

PROPOSAL FOR CONSTITUTIONAL AMENDMENT
AGREEMENT FOR PEACE AND A NEW CONSTITUTION

DECEMBER 6, 2019

[The Technical Commission established in article 10 of the [Agreement for Social Peace and a New Constitution](#) agreed on the following proposal for constitutional amendment. This proposal will have to be officially introduced and approved by both chambers of Congress and sanctioned by the President of the Republic.]

Single article.- The Constitution, whose unified, coordinated and systematic text is contained in Presidential Decree N° 100 of 2005, of the Minister of General Secretariat of the Presidency, is hereby amended as follows:

- 1) The title of Chapter XV of the Constitution is replaced for the following: “Chapter XV. Amendment of the Constitution and Procedure to Establish a New Constitution for the Republic”.
- 2) A new subtitle is inserted before article 127, with the following text: “Amendment of the Constitution”.
- 3) A new subtitle and the following articles are inserted after article 129, with the following text:

On the Procedure to Establish a New Political Constitution of the Republic

Article 130. On the National Referendum

Three days after the entrance into force of this article, by means of an exempted presidential decree, the President of the Republic will call for a national referendum of April 26, 2020.

In the said referendum, citizens will be given two ballots. The first will contain the following question: “Do you want a New Constitution?” Under the question there will be two horizontal lines, one next to the other. The phrase “I approve” will be written below the first line, and the phrase “I reject” below the second, so that the elector may express his or her preference on one of the alternatives.

The second ballot will contain the following question: “Which kind of body should draft the New Constitution?” Under the question there will be two horizontal lines, one next to the other. The phrase “Mixed Constitutional Convention” will be written below the first line, and the phrase “Constitutional Convention” below the second. Under “Mixed Constitutional Convention” the following sentence will be inserted: “Composed in equal parts of members popularly elected and incumbent members of parliament”. Under “Constitutional Convention” the following sentence will be

inserted: “Composed exclusively of members popularly elected” , so that the elector may express his or her preference on one of the alternatives.

The relevant provisions of these statutes, as in force on January 1, 2020, will apply to this referendum:

- 1) The following parts of Decree with Force of Law N^o 2, of 2017, of the Minister of General Secretariat of the Presidency, which fixes the unified, coordinated and systematic text of Organic Constitutional Law N^o 18700 on Popular Vote: Section V, Section VI, with the exception of the sixth paragraph of article 32 and paragraphs two to four of article 33, sections VI, VII, VIII and IX of Title I; titles II to X; titles XII and XIII;
- 2) Decree with Force of Law N^o 5, of 2017, of the Minister of General Secretariat of the Presidency, which fixes the unified, coordinated and systematic text of Organic Constitutional Law N^o 18556 on System of Electoral Registry and Electoral Service;
- 3) The following parts of Decree with Force of Law N^o 4, of 2017, of the Minister of General Secretariat of the Presidency, which fixes the unified, coordinated and systematic text of Organic Constitutional Law N^o 18603, on Political Parties: titles I, V, VI, IX and X.

Television stations of free reception shall provide, free of charge, thirty minutes a day of their transmissions to electoral propaganda on this referendum, giving expression to the two options in each ballot, according to an agreement which shall be adopted by the National Television Board, which will be published in the Official Gazette, within thirty days from the publication of the call to the national referendum, respecting a strict equality in the promotion of the options under the referendum. This agreement may be challenged to the Electoral Tribunal within three days of its publication. The Electoral Tribunal shall make summary judgment within five days from the filing of the challenge.

The Electoral Tribunal shall have jurisdiction on the general vote-counting and will proclaim those options with more than half of the votes validly cast approved. Votes null or blank will not be considered as validly cast. The final certification of the national referendum will have to be concluded within thirty days. The sentence proclaiming the outcome of the referendum will be communicated to the President of the Republic and to the National Congress within three days after its rendering.

If the people vote for the elaboration of a New Constitution, the President of the Republic shall call, within five days of the communication referred to in the previous paragraph, by means of and exempted presidential decree, to the election of the members of the Mixed Constitutional Convention or to the Constitutional Convention, whichever is appropriate. This election will be held on the same day of the elections for majors, municipal counselors, and regional governors of 2020.

Article 131. Of the Convention

For all purposes of this subtitle, “Convention” will mean either the Mixed Constitutional Convention or the Constitutional Convention.

The members of the Convention will be known as Constitutional Conventionals.¹

Besides what is prescribed in articles 130, 140, 141 of the Constitution, to the election of Constitutional Conventionals referred in the last paragraph of article 130 the pertinent provisions for the election of representatives contained in the following statutes, as in force on June 25, 2020, will be applicable:

- a) The following parts of Decree with Force of Law N^o 2, of 2017, of the Minister of General Secretariat of the Presidency, which fixes the unified, coordinated and systematic text of Organic Constitutional Law N^o 18700 on Popular Vote;
- b) Decree with Force of Law N^o 5, of 2017, of the Minister of General Secretariat of the Presidency, which fixes the unified, coordinated and systematic text of Organic Constitutional Law N^o 18556 on System of Electoral Registry and Electoral Service;
- c) Decree with Force of Law N^o 4, of 2017, of the Minister of General Secretariat of the Presidency, which fixes the unified, coordinated and systematic text of Organic Constitutional Law N^o 18603, on Political Parties;
- d) Decree with Force of Law N^o 3, of 2017, of the Minister of General Secretariat of the Presidency, which fixes the unified, coordinated and systematic text of Organic Constitutional Law N^o 18603, on Transparency, Limits and Control of the Electoral Expenses.

The final certification of the election of Constitutional Conventionals will have to be concluded within thirty days. The sentence of proclamation will be communicated to the President of the Republic and to the National Congress within three days after its rendering.

Art. 132. Of the requisites and incompatibilities of the candidates

Citizens meeting the conditions of article 13 of the Constitution may run as candidates to the Convention.

No requisite, inability or prohibition other than those established in this article will be applicable to the candidates to this election, with the exception of the norms about affiliation and independency of the candidates established in article 5 paragraphs fourth and fifth of the Decree with the Force of Law N^o 2 of 2017, of the Minister of General Secretariat of the Presidency, which fixes the unified, coordinated and systematic text of Organic Constitutional Law N^o 18700.

Ministers of the Government, intendents, governors, mayors, regional counselors, members of municipal councils, undersecretaries of the government, regional delegates of the ministries, heads of public services, members of the council of the Central Bank, members of the council of the Electoral Service, members and officers of the different ranks of the Judiciary, members of the Council for Transparency, and active members of the Armed Forces and of the forces of Public Order and Security, will cease in those positions by the force of the Constitution at the time their candidacies be registered in

¹ In the Spanish original 'Convencional Constituyente'. 'Convencional' is not a recognized Spanish noun (translators' note).

the Special Register mentioned in the first paragraph of article 21 of the Decree with the Force of Law N^o 2 of 2017, of the Minister of General Secretariat of the Presidency, which fixes the unified, coordinated and systematic text of Organic Constitutional Law N^o 18700. This is be applicable to the senators and representatives only with respect to the Constitutional Convention.

Union, guild, and neighborhood leaders shall suspend their functions as such from the moment their candidacies are registered in the Special Register mentioned in previous paragraph.

Article 133. On the proceedings of the Convention

Within the three days following reception of the communication referred to in the final paragraph of article 131, the President of the Republic will summon, by means of an exempted Presidential Decree, to the first session of installation of the Convention, further indicating the venue. If no venue is indicated, the Convention will be installed at the seat of the National Congress. The installation shall take place with a fortnight from the publication of the summons decree.

In its first session, the Convention will elect a President and a Vicepresident, by absolute majority of its members in office.

The Convention, in it is first sessions, shall adopt by two thirds of its members in office rules for voting and for the fulfillment of its task.

The Convention shall approve the norms of the proposed text of New Constitution by two thirds of its members in office.

The Convention shall not alter the quorum and procedures for its proceedings and adoption of resolutions.

The Convention will set up a technical secretariat with people of acknowledged academic or technical competence.

The President of the Republic, or the bodies that he may designate thereto, shall provide the technical, administrative, and financial support that may be necessary for the installation and proceedings of the Convention.

Article 134. On the status of the conventional

Articles 51, with the exception of its first and second paragraphs, 58, 59, 60, and 61 of the Constitution, will apply to the members of the Convention.

From the time of their proclamation by the Electoral Tribunal, public officers other than those mentioned in the third paragraph of article 132, and employees of state-owned companies, may take leave without pay while serving at the Convention, in which case the first paragraph of article 58 of the Constitution will not apply.

The positions of congressperson and member of the Mixed Constitutional Convention will be deemed compatible. Representatives and senators serving at this convention will be exempt of their duty to attend floor and committee sessions at Congress while the former is in session. The National Congress may take appropriate measures to maintain adequate legislative activity while the Mixed Convention is in session.

Members of the Convention, with the exception of congresspersons, shall receive a monthly compensation of 50 UTM², besides the compensation of expenses provided for in the Rules of the Convention. Those compensations will be managed by an external committee that will be determined in the same Rules.

Article 135 Special provisions

The Convention shall neither intervene in nor exert any other function or competence of other bodies or authorities established in this Constitution or in the laws.

Before the entrance into force of the New Constitution as established in this article, this Constitutional will remain fully in force, and the Convention shall not deprive it of authority or modify it.

According to article 5 first paragraph of the Constitution, while the Convention is in session sovereignty lies essentially in the Nation and is exerted by the people in the referenda and periodical elections that the Constitution and the laws provide for and, also, by the authorities that the Constitution establish. It shall be prohibited to the Convention, to any of its members or a fraction thereof, to claim for themselves the exercise of sovereignty, assuming other powers than those recognized to them by the Constitution.

The text of the New Constitution that will be presented for approval in referendum, shall respect the character of Chile as a republic, its democratic regime, court rulings, and the international treaties ratified by Chile and in force.

Article 136. On complaints.

Complaints may be filed against any violation of the rules of procedure of the Convention included in this subtitle, and of those accorded by general agreements reached by the Convention itself. Under no circumstances a complaint shall be filed against the content of a draft.

Complaints will be decided by five members of the Supreme Court, randomly selected by the Court itself, for each raised issue.

Each complaint shall be supported by at least 25% of the acting members of the Convention, and filed before the Supreme Court, within five days from the claimed violation becoming known.

² Around US\$3,000 (translators' note).

The complaint must single out both the violation, which must be essential, and the damage it causes.

The procedure for the adjudication of these complaints will be set forth in an Order issued by the Supreme Court, which will not be subjected to the revision of Article 93, section 2.

The judicial decision that accepts the complaint may only quash the violation. In any event, complaints will be decided within ten days from their filing. No legal action or appeal may be brought against the decisions referred here.

Besides what is prescribed in this Article, no authority, nor any court of law shall decide any legal action, complaint or challenge regarding the task assigned to the Convention by the Constitution.

The complaints referred to in this Article may not be brought regarding the final section of Article 135.

Article 137. Extension of the Convention's functioning period.

The Convention shall draft and approve a proposal for a new Constitution within the maximum period of nine months from its installation, which may be extended once, for three months.

The abovementioned deferral may be requested by the President of the Convention or by a third of its members, no more than fifteen and no later than five days prior to the expiration of the nine-month term. Having a request been submitted, a special session shall be called immediately. In this session the President will deliver a public account of the working progress in the drafting of a proposal for a new Constitution, thereby deferring the deadline without any further formality. All of this will be recorded in minutes. The new term will begin to run on the day following the expiration date of the original term.

Once the new Constitution has been drafted and approved by the Convention, or once either the original or the extended term expired, the Convention shall dissolve ipso jure.

Article 138. On temporary rules.

The Convention may issue special provisions regarding the entrance into force of some of the rules or Chapters of the new Constitution.

The new Constitution shall not terminate early the period in office of authorities popularly elected by vote, unless the institutions they are member of are eliminated or subjected to substantial modifications.

The new Constitution shall specify the way in which other authorities laid down by the current Constitution will cease or continue in function.

Article 139. On the composition of the Mixed Constitutional Convention.

The Mixed Constitutional Convention will be composed by 172 members, 86 of which will be citizens especially elected for this purpose, and 86 of which will be incumbent parliamentarians, elected by the Plenary Congress, composed by all acting members of the Senate and the House of Representatives; who can submit electoral lists or compacts, and will be elected in accordance to the system established by Article 121 of the Decree with Force of Law N° 2, of 2017, of the Minister of General Secretariat of the Presidency, which fixes the unified, coordinated and systematic text of the Organic Constitutional Law N° 18.700 on Popular Vote, regarding the election of members of the House of Representatives.

Article 140. On the voting system for the Mixed Constitutional Convention.

In the case of the non-parliamentarians members of the Mixed Constitutional Convention, they will be elected according to the rules provided in Article 121 of the Decree with Force of Law N° 2, of 2017, of the Minister of General Secretariat of the Presidency, which fixes the unified, coordinated and systematic text of the Organic Constitutional Law N° 18.700 on Popular Vote, under the text in force as on December 25, 2020. Its Articles 187 and 188 will apply with the following amendments:

District 1 will elect 2 Constitutional Conventionals;
District 2 will elect 2 Constitutional Conventionals;
District 3 will elect 3 Constitutional Conventionals;
District 4 will elect 3 Constitutional Conventionals;
District 5 will elect 4 Constitutional Conventionals;
District 6 will elect 4 Constitutional Conventionals;
District 7 will elect 4 Constitutional Conventionals;
District 8 will elect 4 Constitutional Conventionals;
District 9 will elect 4 Constitutional Conventionals;
District 10 will elect 4 Constitutional Conventionals;
District 11 will elect 3 Constitutional Conventionals;
District 12 will elect 4 Constitutional Conventionals;
District 13 will elect 3 Constitutional Conventionals;
District 14 will elect 3 Constitutional Conventionals;
District 15 will elect 3 Constitutional Conventionals;
District 16 will elect 2 Constitutional Conventionals;
District 17 will elect 4 Constitutional Conventionals;
District 18 will elect 2 Constitutional Conventionals;
District 19 will elect 3 Constitutional Conventionals;
District 20 will elect 4 Constitutional Conventionals;
District 21 will elect 3 Constitutional Conventionals;
District 22 will elect 2 Constitutional Conventionals;
District 23 will elect 4 Constitutional Conventionals;
District 24 will elect 3 Constitutional Conventionals;

District 25 will elect 2 Constitutional Conventionals;
District 26 will elect 3 Constitutional Conventionals;
District 27 will elect 2 Constitutional Conventionals;
District 28 will elect 2 Constitutional Conventionals;

Article 141. On the composition of the Constitutional Convention.

The Constitutional Convention will be composed of 155 citizens especially elected for this purpose. In order to do that, the electoral districts established in Article 188, the rules provided by Articles 187 and 189, and the voting system described in Article 121, all these provisions of the Decree with Force of Law N° 2, of 2017, which fixes the unified, coordinated and systematic text of the Law N° 18.700, under the text in force as on June 25, 2020, with regard to the election of the members of the House of Representatives, shall be followed.

The members of the Constitutional Convention shall not be candidates to popularly elected offices during the time they perform their task, and until a year after they end their period with the Convention.

Article 142. On the Constitutional Referendum.

Three days after the President of the Republic receives the proposal for a constitutional text approved by the Convention, by means of an exempted presidential decree he will call for a constitutional national referendum, for citizens to approve or reject the proposal.

Voting in this referendum will be mandatory for all citizens with an address registered to vote in Chile.

Any citizen who does not vote shall be punished with a fine in favor of the respective municipality of 0,5 up to 3 UTM.

Those who fail to perform their duty due to illness, absence from the country, being the day of the referendum at a distance larger than two hundred kilometers from the place of his or her voting location, or to any other serious hindrance, duly demonstrated before the respective court of law according to a reasoned appreciation of the evidence, shall not be punished.

Persons who during the national constitutional referendum shall fulfil the functions specified by the Decree with Force of Law N° 2, of 2017, which fixes the unified, coordinated and systematic text of the Law N° 18.700, will be exempt of the penalty established in this article, provided they certify this circumstance before the respective court of law.

This charge shall be adjudicated by the Local Police Judge of the district where it was committed, in accordance to the rules of procedure set in Law N° 18.287.

In the said referendum, citizens will be given a ballot containing either one of the following questions, depending on the kind of Convention that drafted the proposal: “Do you approve the text of the new Constitution proposed by the Mixed Constitutional Convention?”, or “Do you approve the text of the new Constitution proposed by the Constitutional Convention?” Under the question there will be two horizontal lines, one next to the other. The phrase “I approve” will be written below the first line, and the phrase “I reject” below the second, so that the elector may express his or her preference on one of the alternatives.

The referendum shall take place sixty days after the publishing in the Official Gazette of the presidential decree referred to in the first paragraph of this Article, if that day is a Sunday, or otherwise the next Sunday. However, if according to these rules the referendum should take place within a period of time between sixty days prior and sixty days after one of the popular elections prescribed in Articles 26, 47 and 49 of the current Constitution, the date of the referendum will be delayed until the next following Sunday. If according to this rule the referendum should take place in January or February, it will be delayed until the first Sunday of March.

The process of final certification of the national referendum will have to be concluded within thirty days. The judgment on the referendum will be delivered to the President of the Republic and the National Congress within three days after its rendering.

If the question posed to citizens in the constitutional national referendum is approved, the President of the Republic, within the next five days from receiving the judgement, shall summon a plenary session of the National Congress in order to publicly and solemnly promulgate the New Constitution of the Republic, and to take the oaths of respect and obedience to it. The text of the Constitution will be published in the Official Gazette within the next ten days, and it will come into effect that same day. From that moment, the current Constitution, which unified, coordinated and systematic text is established by the presidential decree N° 100, of September 17, 2005, will be abrogated.

The new Constitution shall be printed and distributed for free in all educational establishments, either public or private, municipal libraries, universities, and governmental agencies. All judges and members of higher courts shall receive a copy of the Constitution.

If the question posed to citizens in the constitutional referendum is rejected, the current Constitution will prevail in force.

Article 143. Remission.

The third and fourth paragraphs of Article 130 are applicable to the constitutional referendum.

*Translated into English by Rodrigo Correa and Juan Pablo Aristegui, law professors at Universidad Adolfo Ibáñez. The translation was kindly reviewed by Owen Fiss, Sterling Professor of Law at Yale Law School