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Innovations of the Constituent Convention in Chile: The Perspective from Public Participation and Environmental Rights

Introduction

This paper is written by participants of the Rapporteurship of Popular Participation, which is part of the Constituent Convention (*Convención Constitucional*) that has been taking place in Chile since July 4, 2021. In order to ensure the correct development of the mechanisms of popular participation defined by the Convention, follow-up teams were implemented to the four commissions constituted for the discussion of the content of the Convention. The main task of these teams was to accompany the commissions in the incorporation of the results of citizen participation (also “popular participation” or “public participation”) in the Convention’s norms. The previous activity involved the generation of periodic reports for the commissions with the content of the discussions and the monitoring of the impact of citizen participation at a normative level.

The activities carried out within the framework of the rapporteurship allowed us to observe first-hand the entire development of the constitutional change discussion process. Indeed, the constituent process incorporated innovative mechanisms – such as strict gender parity – which meant the opening of an unprecedented process in the Chilean constitutional tradition.

Considering the context described above, in this article we propose to explain some of the main innovations introduced in the Constituent Convention. For this purpose, the milestones, and the context in which the constituent process takes place are

described in general terms. The main features of the constituent body are also characterized at the procedural and operational level.

Then, the innovations associated with the incorporation of electronic mechanisms of citizen participation are described. This facilitated the reception of the contributions produced by the mechanisms of popular participation, for example, the popular norm initiatives.

Finally, the article refers to some substantive legal innovations enshrined in the recently published Constitution draft (the result of the constituent discussion), that relate to issues of environmental interest. These norms, which form part of the current draft, expand and recognize the fragile environmental and climatic situation in Chile, recognizing new constitutional principles and rights concerning the environment.

I. Brief Background of the Constituent Process: The Scenario Prior to the Constituent Convention

Before entering the main topic of innovations within the Chilean constituent process, it is important to give some insight on the context that triggered this event.

A. Political and Social Crisis

The key antecedent of the Chilean constituent process was the set of events during the week of October 18, 2019, when, as a result of an increase in the price of public transportation fares, a series of demonstrations and mobilizations took place in different communes of Santiago, the capital of Chile, which quickly spread throughout the country.

The demonstrations were led by high school students who began by evading payment of bus and metro fares. As the days went by, the demonstrations grew and called on other sectors of the population with new slogans and demands, which revealed a serious political, social, and institutional crisis. Other deeper issues in the country apart from transport fares began to emerge: discontent was present in areas such as health, education, social security, among others.

Several massive demonstrations took place throughout Chile; some of them peaceful and others of a more violent nature. In this agitated climate that the country was going through, there were also other events such as looting, destruction and even fires at public facilities. As a result of this situation, the government decreed a constitutional state of exception, called state of emergency,¹ which lasted ten days. Although it began to apply only in the capital, it was extended throughout the country, in order to face the serious social crisis.

¹ C. Dominguez, D. Silva, *Chile's president declares state of emergency after riots over metro fare hike*, CNN World, <https://edition.cnn.com/2019/10/19/americas/chile-protests-intl/index.html><https://edition.cnn.com/2019/10/19/americas/chile-protests-intl/index.html> (accessed: 2022.05.20).

The situation of chaos proliferated for almost a month, where there were a series of human rights violations by the forces of order and public security, mainly in the context of the repression of the demonstrations.² At that time, and to give an institutional solution to the social conflict, on November 15, 2019, most political parties and the government signed an agreement to write a new Constitution.³

B. The road to a new Constitution

The agreement materialized in the implementation of a constituent process, where a set of rules and minimum standards were established to initiate the process of constitutional change.

It was established that in April an initial referendum would be held, through which the citizens would have to answer two questions: (1) if they wanted a new Constitution or not, whose alternatives were approval or rejection; and (2) what type of body should draft the new constitution, whose alternatives were either a Constituent Convention⁴ or a Mixed Convention.⁵

On October 25, 2020, the said referendum was held and the winning option to the first question was approval, which meant that the citizens agreed with replacing the Constitution of 1980. The alternative chosen by the citizens to answer the second question was a Constituent Convention, which determined the body that would draft Chile's future Constitution. It is important to stress that there will be an additional referendum at the end of the constituent process, in order to approve or reject the draft of the new Constitution.

II. On the Constituent Convention

A. Brief Description

The Constituent Convention (hereinafter also "CC") was appointed by Chileans by direct vote as the entity in charge of writing the new Constitution for Chile. This organ is made up only of members elected specifically for this task, as opposed to a Mixed

² Office of the High Commissioner for Human Rights (2019). *Informe de la Oficina de Derechos Humanos de la ONU sobre la crisis en Chile describe múltiples violaciones de derechos humanos de Carabineros y hace un llamado a reformas*, <https://www.ohchr.org/es/2019/12/un-human-rights-office-report-chile-crisis-describes-multiple-police-violations-and-calls> (accessed: 2022.05.20).

³ Biblioteca del Congreso Nacional, Agreement for Social Peace and the New Constitution, https://www.bcn.cl/procesoconstituyente/detalle_cronograma?id=f_cronograma-1 (accessed: 2022.05.20).

⁴ The official Spanish term for the Chilean constituent organ is "Convención Constitucional". Considering that it is, technically speaking, a constituent and not a constitutional entity, the translation will be "Constituent Convention", to avoid confusion arising from the constitutional/constituent distinction.

⁵ The Mixed Convention was an alternative body to draft the new Constitution, but it was rejected by the citizens. The Mixed Convention had the particularity of being composed of 50% of current parliamentarians and the rest of members elected specifically for this task.

Convention. In October 2020, the members of the Constituent Convention were elected. The CC was installed and began its operation on July 4, 2021, with a term of nine months to complete its task, which could be extended for three more months.

In what follows, the emphasis will be placed on the issue of popular participation, on the bodies and mechanisms that contribute to its materialization.

B. Popular Participation

One of the innovations that should be highlighted in this process is the relevance given to popular participation, conferring an important role to citizens in the deliberative process and allowing civil society to present proposals to be incorporated into the new Constitution.

Furthermore, the “Reglamento de mecanismos, orgánica y metodologías de participación y educación popular constituyente” (Rules for mechanisms, organization and methodologies of participation and popular constituent education, hereinafter the “Rules for Popular Participation” or “RPP”) contemplated a series of principles that were to guide the work of the Convention, contained in its Title II. On the other hand, in its Title III, it established bodies for popular participation, namely, the Commission for Popular Participation and the Secretariat for Popular Participation, which ultimately had to ensure the effective impact of popular participation in the constituent process.

In this line, several mechanisms of popular participation were contemplated, such as the Self-Convended Meetings, where a group of people, on their own initiative, met to deliberate on constituent issues (art. 36 RPP); the mandatory Public Hearings, which are instances that allow the reception of proposals, experiences and testimonies of people and organizations on issues of interest to the Convention (art. 42 RPP); and the Digital Platform for Popular Participation, which will be discussed in greater depth in the following paragraphs (art. 26 RPP).

In addition, within the initiative of the Secretariat for Popular Participation, the Rapporteership on Popular Participation was created, whose main function was to make available to the Convention the results of the systematization of the various Instruments of Popular Participation, so that they could be considered by the Convention members in the drafting of the Constitutional text. For this task, the documents taken into account were the following:

- 1) “*Cabildos*”, or meetings where people had gathered to discuss constituent issues;
- 2) Local Self-Convended Meetings (which had been held in 2016 in the framework of another constituent initiative);
- 3) Popular Norm Initiatives, that is, normative proposals that people could submit on the Digital Platform for Popular Participation. If they obtained 15,000 signatures or more, they would go on to be discussed directly by the Convention Members within the Constitutional Convention.

Given this context, the Constituent Convention innovates at least in two additional and fundamental aspects concerning popular participation.

Firstly, in the thirty-first transitory provision of the current Chilean Constitution, it establishes a strict parity system requiring an equal number of men and women as representatives at the CC. This parity rule sets a historical landmark which surpasses the share of women's participation achieved in other similar processes, where rules have been incorporated to increase gender equality in the constituent body. Such is the case of Bolivia, Ecuador, and Tunisia.⁶ The 50–50 parity standard is a novelty for the whole world and positions Chile as a pioneer in gender equality in constitutional matters.

Secondly, in the forty-third transitory provision of the current Chilean Constitution, it establishes reserved seats for indigenous peoples. This is a breakthrough norm in Chilean constitutional history. Thus, Chile follows the same line of other Latin American countries, such as Ecuador, Colombia, and Bolivia, where native peoples have greater access to participate in constituent processes.⁷

III. Electronic Public Participation and E-government: Innovation and Challenges of the “Plataforma Digital de Participación Popular”

A phenomenon observed in the Latin American region is a wave of constitutional reforms that have implied the regulation of citizen referendum initiatives, i.e., mechanisms that allow citizens to submit a certain project (a bill of law, a constitutional amendment, etc.) to popular vote. One can also observe agenda initiatives, which allow placing on the agenda of a legislative assembly a bill or constitutional reform, on which the Legislative Branch decides⁸. This is mainly the case in Chile with the ongoing constituent process, which deploys a mechanism to present “Iniciativas Populares de Norma” (Popular norm initiatives, or IPN). This process is particularly innovative in Chile thanks to its implementation made almost exclusively on a digital platform called “Plataforma Digital de Participación Popular” (Digital platform for popular participation, hereinafter “DPPP”). This platform has been made available to the public in a web page. According to the site: “The DPPP is the space where Chilean men and women can present their proposals for norms for the Constituent Convention, and through the popular support of these, will allow their subsequent discussion by the members of this Convention.”⁹

⁶ V. Ponce de León Solís, “La paridad de género en el proceso constituyente chileno: alcances, expectativas y desafíos”, *Revista De Derecho Político* 2021, no. 112, pp. 383–413.

⁷ C. Acevedo De La Harpe, “Inclusión de derechos indígenas en Chile: Arquetipo constituyente desde América Latina”, *Polis (Santiago)* 2021, vol. 20, no. 58, pp. 22–42.

⁸ S. Linares, & Y. Welp, “Las iniciativas ciudadanas de referéndum en su laberinto”, *Revista Latinoamericana de Política Comparada* 2019, no. 15, pp. 55–77.

⁹ Chilean Digital Platform on Popular Participation, https://plataforma.chileconvencion.cl/m/paginas/que_es (accessed: 2022.05.25). Translation from Spanish.

The DPPP is enshrined in art. 26 RPP:

Article 26. Digital Platform. The Convention shall have a Digital Platform for Popular Participation, hereinafter referred to as the Platform, which shall serve as a link between the persons, communities, and organizations of the country and the Convention. It shall serve as an instrument of participation, support in the systematization of inputs and constituent popular education, data bank and dispenser of simple and accessible information.

The Platform will be designed in coordination with the Secretariat of Communications, Information and Transparency, for the effective fulfillment of the principles and guidelines of communication, transparency, and accountability for the functioning of the Constituent Convention. (...)

It is important to note that this is not the only digital platform made available by the Constituent Convention. For example, there is an online platform created exclusively for transparency reasons established by art. 46 and ff. of the General Rules of the Constituent Convention. Therefore, the use of electronic resources by the Convention is extensive, and it can be seen as a clear effort to foster e-government initiatives. In fact, the basic elements of open government initiatives can be clearly seen in the DPPP: transparency, political participation, and cooperation.¹⁰

Particularly concerning the DPPP, the Rules for Popular Participation state that the platform shall link people and communities, establish digital mechanisms of popular participation, facilitate the reception of the inputs produced by the popular participation mechanisms, provide intuitive and accessible interfaces with clear language and differentiated access for adults, children, and adolescents, and people with disabilities, among others.¹¹ This means that in addition to the traditional elements of an open government, this platform is also an opportunity to develop novel products and services, facilitating innovation processes.¹²

One of the main features of the DPPP, as it was formerly explained, is serving as a platform for submitting and voting popular initiatives of constitutional norms (IPNs) to be incorporated in a new constitution. This process, enshrined in par. 2.1 of the Rules for Public Participation, explicitly mentions the Digital Platform in art. 33 and the following. The IPNs can be presented in the Platform by any person or group of persons who fill in the digital or physical form provided by the Popular Participation Secretariat. These initiatives will be considered and voted on by the Constituent Convention if they surpass the threshold of 15,000 signatures, which are also mainly collected online by the same PDPP. The electronic identification process on the Platform is provided by

¹⁰ B.W. Wirtz, J.C. Weyerer & M. Rösch, "Open government and citizen participation: An empirical analysis of citizen expectancy towards open government data", *International Review of Administrative Sciences* 2019, vol. 85, issue 3, pp. 566–586.

¹¹ Art. 27, Rules for Popular Participation of the Constituent Convention.

¹² E. Ruijter & A. Meijer, "Open Government Data as an Innovation Process: Lessons from a Living Lab Experiment", *Public Performance & Management Review* 2020, vol. 43, no. 3, pp. 613–635.

another government service in charge of electronic signatures and e-identity called “Clave Única”¹³

Once a popular initiative reaches 15,000 signatures from at least four different regions of the country, it is considered the equivalent of any constitutional bill presented by a Constituent Convention member, which means they have to be equally discussed and voted on.¹⁴ Besides hosting the IPN voting process, the DPPP additionally allows for “Cabildos” or forums for constituent discussion, and actively show the number of votes, popular initiatives successfully considered by the Convention, the total number of participants and other relevant statistics. Clicking on any IPN allows everyone to see the number of votes over time, by the age and gender of voters, etc.

This Platform is an innovation in Chile and the world concerning constituent processes. Nevertheless, as any e-government initiative, it faces certain challenges that are yet to be addressed, such as IT security issues and data integrity, among others.¹⁵ One of the concrete issues in this case relates to the use of e-identity. For example, is the actual electronic signature system, which does not use second factor authentication, adequate for actions with deep repercussions such as e-voting in a constituent process? Other questions remain open concerning the subsequent conditions of use of the data collected by the DPPP, and are also deeply related to a country that is in process of reforming vital legal instruments such as its Data Protection Law.¹⁶

IV. Environment Commission, Regulatory Innovations in the Inclusion of Norms Associated with Climate Change

Shifting the focus of this article to innovation in substantive matters, the constituent debate has recently been marked by an update at the regulatory level of various problematic topics including environmental issues, specifically climate change, which are among the main concerns of Chilean society.¹⁷ There has been an emergence of socio-environmental conflicts that have increased awareness of problems concerning pollution, sacrifice zones, and water use, which are mainly associated with large investment

¹³ Clave Única (Chilean electronic identity platform): <https://claveunica.gob.cl/que-es> (accessed: 2022.05.13).

¹⁴ Art. 35, Rules for Popular Participation of the Constituent Convention.

¹⁵ L. Sundberg, “Electronic government: Towards e-democracy or democracy at risk?”, *Safety Science* 2019, vol. 118, pp. 22–32.

¹⁶ M. Vergara, “Chile : Comentarios preliminares al proyecto de ley que regula la protección y tratamiento de datos personales y crea la Agencia de Protección de Datos Personales”, *Revista Chilena de Derecho y Tecnología* 2017, vol. 6, no. 2, p. 135.

¹⁷ According to a recent survey of 30 countries, Chile is the country with the second highest concern for the impacts associated with climate change, surpassing the world average. Generación M (2022.04.30). *Chile es el segundo país donde más preocupación genera el cambio climático*. El Mostrador; <https://www.elmostrador.cl/generacion-m/2022/04/30/chile-es-el-segundo-pais-donde-mas-preocupacion-genera-el-cambio-climatico/> (accessed: 2022.05.19).

projects. Given this situation, a movement to care of the environment and the climate change situation has formed in the country.

This means that an important share of environmental activists, that is, activists who had exercised leadership in community experiences that were organized around environmental situations or problems in their territory, were elected as members of the Convention. Likewise, the constituents' programmatic priorities include environmental protection, changes in the development model and changes in the ownership of common goods.¹⁸ In fact, approximately 108 constituents (of 155 elected) have an environmentalist outlook that aims to incorporate constitutional principles and environmental protection mechanisms into the new Constitution. In this regard, a new framework for the protection of water is of the utmost importance for the elected members of the Convention.¹⁹

The importance of environmental protection and the climate emergency implies that, in the Convention's rules, several elements associated with environmental protection have been introduced. The climate emergency is declared in the statutes approved by the Convention, which constitutes a step forward in terms of constitutional drafting experiences.²⁰

Indeed, art. 61 of the Rules of Procedure of the Constituent Constitution establishes the subject of "Environment, Rights of Nature, Natural Commons and Economic Model" as a thematic commission. Then, art. 66 enshrines as part of the topics to be addressed by the Environment Commission, a discussion on environment, rights of nature, environmental democracy, and the climate crisis, among others. Likewise, art. 3, letter m) of the Rules of Procedure recognizes the principle of respect and care for nature and the application of an ecological approach, which establishes that the balance, protection, and care of nature must be considered in the various actions of the Convention. Thus, actions and practices that are consistent with the current climatic and ecological emergency must be deployed.

¹⁸ The idea of common goods has gained strength at the constitutional level under the idea that these types of goods, which correspond to natural resources used by many individuals, should be special objects of protection in the new constitution. E. Olstrom, *El gobierno de los bienes comunes*, Fondo Cultura Económico 2000, pp. 28–29.

¹⁹ H. Cossio, "Convención ambientalista: más de un 70% de constituyentes respalda cambiar de modelo de gestión de agua", *El Mostrador*, <https://www.elmostrador.cl/destacado/2021/05/18/convencion-ambientalista-mas-de-un-70-de-constituyentes-respalda-cambiar-modelo-de-gestion-del-agua/> (accessed: 2022.05.19). Likewise, in the organization of the Constituent Convention, several convention members were constituted under the concept of eco-constituents, corresponding to an open group of convention members that transcends traditional political parties or blocs and who identify themselves with the defense of the environment and criticize the current natural resource management model.

²⁰ "The Chilean Constituent Convention declared a climate emergency on 4 October 2021, and approved statutes of the convention to consider the climate emergency in its principles and rules". K. Martínez et al., *The 11 nations heralding a new dawn of climate constitutionalism*, Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science 2021.

This new conception of care for the environment and action on climate change is far from what is regulated by the Political Constitution that currently governs Chile, which was put into force during Pinochet's dictatorship. The Constitution of 1980 recognizes for the first time in our country a fundamental right of a purely environmental nature, namely the Right to live in a pollution-free environment, enshrined in art. 19 N°8 of the current Constitution. However, this recognition has limitations since the ways of protecting and exercising this right are essentially individual, i.e., it only allows to claim before the courts an affectation to the environment to the extent that it produces damage or a risk to the health of one or more persons.

The individual scope of the right to live in a pollution-free environment is especially relevant when contrasted with its social or collective dimension since communities affected by certain socio-environmental problems can only protect their right as individuals. In other words, there are no collective safeguards in this matter. Thus, the discussion that has taken place in the Constituent Convention breaks with the strictly individual conception of the rights associated with the protection of the environment, recognizing collective ownership of the rights of nature and the environmental crisis we are currently experiencing.

There are at least two norms currently approved by the plenary of the Constituent Convention that acknowledge the climate emergency and the rights of nature. The first article establishes that "it is the duty of the State to adopt actions for the prevention, adaptation and mitigation of risks, vulnerabilities, and effects caused by the climate and ecological crisis. In the same sense, the State shall promote dialog, cooperation, and international solidarity to adapt, mitigate, and confront the climate and ecological crisis and protect Nature".²¹

This recognition of the climate crisis at the constitutional level indicates a clear and emerging trend of different constitutions that explicitly consider the climate crisis. Although there are currently few countries that recognize the climate emergency at a constitutional level, the constitutional recognition and regulation of climate change has the potential to effectively protect the environment, contributing to global responses to climate challenges and also allowing for accelerated adaptation of climate regulation.²²

This is replicated in the recognition of the rights of nature. Article 103 of the new Chilean Constitution bill establishes that Nature has the right to have its existence, regeneration, maintenance, and restoration of its functions and dynamic equilibrium, including natural cycles, ecosystems, and biodiversity, which are respected and protected.

This recognition provided by the Convention follows the constitutional trend in the region (e.g., Ecuador or Bolivia) that recognizes Nature as a subject in its own right.

²¹ Art. 129 of the new Chilean Constitution bill. Translation from Spanish.

²² A. Jegede, "Climate Change and Environmental Constitutionalism: A Reflection on Domestic Challenges and Possibilities" [in:] *Implementing Environmental Constitutionalism: Current Global Challenges*, E. Daly & J. May (eds), Cambridge University Press 2018, pp. 84–99.

This recognition has a collective dimension given that it establishes obligations of the State concerning the protection of nature. Nevertheless, an effective safeguard still depends on the capacity of every individual and collective person to go before a judge in defense of the right to the environment.²³

V. Correlation between Institutions and the Safeguard of Fundamental Environmental Rights: The Case of Water

A. The Constitutional Enshrinement of Water

From the review of the norms of the draft of the new Constitution,²⁴ it can be deduced that another of the innovations at the constitutional level in environmental matters is related to the institutional correlation derived from the consecration of various norms related to water, as a right, as well as in its dimension as a natural common good, and a legal object of special protection.

The correlation in question arises from the creation of novel autonomous bodies, namely, the Nature Ombudsman's Office, the Ombudsman's Office, and the National Water Agency. In addition, with the new regulation of the already existing Environmental Courts, a robust institutional and normative framework is established for the systematic treatment of water in the new Constitution.

B. The Inorganic Regulation of Water in the Current Chilean Constitution

The matters related to water in the current Constitution are related to the statute of the right to property. Specifically, in the last paragraph of art. 19 N°24 of the current Constitution, water is mentioned in the following terms: "The rights of individuals over water, recognized or constituted in accordance with the law, shall grant their owners the property over them". As can be seen, and following Ezio Costa and Daniela Duhart, "The intention of the 1980 constituent was to give security to water users that the State would not take away their use of those waters, as well as certainty for them to make the necessary investments in hydraulic works".²⁵

This was on the understanding that water was treated from the perspective of its use as a necessary resource mainly for the development of agriculture, mining, and the forestry industry. The subsequent legal regulation, established in the Water Code

²³ E. Fernández, *Una amplísima legitimación para el acceso al juez constitucional: De la defensa del derecho al ambiente (Costa Rica) a la defensa de los derechos de la naturaleza*, Revista Judicial 2015, no. 115.

²⁴ Draft Approved Norms for the constitutional proposal by the Plenary of the Constitutional Convention, <https://www.chileconvencion.cl/normas-aprobadas-pleno> (accessed: 2022.05.19).

²⁵ E. Costa & D. Duhart, *La protección del agua en Chile*, A. Jorquera & E. Costa Cordella, *Derecho Ambiental Chileno: Parte Especial* 2021, vol. 10, p. 6.

of 1981, shows the preeminence of this vision over one that ensures that water be enshrined as a human right, in addition to being worthy of a special status of protection.²⁶

C. Constitutional Regulation of Water in the Draft of the New Constitution²⁷

The proposal of the new Constitution contemplates a regulation of water in several dimensions:²⁸ as a human right, as a non-appropriable natural common good, as a legal object of special protection, in addition to the need for a governance and institutional framework to take charge of the challenges posed by the climate and water crisis.

Thus, the Convention establishes a “constitutional statute of waters”, which includes provisions referring to the State’s duty to protect them, in all their states and phases, and their hydrological cycle; to ensure their reasonable use; to ensure a participatory and decentralized system; an integrated management of basins; among others.

The Constituent Convention introduces a new concept and statute of protection referring to natural common goods, among which include water, glaciers, and wetlands. In the case of water, it is established that it will be non-appropriable in all its states, which implies the duty of the State to preserve, conserve, and restore it. It also contemplates the possibility of the State granting administrative authorizations for the use of non-appropriable natural common goods, according to criteria of temporality, subject to causes of expiration, extinction, and revocation, with specific conservation obligations. The novelty of these authorizations, with respect to the statute of water use rights that are constitutionally based on the final paragraph of art. 19 N°24 of the current Chilean Constitution, is that they will not generate property rights.

Regarding this novel constitutional statute of waters, the protection of water as a fundamental right is deepened with the creation of a National Water Agency. The objective of this institution, in accordance with art. 144 of the new Chilean Constitution bill, is to “ensure the sustainable use of water for present and future generations, access to the human right to water and sanitation, and the conservation and preservation of its associated ecosystems”. It is also established that this Agency will be responsible for granting administrative authorizations for use and for coordinating, directing, and supervising the actions of the State bodies with jurisdiction over water and of private individuals.

In terms of governance and institutionality, the new Chilean Constitution bill, in its article 143, contemplates the State’s duty to create and ensure a “participatory and

²⁶ A. Vergara y D. Rivera, *Regulación de las aguas en Chile: esquema general, gestión y conflictos actuales* [in:] *Lecturas de derecho de aguas. El derecho de aguas en Latinoamérica y Europa*, ed J. Pimiento Echeverry, Colombia 2021, pp. 44–74.

²⁷ The regulation is divided into the following dimensions, namely: (i) Water as a fundamental right (art. 294 Draft, p. 100); (ii) Water as a natural common good and conditions for its use (art. 299–302 Draft, pp. 101, 102); (iii) Constitutional Water Statute (art. 309–313, pp. 103, 104) and; (iv) Creation of an autonomous water agency (art. 414–415, pp. 132, 133).

²⁸ Centro de Derecho Ambiental (CDA) (2022), *Gaceta N°7: El Agua en el borrador de nueva Constitución*, Observatorio Constitucional Ambiental, Universidad de Chile Law School, Chile.

decentralized water governance system, through the integrated management of accounts, with the hydrographic basin as the minimum management unit". This aspect is relevant given that water resource management is one of the main issues under study in the field of water, at the doctrinal, public policy, and legislative levels²⁹.

This whole framework of the constitutional regulation of water shows that water is treated from an eminently environmental perspective. This implies considering water as a natural, scarce, and valuable resource, whose protection must contemplate special rules, including with respect to its exploitation. On the other hand, the criterion of sustainability operates as a minimum mandate for the use of water as a resource.

Conclusion

It is possible to observe that the current constituent process in Chile is rich in innovations of both form and substance. In terms of organic and procedural aspects, the Constituent Convention itself includes features of gender equity or participation of the first persons that set high standards for future constituent processes and amendments around the world. The concern for giving legitimacy to the process through citizen participation has also been of vital importance in the context of social and political crisis that demands better standards of democracy. Thus, public participation has had several incarnations, in the implementation of a special Commission, Secretariat, and Rapporteurship on the matter, but also ensuring various forms of public participation and direct democracy.

One of the main advances in the implementation of this process is the deployment of a digital platform for voting on popular initiatives for constitutional norms. This feature marks a milestone in the recognition of e-democracy and shows the potential of digital citizenship. One of the future challenges is related to the replication of these methods of citizen participation as e-government policy in Chile. Cybersecurity or open government issues such as the use of data coming from this process are particularly important.

There are also many innovations in substantive norms that are being incorporated into the draft of the possible new Chilean Constitution. As it is not feasible to include the dense set of novel constitutional norms and principles emanating from the most advanced constitutional doctrine, this article focuses on environmental issues. In this sense, innovative elements such as the recognition of ecological and climate crises in the constitutional text position Chile at the forefront of environmental legislation. Other institutional additions, such as the new water framework, constitute innovations that should be considered by other countries in light of their local situations regard-

²⁹ D. Duhart, "Debilidad institucional en la gestión de las aguas en Chile: Reflexiones a partir del estudio de los sistemas de Inglaterra y Australia (New South Wales) y otras experiencias comparadas" [in:] E. Costa, *La regulación de las aguas: nuevos desafíos del siglo XXI. Actas de las II Jornadas del Régimen Jurídico de las Aguas*, Ediciones DER, 2019, p. 36 y ss.

ing global warming and water governance. The concrete impact of these pioneering initiatives is yet to be proven and is probably linked to the ability of these new rules and institutions to achieve international cooperation, acquire sufficient tools for implementation and enforcement, etc.

Finally, after the completion of the new Constitution bill, we acknowledge the existence of several topics to be explored in future legal and political research, which should address at least the way in which the norms approved by the Convention address the claims of civil society. We are aware that this is a first descriptive approach to a juridical and social phenomenon. In this sense, we believe that issues such as participation (e-democracy) and environment and climate change norms will be references for other constitutional change processes and will set an important landmark for future research.

Literature

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Summary

Alexander Núñez Nova, Camilo Aguilera Ramírez, Jose Ledesma Romero, Benjamín Núñez Ochoa, Nicolás Yáñez Viveros

Innovations of the Constituent Convention in Chile: The Perspective From Public Participation and Environmental Rights

This paper, written by a group of participants of the Rapporteurship of Popular Participation of the Chilean Constituent Convention, shows innovative approaches of the ongoing constituent process in Chile, which started in 2021. It explores innovations both in the form and substance of the process, which is a landmark in the constitutional history of the country. A brief context of the background of the constituent process is provided, and then some innovations concerning the constituent body are discussed. Special attention is given to the process of electronic participation regarding voting on popular norm initiatives. Then, concerning substantive innovations, it focuses on environmental and climate change norms, with some final remarks on the future of water regulation contained in the draft of the new Chilean constitution.

Keywords: constituent process; constituent convention; public participation; popular participation; e-democracy; open government; fundamental rights; climate change regulation; water regulation; Chilean constitution.

Streszczenie

Alexander Núñez Nova, Camilo Aguilera Ramírez, Jose Ledesma Romero, Benjamín Núñez Ochoa, Nicolás Yáñez Viveros

Innowacje Konwentu Konstytucyjnego w Chile: z perspektywy partycypacji społecznej i praw do środowiska

Artykuł napisany przez grupę uczestników „Rapporteurship of Popular Participation of the Chilean Constituent Convention” przedstawia innowacyjne rozwiązania w trwającym od 2021 r. procesie konstytucyjnym w Chile. Autorzy analizują innowacyjne rozwiązania zarówno co do formy, jak i treści procesu, który ma przełomowe znaczenie w historii konstytucyjnej tego kraju. Po pierwsze, przedstawiony został kontekst procesu konstytucyjnego, a następnie omówiono zostały niektóre innowacje dotyczące konstytucyjnych rozwiązań. Szczególną uwagę poświęcono procesowi elektronicznej partycypacji w głosowaniach nad obywatelskimi inicjatywami ustawodawczymi. Następnie, w zakresie innowacji merytorycznych, skoncentrowano się na normach dotyczących środowiska i zmian klimatycznych, przedstawiając końcowe uwagi dotyczące przyszłości regulacji gospodarki wodnej zawartych w projekcie nowej Konstytucji Chile.

Słowa kluczowe: proces konstytucyjny; konwencja konstytucyjna; partycypacja publiczna; partycypacja społeczna; e-demokracja; otwarty rząd, prawa podstawowe; regulacja dotycząca zmian klimatycznych; regulacja gospodarki wodnej; Konstytucja chilijska.