

Chapter 2

CONSTITUTIONS, THE ENVIRONMENT AND CLIMATE CHANGE

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Constitutions can play a key role in providing a stable framework for environmental democracy.

INTRODUCTION

In the wake of increasingly dire warnings about the looming impacts of climate change (Harvey 2022), states are considering, more than ever, how to advance laws and policies to prevent, mitigate and remediate environmental degradation. Constitutions can play a key role in providing a stable framework for environmental democracy by constraining short-term political incentives in favour of longer-term protection of the environment. Constitutional entrenchment of environmental protection may also be key in increasing democratic resilience in the face of economic, political and security challenges that will likely be exacerbated by climate change (Lindvall 2021).

While the recognition of a right to a healthy environment is not new and has appeared in constitutions since the 1970s, the onset of the climate crisis has spurred a series of innovations that have expanded the scope and nature of constitutional protection of the environment. Current environmental provisions in constitutions vary in both their substance and formulation, spanning rights, duties, statements of value, and directive or guiding principles. Some constitutions guarantee procedural environmental rights: rights to information, participation and access to justice in matters relating to the environment. Others empower or obligate the state to meet substantive goals, such as the mitigation of greenhouse gas emissions, adaptation to the effects of climate change, investment in

solar and wind energy, sustainable management of waste and water, revitalization and preservation of forests, and others. These rights and duties are sometimes linked with the rights of future generations or with Indigenous rights; they may seek to balance the principle of sustainable development with economic progress; or they may entrench an eco-centric worldview by recognizing the inherent rights of nature. Various constitutions also create specialized institutions (e.g. courts, ombudspersons or prosecutors) to monitor, enforce and protect environmental rights and provisions. Nevertheless, much depends on the legal and regulatory framework that translates text into action, and the effectiveness of institutions varies depending on their functional independence, resources and powers established by law.

This chapter will survey constitutional reforms related to the environment and climate change in 2021 to mid-2022. It begins by providing a global overview of different debates regarding environmental constitutional provisions during the year. It then shifts focus to Chile's Constitutional Convention, aiming to capture the key internal and external dynamics in the convention's thematic environment committee to provide insights for future constitution-making processes.

2.1. A MIXED BAG: CONSTITUTIONAL TREATMENT OF THE ENVIRONMENT AND CLIMATE CHANGE IN 2021 TO MID-2022

New provisions relating to the environment were proposed in a variety of contexts in the last year, with mixed results.

In **Belarus**, a series of constitutional amendments were passed on 27 February 2022 in a referendum that was widely condemned by the democratic opposition and international community as an illegitimate and blatant consolidation of power by President Lukashenko (ConstitutionNet 2022; Reuters 2022). The amendments renounced Belarus's non-nuclear status, removing from article 18 Belarus's commitment to making its territory nuclear-free and neutral. Instead, article 46 now gives Belarus the ability to 'develop nuclear energy for peaceful purposes', and obligates it to 'ensure safety in the

production and use of nuclear energy' (Venice Commission 2022). The new provision is widely understood as less of a move towards a green energy policy and more about allowing Belarus to host nuclear weapons for Russia, consolidating its status as a client state, and as a possible quid pro quo for Russia's support for Lukashenko during the post-election crisis (Alberque 2022).

The constitution-making events of 2021 in **Haiti** are covered in detail in Chapter 3 of this publication. Regarding climate change, while the 1987 Constitution provided for fairly extensive environmental rights, the new draft both expands and restricts that legal framework (Haiti 2021). A prohibition on upsetting the ecological balance is expanded to expressly allow for the imposition of civil and criminal penalties for violations (article 21). The draft also retains a duty on the state to make natural sites 'accessible to all' and to create and maintain botanical and zoological gardens (article 21), an encouragement to develop alternative energy sources such as wind and solar (article 21), a duty on all citizens to protect the environment (article 87(h)), a prohibition on the importation of waste from foreign sources (article 23), and a provision authorizing sanctions legislation for harming flora and fauna (article 22). However, a commitment to maintain at least 10 per cent forest coverage, which was included in the 1987 Constitution (article 253), does not appear in the current draft. Given the ongoing political turmoil, it is unclear whether the referendum scheduled for late 2022 will be held at all, let alone pass.

In the June 2021 referendum, Swiss voters rejected three environmental proposals.

Switzerland's environmental referendum in 2021 complicates the assumption that European voters' broad desire for more stringent climate change regulation will reliably translate to approval of such regulations at the ballot box (European Commission 2021). In a June 2021 referendum, Swiss voters rejected three environmental proposals. These included: (a) the government's proposed car fuel levy and air ticket tax; (b) a proposal to outlaw artificial pesticides; and (c) a proposal to give subsidies to farmers who use no chemicals in order to improve drinking water. While the latter two issues were expected to be defeated (and indeed were rejected by 61 per cent to 39 per cent), the rejection of the proposed car and air ticket levy was a blow to the government, which had planned for its passage to enable it to halve greenhouse gas emissions by 2030. Fear of the plan's economic impact during the ongoing Covid-19 pandemic was

cited as the primary reason for the narrow rejection of 51 per cent to 49 per cent (BBC 2021). However, in early 2022 Switzerland's Green and Social Democrat parties announced a popular initiative campaign for a 'Swiss Green New Deal', which may see a different result in the year to come should it meet the 100,000-signature threshold needed to be put to referendum (Ammann 2022).

Despite the above setbacks and missed opportunities, bright spots did exist in Italy, Germany and Slovenia, with potential expansion of environmental and climate protections in Luxembourg and in Chile (if approved via referendum) later in 2022.

On 8 February 2022, the **Italian** Parliament amended its Constitution to expand its environmental protections regime. While the process has been ongoing for three years, it gained new impetus as Italy sought to finance Europe's most ambitious post-pandemic national recovery plan with funding from the NextGeneration EU recovery instrument, hoping to use the EUR 191.5 billion package to attract green investment and transform the economy (Amante and Jones 2022; Roberts 2021). The reform amended two articles of the Italian Constitution. Article 9 now states that the republic 'protects the environment, biodiversity and ecosystems, also in the interest of future generations'. Additionally, it places a duty on the state to 'govern the methods and forms of animal protection'. Article 41 was also amended to prohibit private industry from damaging 'health and the environment', in addition to the existing limits of 'security, freedom, and human dignity'. Additionally, article 41 now empowers the legislature to regulate both public and private activity not only for 'social' purposes, but for 'environmental purposes' as well (Fuschi 2022). While the vote was hailed by parliamentarians and some environmental groups as a progressive step forward, it was ultimately a compromise that omitted provisions related to the sentience of animals and the promotion of sustainable development, both of which were ceded during extensive negotiations on the amendments (Sala 2021).

Climate change litigation continues to increase around the world, with a surge in strategic litigation that focuses on state compliance with climate commitments, challenges related to corporate action and/or responsibility, or alleged violations of constitutional and

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human rights, among others (Setzer and Higham 2021). In **Germany** in April 2021, the Constitutional Court issued a landmark ruling in the case of *Neubauer, et al. v Germany*, holding that the provisions of the state's 2019 Federal Climate Change Act would be insufficient to meet Germany's climate targets under the 2015 Paris Climate Agreement and thus violated the Basic Law. The court agreed with the complainants' argument that the state had 'failed to create a legal framework sufficient for reducing greenhouse gases' by placing too high a burden on emissions reductions after 2030 to be feasibly attainable, violating their fundamental right to life and physical integrity enshrined in the Basic Law (*Neubauer* 2021). It further found that by virtue of article 20a, the state must consider 'how environmental burdens are spread out between different generations' (Sabin Center for Climate Change Law n.d.). Rather than appeal, the German Government passed an amendment to the Climate Change Act in June 2021 that accelerated the state's climate neutrality goal to 2045, raised the emissions reduction goal from 55 to 65 per cent by 2030 compared with 1990 levels, and set a goal of achieving negative emissions by 2050 (Nijhuis 2022).

In **Slovenia**, environmental organizations collected enough signatures to force a referendum on the government-backed changes to the Waters Act, which the government claimed would open the way for funds to protect water sources and strengthen regulation of construction. But ecologists, civil society organizations and some political parties warned the changes would allow environmentally harmful construction projects. With a turnout of 46 per cent (high for Slovenia), nearly 87 per cent of voters rejected the amendments (Spasić 2021).

Luxembourg's recognition of the sentience of non-human animals is a significant constitutional innovation.

Finally, article 31, chapter II of **Luxembourg's** proposed constitutional amendments contain several provisions related to the environment, climate change and the protection of animals. The article provides that the 'State guarantees the protection of the human and natural environment, working to establish a sustainable balance between the conservation of nature ... and the satisfaction of the needs of present and future generations'. It also recognizes a state commitment to fight climate change and further recognizes the sentience of non-human animals, placing a duty on the state to ensure their well-being and protection. Luxembourg's recognition of the sentience of

non-human animals is a significant constitutional innovation, but its language does not go as far as Chile's draft constitution, which recognizes both the sentience of non-human animals and their right to live a life free from mistreatment (further analysed below in Section 2.3). On 9 March 2022 the Chamber of Deputies approved chapter II's proposed amendments, including article 31 (Luxembourg 2021). To pass the amendments, the chamber must now approve them in a second vote at least three months later (Luxembourg 1868).

However, despite these developments, it is Chile's process that has taken centre stage in 2022, as the country has produced an 'ecological constitution' that will be subject to referendum in September 2022. Due to the immense interest in Chile's reforms, a more detailed examination of the process and provisions follows.

2.2. CHILE: CONSTITUTION-MAKING IN THE TIME OF CLIMATE CHANGE

The path to the Constitutional Convention began with Chile's 'social explosion'—mass protests that began in 2019 and coalesced around the call for a new constitution that would cure the perceived ills of the Pinochet-era constitution, which entrenched a neoliberal system that increased inequality and treated nature as a commodity (Sasse 2021; Sanders 2021). In response to the protests, Congress authorized a referendum in October 2020 (after the Covid-19 outbreak delayed the original May 2020 date) to determine whether the country should rewrite its Constitution, which passed by 78 per cent of those who voted (BBC 2020). Seventy-nine per cent also voted for a completely separate elected body to draft the new constitution rather than a mixed convention with 50 per cent representation from Congress.

In May 2021, the 155 members of the Constitutional Convention were elected (Bartlett 2021). Leftist parties and independents won the vast majority of the seats, while right/centre-right parties failed to reach the 52 (one-third) seats that would have been needed to block the approval of constitutional provisions, meaning that centre-left and left parties, together with independents, many of whom were left-of-centre, could pass provisions that were unpopular with the right

without impediment. In July, the convention elected as its president Elisa Loncón Antileo, an academic and Indigenous rights activist who planned to ensure conservation of nature in the new constitutional draft, and to inspire the world to adopt Indigenous philosophy recognizing the interdependence of humans and nature (Nugent 2021).

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As expected, environmental issues were at the forefront of the convention. Three months after the start of the convention, the plenary approved a proposal from a coalition of 'eco-constituents' to declare a 'State of Climate and Ecological Emergency' in the Constitutional Convention, which provided that the convention must 'bear in mind, in all the commissions and proposals that it prepares, the guarantees of environmental education, prevention, precaution, non-regression, mitigation, adaptation, and transformation to face the climate and ecosystem crisis'. As a lithium- and copper-rich country, a major question was how Chile could maintain economic development from its mining sector (which contributes to over 50 per cent of Chile's exports (Bravo-Ortega and Muñoz 2015)) while protecting the environment and improving social conditions for all people. Another key issue was access to water resources, since Chile has suffered a multi-year drought and extensive water shortage due in part to chronic mismanagement, exacerbated by a business-friendly constitution that allowed exploitation and diversion of water for industrial farming and mining projects (Bartlett 2022; Matus et al. 2020).

The engine for climate proposals was the 'Environment, Rights of Nature, Common Natural Assets, and Economic Model' committee, one of the convention's seven thematic committees. It was given the mandate to propose constitutional provisions on issues ranging from the rights of nature, climate change mitigation, the protection of animals, the future of the country's mining industry, and more. The committee proved to be one of the most popular, receiving 1,700 requests for public hearings and 300 popular initiative proposals, more than any other committee (Follert 2022). It also sparked fears of an overemphasis on issues regarding the rights of nature at the expense of sustainable development of the country, whose economy relies heavily on mineral extraction (International Trade Administration 2022). Members of the committee, which was

composed of largely leftist and centre-left parties and non-neutral independents, promised transformative change to a state that was ranked in 2019 as the 25th most vulnerable country to climate change in the world (Eckstein, Künzel and Schäfer 2021).

However, those initial high hopes ran into significant obstacles. In March 2022, the committee initially presented to the larger plenary a report with bold and sweeping principles, duties, protections and remedies relating to the climate crisis, sustainability, Indigenous rights, animals, and glacial, water and mineral rights. After some back and forth, the plenary first adopted only one article and one paragraph out of 40 proposed articles, and in a second vote approved seven articles out of a reduced version of the report that included only nine proposed provisions (Paúl and Sanhueza 2022). The second report was then rejected in full by the plenary in April, failing to pass the initial hurdle of a 'general vote' on the report before article-by-article voting could begin (El Mostrador 2022).

The rejection of the second report led to intense acrimony between the committee members and the political parties that refused to back the second report in the April vote, with most of the outrage directed at the Socialist Collective. Committee and convention members were heard calling the Socialist Collective members 'traitors' in the plenary chamber, with Co-coordinator of the Environmental Committee Camila Zárate saying in a statement to the media: 'We regret that they have turned their backs on the citizens, the communities, the population and the territories that we have been mobilizing for years to achieve these great demands in this constitutional text. I hope that those who today rejected and abstained ... meditate on what they did today'. In turn, a leading member of the Socialist Collective, Tomàs Laibe, accused the Environment Committee of 'bullying' and 'persecution' and cited fundamental differences over issues of water, mining and the economic model, as well as the poor quality of the proposal, as the reasons for his party's rejection (Paúl and Sanhueza 2022). A revised second report was then submitted to the plenary, with 30 articles approved in the very last session of the convention. However, in the end the plenary rejected the most controversial provisions, including the nationalization of the country's copper and lithium mines and a 40 per cent royalty to the state for private mining activities.

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So while the Environment Committee succeeded in promoting the approval of many new environmental safeguards and rights, the political configuration of the committee may have damaged the convention's external reputation and stoked public fears about the course of the draft constitution. In particular, the following factors influenced the tensions between the committee and the wider plenary:

- **The composition of the Environment Committee.** While the overall convention has been criticized for under-representing right-wing and centre-left parties (Paúl 2022), the composition of the Environment Committee leaned even further to the left, with a large number of environmental activists. This had several effects. For one, the committee's configuration in part led to maximalist proposals that were largely unacceptable to the larger plenary, which not only leaned more to the centre but also had a higher voting threshold than at committee stage. Second, the convention's decision to give the committee such an expansive mandate over both the environment and the economic model of the country arguably enabled the committee to put forward such far-left proposals, some of which would have fundamentally reshaped the economic reality in Chile (especially with respect to its mining industry) (Bnamericas 2022). Finally, as a result of these dynamics, the composition of the committee was such that it never became a forum where a broad swathe of delegates could reach consensus before the proposals went before the plenary (Follert 2022). Most centre and centre-right parties had no representation on the committee, with the prominent centre-left Socialist Collective itself only having one seat. More radical members of the committee faced virtually no obstacles—and did not feel the need to compromise—in putting together its proposals. The marginalization of the more conservative members in turn added to the external perception of polarization that undermined the entire work of the committee and, indeed, the convention. All in all, these dynamics meant that the committee had strained internal dynamics and a weak tempering force before the proposals reached the more moderate plenary.
- **Growing dissatisfaction with the convention.** Wariness of the left's control of the convention has also grown among Chilean citizens in recent months. Three opinion polls released in April

2022 showed for the first time that Chileans would be more likely to reject than accept the draft constitution, setting off alarm bells across the government. As a result, newly elected President Boric promised to take the 'doubts' expressed in the poll seriously, and second president of the convention, María Elisa Quinteros, vowed to 'improve things' (Paúl 2022).

- **Outside pressure.** Some Environment Committee members blamed interference by the business community for the rejection of the committee's most radical proposals. Co-coordinator Camila Zárata characterized industry influence as a 'significant siege' on their work to reform the economic and environmental model of the country (Follert 2022). Beyond industry concerns, media coverage of the committee's proposals has been mostly negative, fuelling wider fears about the direction of the draft constitution.

2.3. A REVIEW OF CHILE'S PROPOSED ECOLOGICAL CONSTITUTION

Chile's draft constitution is unprecedented and unparalleled in the number and breadth of its environmental provisions. While some robust and progressive language was ceded throughout the constitutional debates and negotiations, and the final result does not match the aspirations of all within and outside the convention, the final draft contains myriad novel substantive, procedural and institutional provisions that may serve as inspiration for future constitution-building processes, especially as more countries seek innovative approaches to address the climate crisis and environmental degradation.

Climate change and rights of nature

The final draft includes granting rights to nature (article 127), which, if passed, would make Chile the second country to constitutionally enshrine this eco-centric right after Ecuador. While the draft protects the right of nature to exist, to be respected, protected and restored, the approved draft provision removed the originally proposed express connection between the cosmovision of Indigenous peoples and rights of nature. However, in the 'constitutional principles' section, article 88 states that 'individuals and peoples are interdependent with nature and form an inseparable whole with nature', and article

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34 states that ‘indigenous peoples and nations have the collective and individual right “to the recognition and protection of their lands, territories and resources ... and to the special bond they maintain with these ...”.’

The draft further protects other elements of the natural environment, creating a national system of protected natural areas (article 132), guaranteeing the protection of glaciers (article 137) and obliging the state to ‘conserve, protect and care for Antarctica, through a policy based on knowledge and oriented towards scientific research, international collaboration and peace’ (article 240). The state also has a duty to protect marine and coastal ecosystems (article 139(2)) and to develop a national port policy to regulate responsible use of the coastline (article 186). In a constitutional innovation, the state pledges to promote measures to conserve the atmosphere and night sky (article 135).

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In recognizing the climate and ecological crisis (article 129), Chile’s new constitution would become one of the few—approximately 11—constitutions to directly reference climate change.¹ The passed proposal guts the most advanced language of the first proposal (which explicitly tied the climate crisis to human activity and imposed a state duty to address its effects at all levels) and instead echoes the current constitutional provisions in other constitutions that broadly cover adaptation and mitigation (Toral et al. 2021). Nevertheless, the draft contains key components of an ecological constitution and reflects core principles of prevention, precaution and progressiveness enshrined in environmental law and international agreements (including the Rio Declaration and the Escazú Agreement) and intergenerational solidarity (article 128). The placement of these principles within an ecosystem of actionable provisions may bolster their impact.

¹ The constitutional provisions that explicitly mention climate change are primarily formulated as obligations of the state, or statements of principle. Ecuador’s Constitution is the most concrete in its formulation: ‘The State shall adopt adequate and cross-cutting measures for the mitigation of climate change, by limiting greenhouse gas emissions, deforestation, and air pollution; it shall take measures for the conservation of the forests and vegetation; and it shall protect the population at risk’ (article 414).

New constitutional rights for animals and humans

A key innovation of Chile's draft is the recognition of the sentience of animals and their right to live a life free from mistreatment. The draft declares non-human animals as subjects of special protection, entitled to state protection, and obliges the state to 'promote an education based on empathy and respect for animals' (article 131). The inclusion of a non-human animal's *right* is a distinct departure from the handful of current constitutional provisions pertaining to animals, perhaps for the first time placing a constitutional limit on human use of animals.² The present global constitutional approach is either viewing animals as natural assets for conservation and exploitation, or one of animal welfare: protection, dignity and compassion (notably not *empathy* as in the case in Chile). Previous jurisprudence, notably in Brazil and Ecuador, has interpreted animal rights through rights of nature (Stilt 2021; Gutmann 2022). In the case of Chile, the innovative combination—recognizing animals' sentience (and thus individuality) and their right to live a life free from mistreatment—tips the needle from a 'freedom from' to a 'right to' paradigm, and may invite judicial consideration of the expansiveness of these provisions, including for farmed animals, those subject to medical and scientific experimentation, those subject to violence for 'entertainment', and those kept in captivity.

In terms of human rights, the draft recognizes several innovative substantive rights in the face of climate change. It contains a state-guaranteed right to a healthy and ecologically balanced environment (article 104), a new state duty to ensure food sovereignty and security, including the right to healthy and adequate food (article 54), a right to a minimum of affordable and safe energy (article 59), a right to clean air throughout one's life (article 105), the right to responsible and universal access to nature (article 107), and the right to water, sanitation and a balanced ecosystem (article 140). The draft also incorporates procedural environmental rights core to environmental democracy: the right to informed participation and right to access information relating to the environment (article 154), but removes language from the initial draft that made public participation in

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² The freedom to undertake economic activities is predicated on compatibility with the rights enshrined in the constitution and with the protection of nature, albeit subject to limits determined by law (article 80).

environmental matters binding. Article 108(8) also guarantees access to environmental justice.

Nationalization of natural resources and regulation of mining

As expected, the draft contains multiple provisions relating to natural common goods and to minerals. In relation to the latter, the draft grants the state 'absolute, exclusive, inalienable and imprescriptible domain of all mines and minerals, metal, non-metallic substances and deposits of fossil substances and hydrocarbons' regardless of ownership of the land on which they are located (article 145). The state reserves the right to regulate the 'exploration, exploitation and use' of minerals considering their finite nature, intergenerational concerns and environmental protection (article 145). The draft incorporates the 'polluter pays' principle, obliging miners to allocate resources to repair damage caused by their activities and, interestingly, constitutionally protects small-scale mining and quarrying (article 147).

Water has proven a key political issue in Chile. It is currently the only constitution allowing privatization of water.

Protection, management and utilization of natural resources as common goods are robustly outlined in article 134. As mentioned in the previous section, water has proven a key political issue in Chile. It is currently the only constitution allowing privatization of water (1980 Constitution, article 19(24)). Clearly, a balance is needed between economic growth and protection of the environment, since lack of water is impacting both people and business (Cambero 2022). In the draft, the state can grant concessions for water on a temporary basis, which will not create a property right (article 134(5)).

Additionally, the draft provides that any person can demand compliance with the constitutional duties relating to natural common goods (with the mechanism and procedure to be set by law).

New institutions and mainstreaming environmental protection in existing institutions

The draft creates an innovative institutional framework in relation to the environment. The draft creates a National Water Agency that will regulate the use of water, and Basin Councils as a decentralized unit of water management (article 144). The National Water Agency is mandated to impose administrative sanctions for non-responsible or non-sustainable use of water (article 144(2))

(f)). The draft constitution also proposes the creation of a robust Ombudsperson for Nature with dedicated regional offices, which is mandated to oversee state compliance with environmental obligations, provide recommendations on environmental concerns, process and investigate alleged violations of environmental rights, and bring constitutional and legal actions when such rights are violated (articles 148–50). The draft, with an eye to ensuring a well-qualified and independent ombudsperson, provides that environmental organizations shall propose a list of candidates from whom the ombudsperson will be appointed (by a majority of the bicameral legislature in a joint session) (article 150). While several environmental tribunals already exist in Chile, the new constitution would establish Environmental Courts in each region. Jurisdiction will include judicial review of administrative acts and resolution of claims relating to fundamental environmental rights and actions on behalf of nature (article 333). The draft constitution enables broad standing for an action alleging a violation of rights of nature and environmental rights, which can be taken not just by the Ombudsperson for Nature, but also any person or group. Likewise, under article 134(6), any person can demand compliance with the enumerated constitutional duties related to the natural commons, with the law to determine the procedure for this action. Apart from specialized environmental institutions, the draft mainstreams environmental protection in the objectives of existing institutions, such as the Central Bank (article 358).

2.4. CONCLUSION

Looking ahead, it is likely that we will continue to see this wave of constitutional innovation be succeeded or surpassed by bolder, more expansive and more holistic provisions that include new substantive rights as well as oversight and enforcement institutions. As the realities of the climate crisis evolve, so will the constitutional provisions designed to address them.

Nevertheless, we will also likely see divergence in implementation depending, among other factors, on a state's constitutional, legal and regulatory framework, political dynamics and public support. Of particular importance regarding implementation is how future

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governments and courts will treat these provisions in relation to other duties and objectives, such as socio-economic rights, fiscal responsibility and economic development. We also cannot assume that the public will back any or most measures to combat climate change (as demonstrated by the defeat of the Swiss environmental measures via referendum), so it is likely we will see greater use of deliberative democracy mechanisms like citizens' assemblies to build consensus and pave the way for the passage of potentially unpopular laws and policies legislatively or via referendum. For example, Luxembourg's Climate Assembly will meet until mid-2022 to create proposals that go beyond Luxembourg's current National Energy and Climate Plan that will form part of the country's next steps to combat climate change (Schnuer 2022). Spain's Citizen Assembly for the Climate also recently approved 172 recommendations for government action related to consumption, food and land use, the environment and other areas, which will be presented to the government and congress (Asamblea Ciudadana Para El Clima 2022).³ We also see the continued importance of an informed and active civil society, as in the case of Slovenia, which utilized the powerful constitutional mechanism of direct democracy, a citizen-initiated legislative referendum, to challenge amendments to the Waters Act that could have led to environmental degradation.

While Chile is seen as the golden child of environmental constitutional reform in the last year, the fate of the draft and the environmental provisions contained within will depend on whether voters will approve the draft in September 2022.⁴ As such, much like the outcome of the climate crisis itself, the future of the most significant constitutional provisions related to the environment in 2021 and 2022 now hang in the balance.

³ Other examples include France's experience post-passing an increase in its carbon tax in 2018 (Noël 2021).

⁴ The referendum (exit plebiscite) on the draft constitution was held on 4 September 2022. It was rejected by a margin of almost 62 per cent to 38 per cent. Nevertheless, renewed attempts at reform have begun and are likely to continue into 2023.

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