

# The Proposal

# for a New

# Constitution

# in Chile:

# Key Elements

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# The Proposal for a New Constitution in Chile: Key Elements

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## Summary

This paper outlines the major points of the proposed new constitution: a diverse and inclusive democracy, social rights guaranteed to all, and environmental protections. Under this constitution, the Chilean state would assume a heightened role in ensuring basic human dignity, liberty, and equality for all individuals, with an emphasis on members of groups who have been historically discriminated against. It would also make Chile a leader in combating the climate crisis.

Keywords: Constitution; Constituent Convention, Democracy, Social Rights.

## Democracy

### Structure

Under the proposed new constitution, Chile is a plurinational and indivisible state, recognizing the Indigenous nations within the state while emphasizing its unified nature. It is divided into regions, territories, provinces, and communes in descending order. The new constitution defines a traditional division of power: a presidential system, a legislative branch with two chambers, and a judicial system (See Index at the end of this paper).

**Direct Democracy.** Suffrage is universal and obligatory for citizens who are 18 years of age and older, though optional for those who are 16-17 years old and for Chilean citizens living abroad. Citizens are able to directly participate in government through proposing policies or constitutional amendments to the legislature. These measures may be proposed by a group of citizens equal to 3 percent of the population, as long as they do not concern taxes or the national budget, or violate fundamental rights. The state must ensure transparency, provide information that is accessible to the public, and work to eradicate corruption. Those convicted of corruption—as well as crimes against humanity, sexual crimes, and domestic violence—may not hold office.

**Executive.** The executive branch consists of the president and the ministers of state. The president serves as the head of state and the head of the government, and the ministers head their respective ministries. The president must be a Chilean citizen, at least 30 years of age by election day, and have lived in Chile for at least four years before the election. To be elected, a candidate

must receive an absolute majority. If no single individual initially achieves at least 50% of the vote, there will be a second round of voting between the top two candidates. The presidential term is four years, and a president may be reelected once and serve either a consecutive or nonconsecutive second term.

**Legislative.** The legislative branch is divided into two chambers: the Congress of Deputies and the Chamber of Regions. The Congress of Deputies is made up of at least 155 democratically elected members and its role is to represent the people in the lawmaking process. The Chamber of Regions is composed of a specific number of members that is to be determined by law. Each region must have an equal number of democratically-elected representatives in the Chamber of Regions. At least 50 percent of representatives in each chamber must be women, and both chambers will also have reserved seats for indigenous peoples. The numbers of seats will be based on the proportion of the indigenous population with respect to the total population.

**Judiciary.** The judicial system is made up of neighborhood courts, courts of first instance, appeals courts, and the Supreme Court. Neighborhood courts resolve local conflicts, particularly in rural areas. Courts of first instance are courts that manage different issues, such as civil courts, labor courts, administrative courts, courts of execution of punishment, and environmental courts. Appeals courts resolve challenges to verdicts decided in courts of first instance. The Supreme Court ensures the correct application of the law and is composed of 21 judges, who may hold their positions for a maximum of 14 years.

**Constitutional Court.** The Constitutional Court is an autonomous body that exercises judicial review, and is comprised of 11 members with nine-year terms. All judges of the national justice system are appointed and trained by the Council of Justice, which ensures the proper functioning of the judiciary.

**State of Exception.** A state of catastrophe, or constitutional exception, is declared by the president and cannot last longer than 30 days, unless approved by the Congress of Deputies. During states of exception, the president has the authority to temporarily assume the powers usually reserved for local governments. The president must explicitly state which rights are suspended or restricted in such a situation, and rights should not be limited excessively. Measures enacted during a state of exceptions are subject to review by the courts, and the Armed Forces and the police must strictly adhere to orders given.

**Defense and the Police.** The Armed Forces are comprised of the Army, Navy, and Air Force and protect the state and its territory from foreign threats. Military operations must be ordered by the president and approved by the legislature. The police is not a military institution; its role is to ensure public safety and protect fundamental rights. Police and members of the Armed Forces cannot belong to political parties or organizations, unionize, or run for public office.

**Economy.** The state holds full control over the mines, regardless of who owns the land where they are located. Mineral use will be based on intergenerational public interest and environmental protection. The Central Bank is an autonomous entity that regulates the amount of money and credit in circulation and formulates monetary policy. It has a duty to contribute to public wellbeing, financial stability, and environmental protection. The Central Bank is headed by a council made up of seven members appointed by the president and confirmed by the legislature. The state must correct for inequalities among regions, territories, and communes by compensating areas with less tax collection.

**Amendments.** Constitutional amendments can originate from citizens, deputies or representatives, or the president. They require the approval of 4/7 of the joint Congress of Deputies and Chamber of Regions to be approved. Amendments that would substantially alter chapters of the constitution concerning fundamental rights, the political regime, and the composition of the legislature, among others, require both the vote of 4/7 of the combined legislative chambers and a popular referendum. The amendment will be ratified if it earns the majority of the votes from the public. However, if approved by  $\frac{2}{3}$  of the joint legislature, the amendment will not be submitted to a referendum.

## **Universal Participation**

The proposed new constitution emphasizes diversity in the democratic system that it outlines, ensuring that participation in decision-making processes and all political, social, and economic aspects of society is not only non-discriminatory, but actively inclusive. It identifies specific groups that have been historically discriminated against or excluded and mandates that the state must employ mechanisms to ensure their full inclusion. In addition, it declares that the state has a duty to adopt measures to correct the disadvantages of certain groups, establishing affirmative actions in their favor if necessary and taking special consideration of people who have multiple identities that have been historically excluded.

**Women.** There must be gender parity in state institutions. All state bodies and public companies must ensure that at least 50 percent of their members and/or employees are women. The justice system must approach cases with a particular focus on gender, aiming to eliminate gender stereotypes and violence against women, including online. Women and all those capable of bearing children should be guaranteed the proper conditions for a pregnancy and the right to voluntarily interrupt any pregnancy. The state will implement mechanisms for the redistribution of domestic and care work, promoting gender co-responsibility in this work and ensuring protections for domestic workers that guarantee that they are not disadvantaged.

**Diverse Sexualities.** The state should ensure freedom of gender identity and sexual orientation, and the free exercise of these freedoms without facing discrimination. It must adopt measures to ensure that people of diverse genders are represented both in its own institutions and in public and private spaces. The right to freely make informed decisions about one's own body is also guaranteed.

**Children and Teens.** Children and teens have the right to live in family environments that facilitate their full development, as well as to be protected from all forms of violence, abuse, exploitation, and negligence. The Agency for the Defense of Children's Rights will be established to prevent child violence. Children also have the right to be heard and to appropriately participate in decisions regarding all matters that directly affect them.

**Indigenous Peoples.** The state must grant Indigenous nations self-determination, which includes territorial, political, administrative, and financial autonomy, as long as they do not violate the indivisibility of the state of Chile. In addition to the reserved seats for Indigenous peoples in legislative bodies, there are also two seats for Indigenous judges reserved in the Council of Justice. Forced assimilation and destruction of Indigenous cultures is prohibited, and the state must recognize the symbols and emblems of Indigenous tribes, as well as their official languages. Indigenous people have the right to occupy the lands that they have traditionally occupied<sup>1</sup>, and the state will establish legal measures for the demarcation, titling, and restitution of these claimed lands. Indigenous nations should be consulted prior to the adoption of any measures that affect them.

**People with Disabilities.** People with disabilities must be guaranteed political, economic, social, and cultural participation. The state should enact public policies aimed to provide universal accessibility, particularly in education, housing, healthcare, and labor, ensuring that the opinions of people with disabilities and those who represent them are adequately considered.

**Incarcerated People.** The state will promote a criminal legal system that preserves the human dignity of incarcerated and formerly incarcerated people. Incarcerated people must not be deprived of any rights other than those necessary for the fulfillment of their sentence. They have the right to petition the courts for the protection of their rights and to maintain communication with whomever is charged with their defense. They must also be provided with spaces to study, work, and practice sports and arts. Once released, they have the right to socially integrate into society. Those who are acquitted must be compensated for each day that they were deprived of their liberty.

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<sup>1</sup> Indigenous people, particularly in the South of Chile, have had land claims since the state gave them titles ("títulos de merced") between the 1890s and 1920s.

## Social Rights

The proposed new constitution expands the scope of goods, services, and fundamental rights that the state guarantees to all individuals. It outlaws all forms of discrimination, especially based on nationality, age, sex, sexual orientation, gender identity or expression, body diversity, religion or creed, race, membership in an Indigenous nation, political opinions, social class, immigrant or refugee status, disability, mental or physical state, marital status, or any other categorization that would result in the undermining of a person's human dignity.

**Fundamental Rights.** No person shall be executed or subjected to slavery or otherwise cruel, inhuman, or degrading punishment. The state has a duty to ensure equality of treatment and opportunity in both the private and public spheres. People have the right to truthful information, especially regarding crimes against humanity or territorial dispossession. Everyone is entitled to sexual and reproductive rights, including comprehensive sex education that emphasizes consent and the free enjoyment of sexuality. Each person has the right to individual, family, and community privacy, including metadata. No one can be deprived of their property except if necessary for the general interest of the population. Any person whose property is expropriated must be justly compensated.

Each individual has the right to a safe living environment, as well as to a death with dignity. In addition, everyone is granted the right to decent work and the ability to freely choose that work. No employee may be arbitrarily terminated for any reason unrelated to their work competency. The state must promote equal working conditions, equitable wages, and rest. All forms of job insecurity, as well as forced, humiliating, or degrading labor is prohibited. The rights to unionize, bargain collectively, and strike are also guaranteed, except for police officers and members of the Armed Forces. Strikes may only be limited if they would jeopardize the life, health, or safety of the general population.

**Liberties.** Freedom of thought, expression, and religion are guaranteed to every individual. The state cannot infringe upon any person's right to assemble, petition any government authority, or peacefully protest in both private and public places. The state must also respect freedom of the press and diversity of information; there may be no prior restraint.

**Goods and Services.** The state has a primary and inescapable duty to ensure the right to a just, nondiscriminatory, inclusive, and universally accessible education. Although every person retains the right to choose the type of education they would like to receive, the state must guarantee that free and secular public education from preschool through college is available.

Every person also has the right to both physical and mental health. The state must generate targeted programs and public policy to address mental health. Everyone, including domestic workers and caretakers, is guaranteed social security, which provides protection in case of disease, old age, maternity or paternity, unemployment, or work accidents or illnesses. The state must also ensure that people with chronic health conditions have access to palliative care. The National Health System will be financed by mandatory income contributions, and both private and public healthcare options will be available. The law will define the integration of the private healthcare system within the National Health System.

The state must ensure the right to clean air, clean drinking water, as well as healthy and nutritional food, including for those who require special food for health reasons. Housing, particularly for low-income people, is also considered a fundamental right. People must be provided with affordable and safe energy, universal access to technology and basic communication services, and free digital literacy. The state must also guarantee the right to free and comprehensive legal advice and representation for anyone who cannot afford or otherwise obtain it themselves.

## Environmental Protections

The most significant aspect of the environmental protection section of the proposed new constitution is that nature is conferred rights of its own that cannot be violated, with the aim of curbing the climate crisis.

**Rights of Nature.** Nature has the right to be respected and protected, and the Agency for the Defense of Nature will promote these rights. The state has the responsibility to educate people on environmental preservation, as well as adopt measures to mitigate the risks presented by the climate crisis and promote environmental cooperation among different countries. It must also establish a decentralized and diversified system of renewable energy with low environmental impact. Anyone who harms the environment must repair it. The law can restrict the exercise of some rights for the purpose of protecting the environment. There must be at least one environmental court in each region of the country. These courts deal with environmental rights, repairing environmental harm, and determining the legality of administrative acts impacting the environment.

**Water.** The state must guarantee the right to clean and accessible water for both present and future generations. The National Water Agency will be charged with ensuring the availability of good drinking water, as well as sustainable water use. Water and Air are common goods that can not be appropriated.

**Special Protection.** Animals are declared subjects of special protection and the state must guarantee their right to live free from abuse or mistreatment, as well as promote respect and empathy toward them. Glaciers, oceans, and wetlands are also granted special protection.

## Constitutional Process: Next Steps

**Transitional Provisions.** If the proposed new constitution is approved, guidelines are in place that lay out the bills that the executive would need to send to Congress within the next five years in order to transition to the new systems and institutions outlined in the proposed constitution. The table below displays these bills.

Date	The executive must present the following bills:
Up to December 2022	-Constitutional Court
Up to April 2023	-Action of protection (“acción de tutela) for fundamental rights
Up to October 2023	<ul style="list-style-type: none"> <li>-Electoral legislation</li> <li>-Social security system</li> <li>-System of care</li> <li>-Council of Justice</li> <li>-National Water Agency</li> <li>-Indigenous electoral registration</li> </ul>
Up to April 2024	<ul style="list-style-type: none"> <li>-National Health System</li> <li>-Protection of children</li> <li>-Relating to labor, I</li> </ul>
Up to October 2024	<ul style="list-style-type: none"> <li>-National Education System</li> <li>-Integrated public land system</li> <li>-Housing</li> <li>-Ombudsman’s Office</li> <li>-Agency for the Defense of Nature</li> <li>-Territorial autonomies (with Indigenous consultation)</li> <li>-Relating to labor, II</li> </ul>



Up to October 2025	-Administrative courts -Indigenous cultural heritage
Up to October 2026	-Territorial organization framework law
Up to October 2027	-Neighborhood justice

### Ratification Plebiscite.

On September 4, 2022, all Chileans who are 18 years of age or older will be required to vote in a nationwide plebiscite that will determine whether the proposed new constitution will go into effect. The plebiscite will ask only one question: Do you approve the text of the New Constitution proposed by the Constitutional Convention? Voters will select either “Approve” or “Reject.” If the majority of voters approve the proposed constitution, it will be ratified; if the majority of voters reject it, the current constitution of 1980 will remain in effect.

For further information: [www.plataformacontexto.cl](http://www.plataformacontexto.cl)

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