

The ABC of the Chilean Constituent Process



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Chile is experiencing a unique and exceptional process in its republican history. For the first time, it will draw up a constitutional text through a democratic constituent process, in which citizens have elected the collegiate body (Constitutional or Constituent Convention). This body will have a set term in which to write the new Constitution. In addition, the constitutional convention will have gender parity, and will include seats reserved for indigenous peoples, and independent non-partisan representatives. Here are the answers to some essential questions about the process.

WHY NOW?

There are different interpretations as to what happened in Chile in recent months and why. One of the explanations is based on the thesis of modernization and the emergence of a new middle class, that began to make greater demands as it became more educated and moved up the social ladder. Another interpretation points to the strong disconnect between political and economic elites and society as a whole. The modernization of society was achieved through the effort and sacrifice of citizens, which implied high levels of personal debt, precarious employment, and insufficient access to certain social rights (pensions, housing, health, education).

Meanwhile, additional fuel to the fire came from a history of abuses and scandals of collusion on the part of large companies, cases of corruption in the armed forces and the police, illegal funding of political parties and abuse of power in different State agencies. Social protest grew gradually from 2005-2006, around diverse issues and with the participation of different social actors: indigenous peoples, environment, gender violence, pensions, quality education, corruption, among others.

The social outbreak of October 18 initially began as a protest by young students against an increase in the price of fares on public transport. However, it quickly escalated and became a social protest against a way of life. One particular slogan that became popular at the time was: "it's not 30 pesos, it's 30 years", implying that protesters had taken to the streets not because of a small increase in the cost of public transport, but as a response to innumerable demands and social frustrations that had accumulated since the return to democracy.

KEY ASPECTS OF THE CONSTITUENT PROCESS

After a month of intense protests, almost all political parties represented in the National Congress came to an agreement to start a constituent process. This was the political response to the social

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outbreak. The agreement, which was later ratified by Congress in a constitutional reform, established a four-stage itinerary:

1) Initial plebiscite (October 25, 2020). A plebiscite was called to ask the citizens if they wanted a new Constitution and the mechanism by which this new text would be drafted (through a Mixed Convention — made up of both sitting congressmen and women and elected citizens; or through a Constitutional Convention — fully elected by popular vote). 78.3% of voters supported the idea of changing the Constitution and 79% preferred a Convention elected in its entirety by citizens. In this election, 50.95% of citizens entitled to vote participated (7,569,082 voters). It is important to consider that Chile has automatic electoral registration system and voluntary voting.

2) Election of members of the Convention (May 15-16th, 2021). The constituent body was elected by popular vote to write this new Constitution. The Convention consists of 155 members, of which 138 were elected by district and 17 were reserved seats elected by indigenous peoples. Chile has a proportional electoral system, and seats are divided among 28 districts, with 3 to 8 seats each depending on their population. As in the election of the lower chamber (House of Representatives), electoral lists could be organized either by political parties or lists of independent candidates who shared a common program.

1,374 candidatures were presented for the Convention (95 for the indigenous peoples' seats and 1,279 for the districts). These candidacies were presented by 8 lists of political parties or party coalitions and more than 70 lists of independent candidates, who participated in some of the 28 districts. 6,184,594 citizens voted in these elections, representing 43% of the electoral universe.

The electoral results can be seen in the following table:

Table 1. Seats within the Convention by political orientation of the lists

	Seats	Percentage (%)
Right-wing parties (ChileVamos)	37	23,9%
Moderate Center-left parties (Unidad Constituyente)	25	16,1%
Moderate Center-Left independents (INN)	11	7,1%
Left-wing parties (Apruebo Dignidad)	28	18,0%
Left-wing independents (Lista del pueblo)	27	17,4%
Other independents	10	6,5%
Reserved Seats for Indigenous People	17	10,9%
TOTAL	155	100,0

Source: SERVEL.

In general, the tendency of the Convention is towards left-wing positions. The right-wing coalition parties gained 23.9% of representation, moderate tendencies of the center-left represent 23.2%, while the two left-wing lists represent 35.4%. It is still too early to classify by political tendency the other independents who were elected and those who hold the reserved seats for indigenous peoples, although it is very likely that they will support positions closer to the left.

3) Functioning of the Convention (9 to 12 months). The Convention would have between 9 and 12 months to draft the text. It was established that this Convention may not interfere in government

affairs, would have a definitive end date for its work, and must approve all regulations with a quorum of 2/3 of the delegates.

The electoral result described above shows that no sector has the number of seats required to block a decision within the Convention. Neither the extreme left nor the right have over a third of votes which would be needed to essentially veto an agreement. This means that considering the configuration of the Convention, progress will be made on a wide number of issues concerning the protection and guarantee of social rights and the strengthening of the State, but it will be more difficult to assure the 67% of votes needed to make reforms to the system of government and other institutional changes, on which there is less agreement.

4) Ratification plebiscite (approximately September 2022). The constitutional text proposed by the Convention must be ratified by citizens in a plebiscite, in which voting is compulsory. If the text is approved, this would lead to its promulgation. However, if it is rejected, the current constitutional text would remain in place.

The agreement included a set of provisions to regulate campaign funding for candidates to the convention, norms to resolve conflicts within the Convention and certain limitations such as the acceptance of the International Treaties signed by Chile, and the fact that the country is a democratic republic.

THREE INNOVATIONS: PARITY, RESERVED SEATS, INDEPENDENT LISTS

The composition of the Convention displays three important innovations. In the first place, it is an organism in which there is an almost perfect balance between men and women (78/77), which makes it the first Constituent Convention in the world with gender parity. This was possible thanks to a reform to the electoral system that established both parity for candidacies and also an electoral correction system to ensure parity in election results. For example, in a district with 4 seats, if all seats were won by women, the two women who obtained the lowest percentage of votes of those elected would have to give their seats to men within their lists who obtained the best electoral results. The same would happen if 4 men were selected. This ensured that there was always a gender balance in the allocation of seats.

In addition, 17 seats reserved for indigenous peoples to represent the 10 peoples recognized in Chilean law. For the elections of indigenous constituents, those people who self-identified as indigenous had to prove that they belonged to a specific indigenous group and sign up in a special registry. When casting their vote, indigenous people had to choose whether they did so for the candidate representing their geographical district or a reserved seat for their particular group. In this case, a system of gender parity was also applied, although in this case, each candidate had a electoral partner of the opposite sex, who would take the seat if needed to guarantee gender parity.

The third innovation was to allow the participation of “lists of independents”. In congressional elections there are political party lists, and independents must compete individually with these lists. The proportional electoral system determines that the most voted candidates from the most voted lists are elected, which makes it virtually impossible for an independent candidate to compete against lists that include between 4 and 9 candidates, whose votes are added up.

To solve this, independents were allowed to compete in their own lists. A minimum number of signatures and a common program were required of the candidates, to assure internal coherence within the list. A total of 42% of the Convention (65 constituents) will be represented by independents who chose to participate outside of traditional party structures or who are representatives of indigenous peoples.

WHAT IS THE SOCIAL PROFILE OF THE CONSTITUTENT CONVENTION?

One of the biggest surprises of the electoral results of May 15-16, 2021 was the social and political diversity of the Convention. We have already said that it will be a Convention with gender parity, and as regards indigenous peoples, in addition to the 17 reserved seats, another 4 constituents are indigenous, representing 13.5% of the Convention. The average age of the constituents is 45 years, with a range that goes from 21 to 81 years of age. 67.7% of them do not belong to a political party. 98% are professionals, with lawyers being the dominant profession among the elected candidates (40.6%).

Table 2. Socio-demographic characteristics of the constituents

Characteristic	Number
Sex	78 Men 77 Women
Ethnicity	134 Non-indigenous 21 Indigenous
Average age	45 years
Political party affiliation	50 party members 40 Independents running in party lists 65 Independents in their own lists
Main professions	63 lawyers 19 teachers 12 engineers 6 journalists 3 psychologists 3 students 49 other professions and trades

One of the most remarkable characteristics of the Convention is that a large number of constituents have experience of social activism in their respective territories. A large number of those who were elected from lists of independents have had experience of activism in the defense of human rights, environmental rights and in voicing local demands in territories throughout the country. We can therefore identify four main segments within the Convention: (1) party members with experience in positions of popular representation or government in recent years. In this case they are professionals, usually lawyers, who have strong political ties with the establishment; (2) academics who work in universities in sciences and law, but with significant social commitment; (3) social activists who have worked in non-governmental organizations of national or local/regional scope, and who have carried out activism around social causes; and (4) people who became well-known in the context of the social outbreak for their participation in protests, and who are not necessarily linked to social or political organizations.

WHAT ARE THE VIEWS OF THE CONSTITUTENT REPRESENTATIVES?

A review of the programs presented by the candidates elected for the Convention and an analysis of their position voiced in surveys show that there is considerable consensus around certain issues:

- Guaranteeing social rights, which include health, education, pensions, housing, work, and the rights of children and adolescents, to name those most frequently.
- Eliminating the subsidiary role of the State, giving it a more relevant role in guaranteeing social rights.
- Establishing a plurinational State, which recognizes indigenous peoples as peoples with political, social, territorial and cultural rights.
- Promoting women's rights and gender equality.
- More broader references to the protection of the environment in the Constitution, including the definition of water as a public good for common use.
- Establishing direct democracy mechanisms that promote citizen participation in the political process.
- Encouraging the decentralization of the State, promoting the transfer of broader competences to the local/regional levels.

Lower levels of agreement exist around issues related organic aspects of the Constitution, which include the type of governmental regime to be adopted; the role of the autonomous bodies of the State; the definition of states of exception; and how the Constitution could be reformed in the future, among others.

Table 3. Opinion of Elected Representatives of the Convention: Social Rights (according to the candidate application [Votamos tod@s](mailto:Votamos.tod@s))

Statements included in the survey Votamos tod@s	Responses of 104 elected representatives of the Convention Percentage (%)		
	Agree	Disagree	No Answer
The State must guarantee free and quality access to health, education, housing and pensions.	91	2	7
Free and quality Internet access must be guaranteed throughout Chile.	90	3	7
Funds should be earmarked to protect artists and cultural workers, especially in retirement.	79	7	14
Social equality must be sought even at the cost of lower economic growth.	77	10	13
Every citizen must be guaranteed a minimum income regardless of whether they have a job or not.	69	13	18
Social equality must be guaranteed even if individual rights are affected.	51	22	27

Sample: 104 of 155 elected representatives. Responses to the Online questionnaire carried out between January and March 2021. See Claudio Fuentes & Rodrigo Márquez, “The Constituent Convention: initial consensus and dissent”, CIPER-Chile, June 1st, 2021.

Table 4. Opinion of Elected Representatives of the Convention: Institutions

Statements included in the survey Votamos tod@s	Responses of 104 elected representatives of the Convention Percentage (%)		
	Agree	Disagree	No answer
Citizens must have the right to participate in all relevant decisions through referenda, consultations and councils.	93	2	4
Citizens should have the right to remove bad authorities from office by means of a referendum.	90	7	3
The control of the civil authority over the Armed Forces and Law Enforcement should be increased.	92	6	2
All Regions of the country must have political and economic autonomy	91	7	2
The autonomy of the Central Bank must be maintained.	72	15	12
A new police force should replace Carabineros.	78	13	9
Congress should have only one Chamber and not the two (senators and representatives) it has currently.	63	22	14
The Constitutional Court should not exist and its functions should be taken on by the Supreme Court.	40	41	19
The Constitution must guarantee more power for the Presidency of the Republic over Congress*.	7	89	4
The Constitution must guarantee more power for the Presidency of the Republic over Congress*.	41	43	9
The constitution must guarantee the same amount of power for Congress and for the Presidency of the Republic*.	6	40	7

*These three questions are part of a set, which is why the sum of the last two to not equal 100

Sample: 104 of 155 elected representatives. Responses to the Online questionnaire carried out between January and March 2021. See Claudio Fuentes & Rodrigo Márquez, “The Constituent Convention: initial consensus and dissent”, CIPER-Chile, June 1st, 2021.

BALANCE OF POWER AND DECISIONMAKING RULES

As we mentioned previously, the Constitution establishes that new articles require the approval of two-thirds of the Convention (67% of its members). This means that the members are obliged to establish broad agreements to approve each of the articles that are discussed. Given the balance of power that was established in the May 15-16 election, it is probable then that several of the aspects that characterize the current Chilean Constitution could well be modified. As we have pointed out, we are likely to see a new Constitution with a more extensive bill of rights, and a

more significant role of the State to guarantee these rights in what is called a “democratic and social state of law”.

The conservative sectors do not have sufficient representation in the Convention to block articles, so they will surely seek to ally with more moderate sectors to defend their interests. It should be noted that there is not one single left-wing bloc, but rather varying left-wing visions — more liberal on value-based issues, and more radical regarding the role of the state vs. the market, etc. — so alliances will probably be built on specific issues addressed during the deliberations. However, it is very likely that by the end of the process, Chile will have a Constitution with a more regulatory role assigned to the State and with greater protection of rights.

KEY EARLY DECISIONS TO BE MADE BY THE CONVENTION

The Convention will begin its deliberations at the beginning of July 2021. The first decisions they will face will be: to elect a President and Vice-president by absolute majority and establish a set of regulations to govern its decisionmaking. The discussion around these regulations will probably take between two and three months since all internal rules and mechanisms, the committee structure, and transparency and participation mechanisms will be defined there.

One of the main challenges for the process of democratization is the generation of mechanisms of citizen participation within the constituent process. Since 2016, Chilean citizens have been organizing in local initiatives referred to as “self-convened councils”. These are micro-spaces for dialogue and deliberation that gained increased momentum from October 18, 2019. Once the Convention is convened, one of its responsibilities will be to define mechanisms for citizen participation, that will hopefully include proposals that emerge from civil society.

We do not yet know what mechanisms will be used, nor do we know if the Convention will include channels for truly effective and relevant citizen participation in the process. The key challenge of this process is that citizens feel that their voice is being heard and taken into account by the elites who, for many years, did not listen to or value the opinion of the people.

In this context, the Chilean constitutional process presents an opportunity to redefine the borders of democracy. It has the potential to generate a deepening of democracy as long as effective and efficient mechanisms for citizen participation, deliberation and decision are established.

THE CONSTITUTION AND WHO WE ARE

As it has in other countries, the debate around a new Constitution in Chile will provide an opportunity to redefine basic elements of social coexistence. In the case of Chile, the most important discussions will revolve around the way in which power will be distributed (system of government); a redefinition of the balance between State and market on issues of social rights (pensions, health, education, housing); the debate on a unitary vs. decentralized State (deconcentration of territorial power from the center to the regions); the protection of natural resources including water; and the recognition of indigenous peoples — an issue still pending in Chile after three decades of democracy.

These are substantial questions that in some cases clearly question the Constitution drafted by Pinochet in 1980, for example the relationship between State and market. In other cases, however, they are debates that have been relevant since the beginning of the Chilean Republic. The constituent process will therefore provide a unique opportunity to debate and redefine the basic premises around which coexistence in the country has been organized.

The great novelty of this story is that while in the past it was always the elites or the military who were in charge of defining who and what we were (1833, 1825 and 1980), it is the first time in history that citizens will have the opportunity to have their say.