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Chilean President Charts Course for New Constitution

by Benjamin Witte-Lebhar

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President Michelle Bachelet has decided to double down—and at the same time pass the buck—on what is arguably the most far-reaching item in her broad agenda: replacing Chile’s dictatorship-era Constitution.

The center-left leader laid out her case for the monumental reform in an Oct. 13 television address, arguing that the Constitution “was born without legitimacy” because of its origins in the military regime of Gen. Augusto Pinochet (1973-1990). “It doesn’t respond to the needs of our time, nor does it favor democracy. It was imposed by a few on the many,” she said. Bachelet then presented a step-by-step roadmap for drafting a replacement and presenting it to the legislature prior to her departure from office in March 2018. “The time to change it has come,” she said. “Chile needs a new and better Constitution, one that is born in democracy and expresses the will of the people.”

The president also made it clear, however, that the document’s ultimate fate lies not with this Congress, but with the next group of legislators—the winners of the November 2017 elections. That Congress, Bachelet explained, will have to choose how the new Constitution should be ratified. Options include a mixed constitutional convention involving lawmakers and citizens; a bicameral congressional committee; and a constituent assembly. A fourth possibility, she said, is for Congress to call a plebiscite and thus leave it to the people to choose among the three aforementioned mechanisms.

The October address was by no means the first time Bachelet publicly challenged the current Constitution (NotiSur, May 29, 2015), which was approved in 1980 in a controversial plebiscite, and following Chile’s return to democracy in 1990, has been subject to numerous reforms. But it was the first time she presented a concrete plan of action for how to go about realizing the ambitious policy goal.

The first step, the president explained, will be to launch a several-month “civic education” campaign to provide “the people of Chile with the necessary information to actively engage in a discussion on the topic.” From there, the administration will gather suggestions and opinions from the citizenry, use those ideas to draft a new Constitution, and then submit the document to Congress, in the form of a bill, in the second half of 2017.

Bachelet will also seek an amendment to the current Constitution so that it allows for the possibility of being replaced. She will ask this Congress, in other words, to give the next Congress the authority it needs to proceed with the project. In addition, the president plans to present legislation to lower the voting threshold—from a two-thirds majority to a three-fifths majority—that the next Congress will need to determine the ratification mechanism.

**Drawn-out process**
Bachelet’s show-stopping announcement sparked a heated national debate and prompted Chile Vamos—as the conservative opposition coalition (the Alianza) recently rechristened itself—to promise an eventual counter bill. Chile Vamos groups together the hard-right Unión Demócrata
Independiente (UDI) and the center-right Renovación Nacional (RN) parties along with the smaller Partido Regionalista Independiente (PRI) and Evolución Política (Evópoli) factions.

“There’s no justification for re-founding the country when we’re not in a crisis of an institutional nature,” said UDI party president Hernán Larraín. The UDI got its start as the civilian political arm of the Pinochet regime. It was founded by Jaime Guzmán, an academic and close collaborator of the dictatorship who was largely responsible for drafting the 1980 Constitution. He was assassinated in 1991.

Much of the criticism, including from within the president’s Nueva Mayoría coalition, is focused on how drawn-out the timeline is. Allies on the left had hoped Bachelet would see the process through before leaving office, not leave it to the next administration and Congress to sort out. Bachelet, who previously served as president from 2006 to 2010, is in her second non-consecutive term.

Opponents on the right also fault the extended nature of the plan. “The administration’s proposal sets the stage for a long and uncertain debate about the Constitution that will go on for many years and is going to overlap with municipal, parliamentary and presidential elections… It puts everything off,” former President Sebastián Piñera (2010-2014) told reporters following an Oct. 19 meeting with Bachelet and two fellow former presidents, Eduardo Frei (1994-2000) and Ricardo Lagos (2000-2006).

Piñera, a billionaire investor who is widely expected to seek reelection in 2017, said he favors trying to “perfect rather than dismantle” the current Constitution. “[Bachelet’s plan] will doubtless lead to greater misgivings, uncertainty, instability,” he added. “It’s going to worsen the stagnation that is affecting the Chilean economy and delay urgent solutions to the serious crime, healthcare, education, and employment problems.”

**Legislative legitimacy**

Bachelet stands by her plan to give final say in the matter to the next Congress. She made the decision deliberately, she said, in response to the country’s ongoing confidence-in-leadership crisis, which predates her return to office in 2014 but has been greatly exacerbated over the past year by a swarm of corruption and campaign finance scandals (NotiSur, July 24, 2015).

One of the scandals involves her son, Sebastián Dávalos, who is accused of using his privileged connections (and insider information) to help his wife orchestrate a lucrative land deal (NotiSur, April 24, 2015). That, combined with an economic downturn, have wreaked havoc on Bachelet’s approval rating, which stands at 29%, according to survey released Nov. 4 by the polling firm GfK Adimark. Others scandals, including the so-called Pentagate case (NotiSur, Feb. 13, 2015), point to misconduct by members of the legislature, particularly on the political right. Pentagate involves the multibillion-dollar conglomerate Grupo Penta, which is accused of making illegal payments to a number of high-profile politicians, mostly from the UDI.

Bachelet hopes that improvements to the country’s campaign finance laws will give the next Congress a significant legitimacy boost. The 2017 parliamentary elections will also be the first to follow new voting rules approved, at the president’s behest, earlier this year (NotiSur, Feb. 13, 2015). The most noteworthy change is the elimination of the country’s binomial system, a much-maligned but long-entrenched election mechanism introduced shortly before Pinochet’s departure from power. The system was designed to ensure political balance by making it extremely difficult for a
single political coalition to control both seats in a given legislative district. With some exceptions, it tended to favor the political right, which was understandably loath to give it up (NotiSur, Feb. 10, 2012).

The parliamentary election overhaul, which cleared the legislature in mid-January, also expands the Senate by 12 seats (from 38 to 50) and the Cámara de Diputados, the lower house, by 35 seats (from 120 to 155). Additionally, it encourages greater female representation in Congress by obliging political parties to have a gender balance of at least 60%-40% among the candidates they run.

“The new legislators will be chosen with greater legitimacy, representation and transparency, and the new Constitution will come into being in the same way,” Bachelet said during her October television address.

**Forcing the issue**

Polls suggest that a majority of Chileans favor the idea of replacing the 1980 Constitution, which for all the post-Pinochet modifications (there have been 257, according to Pablo Ruiz-Tagle, a constitutional law professor at the Universidad de Chile) still bears the stigma of its non-democratic origins. A recent survey by Radio Cooperativa, Universidad Central and the polling firm Imaginacción, estimated support for the measure at 68%.

Respondents to another poll, released in early November by the Universidad Diego Portales (UDP), were more divided: 45% favored a new Constitution versus 34.5% who said they prefer changing the current one. Only 7% opted for the status quo, while slightly more than 13% chose not to respond.

Then there’s the question of which mechanism should be used to ratify a new Constitution, assuming Bachelet’s promised bill does not “end up in the Congressional archives,” as Andrés Chadwick, a Cabinet minister under Piñera, predicts. The UDP poll found that 51.3% support a constituent assembly, compared to just 19% who favor a committee of experts and 9.9% who think Congress should decide. Universidad de Chile professor Gabriel Salazar, a national history award winner, is another advocate for the constituent assembly route, as are many in Chile’s political left.

Members of the political right, on the other hand, fiercely oppose the constituent assembly route, which brings to mind the kind of deep left-wing political transformations that have taken place in recent years in countries such as Venezuela, Bolivia and Ecuador. Former President Frei, who backs Bachelet’s call for a new Constitution, also questions the constituent assembly option. “Personally, I’m not a fan,” he told reporters in October.

Needless to say, Bachelet’s bid to replace the Constitution offers little in the way of guarantees. And it is hard to argue against Piñera’s claim that it will usher in “more uncertainty.” Clearly, though, this is a debate that has long been overdue in Chile, and in that regard, the president’s move, in so far as it has forced the issue and set the wheels of change in motion, is a significant one.

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