



## **Citizen participation and social rights in a new constitution for Chile**

Project Partner: Ahora Nos Toca Participar (Chile)

### **About Ahora Nos Toca Participar**

[Ahora Nos Toca Participar](#) (ANTP, “It’s our turn to participate”) is a project of [NPS](#), a coalition of 700 organisations in Chile working across the entirety of the country. NPS was born in response to protests that began on 18th October 2019. ANTP aims to strengthen democracy and the protection of human rights in Chile as the country embarks upon the possible adoption of a new constitution (or new social pact), a process that will constitute one of the most important socio-political events in Chile’s recent history.

ANTP’s goal is not only to strengthen democracy, but also to promote social cohesion by looking to safeguard public involvement in the constitutional process, and to advocate for participatory mechanisms in such process.

### **Project Overview**

On 11 September 1973, a military junta composed of the heads of the Army, Navy, Air Force and national police led a coup to overthrow the Allende government, alleging constitutional violations. This resulted in military rule followed by a dictatorship, led by Augusto Pinochet, that would last until 1990. Not long after the coup, the junta appointed a commission to begin crafting a new constitutional order to legitimise the military. This constitution, adopted in 1980, forms the basis of the document that still stands today.

The 1980 constitution has been described as a “dual constitution” that contained “transitional” as well as “permanent” articles. The transitional articles would apply during the transitional period of military rule with Pinochet as President and the junta holding constituent and legislative power.

Despite being amended several times over the years, Chile’s democracy continues to be built on a constitution originally written during the dictatorship. It requires a number of extremely high quota requirements for the adoption of even regular legislation, which makes it difficult to bring about any real change. It is also seen as the embodiment of Pinochet’s neoliberal model, prioritising a market-driven economy, but not adequately guaranteeing education, healthcare and pensions. The constitution was written to prioritise private property over welfare state. Chile has signed and ratified a number of international treaties that proclaim economic, social and cultural rights, but by and large these rights have not been incorporated into domestic law, and the constitution does not recognise these rights either.

The protests began in Chile on 18 October 2019, originally led by students, in outcry against rising rush-hour metro ticket prices. When then Minister of Economy Juan Andrés Fontaine announced that those upset with the price rise could wake up earlier and pay a lower rate,



students conducted mass fare evasion by jumping turnstiles and, in some cases, destroying them. When the police tried to use force against the students, protests ensued in the streets to denounce wider inequalities across Chile. The issues brought to the forefront include the increasing cost of living, low wages and pensions, a lack of quality education, and a poor public health system. A recent [study](#) by Centro de Estudios Públicos showed that 63% of people chose pensions as the top problem the government needs to solve immediately, followed by 46% choosing health and 38% choosing education as the most urgent issues.

A large proportion of the population blame “traditional” politics for the lack of opportunities and the violation of rights. This has resulted in a growing distrust of the main political institutions; namely historic political parties, Congress and the Executive or President. According to the study mentioned in the previous paragraph, 27% of people think democracy does not work well in Chile, whilst just 5% have confidence in Government institutions, 3% in Congress and just 2% in political parties.

Since protests began, a large percentage of the Chilean population has got involved in community organising to express their anger because of the high levels of inequality and the state of privatised essential public services. This contrasts with the low figures of formal civic engagement, such as electoral turnout, which was 46% in the first round of parliamentary and presidential elections in 2017.

The protests of October 2019 led to a national agreement, unanimous by all parties, for a referendum on the current constitution. Only elected citizens will be able to directly influence the writing of the new constitution. However, minority groups, including indigenous groups, LGBT+, children, people with disabilities, elderly, rural populations, incarcerated people, refugees and migrants, are historically underrepresented or not represented at all among elected officials in elections in Chile. ANTP aims to raise awareness in particular among the underrepresented communities, and encourage voters to lobby constitutional committee candidates ahead of the elections in April 2021.

### **Project Output**

A 25-30 page report (plus annexes, if any) will be submitted to ANTP at the end of the research. Combined with a good understanding of the political context and the transformation that Chile is going through, the research will explore good practices in participatory constitution-making and deliberative democracy to identify the most effective ways to raise the demands of vulnerable groups in Chile. The research will address how the ideas, demands and suggestions of individuals at greater risk of harm, disadvantage and discrimination can influence the process of production of the new constitution. The research will deliver lessons and propose concrete mechanisms to include vulnerable groups in future political processes, including the production of the new constitution.

The report will contain at least 5 chapters dealing with:



- The political context.
- An analysis of the meaning and significance of the principle of active participation in relation to human rights, particularly economic, social and cultural rights.
- Background information on participation of vulnerable groups in Chile and previous efforts to promote their participation in political processes.
- Insights from the cases studied.
- Mechanisms to effectively include vulnerable groups in the production of a new Constitution in Chile or the equivalent process if the “Rechazo” (rejection) option wins the plebiscite.

Ahora Nos Toca Participar and the Human Rights Centre Clinic will consider the possible publication of the output, always subject to quality assurance, in English and/or translated into Spanish. Ahora Nos Toca Participar will use it in their lobby and advocacy work with parliamentarians and other stakeholders in Chile. June 2021 is when the constitutional convention will commence the drafting of a new constitution for the <sup>country</sup>.

### **Project Outline**

#### Phase 1: November-December 2020

- Preliminary research, understanding the project and developing research/report outline.
- Identifying a list of experts for interviews and questionnaire. A preliminary list will be provided by ANTP
- Mapping of cases, bibliography and literature review. The outline and bibliography to be submitted ANTP in mid-December for comments.
- Seeking ethical approval for interviews.

#### Phase 2: January-March 2021

- Carrying out the interviews online or via telephone.
- Research and data gathering.
- Report writing (first draft)
- Submission of the first full draft (25-30 pages, plus annexes if any) to ANTP.

#### Phase 3: April-June 2021

- Revision and finalising the research based on the input received ANTP, including events occurred in March and April, given the extreme timeliness of this project.
- Potential for blogs at ANTP website and/or other communication material.
- Publication of the material on ANTP’s website (contents’ section).
- Communications campaign including digital, local and traditional media.
- Dissemination with decision makers (constituent convention and/or Parliament).

### **Essential readings**



Participatory constitution-making: Introduction

Sujit Choudhry, Mark Tushnet

*International Journal of Constitutional Law*, Volume 18, Issue 1, January 2020, Pages 173–178, <https://doi.org/10.1093/icon/moaa014>

When public participation matters: The 2010–2013 Icelandic constitutional process

Hélène Landemore

*International Journal of Constitutional Law*, Volume 18, Issue 1, January 2020, Pages 179–205, <https://doi.org/10.1093/icon/moaa004>

Constitution-making and liberal democracy: The role of citizens and representative elites

Gabriel Negretto

*International Journal of Constitutional Law*, Volume 18, Issue 1, January 2020, Pages 206–232, <https://doi.org/10.1093/icon/moaa003>

Women and participatory constitutionalism

Ruth Rubio-Marín

*International Journal of Constitutional Law*, Volume 18, Issue 1, January 2020, Pages 233–259, <https://doi.org/10.1093/icon/moaa005>

The Democratic Case for a Written Constitution

Jeff King

*Current Legal Problems*, Volume 72, Issue 1, 2019, Pages 1–36. <https://doi.org/10.1093/clp/cuz001>

Ron Levy, Hoi Kong, Graeme Orr and Jeff King (eds.), *The Cambridge Handbook of Deliberative Constitutionalism* (Cambridge University Press, 2018)

<https://www.cambridge.org/core/books/cambridge-handbook-of-deliberative-constitutionalism/B209A09BA0C7B3860318D8D2D5DC304B>

Roberto Gargarella, *Latin American Constitutionalism, 1810-2010: The Engine Room of the Constitution* (Oxford University Press, 2013) DOI:10.1093/acprof:oso/9780199937967.001.0001

Francisco Soto Barrientos, *El desafío de la participación* (2012)

<http://repositorio.uchile.cl/bitstream/handle/2250/145071/El-desafio-de-la-participacion.pdf?sequence=1>

OECD, *Public Governance Review Chile: Citizen Participation in the Constitutional Process* (2017)

<http://www.oecd.org/gov/public-governance-review-chile-2017.pdf>

OHCHR, *Guidelines on the right to participate in public affairs* (2018), UN doc: [A/HRC/39/28](https://www.ohchr.org/EN/Issues/Pages/DraftGuidelinesRighttoParticipationPublicAffairs.aspx).

<https://www.ohchr.org/EN/Issues/Pages/DraftGuidelinesRighttoParticipationPublicAffairs.aspx>



Gobierno de Chile, *Manual de Participación Ciudadana* (2017)

<http://www.biblioteca.digital.gob.cl/bitstream/handle/123456789/2298/2017.07.20%20-%20MANUAL%20Definitivo%20Participacion%20Ciudadana.pdf?sequence=1&isAllowed=y>

Gobierno de Chile, *Criterios y Orientaciones Para la Implementación de los Mecanismos de Participación Ciudadana en la Gestión Pública* (2014)

<http://www.biblioteca.digital.gob.cl/handle/123456789/651>

José Thompson, “Participación, Democracia y Derechos Humanos: Un enfoque a partir de los dilemas de América Latina”, *Revista IIDH*, Volume 34-35, Pages 79-103.

<https://www.corteidh.or.cr/tablas/R08068-2.pdf>

Centro de Derechos Humanos UDP, *Informes anuales sobre derechos humanos en Chile*.

<http://www.derechoshumanos.udp.cl/derechoshumanos/index.php/informe-anual>

OHCHR – about Chile.

<https://www.ohchr.org/EN/Countries/LACRegion/Pages/CLIndex.aspx>

Unlock Democracy: <https://unlockdemocracy.org.uk/>

UCL Constitution Unit – On Deliberative democracy: <https://www.ucl.ac.uk/constitution-unit/research/deliberative-democracy>

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