Indigenous Peoples in the Chilean constituent process

The election of the Mapuche constituent member Elisa Loncón as President was a symbol of Indigenous peoples’ protagonism in the drafting of the new Magna Carta. In the same sense, the victory of Gabriel Boric meant greater institutional support and a commitment to provide the Convention with the necessary resources for its operation. The recent approval of Initiative No. 94-1 raises hope that Chile will become a Plurinational State.

By Hernando Silva and José Aylwi - 1st 2022

In addition to putting into question the institutionality inherited from the dictatorship and its exclusions and inequities, the social revolt of October 2019 challenged the model of the State's historical relationship with the Indigenous peoples. The social outcry politicized these peoples’ demand for a reconfiguration of Chile as a Plurinational and Intercultural State, as well as the recognition of their collective rights, especially the rights to territory and self-determination.

For the May 2021 elections, the Articulation of Indigenous peoples gained a number of 17 seats reserved for Indigenous peoples out of the total of 155 seats that make up the Constitutional Convention: seven for the Mapuche people, two for the Aymara people and one for each of the other peoples recognized by law. After the gender parity requirements were applied, the Indigenous peoples gained representation by nine women and eight men.

Although this is an under-representation of the total Indigenous demography (amounting to 12.8% of the total population) and though the Afro-descendant tribal peoples recognized by law in 2020 were not taken into account, the election of Indigenous constituents was a historic milestone. In Chile, it is the first time that Indigenous peoples have participated
alongside Chilean society in the drafting of the Magna Carta, which establishes new bases for interethnic and intercultural coexistence.

The Constitutional Convention and prior consultation

The Constitutional Convention was constituted on July 4, 2021. From its inception, issues related concerning Indigenous peoples’ rights were of great relevance. In formal terms, the formation of a Provisional Commission on "Indigenous Participation and Consultation" stands out. This body received 69 communities and individuals over the course of 22 sessions in order to hear their opinions on the generation of regulatory proposals relating to Indigenous peoples’ participation and consultation in the process.

As a result, a regulation was drafted that explicitly reflects Indigenous peoples' own or customary laws, as well as the United Nations Declaration on the Rights of Indigenous Peoples and the ILO Convention 169. It further reflects the jurisprudence of the Inter-American Court of Human Rights; the Observations and Recommendations of the Committees on Human Rights Treaties and the Special Rapporteurships on Human Rights of the United Nations; as well as the recommendations of the Inter-American Commission on Human Rights.

The Regulations take into account the implementation of a constituent Indigenous consultation and various participatory incentives, such as the Indigenous peoples’ constituent initiative which has the aim of allowing Indigenous peoples to propose constitutional texts to be debated by the Convention. In order to implement the participation and consultation process, the creation of the Commission on the Rights of Indigenous Peoples and Plurinationality was also taken into consideration.

One of the main problems faced by the Commission in the implementing of the Indigenous consultation process has been the limited timeframe of the constituent process: only two months will be available for its implementation. In addition to the reduced budget, it is necessary to remember that the right-wing coalition headed by Sebastián Piñera will govern the country until March 2022. Although the president-elect, Gabriel Boric, has already
promised to provide the Constituent Convention with the necessary resources, these will arrive too late.

**Indigenous participation and Self-Determination**

The inclusion of Indigenous peoples and their rights is delineated in Article No. 1 of the General Regulations of the Convention: "An assembly that is representative, with gender parity, plurinational and autonomous; convened by the people of Chile to exercise the original constituent power". It also includes another series of Indigenous rights: autonomy, territory, common goods and legal pluralism. In turn, each of the commissions account with the participation of at least two representatives of Indigenous reserved seats.

Therein, on January 27, 2022, the Political System Commission, the Government and the Legislative Power and Electoral System approved the regulation declaring Chile as a Plurinational and Intercultural State. Sponsored by 16 constituents and led by the Indigenous convenors, the Initiative No. 94-1 states that Indigenous peoples are "holders of the right to self-determination" and of the collective rights recognized and guaranteed by the new Constitution and the International System of Human and Indigenous Peoples' Rights.

By virtue of this self-determination, the proposal ensures that they have the right to autonomy and self-government. Likewise, their territories, heritage, language, culture, institutions and jurisdictions must be recognized. Initiative No. 94-1 also states that the State must guarantee Indigenous peoples’ participation in the exercise and distribution of power, thus incorporating their political representation in the structure of the State and popularly elected bodies.

The proposal recognizes at least 11 indigenous peoples and nations pre-existing the Chilean State: the Mapuche, Aymara, Rapa Nui, Lickanantay, Quechua, Colla, Diaguita, Chango, Kawashkar, Yaghan and Selk’nam. The initiative does not rule out that other peoples may be recognized by law. Finally, it states that the State must guarantee intercultural dialogue in the exercise of public functions with the aim of recognizing the ethnic diversity of Aboriginal peoples.
Towards a plurinational State

Although Initiative No. 94-1 was just recently approved in general terms by the Commission (and the particular details still have to be voted on), to be approved later by the plenary session of the Convention, it suggests what the majority of the constituents’ thoughts are regarding this matter. In general, Chilean society understands the need for the new Constitution to recognize Chile as a Plurinational State. This is the only way to put an end to two centuries of denial and exclusion that have characterized the history of our country.

Together with the recognition of collective Indigenous rights, the debate on plurinationality demonstrates the agency Chile's Indigenous peoples have exercised in order to transform their relationship with the State and Chilean society through institutional channels. A thorough analysis of the Chilean political situation leads us to think that the constitutional text elaborated by the Constituent Convention will propose that our country assumes its plurinationality.

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