

ARTICLE

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Constitutionally mobilizing against climate change: the case of the environmental movement at the Chilean Constitutional Convention

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Abstract

As Chile embarked on a constitutional replacement process during its worst-ever drought, local environmental activists secured significant representation at the Constitutional Convention responsible for drafting a new constitution, and successfully integrated provisions on climate change and water protection. However, despite the popularity of these measures, the citizenry rejected the proposal. This article, using legal mobilization and constitutional reform studies, examines the dynamics of constitutional mobilization against climate change, presenting two major findings. First, the feasibility of constitutional mobilization hinges on the ability of activists to navigate the politics of constitutional change, as their tactical choices are crucial for enhancing the process's legitimacy. Second, including environmental measures in a constitutional replacement process tie them to less popular provisions, potentially jeopardizing the entire process, delaying state action on climate change, and weakening activists' standing. The data supporting these findings come from interviews with Constitutional Convention delegates, archival research, and participant observation. In a context where climate change is intensifying, this article underscores the unintended consequences and challenges of pursuing environmental goals through constitutional reforms.

Introduction

The worsening of climate change presents environmental activists with significant challenges due to its diverse origins and widespread consequences at both local and national levels. However, this complexity also provides opportunities for mobilization (Han and Wuk Ahn 2020; Klinenberg et al. 2020). Activists often use legal mobilization to challenge climate change globally by targeting courts or promoting progressive interpretations of existing laws (Auz 2024; Ohdedar 2022; Hilson 2019;

Taylor 2023). A key limitation of this approach is that legal progressive interpretations or rulings cannot address situations beyond the law's scope, turning activists into legislative mobilization to promote new environmental laws. However, here they also face an uphill battle, as more powerful stakeholders often dominate complex legislative debates on issues like climate change (Burnell 2012; Johnson et al. 2010; McAdam and Boudet 2012).

Alternatively, constitutional mobilization (Blokker and Thornhill 2017; Son 2018) is another form of legal mobilization that could address both issues simultaneously. As political covenants in a democracy, constitutions establish a framework harmonizing all laws and policies and create institutions and mechanisms that open opportunities for legal mobilization (De Fazio 2012; Vanhala 2012). Consequently, incorporating actionable principles on environmental protection or climate change would be a significant triumph for activists. Such provisions would ensure that all national laws and policies must either adhere to or meet the standards of climate change provisions, and the legal system would uphold them over time. Thus, constitutional mobilization appears to be the most promising avenue for achieving a resolute response from the state on critical and complex issues like climate change.

While recent cases of environmental movements engaging in constitutional mobilization have emerged, particularly in Latin America (Mendes and Rached 2021), the opportunity to study them is rare. Countries infrequently engage in constitutional replacement processes (Elkins and Hudson 2019), limiting our understanding of constitutional mobilization's potential to address urgent issues like climate change. For that reason, we know less about activists' influence over constitutional processes and their role in the politics of constitutional change (Blokker 2018; Della Porta 2020; Eisenstadt et al. 2017).

Given the importance and the novelty of studying the constitutional mobilization of social movements, particularly to address increasingly urgent environmental matters such as climate change, this article raises two interrelated questions. First, can environmental activists be politically influential during constitutional processes? Second, is constitutional mobilization an effective strategy for addressing critical environmental issues like climate change?

This article reflects on these questions, highlighting the complexity of constitutional mobilization and the risks associated with pursuing solutions to climate change through constitutional replacement processes. It examines the case of the environmental movement's participation in the Chilean Constitutional Convention, drawing on data from interviews with constitutional delegates, extensive archival research, and participant observations throughout the constitutional process. The Constitutional Convention was tasked with drafting a new constitution in the aftermath of social outburst, where environmental issues such as a lasting megadrought, exacerbated by climate change, were critical (Heiss 2021). Local environmental activists secured an unprecedented and substantial representation within this assembly, enabling them to successfully advocate for long-awaited demands on climate change and water rights.

Despite a promising start and societal support for the environmental provisions, the citizenry rejected the Convention's proposal in a referendum. As is often the case in constitutional processes, the erosion of public support can be attributed to a combination of endogenous and exogenous factors (Elster et al. 2018). However, the participation of environmental activists within the Convention provides a unique opportunity to examine key aspects of their institutional mobilization, such as their

chances and obstacles to strategize political negotiations, and the impact of their decisions on the process's popularity. Furthermore, this article contrasts the initial optimism surrounding the constitutional process with the unintended negative consequences it had for the advancement of climate change-related measures in Chile following the referendum.

This article makes three key contributions. First, it addresses the challenges of constitutional mobilization, a comparatively understudied kind of legal mobilization (Elkins and Hudson 2019), and its suitability in tackling complex phenomena like climate change. Second, it expands the analysis of the legal mobilization against climate change, which has been predominantly focused on cases from the Global North (Auz 2024; Peel and Lin 2019). Finally, it responds to calls for more in-depth analysis of movement action and effectiveness during constitutional replacement processes (Blokker and Thornhill 2017; Eisenstadt et al. 2017), highlighting both its intended and unintended outcomes (Amenta et al. 2010).

The legal mobilization of environmental social movements

The analysis of the legal mobilization of environmental activists primarily centers on litigation (Chua 2019; Vanhala 2022) and legislative reforms (Johnson and Agnone 2022), specially on the issue of climate change (Arnall et al. 2019). Here, research points at three factors favoring the legal action of social movements (Vanhala 2022). First, a robust legal stock (e.g., norms regulating societal interactions with the environment) providing grounds for litigation (Andersen 2006). Second, a favorable legal opportunity structure allowing activists to channel their grievances to an independent judiciary (Doherty and Hayes 2012; Vanhala 2012). Finally, the availability of resources, such as money and networks, to support litigation efforts (Vanhala 2016; Aspinwall 2021).

Most of these analyses have focused on the Global North (Auz 2024; Peel and Lin 2019). However, evidence from Latin America shows similar trends due to the increasing role of courts in mediating environmental conflicts (Couso et al. 2010), with the case of Colombia presenting the most favorable context for legal mobilization due to its judicial system (Lehoucq 2021). Its 1991 Constitution established a justiciable legal framework mandating courts to safeguard environmental principles, making judges crucial in their progressive and expansive interpretation (Couso 2022). Additionally, it introduced *tutelas*, legal proceedings allowing individuals to directly complain about threats or violations of their constitutional rights to a judge without needing a lawyer, thereby reducing the cost of litigation (Landa 2011). As these constitutional rights and mechanisms became embedded in the social fabric, Colombian courts became a central locus of activism expanding the realm of environmental protections through a progressive interpretation of constitutional principles (Taylor 2023). Therefore, Colombia highlights the potential of legal mobilization and the relevance of constitutional norms to design a system of justiciable rights.

However, the judicial route has limitations. Litigation may render suboptimal results (Rosenberg 2008) and weak legislation constrains the justiciability of norms (Albiston 2010), particularly for an emerging field in the Global South such as climate litigation (Auz 2024). Chile is a good example of these judicial limitations within Latin America. Although the country has an independent judiciary, three institutional issues hinder environmental activists' use of the Environmental Courts established in 2013.

First, Chile lacks constitutional mechanisms like Colombia's *tutelas*, and local courts do not offer legal or technical guidance for filing claims. Due to the pervasive resource constraints of local environmental groups (Moreno 2023; Schaeffer 2017), activists without the means to hire professional lawyers are at a disadvantage if they cannot cover the costs of litigation.

Second, the judicial interpretation of norms often focuses on procedural rather than substantive aspects of existing environmental laws, leading to widespread criticisms (Rabi and Campos 2021, Akchurin 2023). For instance, while constitutional provisions on environmental issues are limited, Article 19 of the 1980 Constitution formally recognizes the right to live in a pollution-free environment. However, judges frequently interpret it in relation to the right to health and not linked to environmental protection (Galdámez Zelada 2017).

Finally, existing laws are inadequate for addressing urgent environmental issues (Moraga Sariego 2021) as they often subordinate to higher-order norms, restricting activists' legal mobilization by limiting progressive judicial interpretation (Akchurin 2023; Cardoso and Pacheco-Pizarro 2021; Ciftci and Lemaire 2023). For example, laws such as the Mining Code, which favors business interests, take precedence over environmental regulations (Akchurin 2023; Cardoso and Pacheco-Pizarro 2022).

These institutional obstacles have two implications for the interaction between the local environmental movement and Chilean courts. First, they largely account for activists' difficulties in challenging major private interests in key economic areas, such as mining or agribusiness (Rabi and Campos 2021). Second, local environmental groups mistrust the court system altogether (Akchurin 2023), resulting in a strained relationship between the environmental movement and the state (Ciftci and Lemaire 2023).

During their struggle over the decommodification of water – a key environmental demand – activists extended their criticisms about the judicial system to the 1980 Constitution, recognizing it as the root of the insufficient legislative framework and of their judicial obstacles (Del Campo et al. 2021; Torres-Salinas and Alvez Marin 2023). Established during General Pinochet's dictatorship (1973–1990) and supporting a neoliberal economic model, Chile's constitution only recognizes water as a commodity (Article 19, N.24). Although the 1981 National Water Code formally declares water a national public good, it subordinates and further reinforces its constitutional commodification by allowing the trading of water rights in a free market (Bauer 2015). These laws continue to create a legal framework that supports a free-market approach (Maillet and Carrasco 2021), which benefits mining and agribusiness interests (Dame et al. 2023) and prioritizes extractivism over human consumption and ecological considerations (Torres-Salinas and Alvez Marin 2023).

This constitutional order also undermines activists' efforts to legislatively address water and climate change issues (Borgias 2018). Politically, the environmental movement has limited influence, successfully opposing only some local-level polluting projects (Huneeus et al. 2021; Delamaza et al. 2017; Madariaga et al. 2021). At the congressional level, activists' influence is even more restricted, making the prospects of substantially reforming the 1980 Constitution and the 1981 Water Code nearly nonexistent. Environmental laws have remained largely unchanged (Tecklin et al. 2011) and the protection of free-market norms (e.g., water rights), essential to the

country's extractivist model, receives cross-partisan support (Maillet and Carrasco 2021). Consequently, the Chilean environmental movement found itself at a political dead-end. Unable to pursue litigation or legislative changes, activists saw constitutional reform as their only viable strategy to secure reforms addressing water issues and, by extension, climate change (Torres-Salinas and Alvez Marin 2023).

Therefore, this case highlights two key issues. First, that constitutions are key to define legal opportunity structures (Vanhala 2012, 2022; De Fazio 2012), as they create institutions and procedures mediating the effectiveness of legal mobilization. Second, and related to this point, that institutional obstacles may motivate social movements to diversify the targets and means of their legal mobilization. That is, activists may pursue litigation on issues like climate change, but they may also aim to modify legal structures and laws at the constitutional level.

Social movements and constitutional mobilization

While acute social conflict and widespread mobilization are key factors in precipitating constitutional replacement processes or substantive reforms globally (Blokker 2018; Eisenstadt et al. 2017; Negretto 2020), activists' participation in the politics of constitutional replacement is typically limited. Institutional elites – who possess greater political experience and resources – tend to dominate deliberations at constitutional assemblies, relegating activists to peripheral roles (Negretto 2017). Thus, regardless of the growing attention to the analysis of constitutional mobilization (Blokker and Thornhill 2017) our understanding of the capacity of movements to shape these processes and its results is limited (Blokker 2018; Della Porta 2020; Eisenstadt et al. 2017; Rodríguez et al. 2024).

Constitutional mobilization can be understood as a form of legal mobilization in which social actors use norms, contextual opportunities, and resources to push for constitutional reforms affecting laws, legal institutions, and legal processes (Son 2018). Since Latin American countries have replaced their constitutions more frequently than those in any other region of the world (Hartlyn and Stoyan 2020), they provide an opportunity to examine how activists mobilize and shape these processes. Historically, political elites in Latin America have addressed social exclusion and inequality by incorporating social rights into the constitution (Angel and Lovera 2014; Gargarella 2022). However, since the 1990s, activists, including environmental groups, have turned directly to constitutional mobilization when governments, parliaments, and courts fail to meet popular demands (Negretto 2020).

Cases such as Colombia in 1991, Bolivia in 2009, and Ecuador in 2008 illustrate this phenomenon in a distinct trend known as “Latin American neo-constitutionalism” (Couso 2022). Here, new societal actors like social movements, and emerging social issues including environmental concerns (Negretto 2015), play key roles in constitutional processes. Political elites remain crucial in these processes as they negotiated the provisions of the new charters (Deheza 2008; Eisenstadt et al. 2017; Negretto 2020). However, activists were instrumental in introducing new topics, mobilizing to pressure constituent assemblies, and working with political parties to include their goals to the new constitutions.

For instance, the charters of Bolivia (2009) and Ecuador (2008) incorporated extensive environmental provisions that outline principles, rights, regulations, competencies, and procedures (Mendes and Rached 2021; Svampa 2019). Activists pushed for these constitutional innovations following a lengthy mobilization process that began before the start of the constitutional drafting. Through extensive coalition work with other actors both inside and outside their constitutional assemblies, activists achieved some of their historical demands (Akchurin 2015; Wolff 2012). The 1991 Colombian Constitution, though it contains fewer rights compared to the other two cases, created a favorable legal opportunity structure (Vanhala 2012) by incorporating environmental state duties and mandating courts to interpret and safeguard them. Later, environmental activists have secured major victories by invoking these principles before local judges, thereby influencing the interpretation of the constitution during its implementation (Taylor 2023).

These cases exemplify the relevance of constitutions and constitutional mobilization for advancing the goals of the Latin American environmental movement. Although implementing environmental constitutional provisions often faces challenges due to bureaucratic and resource limitations (Couso 2022), these provisions grant activists with a crucial foundation to institutionally legitimize their claims in the congressional and judicial arenas (Akchurin 2015; Svampa 2019). As a result, by successfully incorporating new norms and establishing institutions responsible for enforcing them, activists have secured substantial gains in advancing both their present and future goals.

The Latin American experience suggests that constitutional mobilization could be even more promising for activists if they played a more central and unmediated role during the politics of constitution-making. This is particularly relevant when addressing issues like climate change, which would require introducing different provisions covering mandates, principles, and institutional structures to address its manifold manifestations. Therefore, instead of navigating the failings of the legal system to increase their chances of success (Vanhala 2012), activists are agentic actors in creating the institutional conditions that secure the achievement of their goals and enhance their future mobilization effectiveness. However, since constitutional drafting has been almost exclusively controlled by institutional elites (Negretto 2017), we know less about the influence activists can exert and the outcomes of their efforts in constitutional processes where they are key actors.

The Chilean environmental movement and the opportunity of constitutional change

Besides the constitutional obstacles constraining the legal activism of the Chilean environmental movement, two interrelated conditions have shaped its mobilization. One is the megadrought affecting Chile since 2009, which intensified environmental problems associated with the country's "extractivist" economic model (Svampa 2019) and exacerbated environmental conflicts and protests (Delamaza et al. 2017; Donoso and Von Bülow 2017; Huneeus et al. 2021), around economic activities like mining (Dame et al. 2023) and agribusiness (Madariaga et al. 2021). While the water crisis is the main driver behind these mobilizations (Carranza et al. 2020), the megadrought linked it to climate change on a national scale by impacting different communities

(Carruthers and Rodríguez 2009; Torres-Salinas et al. 2016). Thus, the fight for water became a proxy for addressing the broader consequences of climate change for local environmental activists.

The megadrought also favored the emergence of new environmental groups, ranging from informal grassroots networks to national organizations like MODATIMA (Movement for the Defense of Water, Land, and the Environment) and MAT (Movement for Water and Territories), which promoted water-related issues while critiquing the country's extractivist neoliberal model. Despite the movement's fragmentation (Schaeffer 2017), these groups recognized the links between the water crisis and climate change. Nonetheless, like other environmental organizations worldwide (Dietz et al. 2020; Klinenberg et al. 2020), they discussed this issue internally while directing their public campaigns toward more immediate and tangible causes to increase the resonance of their messages (Del Campo et al. 2021). Still, these groups adopted universal frames, such as environmental justice and the human right to water (Madariaga et al. 2021; Urkidi and Walter 2011), to highlight the broader relevance of their cause and underscore the inadequacy of the existing institutional framework to address them.

The other condition shaping environmental mobilization is the deep and persistent crisis of political representation in Chile (Luna 2016), which has further distanced activists from institutional politics. Repeated disillusionment with parties and administrations across the ideological spectrum (Moreno 2023) has made environmental activists skeptical of the willingness and responsiveness of political authorities to address water and environmental issues (Somma and Medel 2017). This distrust has significant consequences for legislative reform. Activists, wary of the entire political system, are reluctant to engage in negotiations, work closely with, or align themselves with any political party. Although activists may cultivate personal alliances with a few legislators to advance their demands (Moreno 2023; Somma and Medel 2017), these connections alone are insufficient to influence reforms on critical issues (López 2023). Therefore, this mistrust critically undermines the prospects for achieving the long-awaited decommodification of water, as established in the 1980 Constitution, since broad partisan support and negotiations are essential for making constitutional reforms feasible.

Under these circumstances, in October 2019, Chile experienced a wave of nationwide protests that triggered the deepest political crisis in decades. Initially ignited by a hike in public transportation fares, the protests persisted for weeks without identifiable leaders (Aguilera and Espinoza 2022), forcefully challenging both the country's authorities and its neoliberal model (Garretón 2021; Somma et al. 2021). Responding to the intensity of the protests (Escudero 2022), the political system initiated a constitutional replacement process, as the 1980 Constitution was widely seen as the root cause of the country's inequalities (Murillo et al. 2021). The Agreement for Peace and a New Constitution (*Acuerdo por la Paz y la Nueva Constitución*), signed by most parties, introduced a referendum asking whether to replace the 1980 Constitution and establish a Constitutional Convention to draft a new one. Both options received overwhelming support, with approximately 78% of the vote in a referendum held in October 2020. Aware of the crisis of representation, legislators sought to enhance the Convention's future legitimacy by adopting additional measures such as facilitating the participation of independents (Alemán and Navia 2023; Larrain et al. 2023).

The social outburst and the start of the constitutional process provided the environmental movement a chance to redefine its strategy and decisively engage in constitutional mobilization. Initially, local activists were skeptical about participating in the constituent process due to their mistrust of institutional politics. However, they recognized the electoral reforms favoring the participation of independents as a unique opportunity. Activists could be elected to replace the country's legal framework without the mediation of political parties and advocate for new tools to address current and future environmental issues (Carrasco et al. 2022). Thus, environmental activists either formed their own lists or pragmatically joined party lists as independents. These candidacies proved highly competitive, with independents (including movement activists) securing 67% of the 155 seats at the Convention. Environmental candidates were particularly successful, winning 27% of the seats (Rozas et al. 2022).

These election results are unique in the study of social movements. Activists rarely gain direct access to decision-making spaces at the legislative and bureaucratic levels (Amenta et al. 2010), and while they may attempt to influence elections, they struggle to get their own members elected to public office (Banaszak and Whitesell 2016). These positions of power are significant because they decide legal reforms that may have lasting effects for a movement (Amenta et al. 2019). The sizeable electoral representation environmental activists achieved makes this result even more remarkable, positioning them as key players at a critical political juncture, such as the drafting of a constitution.

Activists elected to the Convention held positive expectations about the outcomes of their constitutional mobilization as they shared common goals, such as the decommodification of water and recognizing the human access to water. Both were historical movement-level demands and proxies to address the local consequences of climate change, and activists were confident in their ability to shape the process to fully incorporate their demands (Maillet et al. 2021). Thus, the environmental movement engaged in constitutional mobilization due to its potential to disrupt the status quo, break the political deadlock on key environmental issues, and prepare the country to tackle the multifaceted challenges of climate change.

Data and methods

The data come from a larger project focused on studying the political dynamics of the Chilean constitutional replacement process, and the first step of the data collection process was accessing the Constitutional Convention. However, as a novel and temporary institution (July 4, 2021 to July 4, 2022), it lacked formal procedures for visitors, and COVID-19 restrictions further limited access to outsiders. Once COVID-19 restrictions eased in October 2021, I employed two strategies to enter the Convention. First, after direct communication with the Convention's management, I received a pass granting me the same access level as a journalist. It allowed me to enter the garden of the premises where the Convention was held (and where press conferences occurred) but not the main building where deliberations took place. Nevertheless, I gained an opportunity to introduce myself to delegates taking breaks between sessions and engage in informal conversations with them.

Second, in February 2022, I gained full access to the Convention due to the rapport I built with a delegate unrelated to the environmental cause. After explaining my research project to her, she offered to register me as an unpaid staffer to continue my fieldwork. Before accepting her offer, we discussed the terms to avoid potential conflicts of interest and ensure my autonomy as a researcher: I would not disclose the identities of the delegates I interviewed nor the content of those conversations, and I would not work nor engage in any activities supporting her, her caucus, or any of her causes. After agreeing to these terms, I visited the Convention daily until it concluded in July 2022. This position granted me full access to committee meetings and hallways.

This article draws on data from three primary sources, with the main one being 76 semi-structured interviews conducted in two rounds. The first covered a sample of 66 out of the 154 members of the Constitutional Convention. The sampling criteria targeted mainly delegates focusing on the discussion of social and environmental rights. The sample of respondents had a diverse background: 64% were women, 80% represented districts outside Santiago, the capital, and 29% were involved in grassroots environmental groups advocating for local causes. A total of 26 respondents participated in an environmental caucus known as “EcoConstituyentes” (hereafter Eco-Constituents). This group, described in the findings section, consisted of 37 delegates pursuing the constitutionalization of various environmental issues (Maillet and Martínez 2021).

The interviews, conducted between December 2021 and August 2022, aimed to capture the respondents’ perspectives on the constitutional process and their role within it. Initial questions were broad, covering general topics that also guided the coding process, such as the delegates’ expectations before joining the Convention, their key demands, and the strategies they used to influence the Convention. Follow-up questions were tailored based on their previous responses.

The second round consisted of 10 follow-up interviews conducted with respondents from the first round, which included six Eco-Constituents. These interviews took place in September and October 2022, following the plebiscite held on September 4th, which rejected the Convention’s proposal. The second set of interviews compared the respondents’ initial expectations and demands with the referendum’s campaign and result.

The decision to interview only environmental activists elected as delegates and not other members of the movement responded to two main reasons. First, these respondents were the main leaders of their organizations and despite their focus on specific causes – such as animal rights or forest protection – they coincided on broader environmental issues, including climate change and the decommodification of water. Second, because the Convention garnered most of the attention of the environmental movement between 2021 and 2022, there were no significant external episodes of mobilization. Therefore, while this research cannot give an overview of the entire environmental movement, it provides detail on the perceptions and trajectories of its leaders (and delegates) at the Convention.

Most interviews started as informal conversations with the delegates. During these conversations, I introduced myself as a researcher, explained the focus of the research project, and described how I gained access to the Convention. Before conducting each interview, I provided a consent form approved by my university’s Ethics Committee,

outlining the research goals and assuring confidentiality. In accordance with these guidelines, all audio files were deleted after transcription, and quotes have been anonymized using synonyms. The interviews were transcribed and analyzed using Atlas.ti. The average duration of the 76 interviews was 70 minutes, with individual interviews ranging from 17 to 180 minutes.

I added another two complementary sources of data. The first was archival research from media and institutional sources. The selection of media articles focused on a daily revision of print and online media, selecting pieces that summarized events at the Constitutional Convention during its tenure, particularly on the discussion of environmental measures. These articles were retrieved from online sources, such as the main websites of relevant newspapers. The selection of institutional sources covered all the documents and transcripts of all the committee and plenary sessions held at the Constitutional Convention. These transcripts, publicly available at the Convention's official website, registered the deliberations and votes on the articles to be incorporated into the constitutional draft, including the proposal voted on September 4th.

The final source of data stems from participant observations carried out at the Constitutional Convention, spanning from December 2021 to July 2022. These observations occurred weekly from December 2021 to March 2022 and escalated to a daily frequency from April until July 4, 2022, when the Convention concluded its proceedings. The focus of these observations was to document interactions among delegates at the committee level and in the hallways. Additionally, these documented observations, informal conversations, and the interviews with the delegates were anonymized using synonyms if quoted in the text.

Findings

The empirical section chronologically examines how environmental activists advanced their agenda and contributed to the inclusion of constitutional provisions on climate change and water rights, dividing the constitutional process in three distinctive stages. The first occurred between July and October 2021 and centered on establishing the Convention's internal regulations, which would shape the deliberation and approval of constitutional norms. The second, from November 2021 to July 2022, focused on the preparation, introduction, discussion, and approval of norms within commissions and plenary sessions to form the Convention's proposal. In these two stages, we can note how activists' perception about the process and their role in it informed their actions in the politics of constitution-making and created tensions with party delegates. The third stage covers the campaign period, which started after the Convention presented its constitutional draft, and the aftermath of the plebiscite of September 2022.

The first stage of the constitutional process: building political salience by transitioning from environmental activists to institutional political actors

Progressive forces at the Constitutional Convention were in an advantageous position after the election of delegates, since leftist parties, independents, and movement activists secured 117 out of 155 seats. This exceeded the 103-vote threshold needed in

the plenary to approve constitutional norms, signaling that significant reforms were within reach. Consequently, the environmental movement recognized that, rather than influencing the Convention from the outside (as in most constitutional replacement processes in Latin America), it could advocate for its agenda from within (Del Campo et al. 2021). This electoral result was also unforeseen to mainstream forces. Political parties, key actors in the success of constitutional processes (Negretto 2020), obtained a low representation. Moreover, the Convention's political fragmentation hampered reaching broad agreements.

Beyond their sizeable representation, activists soon noticed a favorable context at the Convention. Most independent candidacies identified climate change as a central issue, underscoring the urgency of integrating it into the constitutional proposal (Mascareño et al. 2021). For example, The People's List (*La Lista del Pueblo*), which emerged as the most successful list of independents with 27 delegates, adhered to a platform prominently featured climate change in its introductory statement, outlining their vision for the new constitution, as follows:

The construction of a solid institutional apparatus is required to recognize social, economic, and cultural rights and to lead, with private collaboration in some cases, to the solution of the serious poverty and exclusion problems our country has faced from its origins, and that climate change and the technological scientific revolution will dramatically deepen. (Lista del Pueblo 2021: 1)

The urgency of a water reform was also widely recognized. At least 77% of the Convention's members, including party delegates, expressed varying degrees of interest in modifying the water management model established by the 1980 Constitution (Cossio 2021). In sum, the significance of climate change and water issues from the beginning of the constitutional process created a favorable context for advancing central environmental demands (Torres-Salinas and Alvez Marin 2023).

The favorable election results and the widespread environmental sensitivities among delegates, infused the newly elected environmental activists with a strong sense of optimism about changing the constitutional status quo. They saw the Convention as a unique opportunity to dismantle the Chilean neoliberal model, especially at a time when the climate change-related megadrought extended into its thirteenth year. As Ignacia, an Eco-Constituent, expressed:

[I told my colleagues] "Let's not be afraid, let's go further. Let's not get carried away by legal matters because this is our moment". I strongly believed that we had the opportunity to pave the way for the world, in a country that was one of the most neoliberal in the world during the climate crisis. I really believed that.. we started with all that vigor, all that hope, all that light. (Ignacia, Eco-Constituent, June 2022)

Ignacia's comment illustrates shared expectations among activists about their role in the constitutional process. Particularly, in simultaneously dismantling Chile's neoliberal model and tackling climate change, which could serve as a global example about how to address these two issues. Activists kept this sense of opportunity throughout

their tenure as delegates, leading them to prioritize the urgency and significance of their goals over legal expertise or formalities.

Following the election of delegates, environmental activists faced the critical task of establishing their political legitimacy as institutional actors – an uncommon challenge for social movement activists, who are typically excluded from decision-making spaces (Amenta et al. 2010; Banaszak and Whitesell 2019). Their primary obstacles to achieve this goal included a lack of experience in institutional politics and the absence of organizational infrastructure to facilitate their coordination. As a result, creating a space to align efforts on promoting environmental provisions became a top priority for activists.

The first step in building political standing happened before the Convention officially started. Environmental activists remotely coordinated and drafted a declaration urging the new constitution to decommodify water, recognize nature as a subject of rights, and to end the extractivist economic model. This declaration garnered support from feminist and indigenous activists (which also secured a significant representation within the Convention) and was a key step to bring visibility to environmental demands (Maillet and Martínez 2022).

Once the Convention officially started in July 2021, its delegates had first to write the rules structuring its internal deliberations. At this point, activists recognized that they needed to effectively coordinate their efforts to secure the discussion of environmental demands. Building on their initial ties following the earlier declaration, they launched the Eco-Constituent caucus in September 2021, which provided a group-level infrastructure to unite activists and sympathizers to advance their agenda. As Lucas, one of its founding members, explains:

There was a moment when we considered the idea of creating a movement, a separate collective, Eco-Constituents..apart from everything [parties and collectives]. We conceptualized Eco-Constituents as more of a unifying force for different collectives, rather than a separate one. So, we preferred to be open to all groups and work together. (Lucas, Eco-Constituent. May 2022)

The necessity to establish a common forum arose from the fragmentation within the Constitutional Convention. During its first 2 months, there was a reshuffling of political parties and independent coalitions, leading to the dispersion of environmental activists across various parties and “collectives,” as Lucas mentions. While the majority of Eco-Constituents primarily were activists, independents, and indigenous delegates, the group also welcomed a few party delegates who personally supported the environmental agenda (Maillet and Martínez 2021). As the process unfolded, at least 34 delegates regularly attended weekly meetings to coordinate their positions on environmental provisions.

The strategic decision to launch the Eco-Constituent caucus quickly heightened the visibility of the environmental agenda within the Constitutional Convention, and activists tested their leverage by promoting two key initiatives. The first was approving a declaration in which the Convention recognized the state of climate and ecological emergency affecting Chile and urged for institutional measures aimed at restoring the country’s natural equilibrium (Convención Constitucional 2021: 4). The main goal of this declaration was to introduce environmental issues into the agenda at a time when

deliberations focused on procedural issues. Ultimately this declaration, initially signed by 26 Eco-Constituents, garnered broad support, with 69% of the delegates endorsing it and 87% of the Convention approving it in October 2021.

Beyond the symbolic relevance of passing this declaration, activists noted it elevated the visibility of environmental activists as influential actors in the politics of constitutional change, both within the Convention and in the broader public discourse. First, the declaration received support across the political spectrum, underscoring a shared concern among delegates about the issues championed by environmental activists. Part of this broad support was also possible due to the persuasion effort activists deployed within their respective parties or collectives. As one environmental activist recalls, this experience “exposed several of us for the first time to lobbying our colleagues.” Second, the declaration attracted significant media and public attention (Maillet and Martinez 2021), effectively signaling to society that climate change was a central issue in the future constitutional framework. Gaining public recognition was significant for activists used to a media biased against their demands. As José explains:

We achieved the declaration of a climate and ecological emergency, right? We managed to communicate these issues to counterbalance the traditional media, which we know have a strong corporate bias. (José, Eco-Constituent. December 2021)

This declaration was relevant not only for the symbolic relevance of introducing climate change in constitutional deliberations, but because it signaled activists their institutional salience. Unlike their prior experiences, environmental delegates realized their institutional role and organized effort allowed them to receive support from different political groups and granted them extensive media coverage. This nascent position of influence was also noticed by delegates from political parties, who were initially surprised when this group effectively took control of the environmental debates at the Convention. As a left-wing party delegate recalls about those early days, after the declaration “the environmentalists became a group to keep an eye on. They had numbers and media visibility.”

The second initiative involved defining the commissions responsible for proposing and deliberating on specific constitutional articles during the Convention’s second stage. The Eco-Constituents promoted the creation of the Commission on the Environment, Rights of Nature, Common Natural Goods, and Economic Model (hereafter CE). The CE was important because the discussion of environmental issues was initially assigned to a commission focused on social rights. Instead, creating this commission allowed the Eco-Constituents to tie environmental and economic debates. The environmental sympathy of most of the Convention facilitated approving this commission not only due to the strength of the Eco-Constituent caucus but also by underscoring that a comprehensive examination of economic issues, such as property and mining rights, required addressing their environmental impacts. Additionally, the Eco-Constituents outlined a comprehensive list of topics that the CE must address as part of its mission, which encompassed the climate crisis and the status of water.

The next step in building political influence was securing control of the EC to ensure the discussion of their demands. This required collecting endorsements from peers, as delegates with the most endorsements gained seats on the commission. The Eco-Constituents leveraged their expertise in environmental issues within their parties or collectives, positioning themselves as the most qualified candidates. Although the limited number of endorsements meant that not all Eco-Constituents could join the EC, they secured 13 of the 19 seats. With this two-thirds majority, they guaranteed that environmental demands would be central to the constitutional debate. According to the Convention's regulations, constitutional articles required support from at least half of a commission's members for initial approval. These provisions were then compiled into reports, which needed a two-thirds majority in the plenary (103 votes) to be included in the final constitutional proposal.

In consequence, during this initial stage of the Constitutional Convention, the environmental delegates successfully established their political standing despite their inexperience in formal institutional politics. They raised the visibility of their demands through various declarations, formed a caucus that spanned parties and collectives, and created their own ad hoc commission to amplify their influence in the next stage and ensure their demands were addressed. By leveraging their numbers and a favorable political context, the activists secured significant gains, positioning themselves to maintain a supportive institutional environment in the next phase of the constitutional process.

The second stage of the constitutional process: the bittersweet hegemony of the eco-constituents on the discussion of environmental issues

While securing the majority at the CE was a key political success, activists now faced their most demanding challenge: delving into specific constitutional issues and engaging with other delegates in the politics of constitution-making. Despite their majority, adding clauses at the commission level required significant effort, including defining, drafting, and lobbying for proposals and then securing their approval at the plenary.

To maximize their efforts, the Eco-Constituents recognized the need to improve internal coordination to advance their various demands. In December 2021, they organized the "Plurinational Meeting of Eco-Constituents" (Maillet and Martínez 2022), where they reached two strategic decisions. First, to prioritize the decommodification of water and mandating state action against climate change as group efforts, leaving the discussion of other relevant issues in the hands of activists with greater technical or activist expertise. Gabriela, another Eco-Constituent, elaborated on this approach explaining that at the meeting, "[We] recognized the struggle each one of us championed and our experience. For instance, [other activists said] 'You are an expert on glaciers,' so 'you oversee glaciers. We will follow your lead.'" By delegating responsibilities, the Eco-Constituents went beyond their core demands, such as water rights, to address other environmental issues (e.g., animal rights).

Second, several Eco-Constituents sought to improve their constitutional mobilization by examining the cases of the Bolivian (2009) and Ecuadorian (2008) constitutions, as they have the most explicit environmental provisions in South America (Mendes and Rached 2021). Mario, an Eco-Constituent, explains the key insights they gained from these constitutional processes:

Recognizing rights was not enough. We learned about the Ecuadorian case because we at MAT met with a social movement called “Movement for the Rights of Mother Earth,” which seeks to institutionally advance the rights of Mother Earth ... so we realized that without a bureaucracy, the recognition of rights would only be an empty declaration. (Mario, Eco-Constituent. May 2022)

Mario’s quote echoes the impression of many Eco-Constituents that recognizing extensive environmental rights and protections would be symbolic in the absence of courts or state agencies responsible for enforcing and translating them into actionable principles. This shortcoming also resonated with activists due to the negative experiences they had with the Chilean Environmental Courts (see Akchurin 2023). Thus, the Eco-Constituents refined their goals. They would add constitutional principles and rights to the draft, but also place institutions required to implement and enforce them.

As the rest of this section shows, these insights and the majority of the Eco-Constituents at the CE shaped two related outcomes that nuance the relevance of building political influence as part of the constitutional mobilization of activists. First, the Eco-Constituents achieved their most urgent and historical demands by using their numbers at the EC and a favorable institutional context at the Convention. Second, the activist hegemony on the discussion of environmental issues marginalized other political groups, precluding the achievement of wide political agreements that are crucial to legitimize constitutional deliberations (Negretto 2017).

Key achievements of the eco-constituents: climate change mandate and water rights

The Eco-Constituents secured two key victories at the Constitutional Convention: including climate change action as a state mandate and redefining the constitutional status of water. Both were inseparable to activists, as the former established a principle to support ongoing state action on climate change, while the latter represented a concrete measure that would immediately grant human access to water. However, their discussion triggered conflicts between environmental activists and delegates from political parties.

Incorporating a state mandate to address climate change action as a constitutional principle required a sequence of related steps. Initially, and leveraging the general favorability for their proposals at the Convention, the Eco-Constituents incorporated an explicit mention to nature in the first article of the charter, which declares that the Chilean Republic “recognizes as intrinsic and inalienable values the dignity, freedom, substantive equality of human beings, and their indissoluble relationship with nature” (Convención Constitucional 2022). Additionally, Article 103 recognizes the rights of nature, which was possible due to the Eco-Constituents’ canvassing across different commissions.

Building on these articles, activists then added different constitutional obligations and responsibilities. Among these, the state’s duty to adapt to and mitigate the impacts of climate change emphasizing environmental justice and fair climate action (Article 128). Moreover, activists managed to turn into state duties the implementation of preventive, adaptive, and mitigating actions against climate change (Article 129). Activists broadly framed the climate and ecological crisis aiming to establish a binding mandate for the state to continually adapt and interpret policies addressing the evolving

challenges of climate change. Also, incorporating environmental justice and equitable climate action implied that state actions must consider and address structural inequalities disproportionately affecting certain groups, such as indigenous peoples and impoverished rural areas.

The incorporation of provisions on climate change also benefited from the declaration the Eco-Constituents promoted in the previous stage recognizing a state of climate and ecological emergency. Activists persuaded delegates who voted in its favor to now secure the inclusion of climate change in the constitutional proposal. The importance of this outreach effort should not be underestimated. Climate change-related provisions were included in the first report created by the CE on March 4, 2022, and were the only ones approved by the plenary to be immediately included in the constitutional draft.

However, the recognition of environmental principles also deepened the differences between the Eco-Constituents and party delegates. Several activists prioritized placing their issues in the agenda over the technical rigor of their claims. Juan José Martín, an Eco-Constituent who chaired the CE, acknowledged this to a local newspaper when most of their first report was rejected, stating: “We knew that much of the text wouldn’t be approved due to wording issues. They (party delegates) wanted it to be more concise, better defined, but the majority agrees with what we proposed” (Arancibia 2022). On the contrary, party delegates viewed constitutional debates from a formal standpoint. Thus, they interpreted the activists’ lack of technical rigor as carelessness and questioned their seriousness as counterparts. A party delegate, closely involved in environmental negotiations, recalls:

Many times, the articles weren’t legal in essence. (During the discussion on the rights of nature) there was a proposal talking about a ‘loving bond with nature.’ I told them (Eco-Constituents), ‘But that’s inapplicable in a court, guys. How do I prove a loving bond with nature in court?’ You can love nature a lot, but this is a legal text, you see? (Clara, left-wing party delegate. June 2022)

While recognizing climate change and mandating state action were positive outcomes, the movement’s primary task was to achieve the decommodification of water, a critical issue due to the worsening megadrought. However, although the Constitutional Convention generally supported changing the status of water rights, the Eco-Constituents engaged in direct activism to strengthen their position before negotiations.

During the constitutional process, citizens could propose their own initiatives. Groups like MODATIMA, MAT, and 1,128 other organizations sponsored a comprehensive water proposal comprising 15 articles, including the decommodification of water, the human right to water and sanitation, the protection of glaciers, and the creation of a new institutions to safeguard these rights. Signed by 28,379 individuals, this initiative formed the basis of the Eco-Constituents’ approach to water-related matters at the Convention.

While the interaction between Eco-Constituents and party delegates was always tense (Moreno 2024), the discussion on water issues sparked agreements but also further conflicts. Delegates from leftist (e.g., socialists and communists) and centrist

parties, as well as movement activists and other independents, agreed on constitutionally recognizing the human right to water and, in alignment with the 1981 Water Code, declaring water a national common good (Rodríguez et al. 2024). Activists did not take this shared stance for granted and dedicated their energy to building broader consensus with their party counterparts on this subject. As Miguel recalls:

We worked this norm across political groups, including the Socialist Party, independents, and indigenous peoples ... week after week since the first day until it was presented. In fact, when that norm was introduced it had 36 signatures and then it reached 83 endorsements. There was a maturation in that work and although there were many disputes, we finally reached an agreement. (Miguel, Eco-Constituent. July 2021)

This exhaustive work and negotiations led to the successful incorporation of the human right to water into the Article 57 of the proposal, which marked a paradigm shift in the constitutional status of water in Chile. Ensuring the human right to water means prioritizing its allocation to meet people's basic survival needs before considering other uses. Furthermore, Article 58 gives special recognition to the ancestral water uses of indigenous communities and imposes a state duty to ensure its protection and availability (Convención Constitucional 2022). Most importantly, Article 134 effectively decommodifies water:

Article 134

Natural common goods are elements or components of nature over which the State has a special duty of guardianship ... water cannot be privatized in any of its physical states.

Categorizing water as a national common good and banning its privatization further departs from the 1980 Constitution, which only recognized water as an asset. Additionally, the obligation to ensure water availability for future generations aligns with the principle of sustainability, a concept absent from the current constitutional framework.

Key obstacles of the eco-constituents: discussing the water statute

While the discussion of principles required lengthy negotiations between activists and party delegates, the discussion of the Water Statute triggered the major conflict between them. Drawing from the experiences of Bolivia and Ecuador, in which environmental norms would become merely symbolic, the Eco-Constituents proposed this statute to secure the enforceability of water rights. Therefore, they advocated for the inclusion of additional provisions regulating water use and establishing a bureaucracy to implement them.

Regarding the creation of bureaucratic structures, the Eco-Constituents proposed establishing the National Agency of Water, which was an autonomous organ responsible for enforcing water-related norms and administering water based on the ecological considerations. Unlike the bureaucracy defined by the current Water Code, the

National Agency of Water would grant usage permits, but would not grant or recognize water rights. The creation of this agency and its competencies garnered support across activists and party delegates.

However, the content of the Water Statute sparked bitter disagreements. One contentious point was that, as initially formulated, the statute would abolish existing water rights and the Water Code with immediate effect. Party delegates feared that these measures would compromise vital economic activities such as mining, agriculture, and energy production. In contrast, environmental delegates emphasized that the constitutional process opened a window to address the paramount urgency of changing the status quo of water regardless of its immediate costs, since maintaining the current model had deleterious long-term effects on ecosystems and local communities (Rodríguez et al. 2024).

Despite the political salience the Eco-Constituents built at the Convention (e.g., public visibility and control over the CE), their sense of urgency and opportunity during the Water Statute debate backfired, partially undermined their constitutional mobilization efforts. First, activists excluded the right from most political discussions. As the majority in the CE, the Eco-Constituents could independently approve norms that would then be included in the commission's report, regardless of the input from any party delegates. However, while they negotiated with leftist parties, as their support was crucial for passing measures in the plenary, they excluded right-wing delegates. Leandro, a member of the CE, illustrates this marginalization:

(right-wing delegates) were never invited, because it was an Eco-Constituent decision. We had the majority, so we didn't need to talk with them. All our energy focused on reaching consensus among ourselves. We did this because otherwise all environmental proposals would have moved much more to the extreme. (Leandro, Eco-Constituent. May 2022)

Environmental activists at the Commission usually justified this exclusion on two grounds. First, appealing to the sense of exceptionality, they argued that people voted predominantly for independents and activists to secure constitutional changes. The partisan right received an unusually low number of votes in the election of delegates, leaving it underrepresented at the Convention and rendering its votes irrelevant for the approval of constitutional articles. Second, they mistrusted all partisan delegates, but particularly those from the right, due to their connections with private interests and their support for the 1980 Constitution, which diffculted reaching broad agreements at the Convention.

The counterpart to this exclusion was the opinion of right-wing delegates, illustrated in the case of Diego. He was a right-wing delegate who participated the CE and had experience in water management. He resented his political marginalization, viewing it as political intolerance:

There was no dialogue; there were just backroom deals and majorities [Eco-Constituents] that crushed the minorities. The regulation of natural resources is the one thing I know and have dedicated my life to. I know very well what water supply rights are. So, when I say (new water regulations) will inhibit agriculture ... it's a reality. (Diego, right-wing party delegate. May 2022)

Eco-Constituents and right-wing delegates offer conflicting accounts of this marginalization. Activists accuse conservatives of being completely unwilling to change the status quo and of wanting to sabotage the constitutional process. Conservatives, on the other hand, claim they sought to work with everyone and that their exclusion was driven by prejudice and their small representation, which rendered them politically irrelevant. In any case, this exclusion was used to create different arguments against the Convention and to delegitimize the constitutional proposal (Alemán and Navia 2023). For instance, that the CE as being controlled by radical and inflexible activists or that the Convention did not care about the economic consequences of its decisions.

Another element that undermined the constitutional mobilization of activists was their strained relationship with the partisan left. The Eco-Constituents persistently mistrusted these delegates despite their continuous negotiations over multiple topics (see Moreno 2024), which hindered the achievement of lasting agreements. Activists perceived delegates from leftist parties as committed to preserving the status quo, while partisan delegates viewed them as inflexible political amateurs. As a result, there were instances when Eco-Constituents deemed these delegates untrustworthy and approved issues without their input in the CE. This occurred during the first discussion of the Water Statute, which socialist delegates considered too detailed and restrictive.

A final element eroding the constitutional mobilization of environmental activists and their political standing was, paradoxically, their use of activist tactics at the Convention. This feature became visible during the plenary vote to approve the second report of the CE in April 2022, which included the Water Statute. Several socialist delegates did not fully support the report, arguing that parts of the statute were poorly designed and insufficiently discussed, potentially harming future economic activities. Due to this lack of support, the CE report was rejected after falling short of the threshold needed for further discussion and was sent back to the commission. After the vote, several Eco-Constituents shouted “traitors!” at the socialist delegates. Others organized an impromptu action known in Chile as *funa*, a common movement tactic, which consisted in using social media and the press to publicly shame these left-wing delegates, holding them responsible for the rejection of the report. Karen, an Eco-Constituent involved in this action, justified it as follows:

It was necessary because it wasn't the first thing the parties did to us [during the constitutional process], and no one reacted before. That day was about the Water and Mining Statutes, which are in our hearts. A conversation had taken place with the socialists, and we expected enough of their votes to pass the report. So, when we saw it falling apart at the last minute we stood up said, ‘What’s wrong with you, guys?!’ I think the *funa* was necessary to confront them because they had to be seen by the public as the traitors of the people. They didn’t want to openly show that they rejected the Water Statute. (Karen, Eco-Constituent. June 2022)

This action received extensive media coverage and was widely criticized by opinion leaders and the political establishment, including the newly inaugurated President Boric (Catena and Fuentes 2022). For instance, Juan, a delegate from a left-wing party involved in negotiations with the Eco-Constituent group, had strong words to describe the episode and the activists’ action:

(Conducting the *funa*) reflects their poor political skills. Reading a list of socialist delegates to shame them is childish, immature, naïve [laughs]. It's an ugly and tacky kind of malicious innocence. So, clearly, they shouldn't have done that ... the socialists were obviously going to vote against the report because even though there was some kind of agreement, some Eco-Constituents publicly tore them apart in their speeches before voting. Later, when it was time to vote, the socialists told them to go to hell, as in, 'You spent the whole time discrediting me in your speeches, and now you want me to vote in favor of your norms? Get out of here.' (Juan, left-wing party delegate. June 2022)

Comments like Juan's were common among party delegates, who increasingly viewed the Eco-Constituents as political amateurs taking advantage of an unexpected majority and power in the constitutional process. This event also contributed to the image of a polarized and fragmented Convention incapable of reaching broad agreements, undermining its social and political legitimacy. Eventually, Eco-Constituents and left-wing parties returned to the negotiation table and reintroduced the failed report, which contained the Water Statute and was subsequently approved. However, this incident critically undermined their already fragile relationship (Moreno 2023).

These actions during the discussion of the Water Statute and what partisan delegates perceived as political amateurism further undermined public opinion's perception of the Constitutional Convention as a whole (Alemán and Navia 2023). Moreover, the hegemony of Eco-Constituents in the CE made them an easy target for criticism, as their majority made them responsible for the deliberation and voting of articles within that commission. While some Eco-Constituents acknowledged criticisms about their group's political actions, most disregarded them as a predictable response from delegates defending the status quo:

The Eco-Constituent group and the Environment Commission always received a lot of criticism from the press, right from the first day. Perhaps the environmental issue also has this binary thing, of 'you're either for or against.' And maybe some powerful groups don't like the discussion of environmental issues, so they have to suppress and silence it. (Maria, Eco-Constituent. June 2022)

Despite verbal clashes, spats, and criticisms, the environmental movement ultimately achieved its key demands. The constitutional proposal included provisions mandating state action against climate change, decommodified water, and established institutions to enforce these rights and principles. By the end of the Convention's tenure, most Eco-Constituents shared this overall impression of their work:

We didn't miss anything. I think (the included) environmental measures were precise and concise ... We established the recognition and action on climate change ... and we made it enforceable. Because the big problem in Ecuador, which also recognizes the rights of nature, along with Bolivia, is their lack of institutions to defend those rights. These are nice rights, but worthless without (their related) autonomous institutions. (Our provisions) make a huge difference compared to the Ecuadorian Constitution. (Carla, Eco-Constituent. July 2022)

While some Eco-Constituents may have hoped for more detailed provisions in the constitutional proposal, their general assessment indicated that they had successfully achieved their group's key aspirations, even surpassing their initial expectations. Moreover, activists declared, in casual conversations I had with them during the last three months of the Constitutional Convention (May–July 2022), that achieving the decommodification of water was instrumental in securing the passing of the constitutional proposal at the referendum. This opinion was backed by survey data showing that water rights were among the top three popular demands according to longitudinal polls (Cadem-Plaza Pública 2021).

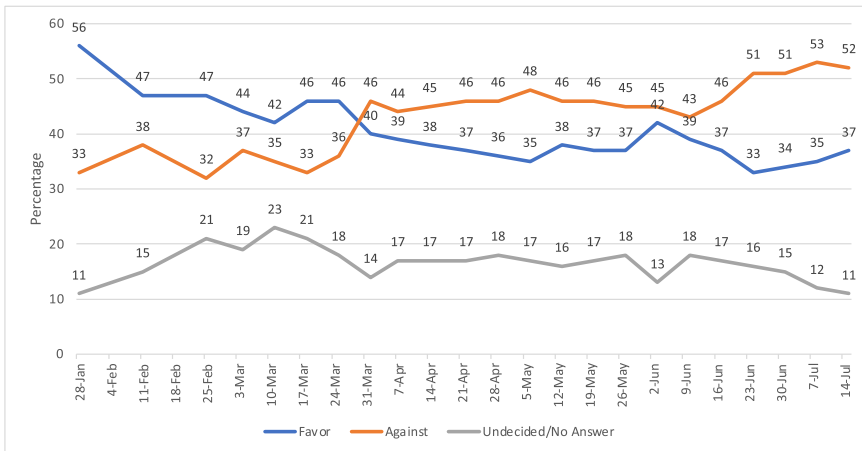
The interactions between the Eco-Constituents and party delegates add an important dimension to understanding the dynamics and politics of constitutional mobilization. Activists leveraged their political influence, including their numbers and control over the Environmental Commission, to frame their demands, ensure discussions, and facilitate approvals. However, they failed to establish lasting, broad, and substantial agreements with diverse political forces and, in some cases, even antagonized them. As a result, while they had sufficient influence to advance their demands, their actions damaged their public image and further isolated them from mainstream political actors.

The third stage of the constitutional process: the referendum and the downsides of constitutionally pursuing environmental demands

The end of the Constitutional Convention exposed activists to the downsides of pursuing action against climate through constitutional reforms, exposing Eco-Constituents to the unintended consequences of their constitutional mobilization on three fronts. First, activists experienced the complexities of campaigning for a proposal that had several nonenvironmental issues. Second, they faced criticism during the campaign for the bad image of the Convention as a whole and their actions as delegates, which undermined their movement's standing. Third, the progress on their demands – e.g., securing state action against climate change and decommodifying water – was compromised after the rejection of the constitutional draft in the national referendum.

As [Graph 1](#) shows, starting in January 2022, surveys consistently indicated a trend against the constitutional proposal (Cadem-Plaza Pública 2022), which coincides with the moment when the delegates started debating constitutional articles. While the reasons behind this rejection are multiple (see Alemán and Navia 2023; Larrain et al. 2023), the missteps of the delegates, such as those of the Eco-Constituents, contributed to the idea that the constitutional draft was ideologically biased, exclusionary, and written by poorly prepared people (Larrain et al. 2023).

All delegates knew about this negative trend before the end of the Convention. While the causes behind this quick fall in public support are manifold and expectable in a country experiencing a severe crisis of representation, Eco-Constituents like Vladimir remained confident during the campaign period. In an interview 2 weeks prior to the referendum, he argued that people would approve the proposal since “the articles related to water, related to nature, are cross-cutting demands that have broad support from society.” Ultimately, activists like Vladimir hoped that the surveys were inaccurate, and that people would recognize the social advances in the constitutional proposal.



Graph 1. Voting preferences about the constitutional proposal.

Activists were also isolated during the referendum campaign. Continuing their distrust in institutional politics, the Eco-Constituents (and other social movement delegates at the Convention) chose not to campaign alongside leftist parties. This decision further reinforced their disconnection from political parties, most of which (even from the center left) decided to reject the proposal or showed a lukewarm support at best (Heiss 2023). This is an important factor since partisan support has been a relevant condition for the success of other constitutional replacement processes in Latin America. Additionally, statements from the left-wing coalition in power – who did not participate in the Convention’s negotiations – contributed to turn the plebiscite into a referendum on an administration hit by the effects of the pandemic, high inflation, and public security concerns, adding one more complication to the chances of approving the text (Lissardy 2022).

Despite activists’ expectations at the beginning of the constitutional process and during the campaign, the plebiscite’s result was even worse than polls anticipated, with 62% of the population rejecting the proposal. This percentage was particularly significant since the voter turnout was the highest in Chilean history.

Activists explained this result pointing at two trends they observed during the campaign. First, that people decided their vote months before the end of the Constitutional Convention. All activists noted that the public supported the environmental rights secured during the Convention, although there were some reservations among rural groups regarding water rights. However, according to Paula,

I feel that people in Petorca didn’t reject the human right to water; they did not vote against water but voted based on lies, misinformation, and out of fear too ... Well, there are several factors, like the mandatory vote at the plebiscite, the lack of synthesis in the text, and we could say that it was not easy to convey a constitutional text in two months. (Paula, Eco-Constituent. October 2022)

Paula's interpretation of people's voting aligns with other sources of data, as surveys conducted after the plebiscite indicate that environmental and water rights were the most favorable aspects of the proposal (Criteria 2022). However, Paula's reference to the town of Petorca, which is a symbol of water mismanagement and scarcity in the country, acknowledges that people pondered other factors when voting and that 2 months was not enough time to change a consolidated public opinion trend.

Moreover, activists recognized that the weight of some controversial measures negatively affected people's support for the proposal and were enough to define their votes. For instance, a couple of Eco-Constituents from different districts explicitly recall encountering evangelicals during the campaign period supporting and celebrating the rights of nature, but who rejected the proposal as it granted abortion rights. Something similar happened with another unpopular measures such as the extension of indigenous rights. Therefore, specific issues defined people's vote despite their sympathy for other measures such as the decommodification of water.

Second, other Eco-Constituents also recognized that their political style and decisions during the Convention could have contributed to erode people's trust in the proposal. For instance, Leandro, who justified in May the exclusion of the right from political negotiations, recognized that it was a mistake and that he should have pushed for their incorporation:

Due to my lack of political experience, I didn't take a more leadership-oriented role in certain matters. I would have been more open to dialogue, much more open to dialogue. But the way the process was set up made it very difficult ... My decision would have been to include them (the right). I didn't push for it because I was blocked, I was completely overwhelmed. I couldn't reach that point of reflection, and because ... there was an extreme that wasn't going to engage in dialogue with them. (Leandro, Eco-Constituent. September 2022)

Leandro later acknowledged that excluding the right contributed to the perception of a biased constitutional proposal that did not represent a plural society. This quote also highlights other two key factors. First, the fast pace of the constitutional process precluded activists from building interpersonal ties and reflect on the development of the process (Moreno 2024). Second, activists' inexperience in institutional politics, which was an asset in their election as delegates, was a key obstacle during the constitutional process. Thus, while activists focused on achieving their demands during the intense decision-making process, they failed to recognize the uniqueness of their electoral success, the implications of their political decisions, and the broader public opinion outside the Convention. Eco-Constituents like Marina concurred and added after the referendum that controlling two-thirds of the CE had costs because "it was questioned whether the commission was politically diverse to address an issue intended to represent majorities." Although activists declared being aware of this issue during their tenure in informal conversations during the Convention, they began to question its consequences during the campaign as they faced scrutiny about their work.

Finally, the rejection of the constitutional proposal also affected the movement and its demands. Many Eco-Constituents, who were the leaders of their environmental organizations, observed a notable decline in their mobilization capacity. Spending an

entire year working full-time as delegates left their groups in disarray, making it difficult to reorganize them in time to campaign in support of the proposal. Additionally, the lengthy constitutional process and fast deliberations at the Convention undermined maintaining consistent local mobilization. As one Eco-Constituent explains,

(our presence at the Convention) tore part of the (grassroots) social tissue ... we got rapidly stuck in a very time-consuming schedule and following what happened here and in the streets was hard for everyone. My comrades are really committed, but they also have jobs, families, etc ... and we were constantly voting at the Convention and that (hectic) pace dilutes the movement. We had everything against us. (Sylvia, Eco-Constituent. October 2022)

She later noted that the political context is less dynamic than it was at the beginning of the Constitutional Convention, leaving rank-and-file activists fatigued and disillusioned with institutional politics following the rejection of the proposal. On top of the demoralization of grassroots activists after the referendum, several Eco-Constituents also claimed that participating in the Convention and the criticisms over their workstyle undermined their standing as social leaders. Sonia, a historical water-rights leader in her community, struggled to convince her constituents to support the proposal and felt personally vilified after becoming a delegate. In her words:

I'm sad because we are common people, and the people abandoned us and didn't trust us with their vote. They elected us to represent them, but they didn't trust our work and rejected it. The political parties also left us alone. Moreover, everyone criticizes us, saying 'you got paid millions,' this and that ... All that effort you put in, the hours you took away from your family—that has no price. I'm not asking for compensation, but I wish people would realize that we really put ourselves on the line for the country, for collective goals. It wasn't for us. (Sonia, Eco-Constituent. October 2022)

The political landscape became even more uncertain for the environmental movement's demands after the plebiscite. In December 2022, the political system relaunched the constitutional process, blaming independents – including environmental activists – for the failure of the Constitutional Convention. Consequently, activists were effectively excluded from this new process and labeled as responsible for the Convention's failure. The election of the new delegates gave control of the new assembly to conservative and far-right forces, who obtained enough seats to wield veto power over proposed measures. These delegates used their position to oppose comprehensive environmental provisions (Herrera 2023) and to push for a conservative constitutional framework (Heiss 2023). Although this proposal was also rejected by the citizenry, discussing critical measures such as the decommodification of water or addressing climate change became unfeasible in this new political scenario.

The aftermath of the constitutional process highlights not only the unintended consequences of using constitutional reforms to address climate change, but also the inherent risks involved. During the campaign period, activists faced unexpected criticism due to their role at the Convention, as well as the challenge of promoting demands

tied to other contentious issues. Overall, the prospects for establishing a new constitutional order that addresses climate change and secures the human right to water in Chile appear more distant after the referendum than they did before the 2019 social upheaval.

Discussion and conclusions

This article examines the case of the environmental movement at the Chilean Constitutional Convention to address two interrelated questions on the capacity of social movements to engage in constitutional mobilization to address the challenges of climate change: Can social activists be politically influential during the constitutional replacement process? And is constitutional mobilization an effective strategy to address climate change? The answers to these questions reveal significant nuances in the potential and limitations of engaging in constitutional mobilization and highlight the relevance of considering the unintended outcomes of strategic choices.

Regarding the first question, environmental activists can be agentic actors within constitutional processes, as they influenced the content of the constitutional proposal by building their political standing. They capitalized on contextual opportunities and used their substantial representation to create further institutional opportunities and spaces to convey their interests. These conditions and tactics allowed them to introduce and approve key demands on climate change and water decommodification.

Assessing the constitutional mobilization of activists also highlights the negative unintended consequences of their strategic choices. The Eco-Constituents, lacking experience and trust in institutional politics, avoided forming pragmatic alliances with party delegates. This decision had two significant effects. First, it presented the constitutional proposal as a biased document that failed to represent society. Second, it weakened the support of institutional actors for the proposal. Both factors are crucial for securing the approval of new constitutions in Latin America, as they ensure broad political negotiations (Larrain et al. 2023; Verdugo and Prieto 2023) and the support from mainstream political forces (Eisenstadt et al. 2017; Negretto 2020). Moreover, activists were unaware that some of their actions – such as excluding the right and publicly criticizing other delegates – further eroded public trust in the Convention (see Larrain et al. 2023; Alemán and Navia 2023).

The response to the second question underscores that, while promising, addressing climate change through constitutional mobilization may ultimately prove fruitless due to two key challenges associated with drafting new charters. First, although the provisions championed by the Eco-Constituents were popular, tying them to a constitution also linked them to less popular issues – such as indigenous rights and abortion – which undermined public support for the proposal. Building alliances between activists and institutional actors might have mitigated public concerns, as seen in other constitutional processes in the region (see Deheza 2008), but activists chose to avoid this approach. Second, failing to pass a constitution can profoundly alter the political landscape and demoralize the movement. After the referendum, conservative forces that disregarded basic environmental norms gained prominence (Heiss 2023), further demoralizing the environmental movement and limiting its ability to mobilize against climate change.

This article empirically expands the analysis of the legal mobilization against climate change, which usually underrepresents cases from the Global South (Auz 2024; Peel and Lin 2019). However, this article also offers three substantial contributions.

First, it enhances our understanding of constitutional mobilization, a relatively underexplored form of legal mobilization (Blokker and Thornhill 2017; Della Porta 2020; Eisenstadt et al. 2017), by highlighting the importance of centering the analysis of the politics of constitution-making (Verdugo and Prieto 2023). Unlike other legal mobilization strategies, such as litigation – commonly used in Europe (Vanhala 2012, 2022) and Latin America (Lehoucq 2021; Taylor 2023) to advance environmental issues – constitutional mobilization requires activists to become political players. That is, to navigate political negotiations and build social legitimacy through broad agreements with institutional actors, which are essential for ensuring the viability of constitutional processes and securing activist gains (Negretto 2017; Son 2018). Failing to engage effectively in these tasks, risks undermining the entire constitutional process and jeopardizing activists' goals.

This article also contributes to constitutional reform studies. Most analyses emphasize the importance of the political establishment in explaining the success of constitutional replacement processes (Deheza 2008; Eisenstadt et al. 2017; Negretto 2020), with cases where these actors do not hold significant control being exceedingly rare (cf. Suteu 2015). The case of the Chilean Constitutional Convention provides the counterfactual of a process where activists and independents dominated the process, illustrating the difficulties constitutional discussions encounter when political parties are a minority and do not lead the key negotiations.

Finally, this article contributes to theorizing the challenges social movement activists face when they gain access to positions of power. Activists rarely win elections (Amenta et al. 2010; Banaszak and Whitesell 2016), leaving us with limited understanding of their ability to coordinate political actions within institutional spaces. The case of the environmental movement at the Chilean Constitutional Convention suggests that movement delegates struggled to separate their activist experiences – such as their distrust of political parties and the use of activist tactics to criticize peers – from their roles as representatives. This tension undermined the effectiveness of their constitutional mobilization. Future research should further examine the conflicts activists encounter when transitioning into institutional roles.

The negative and unintended outcomes of the Chilean case do not imply that social movements should avoid constitutional mobilization to address urgent issues like climate change. Rejection of constitutional proposals is relatively rare; only 6% of such proposals subjected to referenda have been rejected by voters since 1789 (Elkins and Hudson 2019). Furthermore, several Latin American countries, including Colombia, Costa Rica, Bolivia, and Ecuador, have successfully advanced environmental protections through their constitutions (Couso 2022; Gargarella 2022; Mendes and Rached 2021). The Chilean case highlights the critical importance of building broad agreements among diverse political forces to make constitutional mobilization viable and underscores the risks of addressing climate change through constitutional processes without such consensus and by tying urgent demands to other norms.

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Law 21298. “It amends the Fundamental Charter to reserve seats for representatives of indigenous peoples in the Constitutional Convention and to safeguard and promote the participation of people with disabilities in the election of constitutional delegates.”

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