

# Constitutional Changes Towards a Sustainable Citizen Society

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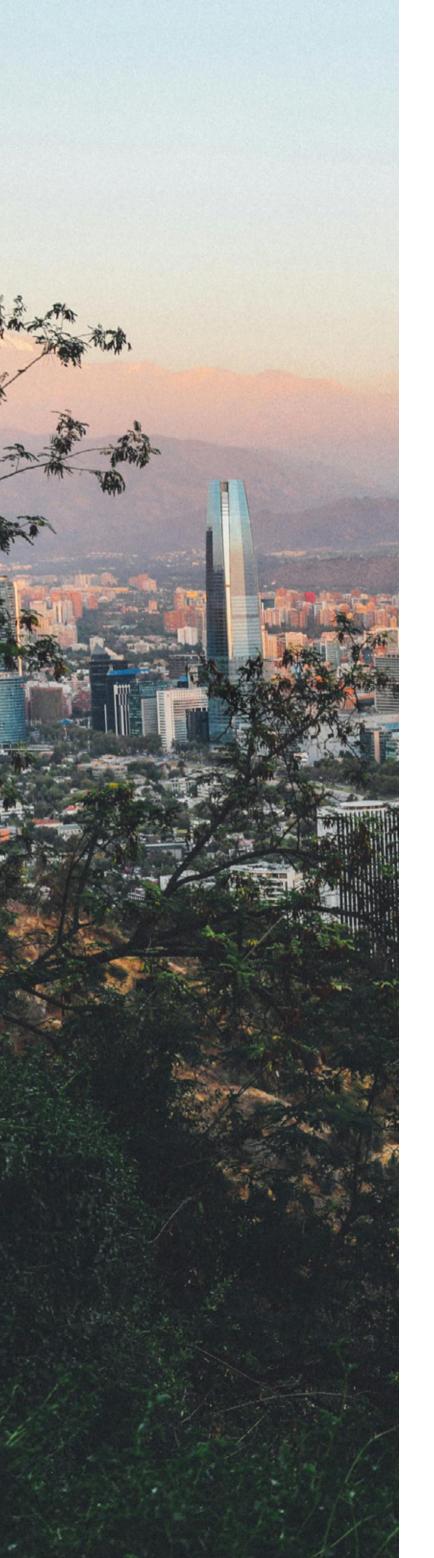
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# Constitutional Changes Towards a Sustainable Citizen Society

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## Part 1 Preamble

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As a Chilean, I am one of those who sees the need for a new constitution. This note has several purposes. First, offer some reflections and ideas to feed genuine dialogues about a new constitution. The text is very short in relation to the depth of the topics it addresses. Second, to identify key aspects to justify a total change of constitution: a new spirit and common thread. Third, focus on the need for a new paradigm of development and transformation, where the constitution represents the story and scaffolding that feeds and protects the birth and development of this new paradigm. I call it "a sustainable nation with an empowered citizenship." Fourth, to advocate for structural changes so that the new paradigm of place with an accent on individual and collective values that will govern new definitions of well-being, progress, development, transformation ... Fifth, to advocate for a new style of constitution, not as a greater law (issues eminently legal, distribution of power and institutional responsibilities), but rather as a narrative of who we are, where we want to go, and how we will try to reach that collective destination.

This text does not address all possible constitutional issues. The priority that justifies the text of this reflection is a sustainable nation with an empowered citizenship.

What would a new constitution look like (i) that really responds to the real and committed construction of a sustainable, intergenerational society, in all its senses; (ii) that meets the demands and challenges of the most vulnerable in our country, the elderly, workers; (iii) that embraces all the needs and challenges facing children, youth and future generations?

Should the constitution be based only on political ideological principles or on a serious understanding of the reality faced by the different actors in our society?

How should the content of education, science, technology and entrepreneurship be transformed for a new constitution?

The constitution must have "spirit", otherwise it is not worth changing.

Everything has to embrace a "reason for Being", which certainly goes beyond the merely legal, political, institutional, material, economic ... If we individually have a being (soul), we also have a being as a human collective (nation). A constitution represents the creation of a space where we must all nurture that individual and collective Being.

This article represents a reflection on constitutional changes necessary to build a sustainable society with an empowered citizenship. I call it a "reflection" because it will not address purely legal matters that should be conditioned and structured by the vision of the country and society that we want. It is the vision of the country and its challenges that define, nurture and delimit the necessary jurisprudence bases of a constitution. The path for a change in the constitution must be full of collective and institutional opportunities, from which new human-social spaces are born that achieve a fundamental letter that reflects the true objectives and aspirations of Chilean women and men.

In essence, the proposal presented here is for a new constitution that contains a consensual and citizen vision of the sustainability of our development, in all its dimensions. In addition, a constitution that also establishes the instruments that will strengthen the individual and collective, external and internal, material and spiritual empowerment of citizens. For this, some proposals are made related to changes and transformations that are needed to achieve this vision.

This proposal is not born out of a void. Actively participate in the Constituent Process, where its most important conclusions have to do with nature. Therefore, this process is a great reference. Its statistical result – in relation to both values, rights, responsibilities, and institutions – shows the priority that the participants gave to issues related to the environment, nature, ecology, environmental institutions, etc. These results must be seriously considered in the drafting of a new constitution.

Another important element in this reflection is that, if our society is willing to change the constitution, we must open ourselves to "a process" that has to go beyond marginal changes (an article here and another there), or accommodative changes (in response to a contingent social political situation). Today, we must establish an in-depth debate and address the structural challenges facing our country, including those of the medium and long term, both at the international, national, regional and local levels.

In this context, for example, we should seriously debate the very definition (eg, type, structure) of a new constitution. That is, to address the nature, content, scope, language, and presentation that we want of our fundamental charter, (and I insist) together with defining the mechanisms of direct-citizen-participation to draft it (eg, plebiscite, assembly constituent). The mechanisms of citizen participation cannot be left out of this reflection.

Furthermore, we know that there are many types of constitution; there are some that are considered as "the highest law", "the supreme law", and others that have a more declarative character. We also know that many constitutions were born as a historical response to armed conflicts, such as the independence of a country, and they reflect this reality.

In general, our constitution is an essentially legal document, and not a fundamental charter that presents a vision of the country. It is in its legal nature where (i) the legal character of many issues is established, (ii) the public and private power is defined, distributed (distributed), and regulated (more in what is public), (iii) it is determines the separation between the powers of the State, (iv) the foundations of the legitimacy and supremacy of relevant social actors are argued, (v) rights and responsibilities are established in relation to some aspects of our society (including our natural resources), (vi) some accountability systems (responsible control) are defined in various situations, (vii) different forms of governance are presented at the national, regional and local levels; and (viii) much more.

Some might argue, however, that the foundations "behind" this constitution constitute a vision of the country: capitalist,

neoliberal, market and free competition, favoring property and private rights... If so, with all the more reason there are to think about a total change of the constitution. It is in this sense that it is important to say that our constitution is not ideologically neutral. It explicitly or implicitly adopts a legal and institutional way to define various relationships within our society (eg, a notion democracy); defines the parameters for a form of economy (market, competitive); and uses a group of values, both individual and collective, that form the scaffolding of many decisions.

In relation to its values, it is important to note that in Article 1, for example, our constitution mandates the State to ensure the material and spiritual well-being of its citizens. Although it is not explicitly defined what spiritual well-being really means, it does imply that well-being (and the values that accompany it) goes far beyond money, the possession of material goods as such, or points of GDP. This article connects with a form of well-being that originates in the non-material and that is not taken up again in the constitution. Something that the new constitution should embrace and integrate strongly.

The constitution that we have must be replaced, for various reasons, including because it originated within the framework of

a dictatorship, which was neither democratic nor participatory; because it imposes a neoliberal economic and social system that concentrates wealth and threatens our ecology; and because it does not present a detailed and explicit vision of the type of society we want and why. This constitution is very far from what citizens want as a society, both for the present generation and for all future generations. In its content you can see the interrelationships that exist between the Constitution, the distribution of power at the institutional level (State powers, vetoes) and the neoliberal economic system. Some reinforce the others. All this under the veneer of freedom, democracy, economic growth, material well-being and many other concepts.

In the 21st century we need another way and, for this, the Constitution must be changed in practically its entirety. And if this is not politically possible (there is no political will), or it is decided to deal with only marginal changes, the new constitution must include at least a long preamble that establishes and transparently declares who we are, what are our objectives as a society, what we are willing to protect and conserve, how we will reach our goals, what is unacceptable in our society, where we want to go in the long term, etc. It is in this preamble where the backbone of our society must be announced and explained:

sustainability with an empowered citizenship. This should be the nature of our next charter.

Given (i) the political crisis that our country is experiencing, (ii) the structural problems that we are confronting at all levels, (iii) the debates we have about various concepts that dominate and determine the constitutional sphere (eg, well-being, competitiveness, citizen participation, self-government of our native peoples, the need for deep decentralization ...), (iv) the weakening of trust in state institutions and political parties, and (v) changes in the planet and in humanity As a result of climate change (natural resources, migration, etc.) and overpopulation, a new constitution must express in detail and consensually our ideals, values, objectives and aspirations as a society. We do not need a constitution of the "supreme law" type; the legal and juridical aspects derived from a new constitution could be in an additional, separate document.

For example, this new declarative constitution should address issues such as the meaning of being Chilean-Chilean; the importance of our children and youth; the significance of our humanandnaturalenvironments; the role of family, neighborhoods, cultural heritage, art, music, and literature; spirituality and the

integral development of human beings; the sovereignty of our native peoples; the collective values that identify us and that we are going to cultivate (justice, equity, interdependence, peace, love, compassion); the society and economy that we want at the national, regional and local level; the, or the notions, of well-being that will be staged within the policies and programs that arise from the constitutional proposals; the importance of a democracy not only representative but also participatory and eminently citizen; the importance of nature and of all living beings, of the landscape, of flora and fauna, of our lands, rivers and seas; the responsibilities we have with future generations; the different forms of law that this new objective and vision as a country needs (citizen, collective, cooperative rights), etc.

All of the above will be born, develop and take on a definitive body only through empowerment and direct citizen participation in the drafting of the new constitution.



# Part II Constitutional Changes

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The list of constitutional changes suggested here is not exhaustive nor is it intended to be. For the most part, ideas or changes are particularly linked to the most fundamental aspects of sustainability and citizen empowerment. The list must be completed and complemented with aspects such as new forms of institutionality and governance, rights and responsibilities.

The listing of these topics is not intended to give them a particular hierarchy. All issues, in themselves, have the merits of belonging to the new constitution proposed here. The institutional, legal, and economic and social policy specifications are not presented here in their entirety, as this will be the subject of a second constitutional stage, more aimed at implementing these strategic issues. For example, in the case of changing private ownership of water to citizen ownership, this should be done as a result of a large national consultation, expert panels, legislative debates, etc. These are typical aspects that define forms of governance and possible strategic implementation alternatives. In a sense, this is what governments should do under the constitution. In part, the debate that is taking place on the modification of the Water Code is an illustration of what is being postulated here.

Here are some important issues to build on the scaffolding of

### 1.- Ownership of our natural resources and environmental services.

All of our natural resources and essential environmental services should be owned by citizens, with the State as the guarantor of these rights. Water should belong to all of us, unlike a private or state right. This should also apply to having clean air and being responsible for it.

### 2.- The rights of future generations. An inter-generational constitution.

Future generations also have rights. Part of the jurisprudence of this proposal is presented in the document "Our Common Future" by Gro Brundtland<sup>1</sup>. The responsibility of ensuring a future, at least the same as that of the present generation, falls into the hands of the State and all those who generate material wealth in our society. The new constitution must have an eminently intergenerational character. This will force us to look more to the medium and long term, and to create effective mechanisms to be applied today, in addition to establishing strategic policies at the national and sectoral level that go beyond the short term

Forty-second session, August 4, 1987 Report of the World Commission on Environment and Development <a href="http://www.un.org/es/comun/docs/?symbol=A/42/427">http://www.un.org/es/comun/docs/?symbol=A/42/427</a>

(eg, energy policy).

#### 3.- The rights and sovereignty of our native peoples.

It is unacceptable that a new constitution ignores our native peoples. It is of fundamental importance that they are at the center of this constitution. Specifically, the sovereignty of these peoples should be explicitly declared, and how the different forms of sovereignty are adequately woven with all aspects of Chile as a nation. This is a delicate subject, but full of possibilities that can create a more harmonious and inclusive nation; something extremely positive. This entails making explicit the relationships and rights over land and other natural resources, as has been done in many parts of the world, and has been recognized by the international system (UN).

#### 4.- The rights of nature and responsibility for its implementation.

The new constitution must understand nature as a living being and not as a "thing". That is why the new constitution must establish the rights of all living beings that inhabit our territory. The new constitution cannot end up being homocentric. A vision that only includes human beings represents a step back from all the scientific evidence that shows us that we are totally interdependent on nature, natural processes, natural laws, etc. Therefore, nature has rights, and respect for those rights will

allow citizens to grow and develop in healthy and appropriate environments; with the impacts that these have on physical and mental health. The State must guarantee these rights.

### 5.- The conservation and sustainable management of our natural resources and the environment as fundamental values.

A declarative constitution must be very aware of the trends that it recognizes as priorities in order to achieve a sustainable society with an empowered citizenship. Examples of these trends are to move: (i) from emphasizing only quantity and moving towards the quality of our development; (ii) from extractivism to the management and conservation of our resources, (iii) from dirty competitiveness to clean competitiveness (ecocompetitiveness), (iv) from pure competition to cooperation, (v) from short-termism to structural consideration of the medium and long term, (vi) from management through the market or the State to an integral management on the part of the citizenry, (vii) from a corporate world only involved in the world of material gains to a contribution to the collective well-being, (Viii) from a totally open economy to an economy that has protection mechanisms in relation to the objectives to be achieved, (ix) from the closed world to the open world of technologies and communications, (x) etc. It will be the nature and the consensual content that will give

body and rationality to these issues. The important thing is that values such as life, conservation, cooperation, interdependence, spirituality, self-fulfillment, justice, equity, and many others, must be essential in the writing of the new constitution.

## 6.- The importance of citizen empowerment and a participatory and deliberative democracy.

Direct citizen participation. The future of a democracy lies in the direct and permanent participation of the citizenry. Democracy that is only representative will be limited by the nature and quality of public powers, the perception and effectiveness of political parties ... In Chile there are not many instances of direct citizen participation except to vote, and those that exist are very insufficient. Sustainability and empowerment go hand in hand and the new constitution must establish and explain what the human, institutional, cultural, ethnic, spiritual, ethical, and empowerment mechanisms will be. We must be clear about whether or not there will be a constituent assembly, and under what kind of circumstances. Or, what institutional mechanisms will serve for citizen consultations. This is an issue that may require a series of plebiscites to establish its scope and legitimacy. All of the above leads us to think that empowerment must also be nurtured through education, health, food, culture,

social cohesion, identity at all levels...

#### 7.- Eco-competitiveness.

Responsibility for all negative impacts on the life cycle of products. The new constitution must establish the concept of eco-competitiveness; a competitiveness that, in addition to being related to international prices, must internalize all the costs of externalities within the life cycle of a project or policy. Otherwise, the incidence of dirty competitiveness, over time and territory, will be extremely negative. In Chile there has been a recognition of the importance of producer responsibility over the life cycle of a product. The so-called REP Law. However, this law only addresses a very small variety of products, such as batteries, car oil, and others. This recognition implies that the producer responsibility walls go much further than the company's tambourines. This is very relevant, to avoid negative external effects in other spaces or actors of the economy. This forces the producer to find the most suitable technologies and processes to respect the environment and achieve the sustainability of our development. That is why the new constitution must consider the principles declared within the REP Law as essential for all products of the economy. Thus, for example, mining should take care of tailings, and not let them wreak havoc today or in the future (eg groundwater contamination). All of the above demands a

new way of defining and measuring our competitiveness.

## 8.- The commitment to a healthy diet and new forms of agriculture.

Organic agriculture, not GMOs. Today there are some developed countries that are definitely moving towards an agriculture that contributes to a healthy diet. In Northern Europe there are countries where organic agriculture for all their products is today a national goal. Those same countries will put restrictions on international trade (the importation of non-organic products), to meet their internal objectives. Today, many of the trade restrictions, as a way and form of protectionism, are born as a result of a special concern for the environment and the social. Just as soccer balls made by minors are not imported, so imports of transgenic products and other products that do not have an environmental certification of origin will also begin to be restricted. These will be the new forms of tariffs or implicit taxes on trade. A trade that will no longer be "free". Our constitution has to be emphatic on the issue of healthy eating and how it hopes to achieve it. This is not a sectoral issue. It is an issue that goes deep into the real identity of our country. Chile's constitution should be an example for the whole world in terms of healthy eating.

### 9.- The contribution of the private sector to the collective welfare.

Changes in the character of the private good and the public good. As there are more inhabitants, as population density is higher and urbanization rates continue to increase, all human activities begin to have more pronounced "public" (collective) dimensions. The nature of a public good, of what we do on a daily basis and of economic and social policies, is becoming more and more evident. The private begins to weaken in pursuit of the public. The discussion about the ownership of water proves to be an excellent example of its character as a public good in the 21st century. This seems to be happening on many fronts: natural resources, seas, rivers, mountains, air, water, forests, health, education, housing, noise, landscape, culture, art, history, literature, entrepreneurship, etc. In this context, the need arises to revitalize the private corporate sector in pursuit of a significant contribution to the collective well-being. Profit or monetary gains cannot be the only food for companies. The private sector plays and will play a leading role in achieving sustainability. This is particularly significant in our country where the relative competitiveness of the sector depends on natural resources. The new constitution cannot see the private sector

as an entity apart from the sustainability of development.

#### 10.- The principles of land use planning.

The territory is diverse and represents the wealth and fundamental heritage of a nation. That is why the occupation of this territory cannot be random or let the market assign it in its own way, in response to incentives that do not respect the sustainability of our development. The constitution must list the most important criteria that will determine how our territory will be occupied in the future, including coastal border areas, native forests, river borders, glacier areas, ecologically fragile spaces, etc. This is where both sectoral issues, such as agriculture and food, industrial location, as well as more regional issues (eg, sacrifice zones) and national issues (competitiveness, royalties, foreign investment) are discussed. The notion of "slaughter zone" will be rejected, as sustainability cannot be achieved in one part of the territory at the expense of others. This issue of land use planning is of great importance for citizens, whose participation at the local and regional level will be decisive for sustainable development.

## 11.- The integral human ecology and that of all forms of life in our country.

There is no doubt that the improvement of the quality of life,

and that alternative forms of life in our development, are of vital importance. It is in this sense that the human being is one of the main actors in the productive transformation, in the realignment of consumption, and in the receipt of the great ecological benefits. Therefore, ecology and the human being must be integrated; an indivisible unit. However, this integration is interdependent, and must respect all forms of life that inhabit nature. A deterioration in ecology and the natural environment will immediately translate into a limitation to the material and spiritual development of the citizenry. That is why the constitution must adopt the motto of "the integral ecology of all forms of life" and not only of human life. This will demand criteria for evaluating our policies and programs with respect to their impact on all forms of life and not only on the human being. Excessive anthropocentrism has led to the implementation of programs that have been detrimental to other living beings, such as the condor, the huemul, and many other species that are on the road to extinction.

## 12.- The decentralization of the country as a key element for the sustainable citizen economy.

Chile is a tremendously centralized country, even though we all know that Chile is not Santiago, and that its crazy geography shows a great variety of situations and ecologies. It is not a uniform country and therefore we must recognize this diversity that occurs in so many aspects and levels. This demands that we have much more appreciation of what is happening in the regions and that, through local institutions, the objectives of those territories are achieved. That is why the new constitution must declare the principle of decentralization of the country, in all its dimensions. Our wealth, in all its possible expressions, including the strictly economic one, depends on this process of decentralization. At the moment, centralization is exposed to "rising costs," which is very negative for the future of the country in the medium and long term. Chile must become a sustainable, decentralized, and citizen country (SDC); our triangle of national development.

#### 13.- A new fiscal and tax policy: taxes on evils and not on goods.

The role of the State becomes increasingly important in achieving sustainable society. The neoliberal market system does not have the mechanisms to automatically correct environmental and ecological destruction. Therefore, markets must be intervened and this must be done by citizens or the State. One of the instruments that can correct the negative externalities of the markets is fiscal policy, both in the way it generates fiscal revenues and its mechanisms for allocating them. Taxes are a classic instrument

for generating tax revenue. Here we must recognize green taxes and other taxes that can reallocate scarce resources in order to reduce ecological and environmental deterioration, in time and space (territory). It is important that the constitution makes clear the sustainability criteria for all fiscal policies, so that there are no contradictions around earning more GDP points at the expense of a substantive deterioration in sustainability.

#### 14.- The new concepts of well-being.

Collective and spiritual values. All the previous points demand new definitions of what constitutes well-being in our society. It is important to make these new notions of well-being explicit in order to evaluate the extent to which our interventions contribute to that well-being. Recent studies (UNDP) show the importance that citizens assign to security, integration, inclusion, protection, and many other values of a collective nature. These new concepts of well-being are generally of a non-material nature of our economic and social development (eg, OECD), as is the case of happiness, or as is the spiritual well-being defined in the existing constitution. We must reach a consensus on what we understand and what we want as a notion of well-being that we want, and this must appear in the constitution explicitly.

## 15.- Redistributive Justice and Ecological Justice: Foundations of Equity.

Variations in the quality of the environment and ecology imply changes in well-being and differences in the possibilities of human and material development and transformation. Poor people generally live in poor and unsustainable environments and ecologies, where water and air are polluted, where the land has very low productivity, where homes and neighborhoods are devoid of services, etc. But the deterioration of the ecology and the environment generally does not have its origin in poor people. This deterioration is the result of wealth creation processes and the patterns of concentration and inequity that accompany it. Wealth creation as the origin, and poverty as the incidence. This difference between the actors involved in the origin and those who suffer the incidence, has created great redistributive injustices; that form the basis of "ecological justice". The constitution must recognize the importance of ecological justice.

#### 16.- An economy without ethical vacuum: towards a new ecomorality and economy.

The constitution must be clear in establishing that the economy, and the economic system to be applied in our country, cannot

be implemented in an ethical or moral vacuum. That is why it is important to establish principles of eco-morality where the type of activity that will not be accepted in our economy is established, even if it generates material profits. This eco-morality must be established together with a precautionary principle, and avoid negative impacts that significantly affect citizens. Our constitution should be a global example in terms of embracing a form of economy that is deeply humane, that respects all forms of life, and that recognizes the ethical and moral spaces where it can operate.



# Part III Final Thoughts

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Let's change the constitution. Our constitution will be changed in a historic moment when we are governed by natural human interdependence. In that all forms of life form a singular whole. A world of cultural and natural diversity, with a common destiny.

A constitution must give us the foundation to choose our shared future.

When writing a new constitution, a scaffold is needed, a common thread, a glue, a unit of account, an axis of coherence ... This must be the sustainability of our nation with an empowered citizenship. Sustainability is much more than an economic system. Sustainability is an eminently human social space, an individual and collective life system, a collection of spiritual human values, a right to a standard and quality of life, a state of consciousness ... And, where all forms of life are benefited by the new constitution.

A constitution in which future generations and nature feel truly represented. A constitution where the conservation of our human and natural resources is not just another article but its backbone. A constitution based on the principles of peace and harmony. And, all that this entails in terms of power, governance,

institutionality, citizen rights, property, well-being, progress, etc.

That is why I want to change the constitution.

Spirituality is essential in this constitution.

Just as we all have a Being, the nation also has a Being. The new constitution cannot be conceived outside of Being. The more outside of Being a constitution is, the less it will last in time. The constitution of the dictatorship does not have a Being. It is empty. The access and distribution of "power", to people, institutions, social organizations, the State, the market, the corporate world ... are the mark of many constitutions.

What do we understand, or how do we want to define, power in a new constitution? Is the power only material, money ... or should we also deal with spiritual power? That power that benefits us all, translating into justice, equity and social integration?

The new constitution must adopt the principle of ecological integrity in economic, social, institutional, and political terms. This will apply especially in the protection of biodiversity, native species, native seeds, ecological reserves, recovery of flora and fauna ...

The central idea is to eliminate the possibility of violating maximum sustainable yields, exceeding critical zones, or minimizing the depletion of non-renewable resources. For this, the new constitution must make explicit the obligation to ensure the ecological and environmental attributes and services of future generations, where future generations also have rights.

Itis in this sense that the constitution must explicitly recognize that all living things are interdependent. That is why we must introduce the concept of community of life. For this, the constitution will validate the rights to access, possess, use, and manage natural resources, but understanding that these rights entail the duty to avoid environmental and ecological deterioration.

Let us embrace rights that allow us to live in peace and harmony among ourselves, and between ourselves and all forms of life. Let's call this: our principle of responsibility as a nation.

That is why the new constitution must adopt a concept of democracy that includes, among other things, sustainable democracy. There is no justice there without ecological justice. There, the evolutionary universe contains the human being and

nature. That is why our environment must be a fundamental concern of the new constitution.

Citizenempowermentisacentralobjectiveofthenewconstitution. Development challenges are multiple in nature. The economy, the social, the political, the cultural, the ecological, the spiritual ... they all go together.

But, changes in our way of life, towards a sustainable society must be accompanied by a great change in consciousness, values, and institutions.

The main thing is not to have more but to be more as a nation.

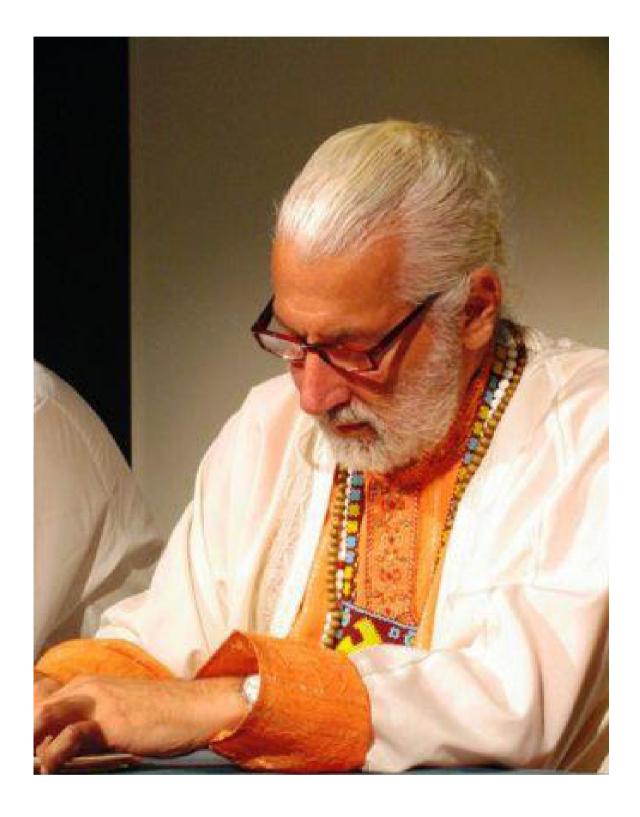
We are peoples of our Chile, of our land. The constitution must declare the obligations of each other and to the land. A great community of the ways of life that coexist here. The constitution is the vertex of union between the right and respect for nature and ways of life, individual and collective human rights of a universal nature, equity and economic justice, and the achievement of happiness and citizen well-being.

The constitution must have a preamble that is not just a legal

grammar. It must contain a vision of what we are (identity, sense of belonging ...), and of the values necessary to achieve what we want to be (solidarity, cooperation, equality, equity, interdependence, compassion, love, justice, rights. ..).

Chile will be a developed country when the processes of wealth creation do not create poverty and inequality. The new constitution must be instrumental in making this a reality.

It must be declared that the country has adopted a model of sustainable development in all its dimensions. Policies of all kinds, macroeconomic, monetary, fiscal, trade, etc., must be evaluated in relation to sustainability.



------Dr. Alfredo Sfeir-Younis
Dzambling Cho Tab Khen
2020-----