



# ELDH European Association of Lawyers for Democracy & World Human Rights

WITH LAWYERS  
IN 21 COUNTRIES

EJDM Europäische Vereinigung von Juristinnen & Juristen für Demokratie und Menschenrechte in der Welt  
EJDH Asociación Europea de los Juristas por la Democracia y los Derechos Humanos en el Mundo  
EJDH Association Européenne des Juristes pour la Démocratie & les Droits de l'Homme  
EGDU Associazione Europea delle Giuriste e dei Giuristi per la Democrazia e i diritti dell'Uomo nel Mondo

Equality Privacy Social Rights  
No Racism Peace No Torture No War  
Self-Determination of Peoples Democracy  
Human Rights Rights of Migrants

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## ELDH enthusiastically supports a new constitution for Chile.

On 4 September 2022, the Chilean people will vote on the draft of a new state constitution. Their choice will be either to approve the entry into force of the new constitution, or to continue to apply the 1980 constitution drafted under military dictator Augusto Pinochet.

A vote for the Pinochet constitution of 1980 would be a vote for the continuation of the economic and social order established during the military dictatorship. It was drafted in the 1970s by a small group of neoliberal and radical right-wing experts, excluding the public and any other form of democratic participation.

During the course of the formal democratisation between 1989 and 2005 some provisions were removed: bans on political and trade union activity bans affecting the left in particular; certain privileges of the military; non-democratically legitimised members of the Senate. But the neoliberal economic constitution installed under Pinochet in particular remained essentially untouched.

Chile is probably the only country in which the privatisation of water is constitutionally secured (Art. 19 No. 24 Constitution 1980). In practice avocado cultivation enjoys constitutional priority over sufficient water for people. It is particularly problematic that the state is subordinated to the private sector. This means that that education, health care, the pension system and other social services are subject to the interests of the market, with an extreme disparity that prevents poorer parts of the population from participating in society.

Chilean lawyers rightly point out that the 1980 constitution is a kind of "cheating constitution"/"constitución tramposa". Before democratisation, important decisions concerning the health system, the pension system and other essential social systems and the economy, were pre-empted by so-called constitutional laws, which could only be changed by the consensus of the political groups.

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The dictatorship thus enshrined a decision in favour of a neoliberal state, and the basic systemic decisions were "protected" from democracy. The 1980 constitution is in the tradition of Latin American colonialism, which could only fully develop in Chile after the colonisers, who originally came from Europe, broke away from the Spanish royal house and became independent. Their descendants are the great majority of the population.

The remaining eleven percent of the population is still denied self-determination for the administration of their territories or political and cultural self-organisation. Instead, indigenous resistance against the destruction of the forests of southern Chile (Araucanía) has been suppressed by the military, with the help of the dictatorship's emergency constitutional regulations.

The new draft constitution, which dates back to the Estallido Social, the uprising of 18 October 2019, will be a clear departure from this path.

The subsidiary state will be replaced by a social and democratic constitutional state. The new constitution will be concretised by a comprehensive framework of fundamental and human rights, including the right to sufficient drinking water, in line with Latin American and global human rights developments. The principle of democracy will be enshrined in an exemplary way, especially with regard to gender justice, also for global legal development. For the first time institutions will guarantee substantial gender equality.

The centralist-colonial state will be replaced with a plurinational, more regionalised state. Indigenous peoples and communities will be given comprehensive self-organisation rights. Centuries of oppression, dispossession and exploitation will not be automatically ended by this. But the participation of the indigenous population in the drafting of the constitution, for example through the first indigenous chairperson of the Constitutional Convention, Elisa Loncón, shows the way to participation on an equal footing.

This will be reinforced by the recognition of indigenous demands, such as the subjective rights of nature, or the constitutional principle of the Good Life (Buen Vivir), as an indigenous constitutional principle of living in harmony between state institutions, people and nature.

ELDH therefore sides with Chilean democrats in the struggle for the new constitution. A vote for the new constitution will be an inspiration for ELDH members and all democrats in Europe.