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## 1 The Demand for a New Constitution

On September 4, 2022, Chile rejected a proposed new Constitution draft and saw the end of a cycle of heavy political discussion that lasted almost three years.

Even though the drafting of a new Constitution for Chile had been proposed in academic circles before, it became part of political discussion after a series of public manifestations that took place in Chile beginning from October 18, 2019. In those manifestations, people raised before the government a wide range of social demands, including environmental issues, gender equality, the status of indigenous peoples, and the protection of animals, as well as reforms to the pension and health insurance systems. In that context, drafting a new Constitution was proposed as a means of addressing some of these demands, as well as raising to a constitutional level some issues that were currently treated on lower levels or were not regulated.

In addition, members of the left-wing political spectrum highlighted the importance of drafting a new Constitution by questioning the legitimacy of the one currently in force. The legitimacy question arises due to the fact that, although the Chilean Constitution has been subject to numerous reforms over the last decades, it was originally drafted and enacted in 1980, under the military government headed by Augusto Pinochet. Likewise, supporters of drafting a new Constitution demanded a more central role of the State in the Chilean economy, beyond the subsidiary role the State has under the current Constitution.

## 2 Drafting Process and Rejection

In order to appease the manifestations that started from October 18, 2019, members of different political parties agreed on an "Agreement for the Social Peace and New Constitution", which was signed on November 15, 2019. According to this political agreement, a referendum would be held to decide whether (i) a new Constitution should be drafted, and (ii) the drafters should be a "mixed" convention (i.e., composed of both members of the Congress and ad-hoc representatives) or by a convention composed only by ad-hoc representatives specially elected for the purposes of drafting a new Constitution.<sup>1</sup> After deferrals due to Covid-19, the referendum was held on October 25, 2020 under the government of Sebastián Piñera. At this time, 78.2% of voters approved drafting a new Constitution and 79% of voters preferred that such drafting was carried out by a convention fully composed of ad-hoc representatives.<sup>2</sup>

<sup>1</sup> [https://obtienearchivo.bcn.cl/obtienearchivo?id=documentos/10221.1/76280/1/Acuerdo\\_por\\_la\\_Paz.pdf](https://obtienearchivo.bcn.cl/obtienearchivo?id=documentos/10221.1/76280/1/Acuerdo_por_la_Paz.pdf).

<sup>2</sup> <https://www.chileconvencion.cl/itinerario-constitucional/>.

Following constitutional amendments necessary to carry out the drafting process, 155 representatives were elected on May 15 and 16, 2021 and formed the Constitutional Convention, which had the specific task of drafting a new Constitution within a maximum period of 12 months.<sup>3</sup> On July 4, 2022, exactly one year since its first session, the Constitutional Convention delivered a text of 388 Articles and 57 transitory rules, and was dissolved.<sup>4</sup> One of the main features of the proposed text was a long list of individual and collective fundamental rights and guaranties, from Article 17 to Article 113, encompassing with various nuances topics as diverse as due process, property, education, health, language, arts, gender identity, labor unions, energy, water, and environment, among others.

On September 4, 2022, a referendum to approve or reject the proposed Constitution was conducted. According to the new rules passed to enable the new Constitution drafting process, the winning option must obtain the absolute majority (>50% of actual voters), under a system of mandatory vote for all citizens of or over 18 years of age. In the most participative referendum of Chilean history, the new Constitution proposal was rejected by 61.86% of votes.<sup>5</sup> The reasons for this rejection undoubtedly are a complex set of interacting factors, but among the main elements it is possible to identify the inefficacy of the Constitutional Convention, which proposed a text that implied a radical shift in the Chilean legal usage, along with its inability to address some big concerns raised from the proposed text itself, like the protection of property, the unitary character of the country, and public security. Even the political sectors supporting the new Constitution draft acknowledged that amendments would be necessary after its enactment, which may have undermined the draft's adequacy vis-à-vis other alternatives like amendments to the current text. Another element may have been the low popular support for the government of Gabriel Boric, which was expressly advocating the approval of the new Constitution draft.<sup>6</sup>

### 3 The Way Forward

Although the people of Chile rejected the text of the new Constitution draft as a whole, the government continues its efforts to reach an agreement to draft another proposal for a new Constitution, carried out by another constitutional convention, this time advised by an expert panel. At this stage it is not possible to know the result of these political negotiations, or the details and schedule of the drafting of the new Constitution proposal, if implemented.

Nevertheless, it is foreseeable that such instance would include some of the topics put on the table by the recent experience, such as environmental protection, and reforms to the pension and health insurance systems. Whether and how these topics will be addressed is something that will be revealed in the future, depending on the how the politics and other factors that shape the drafting process of the new Chilean Constitution evolve.

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<sup>3</sup> <https://www.bcn.cl/leyfacil/recurso/proceso-constituyente>.

<sup>4</sup> <https://www.chileconvencion.cl/wp-content/uploads/2022/08/Texto-CPR-2022-entregado-al-Pdte-y-publicado-en-la-web-el-4-de-julio.pdf>.

<sup>5</sup> <https://plebiscitoconstitucional.servel.cl/servel-realiza-balance-del-plebiscito-constitucional/>.

<sup>6</sup> <https://www.bbc.com/mundo/noticias-america-latina-62798970>; <https://www.elmostrador.cl/destacado/2022/09/09/que-paso-las-razones-del-rechazo/>.

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