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Chile

Chile: The debate on the Constituent Assembly

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Throughout these sixty days of mobilisation, the popular revolt in Chile has advanced three fundamental demands: a social agenda to immediately fight against the precariousness of life; a new Constitution through a constituent assembly; and justice and the punishment of human rights violations. These demands have been advanced both in the spaces formed in the heat of the struggle such as the territorial assemblies and in the social spaces organised before the explosion of 18 October.

In this article, I will only deal with the discussion about a new Constitution, how it has developed, starting from the popular sectors and the ruling bloc, considering that on 18 October 2019 a constituent process was initiated, expressing a new relationship of forces between the social classes of our country. This opened a new political period which will be marked by the struggle between those who wish to maintain the current system and those who wish to advance towards a new political, economic and social system.

In this respect, the constitutive process will be characterized by the manifest will of the popular sectors to dismantle the neoliberal system and its legal order, which necessarily opens up a discussion on the need for a new constitutional text. In this sense, the conflict pits three sectors against each other: the popular sectors, which want profound transformation of this system and think that the current phase is an expression of the class struggle and that it is necessary to advance to an accumulation of social force allowing progress towards a higher stage of the class struggle; the reformist sectors which want changes as far as possible by concerted negotiation with those who want to maintain the status quo; and reactionary sectors that oppose any change to the current system and its Constitution.

Why a new constitution?

Chile's current constitution was imposed by a dictatorship and drawn up by the Ort zar Commission - ideologically directed by Jaime Guzm n. [1] The Pinochet regime tried to legitimize it in 1980 by a plebiscite carried out under the state of emergency and without an electoral register. It is true that it has undergone dozens of modifications, notably those of 1989 (with a plebiscite organized under pressure from the military on the street) and 2005 - where Ricardo Lagos signed off the amended text. [2] However, none of them changed substantive aspects of the dictatorship's constitution.

At the heart of this Constitution is the defence of the neoliberal system through the dogmatic protection of property rights, economic freedom and "freedom to conduct business" in areas of social rights, such as the right to education and to health. This is what has been called the "principle of subsidiarity" which underlies the constitution, even if it is not explicitly part of the text. Not all the standards maintained by the neoliberal system are enshrined in the constitution, but it can be said that its general framework is established in accordance with the provisions already cited.

This central core is protected by a series of "authoritarian enclaves" that maintain the constitution as it was written during the dictatorship. Among these enclaves are the preventive review by the Constitutional Court, the quorums of majority vote needed to modify the organic constitutional laws, the laws of interpretation of the constitution and constitutional reforms. Added to this were the binomial electoral system (repealed in 2015) and the appointment of senators (repealed in 2005). These enclaves are part of a constitution which establishes a system of extreme presidential power (power of veto, exclusive powers to initiate laws), which apart from elections has no mechanisms

for popular participation such as referendums, popular legislative proposals, or participatory budgets, among other measures. The political system excludes the popular sectors from decision-making.

This means that the questioning of the current constitution is a questioning of the neoliberal system put in place more than 46 years ago and of the transition pact, crystallized in the constitutional reforms and the legitimization of the Pinochet constitution in 1989. We can well say that the current mobilizations are not to gain 30 pesos, but to protest 30 years of exclusion of the people from decision-making about the present and the future of our country.

Why a new constitution? We need a constitution which crystallizes the dismantling of neoliberalism and which enshrines the advance towards new economic and social horizons which allow us to question the model of production, reproduction, distribution and consumption of wealth in our country; to regain control of common goods such as water, minerals, forests, marine resources, among others; as well as control of basic services such as electricity and health services. We need a new constitution which effectively guarantees economic, social and cultural rights and political and civil liberties. We need a new Constitution which allows the exercise of democracy, without exclusions and with high levels of direct democracy, so that the institutions of representative democracy are effectively representative. We cannot overlook the fact that this must be understood as an ongoing process of mobilization and deliberation of the peoples of our country, it being understood that the result will depend directly on how the process is carried out.

Our struggle does not end with the change of the constitution, but the conquests in this area will allow us to accumulate popular forces to advance to a higher stage of the class struggle.

The demand for the Constituent Assembly: how to reach a new constitution?

There are different mechanisms for amending a constitution: expert commissions, Congress, a Constituent Convention and a Constituent Assembly. In our country, Constitutions were created to solve a political problem at a historical moment and were written by commissions of “expert” men in the service of the national oligarchy, excluding the popular sectors and women. This happened from the constitutions of the 19th century until the most recent constitutions of 1925 and 1980.

The most democratic mechanism for modifying a constitution is the Constituent Assembly, which can be defined as an assembly all of whose members are democratically elected by universal suffrage and which has the specific function of drafting a new constitutional text. Historically, it has been understood that the constituent assembly must be sovereign, that is to say that it is not governed by any other power and that it has an initial power, which breaks with the previous legal order. This has happened with historical constituent assemblies such as those following the French Revolution (1789), the Second World War (Italy, 1947), as well as in countries which have suffered military dictatorships such as Portugal (1975), political regime changes through elections (Venezuela 1999, Ecuador 2008 and Bolivia 2009) or a major political crisis (Iceland, 2010).

Unfortunately, attempts have been made to empty the concept of a constituent assembly in order to legitimize dictatorships or authoritarian regimes in Latin America. This was the case with the constituent assemblies of El Salvador (1983) and Honduras (1982), which reduced the concept to a mechanism where the only important thing is the election of its members by universal suffrage. Therefore, and to understand the current debate in Chile, it is important to emphasize that sovereignty is a fundamental element when talking about the constituent assembly, even if certain sectors want to reduce its meaning to a simple mechanism for electing those who draft it.

In order not to engage in a semantic discussion, it is important to characterize the constituent assembly generated as a demand from mobilized sectors, and which was installed as a necessity of the first order since the discussion on how to generate a transition from the dictatorial regime led by Augusto Pinochet. Unfortunately, the sectors of the Concertación preferred to maintain the constitution of the dictator and not to fight for a new constitution built by the Constituent Assembly, as happened in all the countries of the world which ended an dictatorial regime, ensuring that the rules established by the dictatorship are ended.

We demand a free and sovereign constituent assembly, representative, plurinational and democratic. A free and sovereign constituent assembly means that there is no state power which can put pressure on it to take decisions or impose prior regulations on it; it is the assembly itself which decides on its operating rules and its quorum for their approval. A representative assembly means that if more than half of the population is female, at least half of the members of the assembly must be women. A plurinational assembly means that its composition recognizes that Chile is a country made up of different nations and peoples, and that it is therefore necessary to consider reserved seats for indigenous peoples and Afro-descendant Chileans. A democratic assembly means that all must participate in the election of the members of the assembly, and have the possibility of being elected, which implies: firstly, all people over the age of 14 can vote; Chileans from abroad can also vote in all elections and also be elected; secondly, the system for electing deputies is modified to increase the number of members of the assembly (244 members elected by the districts, more seats reserved as an expression of plurinationality and, after the election results, corrections to reach parity); and finally the means are given to independents so that they can be candidates under the same conditions as political parties.

The most developed proposal in these terms was that emanating from Unidad Social, which envisages a path to advance towards a free and sovereign, multi-national, representative and democratic constituent assembly. In this discussion, it is important to point out that the constitutive process initiated on 18 October includes all expressions of the people's struggle, including their spaces for discussion and popular deliberation such as councils (*cabildos*), territorial assemblies and the popular assemblies. But the fact that these spaces are part of the constitutive process does not necessarily mean that these spaces are legally recognized, even if they will become a material force of this constitutive process. [3]

We must therefore make a distinction between the constituent process in general, which is really important, and the institutional constituent route, which is one of the concretizations of the demands of the mobilized people. The institutional dimension is that which must be adopted by the existing institutions, because if we were to try to move forward without this, it would mean that we are able and ready for a seizure of power and a revolutionary process. According to our analysis, we are not in a pre-revolutionary situation, due to the absence of organized popular forces, so that in the current situation we must have a dialogue, interaction and confrontation with the current institutions, without being able to go around them.

The constitutional route developed by Unidad Social, in its institutional dimension, involves a constitutional reform establishing the call for a referendum so that the people decide whether they want a new constitution or the maintenance of the current one. In addition, if the people want a new constitution, it is necessary to envisage a second vote to decide if the body which will draft the constitution will be the Congress, a mixed constituent convention (half of the members elected by the Congress and half of the members elected by suffrage universal) or a constituent assembly (all members elected by universal suffrage). This vote should take place in March or April 2020. Given the majority of the peoples of Chile agree to a new constitution through a constituent assembly, the election of its members should take place on a date different from that of the municipal elections and should be held in July-August 2020.

Once elected on a representative and plurinational basis, members of the assembly must draw up their rules and have them approved by a qualified majority (half plus one of the members of the Assembly). In this case, they could set a higher quorum of approval for certain questions, such as a quorum of 3/5 or 2/3, however, **if they cannot**

agree, these questions must be resolved by the citizens through an intermediary referendum to decide between alternative formulations, which must take place at the latest nine months after the Assembly has started to discuss the new Constitution.

Once the results of the referendum are known, the Constituent Assembly must draft the final text of the Constitution, which must be submitted to a ratification vote, which should take place before the next general, parliamentary and presidential elections (August or September 2021) , so that the new authorities can be elected by means of the new constitutional rules. This is a proposal from various social, trade union, socio-environmental, student, feminist, human rights organizations, among others, with the support of Territorial Assemblies and Councils. However, **it is a proposal** and the political outlook is in many respects far from this constituent path.

The ruling bloc and the new constitution

In the discussion about a new constitution, the proposals of the ruling bloc have been differentiated. In the early days, despite pressure from the streets, the government opposed initiating a process that would lead to a new constitution, admitting only constitutional reforms. This picture changed as popular mobilizations in the streets progressed, forcing it after the general strike on 12 November to accept the discussion on a new constitution. This decision was crystallized by the “Agreement for Peace and the New Constitution”, signed by the parties of officialism – UDI, RN and Evópoli – and of the opposition: DC, PR, PPD, PS, RD, Comunes and Gabriel Boric. [\[4\]](#)

Some have resigned themselves to constitutional change but would like everything to change so that things stay the same. In this regard, the main element introduced by the right was the requirement that all decisions of the new constituent body (be it the mixed constitutional convention or the constitutional convention) be adopted by 2/3 of its members. This eliminates the *sovereignty* of the constituent body and grants a right of veto to the right so that constitutional changes do not take place. If the new constitutional process fails, the current constitution is maintained, which means that the right has a fundamental tool to boycott the constitutional process. **This is the central point of this agreement.**

Furthermore, this agreement did not provide for parity, nor for reserved seats as an expression of the country's plurinationality, nor for the equality of independents in the electoral race. Opposition sectors, mainly from the Frente Amplio, justified this agreement on the basis of two arguments:

1. They were under pressure to reach such an agreement, failing which the government of Piñera would again declare a state of emergency and take the soldiers out into the streets.
2. That a historic opportunity was opening up and that it had to be seized before the right returned to its traditional positions.

They added that the Peace Agreement was a floor from which they would bounce, not a ceiling. On the contrary, the UDI maintained that no new element had been added to the agreement, which signified the adoption of the agreement as it had been discussed on Friday, 15 November, between dawn and midnight. The agreement called for a referendum in April on two issues; the first, to choose whether to amend the current constitution, the second, to decide whether it will be modified by a mixed convention or a wholly elected one.

In the popular sectors, we maintain that a constitutional convention is not the same thing as a constituent assembly, because its decisions are limited, which prevents it from being a sovereign body. The progressive sectors that defend

the Agreement only argue that this has been achieved, embodying the transitional policy that builds “democracy as much as possible”.

The Agreement for Peace and a New Constitution was supplemented by a Technical Commission, composed of members appointed by the political parties signatory to the agreement. This commission supplemented (for the worse) the Agreement, establishing that the new constitution cannot modify international treaties ratified by Chile and that the constitutional convention cannot take over functions not provided for in the Constitution nor modify the quorum of its decisions, which deprives it of all sovereign character.

This Agreement was approved, without any modification, on Wednesday 18 December by the Chamber of Deputies and Thursday 19 December by the Senate. In both cases, parity, reserved seats and the equality of independents in the elections were rejected. This project was promulgated by the President of the Republic on Monday, 23 December, to issue the supreme decree on 24 December. What are the elements that are already the subject of a law? **The referendum has already been legally convened and will take place on Sunday, 26 April 2020.** The first vote will be on the question “Do you want to change the Constitution” with the following options: “a) yes” or “b) no”. The second vote, if the answer to change the constitution is “yes”, will consist of two options: change it by a mixed constitutional convention or a constitutional convention.

In summarizing the above, rules limiting the sovereignty of the constitutional convention have been established. All its decisions must be adopted by two thirds of its members. If the new constitution is rejected, the current one will continue to govern. The possible new constitutional text will have to be approved by a plebiscite of ratification with compulsory vote. This is what has been legalized so far. This is nothing more than what was provided for in the Peace Agreement and the new Constitution.

What about representation, plurinationality and the participation of independents?

On Wednesday 19 December, one day after the vote on the constitutional reform which convenes the referendum and legalizes the Agreement for Peace and the New Constitution, the Chamber of Deputies again debated representation, plurinationality and the participation of independents – questions which, the day before, had been rejected. This time, the opposition hoped to have the support of Evópoli and sectors of the Renovación Nacional, which it got. On the day, transitional rules were approved which allow for representation, seats reserved for indigenous peoples and the participation of independents through lists. [5]

With regard to representation, it has been established that “the lists formed by a single party, the lists of independent persons and electoral alliances for the constituent body must be composed by alternating a man and a woman, and by placing a woman in first position”. [6]

With regard to the participation of independents, it has been established that “two or more independent candidates may agree to an electoral pact, which will be in force exclusively in the constituency where independent candidates declare their candidacy. The declaration and registration of this list will be subject to the same rules as the candidacies for the posts of deputy. In addition, each candidate on the list, considered individually, must be sponsored by a number of independent citizens equal to or greater than 0.2% (this number was reduced after a first indication of 0.4%), and the list itself must be sponsored by 1.5% of those who voted in the electoral district during the previous legislative election, in accordance with the general count made by the Election Qualification Tribunal”.. [7]

With regard to the seats reserved for indigenous peoples, it was agreed that they will have 18 seats in the case of a constitutional convention and 21 seats in the case of a mixed constitutional convention. The question of whether each indigenous people (Aimara, Atacameños, Collas, Diaguitas, Mapuche, Quechuas, Rapa Nui, Kawashkar and Yagán) will have at least one reserved seat is still under discussion. The inclusion of Afro-Chileans, Afro-descendants, in this proposal was rejected. Voting, as approved by the Chamber of Deputies, will take place within the framework of a national electoral district with a single register of voters. [8]

However, these questions do not yet have the force of law and are the subject of litigation in the Senate. Some RN Senators are said to be unwilling to endorse the representation proposals, thereby yielding to pressure from the UDI and acting in their own interest. Technically, senators have until June to approve these provisions and the election of members of the convention should according to the government's calendar take place in October 2020, at the same time as the election of municipal authorities. For the approval of these rules, the opposition needs 25 votes in the Senate. It already has 23 votes, which makes the support of Senators Manuel Ossandón (RN) and Felipe Kast (Evópoli) essential to get these issues approved, as was the case in the Chamber of Deputies.

What should the popular movement do in this scenario?

Compared with the social issues and the political and criminal responsibility for human rights violations, it is on the theme of the constituent assembly that the most progress has been made. But there remains a central threat which is the weapon of the right to slow down the whole process and prevent the change of the constitution: this is the lack of sovereignty of the Constitutional Convention. **Demanding the sovereignty of the constituent body is therefore the priority.** In the current scenario, the demand for an intermediate referendum on alternative formulas on issues on which the Convention cannot reach agreement can be used for this purpose. All those issues on which agreement cannot be reached must be resolved by the citizens, otherwise we are giving the right a weapon to boycott the whole constitutional process.

Technically, the convening of an intermediary referendum or a referendum on alternatives can be done on the basis of a transitional article of the Constitution, which requires the approval of 3/5 of the Chamber of Deputies and the Senate. How can this be obtained? By making this demand a central demand in the general strike to be called in March, which should have as its central theme the demand for concrete economic and social measures to stop the precarisation of the lives of millions of families in our country and political and criminal responsibility for those responsible for human rights violations.

With regard to participation in the 26 April referendum, it is important that grassroots organizations, including social spaces organized before the Popular Revolt such as the Territorial and People's Assemblies, can take up this discussion, in order to decide if they are going to commit themselves forcefully to vote in favour of a New Constitution and for the option of the constitutional convention, even with its limits, while understanding that lacking sovereignty, it cannot be characterized as a constituent assembly. Before a majority of social and popular organizations feel ready to participate in this referendum, it is important to understand that the discussion on the character of the process is not yet closed, and that we have the possibility of continuing by imposing the discussion on the intermediary referendum as central, in order to make real the possibility of changing the content of the constitution. Without this we would have a fake constitutive process, allowing the reactionary right to boycott the whole process. But this will only be possible with a general strike.

As for participation in the election of the Convention, it will depend on the development of the situation and on our ability to tip the scales in our favour through popular mobilization. Finally, we must emphasize that the ruling bloc only wants a simulation of constituent processes, clearly having the task of protecting the norms which underpin the

neoliberal system in our country. Therefore, in every popular decision, we must keep in mind - paraphrasing the music group Con\$pirazion – that it is only by fighting that we advance, and that we only trust the people.

5 January 2020

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[1] Jaime Guzmán (1946-1991) was a far-right lawyer, and a leader of the paramilitary movement *Patria y Libertad*, who became an advisor to Pinochet and a senator. He was assassinated by members of the Manuel Rodríguez Patriotic Front.

[2] Ricardo Lagos, born in 1936, an exiled oppositionist under the Pinochet regime, led the Concertation of parties for democracy (comprising the Christian Democratic Party, the Party for Democracy, the Socialist Party and the Radical Social Democratic Party between 1988 and 2013), and campaigned for a “no” vote during the plebiscite seeking to allow Pinochet to remain in power in 1988. He was elected president of Chile from 2000 to 2006.

[3] Available in Spanish [here](#).

[4] The Unión Demócrata Independiente (UDI) is a party of the reactionary right, which supported Pinochet; with two centre right parties, Renovación Nacional and Evópoli, it forms the coalition Chile Vamos which supports the policy of the current president Sebastián Piñera. The Partido Demócrata Cristiano (PDC) is a historic party of the centre right. The Partido Radical (PR) is a historic anti-clerical party, which supported the Allende government and today positions itself as social-liberal. The Partido por la Democracia (PPD), founded in 1987 by a faction splitting from the PS, identifies itself with the centre left and social democracy. The Partido Socialista (PS), founded in 1933 as a Marxist party, is today part of the Socialist International and governed Chile under the presidency of Michelle Bachelet between 2006 and 2010 and between 2014 and 2018. Revolución Democrática (RD) is a left party founded in 2012 by some leaders of the 2011 student mobilisation, while Comunes is a party “of the democratic, popular and feminist left” founded in 2019 by the fusion of the organisations Poder Ciudadano and Izquierda Autónoma. Gabriel Boric is a deputy and a former student leader active in Izquierda Autónoma, one of the initiators of the Frente Amplio.

[5] 7. *Diario U Chile* of 19 December 2019, [“Cámara aprueba paridad de género, cuotas indígenas y candidaturas independientes”](#).

[6] *Boletín*-n 13.127, Cámara de Diputados.

[7] *Boletín*-n 13.130, Cámara de Diputados.

[8] *Boletín*-n 13.129, Cámara de Diputados.