at 27.

¹⁷ *Id.*

¹⁸ See, Jacobo Schatan, *Poverty and Inequality in Chile: Offspring of 25 Years of Neoliberalism*, 30 DEV. & SOC. No.2 57, 75-76 (December 2001) Available at <http://isdpr.org/isdpr/publication/journal/30-2/03Jacobos-%EC%82%BC.pdf>.

¹⁹ Alejandro Foxley, *Successes and Failures in Poverty Eradication: Chile*, INT'L BANK FOR RECON. & DEV./THE WORLD BANK, p.1 (2004), available at: http://www.hawaii.edu/hivandaids/Successes_and_Failures_in_Poverty_Eradication__Chile.pdf.

²⁰ *Id.*

²¹ *Id.*; see also, Andres F. Martinez. "Chile: Increasing Transparency in Insolvency Proceedings." Celebrating Reform, p.2 (2009). Available at: <http://www.doingbusiness.org/reports/case-studies/2009/insolvency-proceedings-in-chile>.

²² Foxley at 1.

halved the income gap between the top twenty highest earning households and their counterparts at the bottom.²³ A study comparing social policies in the 1980s and 1990s shows that about 60% of the poverty reduction Chile experienced in the 1990s could be traced to general economic growth and 40% to the social policies put into place.²⁴ These social policies focused on increasing wages and minimum wage, expanding income-support programs for low-income families, and improving pensions.²⁵ A key to understanding the success in reducing poverty lies in the “balanced nature of the equation: an active pro-growth agenda and aggressive social policies focused on poverty reduction.” Studies done in Chile have found that good growth performance is not the sole driving force behind poverty reduction - active social policies do make a difference.²⁶

Year	1990	1992	1994	1996	1998	2000
Poor	-536	-634	-551-	-492	-128	-79
Indigent	-466	-490	-133	-223	-7	+29

Source: Banco Central (2001) and MIDEPLAN (2001), op. cit.

a. What factors affect poverty?

Wages in Chile have outpaced inflation every year since 1990; this pattern reflects the high levels of productivity in the country.²⁷ Increased wages in turn have helped increase living standards in general and further growth of the labor force. ²⁸ In spite of the growing economy and the government’s continued support of those program an tactics used in the past to tackle poverty as already noted, unemployment levels unexpectedly rose in 2009. This raises the question of what factors are affecting poverty?

What is often cited as the ‘principle factor’ behind poverty in Chile is the distribution of income.²⁹ However, additional factors have been identified which improve or worsen one’s chances of falling into poverty. Educational attainment is one

²³ *Id.*

²⁴ *Id.*

²⁵ Foxley at 2.

²⁶ *Id.* at 9-10 (Another way of looking at these results is that, with social expenditures maintained at the level of the late 1980s, and identical growth rates as experienced in the 1990s, poverty in 1996 would have been 28 percent of the population, instead of the 23 percent actually achieved. Social policies did make a difference).

²⁷ Encyclopedia of the Nations. *Chile – Poverty and Wealth*. citing United Nations, Human Development Report 2000; Trends in Human Development and Per Capita Income. Available at <http://www.nationsencyclopedia.com/economies/Americas/Chile-POVERTY-AND-WEALTH.html> (last visited October 19, 2012).

²⁸ *Id.* (Unemployment has varied in recent years leading up to 1999, with annual rates between 4.5 to 6 percent).

²⁹ *Pobreza in Chile*, *supra* note 5 at slide 6 (Latinoamerica has the highest levels of income inequality. Within Latinoamerica, Chile occupies the second worst spot.)

such factor. One recent study conducted in Chile found that a traditional high school and college education by itself did not increase one's odds of exiting poverty.³⁰ On the other hand, more educated households did have a smaller probability of falling into poverty.³¹ Training in a technical field, however, increased the probability of exiting poverty while also lowering the probability that one would fall into poverty.³² The “asymmetry [in the study's results] suggests that technical education provides households with a type of insurance against poverty.”³³

The section of the economy where the head of household worked was also shown to be a determining factor in whether a family would fall into or rise from poverty. The armed services as well as those employed as domestic servants or maids (‘nanas’) were found to have a higher probability of exiting poverty over time while public service works tended to have a lower probability of falling below the poverty line.³⁴ There is also evidence to suggest that in Chile a household's demographic composition also an “important determinant of poverty dynamics.”³⁵ Homes with younger heads of household had a higher probability of falling into poverty while the higher the number of children under the age of 15, the less likely it is for a household to exit from poverty.³⁶ Finally, families that own a second home were found to weather economic shocks better than their non-owner and single-home ownership counterparts and therefore had a lower probability of falling into poverty.³⁷ Those households where the head reported a significant health problem had a significantly higher chance of becoming ‘impooverished’ – a statistic that suggests that health problems have a disproportionate effect on the incomes of those families hovering above the poverty line.³⁸

b. Evolution of Policies and Programming to Address Poverty

The Chilean government in the last ten years has explored different options to solve a key problem of the poverty quagmire: “permanent economic insecurity” – a problem largely caused by the effects of income shocks on poor or at risk families such as “loss of jobs, serious health problems, and the break-up of families or the impossibility of meeting school financial needs.”³⁹ The World Bank identifies this problem as “poor social risk management vis-à-vis poor families” finding additionally that such insecurity reduces family cohesion and reduces motivation in the classroom, the job market, and during the process of retraining.⁴⁰ Early efforts by the government to overcome this problem consisted of various experimental programs focused on organizing groups of indigent families around specific projects that would allow them to

³⁰ Christopher Neilson, Dante Contreras, Ryan Cooper and Jorge Hermann, *The Dynamics of Poverty in Chile*, p.16 (2008). Available at http://captura.uchile.cl/jspui/bitstream/2250/6641/1/NEILSON_CHRISTOPHER.pdf.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 16-17.

³⁶ *Id.*

³⁷ *Id.* at 17.

³⁸ *Id.* (Also “the health problem variable is only relevant for a set of poverty lines between Ch\$40,000 and CH\$50,000 per capita, which is roughly the second-third decile of the population.”).

³⁹ Foxley at 12, n.4.

⁴⁰ *Id.* at 12.

improve their condition.⁴¹ These programs focused on credit access for microenterprises, upgrading skills, small irrigation projects in rural areas, youth training programs and housing and environmental improvement in squatters and slums.⁴²

The first-generation social-welfare programs represented a step away from the typical attempts at decreasing poverty by solely tackling access to health, education and the social infrastructure.⁴³ This new set of experimental programs explicitly required the active involvement of indigent individuals and/or families. Although the programs initially met with high reception, over time the weak aspects of the programs also came to light. First, there was “no cumulative effect.”⁴⁴ Given the programs were structured to provide assistance by way of specific and compensated project, when a project was completed the progress was undone unless new projects were designed for the same participants. A second shortcoming was the low percentage of the poor reached by these programs.⁴⁵ Ironically, although these critiques were recognized early on, they remain applicable to the current state welfare programs (e.g. FOSIS) albeit to lesser degree.



In 1994, President Frei attempted to revamp these programs by designing a National Plan of Poverty Eradication whereby the government’s resource earmarked for reducing poverty would be focused on pre-selected districts with high concentrations of indigent households.⁴⁶ Although some progress was made, the programs suffered other problems and by 2002 it was evident that a new approach was evident. Chile Solidario, “a family-centered, integral program designed to reduce the vulnerability associated with the condition of extreme poverty”⁴⁷ was the solution. Chile Solidario was innovative at the time as it focused on the family as a unit and engaged the head of household to work with the government agency to

“jointly identify the sources of vulnerability and risks of the family and then design an integral, coordinated action destined to cover the main deficits, in terms of minimum income needed for subsistence, access to basic social services, to schooling for the family’s children, and training and empowerment for the adults in the family unit”.⁴⁸

While in the program, participant progress is monitored by a case worker who first works to cover the family’s basic needs, and then shifts to helping the head of household find a stable job and also form support networks with neighbors and community

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 12-13.

⁴⁴ *Id.* at 13.

⁴⁵ Foxley at 12.

⁴⁶ *Id.* at 13.

⁴⁷ *Id.*

⁴⁸ *Id.*

organizations. After two years, the heads of households are expected to have the capacity to provide for the family and thus “break away from the cultural and economic trap that surrounds very poor families.” Evaluations of the program found that it coordinated national and local agencies better than its predecessors,⁴⁹ and with regard to the impoverished women involved, the Chile Solidario model “produced a strong[er] motivational impact” to succeed. Participants include gaining information about the different public subsidies available, supplementary income, aid with minor children’s school tuition, and access to employment programs.⁵⁰ Some critiques of Chile Solidario are that: 1) the program is successful in giving aid (income support and subsidies) but that the self-empowerment goal is not being achieved; 2) in spite of being educated on the importance of social networks, participating families are not reaching out to community organizations and building relationships; and the two year participation window for each family is insufficient to overcome the cycle of poverty.⁵¹

c. The Intersection of Public Policy and Entrepreneurship

The arm of Chilean government focused on entrepreneurship and the poor, housed under Chile Solidario’s Bridge Program, is the *Fondo de Solidaridad e Inversion Social* (“FOSIS,” Foundation for Solidarity and Social Change). A second organ called CORFU exists as a source of financing for micro- and small-businesses; however, it targets entrepreneurs launching innovative and scalable start-ups the likes of which are not commonly seen in applications from impoverished female entrepreneurs.

Overseen by the Ministry of Social Development, FOSIS aims to ‘eradicate poverty and decrease the condition of vulnerability in Chile for those families wanting to improve their quality of life’⁵² by offering services to the poor and indigent in three areas: entrepreneurship, employment, and social empowerment. Annually, FOSIS works with individuals representing families close to one-hundred twenty thousand in total on a budget of Ch\$50 billion (~USD\$103,000). Within the entrepreneurship section, the program is split into four steps requiring completion of one before the individual can progress to the next. The Seed Program, the first of these steps, has established a bidding system given the high level of demand which preferences female heads of household.⁵³ To incentivize completion of the entire program, additional forms of monetary assistance and support services become available at each individual stage. In total, the entrepreneurship program provides a wide degree of assistance to the budding entrepreneurs, most of who hope to establish a micro-business from the home or a nearby location in the textile (sewing), food service, or food preparation industries.

During the first two stages, the participants – mostly women from households below the poverty line – are not required to register and formalize their businesses with the municipality; rather the focus is on training, educating on how to run a business, and developing a business plan.⁵⁴ FOSIS contracts with local institutions, centers, and colleges to offer its participants classes free of charge. Typically, the institutions submit

⁴⁹ *Id.*

⁵⁰ *Id.* at 13-14

⁵¹ *Id.*

⁵² FOSIS, mission statement, available at <http://www.fosis.cl>.

⁵³ *Id.*

⁵⁴ *Id.*

bids to FOSIS detailing what courses they can offer, the number of persons per class, and a price – FOSIS then reviews applicant files to determine which courses and through which institutions will maximize their limited resources.⁵⁵ Upon completion of the second stage, participants wishing to continue with the program must move their business from the informal to the formal sector. FOSIS supports the entrepreneurs with this process as well.⁵⁶

One innovative aspect of the FOSIS program, a direct response to a large obstacle faced by impoverished female entrepreneurs in Chile, is their system for making credit available to participants. Similar to the parable of the giving fish versus teaching a man to fish, FOSIS does not act as a direct lender. Rather, it works with banks and other lenders to mitigate the risk of lending to uncreditworthy entrepreneurs and thus open credit markets. FOSIS calculates the cost to the bank of extending a small business loan to the participant and then makes a direct payment to the institution in that amount. The result: banks are enticed by low-level of risk (as well as the publication relations value and additional income stream) and offer small starter loans to the entrepreneurs. Similarly, the entrepreneur is not made dependent on FOSIS but rather – as the loan is in their name – begins to develop a positive credit history which can assist them should additional financing be needed in the future.

FOSIS' entrepreneurship program has proven successful in reaching the target group (entrepreneurial female head of households); however the program's success has also been its downfall as the quality and quantity of assistance it provides limits it to helping only a small percentage of needy households. Thus, Chile's goal of eradicating poverty by 2014 is proving to be much more difficult than perceived.

Given the success of the FOSIS program coupled with its lean budget in recent years, acceptance into the program has become extremely competitive.⁵⁷ As result, a variety of private organizations have entered the field, many of whom offer free assistance in preparing applications for FOSIS or CORFU. *Accion Emprendedora*, one organization working in Santiago and Vina del Mar, not only offers such services but also bundles entrepreneurs with compatible plans into a single application where appropriate so as to make the applications stronger and increase the probability of it being selected.⁵⁸ Beyond its interactions with FOSIS and CORFU, *Accion Emprendedora* has also begun to promote 'entrepreneurship as a vehicle for raising families from poverty' by offering a variety of other services. Included among these are entrepreneurship formation courses, consultation services (legal and technical), and business incubation.⁵⁹ Within the last two years, *Accion Emprendedora* has partnered with the Universidad Adolfo Ibanez, a private institution based in Vina del Mar and known for the strength of its entrepreneurship program, to create a legal aid clinic for impoverished or at risk entrepreneurs. Given the name-recognition of *Accion Emprendedora*, most participants come to organization seeking help as opposed to a large advertisement budget signifying that the social networks vital for start-ups are

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Interview with Angie Armer, Asst. Prof. at Univ. Rodolfo Ibanez, in Vina Del Mar, Chile (June 12, 2012).

⁵⁹ Accion Emprendedora, Mission Statement, http://www.accionemprededora.cl/web/nuestro_trabajo.php (last visited June 12,

present. Each semester, clients whose cases require legal expertise are forwarded to the clinic. In addition to providing the law students with experience in handling business formation or related issues, the professors in the process educate the clients on the legal requirements for running their businesses as well as get them to think critically of their goals with the venture and the structure of the business.

Overall, most entrepreneurs who seek help from *Accion Emprendedora* have long-term careers in mind as opposed to short-term plans driven by economic necessity. This reflects the reality that entrepreneurship is not for the extreme poor. While it would be ideal if everyone with an idea could transform it into a profitable business, realistically to develop and commercialize an idea requires capital. Although the very poor can apply for assistance through FOSIS, most applications will not be accepted while a small percentage may be rolled over into the next application term.⁶⁰ This problem is representative of the larger issue facing impoverished female entrepreneurs in Chile - are simply not enough resources available to make an impact.

iii) State of Entrepreneurship in Chile

In recent years, much has been written describing the Chilean economy and its decision to use entrepreneurship to carry it into the 21st century. Chile attracts foreign investment, and is arguably particularly suited for an entrepreneurial renaissance, given it has one of the most competitive economies in Latin America.⁶¹ In addition to economic and political stability, Chile also boasts relatively low levels of corruption, one of the most advanced physical infrastructures in Latin America, and government investment in Research and development has increased seventy percent since 2005, the country became the first Latin American state to join the Organization for Economic Cooperation and Development (OECD), =.⁶²

Along with the many positive aspects of the Chilean economy which make it desirable for business, there are elements that detract from its suitability for entrepreneurial ventures. Most notably, Chile has historically lacked a start-up culture and “innovation still plays a minor role in the creation of new enterprises.”⁶³ The government has taken steps to overcome this barrier and jumpstart the entrepreneurial mechanism. Two leading programs are InnovaChile and Start-up Chile. InnovaChile was created with the aim of supporting innovation in various sectors, including biotechnology, energy, and information technology. Start-up Chile focuses on attracting foreign entrepreneurs to Chile in hopes of enticing them launch their ventures in Chile while also “allow[ing] for know-how sharing and network building as well as pushing the country to find ways to boost access to capital and improve the general regulatory environment of start-ups, areas that are currently considered weaknesses affecting young businesses.”⁶⁴ While the two programs been well received in recent years and demonstrate a commitment by the government towards improving the entrepreneurial

⁶⁰ Interview with Isabel Olmos, *supra* note 51.

⁶¹ Jonathan Ortman, *The State of Entrepreneurship in Chile*, Public Forum Institute, Kauffman Foundation (Aug. 30, 2012). Available at <http://www.entrepreneurship.org/en/Blogs/Policy-Forum-Blog/2010/August/The-State-of-Entrepreneurship-in-Chile.aspx>.

⁶² *Id.*

⁶³ *Id.* citing InfoDev Incubator Support Center(iDisc) service from the World Bank, available at <http://www.idisc.net/en/Article.38862.html>.)

⁶⁴ Start-up Chile, <http://www.startupchile.org> (last visited October 19, 2012).

landscape, the same programs insufficiently support entrepreneurship by the poor. Although the benefits may eventually trickle down into impoverished homes, the question remains of what the impoverished are to do until such time.

Endeavor, an organization dedicated to promoting “high-impact entrepreneurship as a driver of economic development in developing countries”⁶⁵ found that the profile of the successful innovative entrepreneur in Chile includes previous experience in one or more failed ventures prior to founding a successful enterprise. That is, the experience failed is an important factor in the development of a successful entrepreneur. Unfortunately, there is still a real stigma attached to “failure” in business. There are signs of change, however, with the increases in the numbers of university students exploring new business creation as a career path. According to Endeavor, “[i]f the trend continues, those who take on entrepreneurial ventures in Chile will generally be ... people who have been working in a specific industry for an average of 15 years and then continue in the industry as a self-employed entrepreneur.”⁶⁶ Notably, Endeavor’s results reinforce the view that the current policies and program being created in Chile with regard to growing innovative entrepreneurship are focused on improving the economy while the interests of the impoverished have moved further down the list.

Part B. Law, Institutions, Policies and Practices Affecting Entrepreneurship

i) Issues Affecting the Entrepreneurial Process for the Poor

While it is easy to start a business in Santiago to the extent that any person can file for a commercial tax identification number, receive a temporary operating license, and publish notice of the company’s creation online – all required steps for a formalized venture - other steps in the formalization process as well as outside factors continue to pose barriers for impoverished female entrepreneurs. While men and women of all socio-economic brackets are relatively equal in Chile, notwithstanding economic equality, the act of formalizing and registering a business can run from complicated to burdensome. Often cited problems include poor communication between governmental offices, an overly formalized process, and too wide a zone of discretion.



Discretion, Poor Communication, and to Formalized a Process

Health inspectors, in their role as gate-keepers to the entrepreneurial machine, have a great deal of discretion in performing their duties. One fallout of this is that entrepreneurs cannot accurately anticipate what will be required of them and as such may not be able to plan for additional costs and delays. There is a general sentiment in

⁶⁵ Endeavor, mission statement, available at <http://www.endeavor.cl/impacto/resultados-en-chile>.

⁶⁶ Jonathan Ortman, *The State of Entrepreneurship in Chile*, Public Forum Institute, Kauffman Foundation (Aug. 30, 2012). Available at <http://www.entrepreneurship.org/en/Blogs/Policy-Forum-Blog/2010/August/The-State-of-Entrepreneurship-in-Chile.aspx>.

entrepreneurial social circles that instruction/guidance varies depending on the inspector and the day. Given the difficult financial situation of many of the micro-entrepreneurs subject to this report, the inability to forecast the outcome of a health inspection is a large barrier.

Beyond the wide latitude of discretion given health inspectors, another issue is the lack of communication between agencies. In order to formalize their business, micro-enterprises must complete various forms, obtain numerous approvals, and undergo inspections. This process involves lengthy paperwork, submitting notarized documents, confirmation from the head notary office that the notary is recognized by the State from the head notary office licensed by the state, etc. Adding to the difficulty of navigating this system are the opportunity costs with respect to time and the fees charged to complete, notarize, and submit applications. In sum, the actual process of formalizing a micro-enterprise can prove time-consuming, burdensome, and costly due in large part to the lack of a stream-lined system for sharing information between government offices and in general unclear directions.

Availability of Products and Supplies

Conversely, acquiring the tools and the supplies necessary to begin one's business does not pose as large a challenge in Santiago. Given the Chilean economy has experienced two decades of continual growth, and that the country is now party to various free-trade agreements which further feed industry, a sizeable market exists for goods making most products, pieces, and parts generally available. While the ability to pay for such materials continues to pose a barrier, the country does benefit from the relative constant availability of those goods commonly required in the micro-enterprises begun by impoverished women (textile, food service, food production).

Financing

As noted, one of the largest barriers preventing impoverished women from starting businesses is the inability to obtain the funds necessary to launch and or grow their ventures. Although FOSIS has managed to counter the problem of opening credit markets, FOSIS is not able to provide this service to more than a small sample of the total number of women applying for assistance. Thus, the problem of financing the costs of starting the micro-business and/or growing an already established business persists. In general there are five options for securing the financing:

- 1) Private financing in the way of loans from banking and other loaning institutions;
- 2) Private funding from Investor and Angel-Investor groups;
- 3) State-funding through public programs;
- 4) Borrowing from one's social networks (i.e. friends, family, community); and
- 5) Converting personal assets and use of savings.

In Chile, the source of funding most commonly used by entrepreneurs is personal savings.⁶⁷ While access to credit from banks and investors is not particularly difficult to come by for the more affluent ‘Santiaguinos,’ for most of the impoverished/indigent women targeted in this report, the options are more limited. The Chilean banking system did not suffer to the scale of the United States or European economies following the 2008 Subprime Mortgage Crises. One positive effect of the Pinochet era was a conservative banking infrastructure which required high reserves and placed limits on the amounts of loans/debt banks could hold at a given time. As result, while banking systems around the world were in turmoil in 2008-10, few if any Chilean national banks collapsed as the high state-mandated reserves kept them afloat. Notwithstanding this, access to formalized credit by way of private lending institutions continues to remain elusive for the impoverished entrepreneur. Lack of credit history and the inability to pledge large personal assets as collateral (such as homes, automobiles, etc.) effectively remove this option for most. Furthermore, of those who manage to obtain private loans of their own accord, a majority find the approval process to be difficult (64%) and the terms of the loan unreasonable (57%).⁶⁸

Likewise, the small-scale nature of the micro-enterprises most often proposed by these women effectively prevents them from competing for private investor and angel financing, sources which typically require that proposed ventures be likely to return a high profit and/or serve the purpose of jump-starting an underdeveloped industry in Chile (e.g. Start-up Chile). The fact remains that most of the food carts, vegetable stands, sewing start-ups, hair salons, etc. cannot compete with scalable-start-ups for the same investor interest. In fact, data from FOSIS shows that most micro-businesses begun in Chile never reach profitability and those which are ‘successful’ often generate sales just above operating costs.

Beyond third-party financial sources, another commonly used source – and the second leading source for impoverished families – is the family’s social networks (Family, friends, co-workers).⁶⁹ Institutional networks play a less relevant role in the access to such resources for these women.⁷⁰ Overall, however, social networks in Chile are neither used effectively or to capacity, an aspect that has already been highlighted in previous studies on the entrepreneurial process in the country.⁷¹

Debt Forgiveness

One legal instrument affecting the decision of impoverished women to create micro-businesses is Chile’s stance on personal debt relief, or more appropriately, the lack of a personal bankruptcy framework. While an exception exists for certain corporate-like entities, Chilean entrepreneurs run the risk of long-term financial ruin if their venture fails. Chile’s system has been described as draconian for its lack of personal bankruptcy or commercial courts. While the insolvency process was improved under Law 20004, non-corporate individuals still do not have the option of debt forgiveness. Rather, debt

⁶⁷ Osvaldo Larranaga and Rodrigo Herrera, *Los Recientes Cambios en la Desigualdad y la Pobreza en Chile*, Estudio Publicos No.109, p. 27(Summer 2008). (Recent Changes in Inequality and Poverty in Chile). Available at http://www.cepchile.cl/dms/lang_1/doc_4121.html.

⁶⁸ *Id.* at 28.

⁶⁹ *Id.* at 27.

⁷⁰ *Id.*

⁷¹ *Id.* at 30.

from a failed venture follows the individual as personal debt and permits every creditor to seize and sale the entrepreneur's personal assets.⁷²

One identified socio-cultural factor which supports this conservative business environment is that, in general, Chilean culture is not receptive of failure – whether it is business or personal.⁷³ While in many other countries, it is understood that most successful entrepreneurs will have persisted through numerous failed attempts, in Chile second chances are difficult to come by particularly for the impoverished and at-risk. In addition, there is a negative social stigma attached to failure; a stigma that not only marks the individual but also the larger family unit (who ultimately must house and provide for the indebted entrepreneur and his/her dependents). It appears difficult for poor entrepreneurs, and in particular female entrepreneurs, to move beyond a poor investment decision as the communal sense of disappointment is placed on their shoulders as opposed to the tides of commerce. The result of such an environment is that the entrepreneurial spirit is quashed as “societal pressures favor people who avoid risky ventures.”⁷⁴

Little Legal Protection for Informal Businesses

Despite the progress being made by private and public actors with regard to increasing the numbers of impoverished women entering into business,⁷⁵ additional factors affect the ability of the women to start micro-businesses in Santiago. One factor complicating entrance into the market as well as continued growth is that informal businesses can seek little if any protection before a court of law. Chile does not recognize ‘partnerships’ as used in the North American context. As such, where unregistered, courts are unlikely to find that a business has existed thus undermining a main source for conflict resolution. One particularly serious implication of this is that when entrepreneurs transact with third-party vendors they must often pay upfront as wholesalers and other vendors are hesitant to extend credit for the purchase of bulk supplies or equipment (i.e. food cart, gas tank, materials, etc.) given they take on the added risk of non-payment. This can prove particularly difficult for impoverished women as most possess neither the cash at hand nor sufficient assets to place as collateral. The Chilean justice system has yet to resolve this matter.

Informal Policy of Non-enforcement Against Unregistered Merchants

One factor which has made it easier for impoverished entrepreneurs is that law enforcement and public inspectors tend to allow informal operations to continue in the public face. The informal sector, which many businesses started by poor fall under, has a symbiotic relationship with the professional/working class circles of Chilean society. It is fairly common to see public and private professionals, tourists, and locals buying food and other goods from vendors along main sidewalks and metro and bus stations. These

⁷² Bankruptcy proceedings are mainly ruled by law 18.175 and modified by laws 20.073 and 20.08 (see article 2 of the Bankruptcy law which is a general and compulsory proceeding with the purpose to foreclose or realize in one proceeding all the goods and assets of the bankrupt in order to pay all his/hers debts and liabilities.)

⁷³ Prof. Steve Blank, *Creating the Next Silicon Valley – The Chilean Experiment* (Jan. 4, 2011), available at <http://steveblank.com/2011/01/04/creating-the-next-silicon-valley-%E2%80%93-the-chilean-experiment>.

⁷⁴ *Id.*

⁷⁵ Larranaga and Herrera, Estudio Públicos No.109 at 25. (Female employment [in the years 2000 to 2006] grew more rapidly than that of male employment 30.2% versus 19.5%), reflecting the incorporation of women from all age groups into the labor market.).

entrepreneurs feed and service the formalized working world. The hands-off approach taken by the authorities stems from an overarching sense of respect for the food vendors and other street merchants who they view as trying to improve their condition instead of leeching state resources.

While certain aspects of day-to-day life facilitate the creation of informal businesses and their continued operation – and it may be argued that society to certain extent requires that such entrepreneurs stay in business – in terms of legislation, the same society that relies upon these services makes it difficult for the entrepreneurs to launch and formalize their businesses. The longer a vendor remains in business however, the easier it becomes. This is due almost entirely to the creation of social networks. That is, the vendors develop a rapport with the entrepreneurs and over time develop a better gauge by which to determine whether an order or quantity is within their risk appetite.⁷⁶ Or similarly, having more trust in the entrepreneur's ability to run a business and make good on payment, vendors may begin to offer products at lower prices or extend honor-based store credit.

Overall, however, there is little benefit for these women in formalizing their micro-enterprises. Formalization in Chile can be an unnecessarily arduous and risky process. Given the multiplicities levels of approvals required coupled with what at times can be seen as complete discretion on the part of city inspectors and other public officials, the process for a small venture from start-to-finish may not outweigh the benefits given the barely profitable nature of these micro-businesses and the reality that such vendors and merchants have a low-risk of running afoul of authorities. Likewise, as incorporation as a corporation/corporate-like entity is not an option, these entrepreneurs do not benefit from the revised bankruptcy laws and thus regardless to whether formalized or not they risk their personal assets by starting a business. Notwithstanding these reasons, formalization also triggers one's tax responsibilities, making one liable for additional taxes at the municipal, provincial, and national levels.

Currently there are a variety of organizations and a couple public programs aimed at preparing and supporting these impoverished female entrepreneurs through the business –formation and –building processes. In particular, most place a heavy emphasis on impoverished female heads of household. A great deal of the activity is focused around skill-building. Both large and small institutions as well as for-profit and non-profit entities offer training, most often vocational in nature to the women. One such non-profit, Infocap: University for the Worker, offers a variety of courses to include textile (sewing), hairdressing, plumbing, and construction at prices affordable to those women near the poverty line. In addition, the institution has overcome some of the more common barriers often encountered by offering scholarship assistance to a limited number of applicants who face economic hardships, providing on-site day care for parents while classes are in session, and facilitating access to social networks for networking and mentorship. Numerous for-profit institutions exist in Santiago as well such as S.E.K. and *Instituto Profesional de Santiago* (Professional Institute of Santiago)

⁷⁶ For example, one woman who operates a food cart offering *terremotos* (cultural beverage), ice-cream, and baked goods just beyond the gates of *Cerro San Cristobal* commented that when she had first begun selling food it was very difficult as she would have to pay for all of the supplies out of pocket; an act which limited her ability to churn a higher profit given economies of scale. Likewise, she opined that although prices have risen since she first began, her costs today as compared to back then are not too much higher although she now buys in larger quantities.

among others. Although most impoverished entrepreneurs cannot access these for-profit institutions given the cost, government programs such as FOSIS are working to bridge this barrier. Despite the progress, more remains to be done to limit the effects of the additional barriers noted above.

Part 3: Overarching Issues at the Intersection of Law, Human Development and Entrepreneurship

While equality is generally promoted under Chilean law and various state programs strive to maintain it, policies promulgated by past administrations as well as traditionalist notions of gender roles continue to create obstacles for many impoverished/at-risk women – obstacles which inhibit to a degree the rights of women to start and grow a micro-business.

i) The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (“UDHR”) while not legally binding as adopted by Chile in 1966 is now generally regarded as “the standard upon which human rights practiced in various member countries are judged.”⁷⁷ As such, the UDHR provides a human rights base from which to analyze the intersection of law, human development, and entrepreneurship in Chile with a particular focus on how impoverished urban women fit into this space.

Articles 1 and 2 of the UDHR establish that the rights and freedoms set forth in the document extend to all persons indiscriminately, whether male or female, rich or poor, rural-dwelling or urban.⁷⁸ In practice, however, impoverished Chileans do not experience the same ease of entry into the market as the middle- and high-classes. Rather, female heads of household near or under the poverty line experience even more obstacles and pressures as noted generally throughout this report.

Article 7 of the UDHR provides for the right to equality before the law⁷⁹ and article 17 the right to own property.⁸⁰ While the Chilean legal system has been modernized in many capacities, in certain areas such as the intersection of laws governing personal property and those dictating marital affairs, the law on paper provides for fulfillment of the UDHR articles while in practice socio-cultural norms, lack



⁷⁷ Speech by Dato' Muhammad Shafee Abdullah for the Asia-Pacific Forum of National Human Rights Institutions (28-31 June 2008) on “The Meaning and Effect of Article 29(2) of the Universal Declaration of Human Rights 1948 (UDHR)”. 31 July 2008. Kuala Lumpur.

⁷⁸ Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at arts 1-2 (1948). (“UDHR”).

⁷⁹ *Id.* at art. 7 (“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”).

⁸⁰ *Id.* at art. 17 (“1) Everyone has the right to own property alone as well as in association with others. 2) No one shall be arbitrarily deprived of his property.”).

of education, and a host of other factors prevent most impoverished female entrepreneurs from full exercise of their rights.

In Chile - a civil law state - at the time of marriage a couple must select one of three “*regimens patrimoniales*” upon which to base their marriage. These regiments complement establish the economic relations within the marriage and stipulate how property acquired during the marriage will be divided in the event of a divorce.⁸¹ Given divorce was legalized only in 2004,⁸² that certain regiments are selected more often than others may be seen as a cultural perception of normativity and/or lack of education as to the other options. The first of these regiments is “*la sociedad conyugal*.” The second is “*separacion de bienes*,” and the final is called “*participacion de los gananciales*.”⁸³

Sociedad Conyugal

Under the Regimen of *Sociedad Conyugal*, the husband is made the head of the union and has the responsibility of administering the assets acquired by the couple during the course of their marriage and before the marital bond was contracted.⁸⁴ This responsibility of administration gives the husband the sole right to sell the assets. In fact, generally speaking, it would be a violation of the law for the wife to attempt a sale of some shared asset. By the text of the statute, however, the husband must also first obtain the wife’s authorization before he can sell marital assets.⁸⁵ If a couple selects the *Sociedad Conyugal* regiment, upon dissolution of the marriage, the couple’s assets are to be liquidated by the husband and half of the proceeds given to each spouse. Despite condemnation by the Inter-American Commission of Human Rights as propagating inequalities against women,⁸⁶ *Sociedad Conyugal* remains the default selection such that couples that fail to elect a regiment are presumed to have married under this statute. A bill was introduced in 1995 – and continues to work its way through the legislative system today – which would create a fourth regimen to replace *conyugal sociedad* as the default.⁸⁷ However, given the twenty years since its proposition there is no cause to expect its passage in the near future.

Separacion de Bienes

⁸¹ Guide to Civil Education: Civil Matrimony, National Library of Congress of Chile. Available at <http://www.bcn.cl/ecivica/mcivil/> (last viewed on October 21, 2012).

⁸² Divorce legalized only in May 2004 by Law No. 19.947.

⁸³ Guide to Civil Education, *supra* note 77.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ See generally Inter-American Comm. Hum. Rights, *Informe Sobre los Derechos de las Mujeres en Chile: La Igualdad en la Familia, el Trabajo y la Política* (Chile 2009). Available at <http://cidh.org/countryrep/ChileMujer2009sp/Chilemujer09i-iii.sp.htm>; see also *Id.* at par. 56 (“The Commission also notes the link between Chilean women’s unequal status within the family and their limited participation in Chile’s public life and job market, due to stereotyped notions of their role in society as women and mothers. Despite the increasing –although still low, relatively speaking- number of Chilean women joining the workforce, the division of family responsibilities between the two partners is still uneven, with the result that women have fewer options when it comes to entering and moving up in the workforce and politics.”).

⁸⁷ *Id.* at par. 96-98 (“A bill is currently pending to amend the Civil Code and laws on the subject of conjugal partnership or community property, in order to grant the husband and wife equal rights and obligations. This bill establishes a new property ownership regime that will replace the conjugal property regime with one that makes husband and wife equals in the administration of property (called “deferred community of property.” The State has asserted that “the new regime of ‘deferred community of property’ is intended to eliminate the notion that the husband is the ‘head of the conjugal partnership’ and, accordingly, entitled to administer the property of the wife.”).

If the *Separacion de Bienes* regimen is chosen, the husband and wife each have independent and sole authority to administer the assets they acquired before and during the marriage; those assets purchased together are treated as jointly-owned property (home, vehicle, etc.). Under this system, each spouse's assets are protected in the event the other encounters financial problems and are viewed non-joint property during divorce proceedings. To provide for the continued security of the other spouse, *Separacion de Bienes* enables one to choose what percentage of his or her assets are to be transferred to the surviving spouse in the event of death..⁸⁸

Participacion de los Gananciales

Finally, under the '*Regimen de Participacion de los Gananciales*,' assets acquired during the marriage are considered separate property, but upon the dissolution of marriage the *gananciales* (most closely translated to 'earnings') are balanced between the two individuals.⁸⁹ In essence, this marital system calls for the comparison of two snap-shots, one of the fiscal holdings of each spouse at the start of the marriage and the second of the spouses on the day after the dissolution of the marriage.⁹⁰ These financial figures are averaged and the individual who has 'earned' more than the other during their marriage must make a payment to the other equalizing their financial positions.⁹¹

Insecurity by way of Marriage

Of the three economic regiments available, the most often used is the *Sociedad Conyugal* followed by the Regimen de *Separacion de Bienes*. It is not uncommon to find women with no knowledge of the third option, particularly in the lower-class communities.⁹² While the regiments chosen can be changed at any time if both individuals agree, it is often the case that married couples never seek such a change – particularly impoverished couples.

Given the heavy usage of *Sociedad Conyugal* and the fact that under this regiment a husband can sell the assets to his spouse's business, the selection of economic regiment is important for female entrepreneurs in general and may pose a particularly difficult problem for poor and/or uneducated women. Unaware that under the law it is illegal for a husband to sell the wife's property without her permission and that any attempt to do so automatically grants her the right to oversee the administration of the property, most women live with the belief that they are powerless to the whims of their husbands. The feelings of powerlessness are heightened where the husband is the sole financial provider for the family, as is often the case in impoverished households.

⁸⁸ Guide to Civil Education, *supra* note 77.

⁸⁹ Law No. 19335, Art.138- 40. Available at <http://www.leychile.cl/Navegar?idNorma=30702> .

⁹⁰ In the United States, a common law country, there are generally three ways that spouses share ownership in a marriage: 1) joint tenants, in which one spouse's equal share of jointly-owned property passes to the other upon death; 2) Tenancy in common which allows a spouse to assign his or her share to another person upon death, i.e. it doesn't automatically pass to the surviving spouse. The share of the property does not need to be equal between spouses; 3) Tenancy by the entirety – only available in a few states - which allows the property to pass to the surviving spouse on death but also provides greater protection in that a creditor of one spouse cannot sell the property to pay back a debt." Under all of these regiments, the husband and right retain ownership and a degree of authority over the property; however, where jointly owned prior authorization usually must be obtained before a legally valid sale can be executed.

⁹¹Law No. 19335, *supra* note 85.

⁹² Inter-American Comm. Report *supra* note 82 at Par. 63 ("During the visit, the Commission received information that confirms that most Chilean couples opt for the current conjugal partnership system, either because they are uninformed and/or because of the cost that opting for other marital arrangements involves.").

An area of gray within this system is the dearth of detail in the written law on how the husband is to affect the sale and what steps the wife may take to prevent an unauthorized sale in the absence of hiring a lawyer and filing charges.⁹³ No objective standards exist for determining in what time-frame a husband must execute a sale nor how 'fair-value' is to be judged. Women in these circumstances who cannot afford legal representation, but who need to act quickly so as to avoid injury to their businesses, often do not know where to turn for help. The law as written and court procedures do not provide sufficient protection. As such, it is possible for a husband to take advantage of the power imbalance under *sociedad conyugal* and sell the assets of his spouse's business at or below market price before any type of legal injunction is possible. Although legal recourse exists, for most of the women focused on in this report, bringing legal action against their husbands is not an option – at least not within the requisite amount of time. While representation by legal aid clinics is a viable option, it's often the case that that demand for these services outpaces availability.

That the second economic regiment described, *Asociacion con Bienes*, is mostly commonly used where the married couple find themselves in the middle and upper classes makes sense when one comes to see that in most impoverished families, it is almost always the case that the husband works to support the family while the wife stays home to care for the children, cook, clean, etc.⁹⁴ In a great deal of the cases where the wife has ventured in entrepreneurship, she almost always employs herself in some task that can be carried out from the home (sewing, food preparation, laundry service, etc.) or one within a short distance from the home (i.e. food cart, maid service, etc.).

As most of the women in impoverished homesteads live on little if no incomes, it is logical that an economic relationship which guarantees them a sense of financial security by way of a division of the husbands assets should the marriage dissolve would be prevalent. In contradistinction, in those homes where the female head is gainfully employed, and thus a heightened sense of financial independence - the *Asociacion con Bienes* model is most common. Why the third economic regiment is not widely used, however, remains to be explored. Under the final regiment described above, the property assets gained during the marriage belong jointly to both parties and upon dissolution of the marriage are split equally among the couple. However, this economic regiment is rarely used in comparison to the others, particularly among impoverished women. While the reasons are likely multiplicitous, they do include lack of education as to the law and a general socio-cultural understanding that the affairs of a married couple are to be done a certain way.⁹⁵

As noted above, the social understanding of gender roles in a marriage and the accompanying patterned selection of economic regiments has created, or at minimum

⁹³ N.B. In Chile, pro-se litigation does not exist, thus impoverished entrepreneur must hire an attorney or seek aid through a legal aid clinic.

⁹⁴ See generally Inter-American Comm. Report *supra* note 82 at Par. 135 & 139. (“[135] Society’s notion of family relations is informed by a discriminatory model that lays the bulk of the responsibility for care of the family on women’s shoulders. This limits their opportunities to enter the labor market. It also results in an unbalanced distribution of paid and unpaid work between women and men... [139] The division of family responsibilities between the two partners is such that the bulk of the work is left to women, the immediate consequences of which are reflected in the low percentage of women playing an active role in politics and in the scant recognition that they receive for their talents for wielding political power. All this combines to perpetuate gender-based discrimination.”).

⁹⁵ Interview with Angie Armer, Asst. Prof. at Univ. Rodolfo Ibanez, in Vina Del Mar, Chile (June 12, 2012).

continues to support, an environment which disfavors women embracing their right to equality. Particularly as it relates to the ability to own and dispose of their property (entrepreneurial ventures).⁹⁶ While the law provides options that strike a more neutral balance in the management of marital affairs, the fact remains that wider education is necessary for the targeted population to understand how these arrangements work and how the decision affects their

ii) Right to an Adequate Living Standard: Poverty & Education

Article 25 of the UDHR identifies the right to an adequate living standard. Specifically, it reflects the notion that every person should be able to live at a level where they are able to provide for the “health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary services... .”⁹⁷ While the Chilean government has continued to take steps to lower poverty levels since the 1980s, successfully reducing the number to one-fourth its peak level, there is still work to be done so as to ensure that all persons, especially women, are able to maintain adequate living standards for themselves and their dependents.

The field of human rights as spoken of and advocated for is composed of two elements: 1) the rights themselves; and 2) the social structure which allows one to appreciate those rights referred to as ‘human rights.’ That is, by way of example, the right to female suffrage is largely illusory where there are laws preventing females from venturing outside the home without escort. More

pertinent to the situation in Santiago, the steps taken to reduce the poverty level – an act which all of the presidential administrations following the Pinochet era have viewed as a central pillar in the plan to modernize Chilean society – have in many ways obtained positive results. However, that these programs are ill-funded, not well-enough staffed, and capable of reaching only a small percentage of those seeking assistance indicates, speaks to the fact that that more work remains to be done. While Chile has provided for the rights themselves, a structural reform is necessary in order to assure compliance with the general rights reflected in the UDHR.



Article 26 – Education & Entrepreneurism

Article 26 of the UDHR speaks to a universally recognized right to education.⁹⁸ With respect to education in Chile and its interplay with entrepreneurship for impoverished women, two important areas must be addressed: first, the current state of the public education system in Chile and secondly the renaissance in private higher education currently underway in Chile. The public education system in Santiago and

⁹⁶ Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at art.17 (1948). (“UDHR”).

⁹⁷ *Id.* at art. 25.

⁹⁸ *Id.* at art. 25.

throughout all of Chile is generally recognized as ill-equipped to provide students with the necessary skills and training that will enable them to do well at the university level and/or in the professional world. With specific exceptions, such as those schools that house special programs or advanced studies courses, most parents opt to enroll their children in private schools. In spite of the price, most parents are able to send their children to private schools. Whereas in older times, most Chilean households could not afford to send their children to private institutions, the relative economic prosperity realized in Chile over the past thirty years coupled with government subsidization has made it possible. Because of this, the number of private elementary and secondary educational institutions has skyrocketed to meet demand which in turn has led to the modern scenario where the average family in Santiago sends all of their children to private primary and secondary school and is able to send at least one child to college. The example offered during the course of interviews was that ‘near every taxi driver now can afford to send at least one child to college.’

With more young adults graduating each year, and likewise more disposable income available per capita, one would expect to see a rise in the number of new businesses being created. However, this is not the case. One commonly-voiced critique is that the curriculums being taught in Chilean schools do a disservice to entrepreneurial-minded students. That is, “while being advanced in terms of access to traditional curriculum, [the overall education system] has yet to full incorporate elements and methods that foster creativity, entrepreneurial initiative and autonomy,” thus the schools –regardless of their public or private status – are depriving the next generation of entrepreneurs of the opportunity to hone the skills and obtain the experiences that are key to successful business-building.⁹⁹



Although the State is fulfilling its obligations under Article 25 of the UDHR by providing access to education, more can be done recalling that such a right is a minimum not a maximum. While the education system in Chile has progressed greatly since the end of the Pinochet era with regard to its role in preparing students to launch and succeed in entrepreneurial ventures, further research needs to be done to determine how the curriculum can incorporate and foster further creativity and initiative while combating the social stigmas attached to failure. In fact, given the push in recent years by the Chilean government to build the web 2.0 industry in Chile by attracting foreign

⁹⁹ Jonathan Ortman, *The State of Entrepreneurship in Chile*, Public Forum Institute, Kauffman Foundation (Aug. 30, 2012). Available at <http://www.entrepreneurship.org/en/Blogs/Policy-Forum-Blog/2010/August/The-State-of-Entrepreneurship-in-Chile.aspx>.

talent to the country,¹⁰⁰ such an investigation into the what additional changes can be made domestically to reinvigorate the national populace might prove fruitful.

Part 4. Recommendations

Narrowly addressing the shared experiences of impoverished female entrepreneurs in Santiago and what steps can be taken to remedy the issues identified throughout the course of my research, my recommendations are split into three areas: Legal, Process, and Execution.

Legal

By way of legislation, the Chilean Congress has the potential to make the largest impact on impoverished women in their attempts to use entrepreneurship as a way out of poverty. As a preliminary matter, the income-based methodology for defining “*pobreza*” and “*indigencia*,” could be expanded so as to address not only the chronically poor but also those families who experience in transience. As noted previously, one’s categorical classification determines the types of public aid that can be accessed. Those families that find themselves above the poverty line some months and below during others are often disqualified from accessing services provided by FOSIS and other groups.

Secondly, in addition to incentivizing scalable and innovative entrepreneurial ventures through programs such as Start-up Chile, the government should additional emphasis incentivizing micro- and small-scale entrepreneurship through policy reform. Two areas where such reform would likely have a large impact are Chile’s bankruptcy laws and current tax structure. The absence of a personal bankruptcy framework deters many impoverished – and dare I say middle class – entrepreneurs in Santiago. This said it is generally understood that most entrepreneurs will have overcome multiple experiences with failure prior to successfully commercializing an idea. Starting a business can be a costly and risky affair. These costs and the potential negative impacts associated with failure are particularly pronounced for the economically disadvantaged and at-risk. Were it that some legal mechanism existed to off-set the repercussion of failure – i.e. a life of indebtedness, the numbers of successful businesses launched would likely increase over time.

A reform of the current tax structure could also prove beneficial. Most micro-entrepreneurs do not formalize their business because of the tax implications such an act triggers (beyond the process related hurdles as will be discussed in the next section) Upon formalizing their ventures, merchants become subject to tax requirements at the municipal, regional and national levels. The national tax alone is 19% per every transaction and formalized businesses are sporadically audited by tax inspectors and can face at worst the forced closure of their business for failure to charge tax on every sale.¹⁰¹ Given the bare profitability of most of the micro-businesses started by the poor, the additional expense often undercuts the benefits, especially in light of the fact that law enforcement has an informal policy of allowing informal vendors to continue operating without interference. If the government has not already, it would be

¹⁰⁰ By way of example, the Start-up Chile program housed under Innovachile and in association with CORFU.

¹⁰¹ Taxes are built into the sale price with a lump sum is paid to the appropriate levels of government at the end of each fiscal year.

beneficial to investigate the possibility of a tiered taxation system, tax breaks, or a roll-over tax credit system for micro- and small-businesses. This would incentivize formalization of informal businesses and provide an additional income source for the state and added protections for the entrepreneurs.

Lastly, despite findings by the Inter-American Commission on Human Rights (“IACtHR”) that the marital regiment of *Sociedad Conyugal* furthers the economic inequality between men and women, the regiment remains the default. At the time of the IACtHR investigation, it was commented that the State was taking initiatives to educate the population – in particular the poor – on the various options available as well as making progress on approving a bill which would create a more gender-equitable economic relationship between spouses. Interviews suggest that many of the poor still do not sufficiently understand the implications of choosing one economic regiment over another and the proposed legislation continues to languish in Congress. To this extent, the government should take proactive steps to educate the population on the regiments available with attention given to the rights each spouse has to personal and shared property under each.

Process

Other barriers identified during the course of research related to process or formalizing one’s business. Beyond tax implications, many entrepreneurs who considered formalizing their ventures found navigating the system complicated, costly, unclear and at times repetitive. In general, it appears as if it work can be done to streamline the system for accepting and processing business permits. Any steps taken should include: 1) improving communication and the transfer of application materials between departments and offices; 2) reducing the amount of paperwork required of applicants while, at the same time, clarifying directions, what documentation is required, and what needs to be notarized; and 3) promulgating and enforcing uniform standards when it comes to health inspections so that applicants can anticipate what is required early on in the process.

Execution

Lastly, the FOSIS program continues to make progress in facilitating the entrance of impoverished women into the entrepreneurial sector. However, as mentioned, FOSIS’ work is limited to a small percentage of the individuals/families that could benefit from its assistance. Recent administrations have focused on building the scalable entrepreneurial sector in Chile with one idea being that the benefits of such a ‘jump-start to the economy’ will trickle down and help to reduce the country’s income gap (e.g. fighting poverty). Until these effects are felt, there is much that can be done to support the twin-goals of eliminating indigence and reducing poverty in Chile. For example, the government can increase funding for FOSIS enabling it to provide services to a larger percentage of the poor. Likewise, given the FOSIS model has shown positive results, it might also prove beneficial to investigate the feasibility of rolling-out a larger state program, built from the FOSIS model, aimed at lower- and middle-class entrepreneurs.

Conclusion

International law, domestic law, policies and procedures all play a role in structuring and influencing commercial markets. Chile has done a great deal of work to

increase the levels of civic participation, educational attainment, income levels, and the overall sense of equality experienced within its borders. However, the changes, while progressive, have not had an equal effect in application. While the overall environment for start-ups in Chile has improved, the forecasted benefits have yet to have a pronounced impact on the poor and at-risk communities. Although it has been stated various times that the government aims to eradicate poverty by 2014, the majority of the changes occurring in and around Santiago do not seem to be opening doors to those portions of society most in need of help.

By way of its various public programs, profit and non-profit interest groups, and the universities and educational institutions, Chile has made the decision to focus on kick-starting the entrepreneurial system. In making such a decision, it appears that the nation has focused its resources mainly on improving the conditions in-country so as to attract scalable entrepreneurial ventures. While this route, according to academics such as Steve Blank, improves Chile's odds of bolstering the economy,¹⁰² until such results are reaped this social policy fails to address the needs of a large swath of the poor. Although the Chilean government has taken a large step in supporting entrepreneurship by impoverished urban women, the evolution of the area demonstrates a slow movement away from direct action to the fostering of corporations and companies whose actions it is hoped will ultimately be of benefit to the poor. Despite the improvements in income inequality, barriers remain that prevent the poor from making use of entrepreneurship to lift themselves and their families from poverty. However, it is possible for the government to continue with its current entrepreneurial scheme while also addressing the structural issues that underlie the poverty crises in Chile. As part of this, the legal-, process-, and execution-oriented barriers as brought together in Part 4 should be addressed so as to best provide for the urban poor mother, grandmother, daughter or sister who is striving despite all odds to lift a family –and a nation - from poverty. Similar to the proverb, Chile is at an impasse where it must decide whether it will give these female entrepreneurs a meal today or equip them with the skills and training to make an adequate living the remainder of their days.¹⁰³

¹⁰² Prof. Steve Blank, *Why Governments Don't Get Startups*, 1 September 2011. Available at <http://steveblank.com/2011/09/01/why-governments-don%E2%80%99t-get-startups/>. (Noting that entrepreneurship programs are doomed for failure if they are structured as public jobs programs and instead advocating for limited government participation and more private market forces.)

¹⁰³ E.g. "Give a man a fish and you feed him for a day. Teach a man to fish and you feed him for a lifetime."