

MAIN ENVIRONMENTAL ARTICLES OF THE PROPOSED CONSTITUTIONAL TEXT

*Document prepared by:
Vicente Díaz Galleguillos.*

Preamble

We the people of Chile, conformed by several nations, freely grant us this Constitution, that was agreed in a participatory, parity and democratic process.

CHAPTER I PRINCIPLES AND GENERAL PROVISIONS

Article 1.

1. Chile is a social and democratic State of law. It is plurinational, intercultural and ecological.
2. It is constituted as a Republic of solidarity, its democracy is a parity democracy and recognizes as intrinsic and inalienable values the dignity, freedom, substantive equality of human beings and their indissoluble relationship with nature.
3. The protection and guarantee of individual and collective human rights are the foundation of the State and guides all its activities. It is the duty of the State to create the necessary conditions and provide the goods and services to ensure the equal enjoyment of rights and the integration of people in the political, economic, social and cultural life for their full development.

Article 8.

Individuals and peoples are interdependent with nature and form, with it, an inseparable whole. The State recognizes and promotes a relationship of harmonious balance between people, nature and the organization of society.

CHAPTER II FUNDAMENTAL RIGHTS AND GUARANTEES

Article 17.

1. Fundamental rights are inherent to the human person, are universal, inalienable, indivisible and interdependent.
2. The full exercise of these rights is essential for the dignified life of individuals and peoples, democracy, peace and the balance of Nature.

Article 18.

1. Individuals are holders of fundamental rights. Rights may be exercised and demanded individually or collectively.
2. Indigenous Peoples and Nations are holders of fundamental collective rights.
3. Nature shall be entitled to the rights recognized in this Constitution that are applicable to it.

Article 34.

The indigenous people and nations and their members, by virtue of their self-determination, have the right to the full exercise of their collective and individual rights. In particular, they have the right to autonomy and self-governance, to their own culture, identity and cosmovision, heritage and language, to the recognition of their lands, territories, the protection of the maritime territory, of nature in its material and immaterial dimension, and the special bond they have therewith, to cooperation and integration, to the recognition of their own or traditional institutions, jurisdictions and authorities, and to participate fully, if they so wish, in the political, economic, social and cultural life of the State.

Article 35.

1. All persons have the right to education. Education is a primary and unavoidable duty of the State.
2. Education is a process of formation and permanent learning throughout life, indispensable for the exercise of other rights and for the country's scientific, technological, economic and cultural activity. I
3. Its purposes are the construction of the common good, social justice, respect for human rights and nature, ecological awareness, democratic coexistence among peoples, prevention of violence and discrimination, as well as the acquisition of knowledge, critical thinking and the integral development of people, considering their cognitive, physical, social and emotional dimensions [...].

Article 39.

It is the duty of the State to guarantee an environmental education that strengthens the preservation, conservation and care required with respect to the environment and Nature, and that allows for forming an ecological conscience.

Article 54

1. It is the duty of the State to ensure food sovereignty and security. To this end, it shall promote the production, distribution and consumption of food that guarantees the right to healthy and adequate food, fair trade and ecologically responsible food systems.
2. The State promotes ecologically sustainable agricultural production.

3. The State recognizes, promotes and supports peasant and indigenous agriculture, harvesting and artisanal fishing, as fundamental activities for food production.
3. Reconoce, fomenta y apoya la agricultura campesina e indígena, la recolección y la pesca artesanal, en tanto actividades fundamentales para la producción de alimentos.
4. In the same way, it promotes the culinary and gastronomic heritage of the country.

Article 58

The Constitution recognizes the traditional use of waters located in indigenous territorial autonomies or indigenous territories by indigenous peoples and nations. It is the duty of the State to guarantee the protection, integrity and supply thereof, in accordance with the Constitution and the law.

Article 59

1. Every person has the right to a vital minimum of affordable and safe energy.
2. It is the duty of the State to assure equitable and non-discriminatory access to energy that allows people to satisfy their needs, ensuring the continuity of energy services.
3. The State shall regulate and promote a distributed, decentralized and diversified energy matrix, based on renewable energies with low environmental impact.
4. Energy infrastructure is in the public interest.
5. The State shall encourage and protect cooperative energy enterprises and self-consumption.

Article 78.

Every person, whether a natural person or legal entity, has the right of ownership in all its forms and over all kinds of property, except those which nature has made common to all persons and those which the Constitution or the law declares non-appropriable.

The law shall determine the manner of acquiring property, the content, limits and duties thereof, in accordance with its social and ecological function (...)

Article 79

1. The State recognizes and guarantees, in accordance with the Constitution, the right of the indigenous peoples and nations to their lands, territories and resources.
2. The ownership of indigenous lands enjoys special protection. The State shall establish effective legal instruments for their cadaster, regularization, demarcation, titling, reparation and restitution.
3. Restitution constitutes a preferential mechanism of reparation, of public utility and general interest.
4. According to the constitution and the law, indigenous peoples and nations have the right to

use the resources they have traditionally used or occupied, which are found in their territories and are indispensable for their collective existence.

Article 80

1. Every person, either a natural person or legal entity, has the freedom to undertake and develop economic activities. The exercise thereof shall be compatible with the rights enshrined in this Constitution and with the protection of nature.
2. The content and limits of this right shall be determined by the laws regulating the exercise thereof, which shall promote the development of smaller companies and ensure consumer protection.

Article 103.

1. Nature has the right to have its existence respected and protected, to the regeneration, maintenance and restoration of its functions and dynamic equilibrium, which include natural cycles, ecosystems and biodiversity.
2. The State, through its institutions, shall guarantee and promote the rights of Nature as determined by the Constitution and the Laws.

Article 104

All persons have the right to a healthy and ecologically balanced environment.

Article 105

All persons have the right to clean air throughout their life cycle.

Article 106

The Law may establish restrictions to the exercise of certain rights or freedoms to protect the environment and Nature.

Article 107

1. The right of responsible and universal access to mountains, riverbanks, seas, beaches, lakes, lagoons and wetlands, among others defined by law, is recognized for all persons.
2. The law shall regulate the exercise of this right, the obligations of neighboring owners and the applicable liability regime, among others.

Article 108.

(...)

8. The State guarantees access to environmental justice.

Article 119

1. Any person that by reason of an act or omission suffers a threat, disturbance or deprivation in the lawful exercise of said person's fundamental rights, may by himself/herself/itself or anyone on his/her/its behalf may resort to and appear before the court of instance determined by law, which shall immediately adopt all measures it deems necessary to reestablish the rule of law. This action may be brought as long as the violation persists. The action shall be processed summarily and in preference to any other case being heard by the court.

2. This precautionary action shall be applicable where the affected person has no other action, remedy or procedural means to claim his/her/its right, except in those cases where, due to the urgency and severity, imminent or irreparable serious damage may be caused to the affected person.

3. When accepting or rejecting the action, the legal procedure to which a person is entitled according to the law and that allows for the resolution of the matter must be indicated.

4. The competent court may at any time during the proceedings, either ex officio or at the request of a party, order any provisional measure it deems necessary, and may lift or set aside such measures where it deems it appropriate.

5. This action may not be brought against judicial decisions, except with respect to those persons that have not intervened in the respective process and are affected by its outcome.

6. The appeal against the final judgment will be heard by the respective Court of Appeals. The appeal will be heard by the Supreme Court if there are contradictory interpretations of the subject matter of the action in two or more final judgments issued by the courts of the National Justice System. If, in the examination of admissibility, it is deemed that there is no such contradiction, the appeal shall be ordered to be sent together with its respective case record to the relevant Court of Appeals so that, if it deems it admissible, it may be heard and resolved.

7. This action shall also apply where an administrative act or resolution deprives or denies Chilean nationality. The filing of the action will suspend the effects of the act or resolution under appeal.

8. In the case of the rights of nature and environmental rights, this action may be brought either by the Ombudsman for Nature's Office or by any person or group.

9. In the case of the indigenous and tribal peoples' rights, this action may be brought by the representative institutions of the indigenous peoples, the members thereof, or the Ombudsman for the People's Office.

CHAPTER III NATURE AND THE ENVIRONMENT

Article 127

1. Nature has rights. The State and society have the duty to protect and respect such rights.

2. The State shall adopt an ecologically responsible administration and advocate for environmental and scientific education through permanent training and learning processes.

Article 128

1. The principles for the protection of Nature and the environment are, at a minimum, the principle of progressiveness, the precautionary principle, the principle of prevention, environmental justice, intergenerational solidarity, responsibility and fair climate action.
2. Whoever damages the environment shall have the duty to repair it, notwithstanding the relevant administrative, criminal and civil sanctions in accordance with the constitution and the laws.

Article 129

1. It is the duty of the State to adopt actions for the prevention, adaptation and mitigation of risks, vulnerabilities and effects caused by the climate and ecological crisis.
2. The State shall advocate for the dialogue, cooperation and international solidarity to adapt, mitigate and confront the climate and ecological crisis and protect Nature.

Article 130

The State protects biodiversity, and must preserve, conserve and restore the habitat of wild native species, in such quantity and distribution that adequately sustains the viability of their populations and ensures the conditions for their survival and non-extinction.

Article 131

1. Animals are subjects of special protection. The State shall protect animals, recognizing their sentience and their right to live a life free of mistreatment.
2. The State and its agencies shall advocate for education based on empathy and respect for animals.

Article 132

The State, through a national system of protected areas that is unique, comprehensive and of a technical nature, shall guarantee the preservation, restoration and conservation of natural spaces. It shall also monitor and maintain updated information regarding the characteristics of said areas, and guarantee the participation of the local communities and territorial entities.

Article 133

It is the duty of the State to regulate and promote the management, reduction and recovery of

waste.

Natural common goods

Article 134

1. Natural common assets are elements or components of Nature over which the State has a special duty of custody in order to ensure the rights of Nature and the interest of present and future generations.
2. The territorial sea and its seabed; beaches; waters, glaciers and wetlands; geothermal fields; the air and atmosphere; high mountains, protected areas and native forests; the subsoil, and others declared by the Constitution and the law are natural common assets
3. Among these assets, water in all its states and air, those recognized by international law and those declared as such by the Constitution or by law, are non-appropriable.
4. In the case of natural common assets which are non-appropriable, the State shall preserve, conserve and, if necessary, restore these. It shall also administer them in a democratic, supportive, participatory and equitable manner. With respect to those natural common assets that are in the private domain, the State's duty of custody implies the power to regulate the use and enjoyment thereof, with the purposes established in Article one.
5. The State may grant administrative authorizations for the use of non-appropriable natural common assets, in accordance with the law, on a temporary basis, subject to causes of expiration, extinction and revocation, with specific conservation obligations, justified on the basis of the public interest, the protection of nature and the collective benefit. Such authorizations, whether individual or collective, do not generate property rights.
6. Any person may demand compliance with the constitutional duties of custody of the natural common assets. The law shall determine the procedure and requirements for such action.

Article 136

The State, as custodian of wetlands, native forests and soils, shall ensure the integrity of these ecosystems, and the functions, processes and water connectivity thereof.

Article 137

The State guarantees the protection of glaciers and the glacial environment, including frozen soils and the ecosystemic functions thereof.

Article 139

1. Chile is an oceanic country, the State of Chile recognizes the existence of the marine area as a legal category which, like the territory, must have specific regulatory regulations that recognize its own characteristics in the social, cultural, environmental and economic spheres.
2. It is an integral duty of the State to conserve, preserve and care for the continental, insular and

Antarctic marine and coastal ecosystems.

3. A law shall establish the administrative division of the marine area and the basic principles that shall inform the legal bodies that materialize its institutionalization.

Constitutional Statute on Water

Article 140

1. Water is essential for life and the exercise of human and natural rights. The State shall protect water, in all its states and phases, and its hydrological cycle.
2. The exercise of the human right to water, sanitation and the balance of ecosystems shall always prevail. Other uses shall be determined by law.

Article 141

The State shall promote and protect the community management of drinking water and sanitation, especially in rural and extreme areas and territories, in accordance with the law.

Article 142

The State shall ensure reasonable water use. Authorizations for the use of water shall be granted by the National Water Agency, shall be of an inalienable nature, granted on the basis of the actual availability of water, and shall bind the holder to the use that justifies the granting thereof.

Article 143

1. The State shall ensure a participatory and decentralized water governance system, through comprehensive river basin management, whereby the river basin shall be the minimum unit of management.
2. The Basin Councils shall be responsible for the administration of waters, notwithstanding the oversight and other powers of the National Water Agency and other competent institutions.
3. The law shall regulate the powers, operation and composition of the Councils. The latter shall consider, at a minimum, the presence of the holders of water authorizations, civil society and territorial entities with a presence in the respective basin, ensuring that no stakeholder shall attain exclusive control for itself.
4. The Councils may coordinate and associate where appropriate. In those cases where a Council is not established, the administration shall be determined by the National Water Agency.

Constitutional Statute on Minerals

Article 145

The State has absolute, exclusive, inalienable and imprescriptible domain over all mines and mineral substances, metallic and non-metallic, and deposits of fossil substances and hydrocarbons existing in the national territory, notwithstanding the ownership of the land on

which they are located.

The exploration, exploitation and use of these substances shall be subject to a regulation that takes into account their finite, non-renewable nature, intergenerational public interest and environmental protection.

Article 146

Glaciers, protected areas, those established by law for reasons of hydrographic protection, and others declared by law, shall be excluded from all mining activities.

Article 147

1. The State shall establish a policy for the mining activity and the productive chain thereof, which shall consider, at a minimum, environmental and social protection, innovation, generation of added value.
2. The State shall regulate the impacts and synergistic effects generated in the different stages of the mining activity, including in the productive chain, closure or stoppage thereof, in the manner established by law. The person performing the mining activity shall have the obligation of allocating resources to repair damages caused, the environmental liabilities and mitigate the harmful effects of the mining activity in the territories where it is developed, in accordance with the law. The law shall specify the manner in which this obligation shall apply to small-scale mining and individual artisanal miners (*pirquineros*).
3. The State shall adopt the necessary measures to protect small-scale mining and individual artisanal miners (*pirquineros*), promote them and facilitate access to and use of tools, technologies and resources for the traditional and sustainable exercise of the activity.

Ombudsman for Nature's Office

Article 148

1. An autonomous agency, with legal personality and its own assets, called the Ombudsman for Nature's Office, shall have the purpose of promoting and protecting the rights of nature and the environmental rights assured in this Constitution, in the international environmental treaties ratified by Chile, against acts or omissions by the bodies and agencies of the State administration and by private entities.
2. The Ombudsman for Nature's Office shall have regional ombudsmen's offices, which shall operate in a deconcentrated manner, in accordance with the provisions of its law. The law shall determine the powers, organization, operation and procedures of the Ombudsman for Nature's Office.

Article 149

The Ombudsman for Nature's Office shall have the following powers and authorities:

- a) To supervise the bodies of the State in the fulfillment of their obligations in matters of environmental rights and the rights of Nature;
 - b) to draw up recommendations with respect to matters under its jurisdiction;
 - c) to process and follow up on claims of violations of environmental rights and to refer these where applicable;
 - d) to file constitutional and legal actions where environmental rights and the rights of Nature are violated, and others entrusted to it by the Constitution and the law.
- (...)

Article 150

The direction of the Ombudsman for Nature's Office shall be led by an Ombudsman for Nature, who shall be appointed by the majority of the members of the Congress of Deputies and of the Chamber of Regions, in a joint session, from a list of three candidates drawn up by the environmental organizations of civil society, in the manner determined by law.

CHAPTER IV DEMOCRATIC PARTICIPATION

Participation and democratic representation

Article 154

1. It is the duty of the State to guarantee the environmental democracy. The right to an informed participation in environmental matters is recognized. The mechanisms of participation shall be determined by law.
2. All persons have the right to access environmental information in the possession or custody of the State. Private parties must deliver the environmental information related to their activity, in the terms established by law.

CHAPTER V GOOD GOVERNANCE AND PUBLIC FUNCTION

Article 184

1. It is the duty of the State and the territorial entities, within the scope of their financial competencies, to establish a permanent policy of sustainable and harmonious development with nature.
2. In order to have resources for the care and reparation of ecosystems, the law may establish taxes on activities that impact the environment. The law may also establish taxes on the use of natural common assets, national assets of public use or fiscal assets. Where such activities are territorially circumscribed, the law shall distribute resources to the relevant territorial entity.

CHAPTER VI REGIONAL STATE AND TERRITORIAL ORGANIZATION

Article 197

1. The State and the territorial entities have the duty to organize and plan the national territory. For this purpose, they shall use management units that consider the watersheds.
2. The purpose of this duty will be to ensure an adequate location of settlements and productive activities, allowing for the responsible management of both ecosystems and human activities, applying criteria of territorial equity and justice for intergenerational well-being.
3. The management and planning of the territories shall be binding in respect of the matters determined by law and carried out in a coordinated and comprehensive manner, with a focus on the public interest, considering participatory processes in its different stages.
4. Structuring and planning plans shall consider the impacts that land uses cause on the availability and quality of water. They may define environmental or cultural protection areas.

Special Territories

Article 236

1. Rapa Nui and the Juan Fernández Archipelago are special territories that shall be governed by their respective statutes.
2. Notwithstanding the provisions of this Constitution, the law may create special territories by virtue of the geographical, climatic, environmental, economic, social and cultural particularities of a given territorial entity or part thereof.
3. The law may establish differentiated economic and administrative regimes in the special territories, as well as the duration thereof, taking into consideration the characteristics and particularities of such entities.

CHAPTER IX JUSTICE SYSTEMS

Article 307

1. Jurisdiction is a public function that is exercised on behalf of the people and consists of knowing and judging, by means of due process, conflicts of legal relevance and enforcing that which is resolved, in accordance with the Constitution and the laws, as well as the international treaties and instruments on human rights to which Chile is a party.
2. It is exercised exclusively by the courts of justice and the authorities of the indigenous peoples recognized by the Constitution or laws enacted pursuant thereto.

3. In exercising jurisdiction, care must be taken to protect and promote human rights and the rights of nature, the democratic system and the principle of legality.

Article 333

1. The Environmental Courts shall hear and resolve on the legality of administrative acts in environmental matters, the action for the protection of fundamental environmental rights and the rights of Nature, reparations for environmental damage, and others as indicated by the Constitution and the law.

Actions to challenge the legality of administrative acts issued with respect to environmental matters may be brought directly before the Environmental Courts, without requiring the prior exhaustion of administrative remedies.

2. There shall be at least one Environmental Court in each region of the country.

3. The law shall regulate the integration, jurisdiction and other aspects necessary for the proper functioning thereof.

4. In the case of administrative acts that decide on an environmental assessment process and the request for precautionary measures, the exhaustion of administrative channels may not be required for access to environmental justice.