



中華民國憲法

1112
I21
542

動員戡亂時期臨時條款

中華民國三十七年四月十八日第一屆國民大會第一次會議第十二次大會通過

中華民國三十七年五月十日國民政府公布

中華民國四十三年二月十一日第一屆國民大會第二次會議第七次大會決議「動員戡亂時期臨時條款」繼續有效

臨時條款

中華民國四十九年二月十一日第一屆國民大會第三次會議第六次大會修訂

中華民國四十九年三月十一日總統公布

中華民國五十五年二月七日國民大會臨時會第三次大會修訂

中華民國五十五年二月十二日總統公布

中華民國五十五年二月十九日第一屆國民大會第四次會議第九次大會修訂

中華民國五十五年三月二十二日總統公布

中華民國六十一年三月十七日第一屆國民大會第五次會議第九次大會修訂

中華民國六十一年三月二十三日總統公布

茲依照憲法第一百七十四條第一款程序，制定動員戡亂時期臨時條款如左：

一、總統在動員戡亂時期，為避免國家或人民遭遇緊急危難或應付財政經濟上重大變故，得經行政院會議之決議，為緊急處分，不受憲法第三十九條或第四

十三條所規定程序之限制。

二、前項緊急處分，立法院得依憲法第五十七條第二款規定之程序變更或廢止之。

三、動員戡亂時期，總統副總統得連選連任，不受憲法第四十七條連任一次之限制。

四、動員戡亂時期，本憲政體制，授權總統得設置動員戡亂機構，決定動員戡亂有關大政方針，並處理戰地政務。

五、總統為適應動員戡亂需要，得調整中央政府之行政機構、人事機構及其組織。

六、動員戡亂時期，總統得依下列規定，訂頒辦法充實中央民意代表機構，不受憲法第二十六條、第六十四條及第九十一條之限制：

（一）在自由地區增加中央民意代表名額，定期選舉，其須由僑居國外國民選

出之立法委員及監察委員，事實上不能辦理選舉者，得由總統訂定辦法遴選之。

(二)第一屆中央民意代表，係經全國人民選舉所產生，依法行使職權，其增選補選者亦同。

大陸光復地區次第辦理中央民意代表之選舉。

(三)增加名額選出之中央民意代表，與第一屆中央民意代表，依法行使職權。

增加名額選出之國民大會代表，每六年改選，立法委員每三年改選，監察委員每六年改選。

七、動員戡亂時期，國民大會得制定辦法，創制中央法律原則與複決中央法律，不受憲法第二十七條第二項之限制。

八、在戡亂時期，總統對於創制案或複決案認為有必要時，得召集國民大會臨時

會討論之。

九、國民大會於閉會期間，設置研究機構，研討憲政有關問題。

十、動員戡亂時期之終止，由總統宣告之。

十一、臨時條款之修訂或廢止，由國民大會決定之。

THE CONSTITUTION OF THE REPUBLIC OF CHINA

(Adopted by the National Constituent Assembly on December 25, 1946, promulgated by the National Government on January 1, 1947, and becoming effective on December 25, 1947.)

The National Constituent Assembly of the Republic of China, by virtue of the mandate received from the whole body of citizens, in accordance with the teachings bequeathed by Dr. Sun Yat-sen in founding the Republic of China, and in order to consolidate the authority of the State, safeguard the rights of the people, ensure social tranquillity, and promote the welfare of the people, do hereby adopt this Constitution to be promulgated throughout the land for faithful and perpetual observance by one and all.

Chapter I. GENERAL PROVISIONS

Article 1. The Republic of China, founded on the Three Principles of the People,⁽¹⁾ shall be a democratic republic of the people, by the people, and for the people.

Article 2. The sovereignty of the Republic of China shall reside in the whole body of citizens.

Article 3. Persons with the nationality of the Republic of China shall be citizens of the Republic of China.

Article 4. The territory of the Republic of China within its existing national boundaries shall not be altered except by a resolution of the National Assembly.

Article 5. There shall be complete equality among the various ethnic groups in the Republic of China.

Article 6. The national flag of the Republic of China shall show a red field with a blue sky and a white sun in the upper left corner.

(1) The Three Principles of the People, as enunciated by Dr. Sun Yat-sen, are the Principle of Nationalism, the Principle of Democracy, and the Principle of People's Livelihood.

Chapter II. RIGHTS AND DUTIES OF THE PEOPLE

Article 7. All citizens of the Republic of China, irrespective of sex, religion, ethnic origin, class, or party affiliation, shall be equal before the law.

Article 8. Personal freedom shall be guaranteed to the people. In no case except that of *flagrante delicto*, which shall be separately prescribed by law, shall any person be arrested or detained other than by a judicial or police organ in accordance with the procedure prescribed by law. No person shall be tried or punished other than by a law court in accordance with the procedure prescribed by law. Any arrest, detention, trial, or punishment not carried out in accordance with the procedure prescribed by law may be resisted.

When a person is arrested or detained on suspicion of having committed a crime, the organ making the arrest or detention shall inform him in writing, and any relative or friend of his designated by him, of the grounds for his arrest or detention, and shall turn him over, not later than twenty-four hours after his arrest, to a competent court for trial. The said person, or any other person, may petition the competent court to serve a writ on the organ making the arrest to surrender within twenty-four hours the said person for trial.

The court shall not reject the petition referred to in the preceding paragraph, nor shall it first of all order the organ concerned to make an investigation and submit a report thereon. The organ concerned shall not refuse to comply, or delay in complying, with the writ of the court for the surrender of the said person for trial.

When a person is unlawfully arrested or detained by any organ, he or any other person may petition the court to make an investigation. The court shall not reject such a petition and shall, within twenty-four hours, investigate the action taken by the organ concerned and deal with the matter in accordance with law.

Article 9. Except those in active military service, no person shall be liable to court-martial.

Article 10. The people shall have freedom of residence and of change of residence

Article 11. The people shall have freedom of speech, teaching, writing, and publication.

Article 12. The people shall have freedom of privacy of correspondence.

Article 13. The people shall have freedom of religious belief.

Article 14. The people shall have freedom of assembly and of association.

Article 15. The right to live, the right to work, and the right to own property shall be guaranteed to the people

Article 16. The people shall have the right to present petitions, lodge complaints, and institute legal proceedings.

Article 17. The people shall have the rights of election, recall, initiative, and referendum

Article 18. The people shall have the right to take public examinations and hold public offices.

Article 19. The people shall have the duty to pay taxes in accordance with law.

Article 20. The people shall have the duty to render military service in accordance with law

Article 21. The people shall have the right and the duty to receive elementary education.

Article 22. All other freedoms and rights of the people that are not detrimental to social order or public welfare shall be guaranteed under the Constitution.

Article 23. All the freedoms and rights enumerated in the preceding Articles shall not be abridged by law except such as may be necessary to prevent infringement upon the freedoms of others, to avert an imminent danger, to maintain social order, or to promote public welfare.

Article 24. Any public employee who, in violation of law, infringes upon the freedom or right of any person shall, in

addition to being subject to disciplinary punishment in accordance with law, be liable to criminal and civil action. The victim may, in accordance with law, claim damages from the State for any injury sustained therefrom.

Chapter III. THE NATIONAL ASSEMBLY

Article 25. The National Assembly shall, in accordance with the provisions of this Constitution, exercise political rights on behalf of all the citizens of the country.

Article 26. The National Assembly shall be composed of the following Delegates:

1. One Delegate shall be elected from each County, Municipality, or area of equivalent status. In case the population of the electoral district exceeds 500,000, one additional Delegate shall be elected for each additional 500,000. The election of Delegates representing areas equivalent in status to the County or Municipality shall be prescribed by law.
2. Delegates to represent Mongolia shall be elected on the basis of four for each League⁽²⁾ and one for each Special Banner.⁽²⁾
3. The number of Delegates to be elected from Tibet shall be prescribed by law.
4. The number of Delegates to be elected by various ethnic groups in frontier regions shall be prescribed by law.
5. The number of Delegates to be elected by Chinese citizens residing abroad shall be prescribed by law.
6. The number of Delegates to be elected by occupational groups shall be prescribed by law.
7. The number of Delegates to be elected by women's organizations shall be prescribed by law.

Article 27. The functions of the National Assembly shall be as follows:

1. To elect the President and the Vice President.

(2) The Banner, so called because of the special flag or banner symbolizing it, is an administrative district in Mongolia. Several Banners form one League.

2. To recall the President and the Vice President.
3. To amend the Constitution.
4. To vote in the exercise of its right of referendum on proposed constitutional amendments originating in the Legislative Yuan.

With respect to the rights of initiative and referendum, except as is provided in Items 3 and 4 of the preceding paragraph, the National Assembly shall adopt regulations pertaining thereto and put them into effect after one half of the Counties and Municipalities of the country shall have exercised their rights of initiative and referendum in their respective jurisdictions.

Article 28. A new election for Delegates to the National Assembly shall be held every six years.

The term of office of the Delegates to each National Assembly shall terminate on the day the next National Assembly convenes.

No incumbent government official may be elected a Delegate to the National Assembly to represent the electoral district in which he holds office.

Article 29. The National Assembly shall be convoked by the President to meet ninety days prior to the expiration of each Presidential term.

Article 30. An extraordinary session of the National Assembly shall be convoked in any one of the following circumstances:

1. When, in accordance with the provisions of Article 49 of the Constitution, a new President and a new Vice President are to be elected.
2. When, by a resolution of the Control Yuan, an impeachment of the President or the Vice President is instituted.
3. When, by a resolution of the Legislative Yuan, an amendment to the Constitution is proposed.
4. When over two fifths of the Delegates to the National Assembly request that an extraordinary session be convoked.

When an extraordinary session of the National Assembly is to be convoked in accordance with Item 1 or Item 2 of the preceding paragraph, the President of the Legislative Yuan shall issue the notice of convocation; when it is to be convoked in accordance with Item 3 or Item 4, it shall be convoked by the President of the Republic.

Article 31. The National Assembly shall meet at the seat of the Central Government.

Article 32. No Delegate to the National Assembly shall be held responsible outside the Assembly for opinions expressed or votes cast at meetings of the Assembly.

Article 33. While the Assembly is in session, no Delegate to the National Assembly shall, except in case of *flagrante delicto*, be arrested or detained without the permission of the National Assembly.

Article 34. The organization of the National Assembly, the election and recall of Delegates to the National Assembly, and the procedure whereby the National Assembly carries out its functions shall be prescribed by law.

Chapter IV. THE PRESIDENCY

Article 35. The President shall be the Chief of State and shall represent the Republic of China in foreign relations.

Article 36. The President shall have supreme command of the army, navy, and air force of the country.

Article 37. The President shall, in accordance with law, promulgate laws and issue mandates with the countersignature of the President of the Executive Yuan or with the countersignatures of both the President of the Executive Yuan and the Ministers or Chairmen of Commissions concerned.

Article 38. The President shall, in accordance with the provisions of this Constitution, exercise the powers of concluding treaties, declaring war, and making peace.

Article 39. The President may, in accordance with law, declare martial law with the approval of, or subject to confirmation by, the Legislative Yuan. When the Legislative Yuan

deems it necessary, it may, by a formal resolution, request the President to lift the martial law already declared.

Article 40. The President shall, in accordance with law, exercise the powers of amnesty, pardon, remission of sentence, and restitution of civil rights.

Article 41. The President shall, in accordance with law, appoint and dismiss civil and military officers.

Article 42. The President may, in accordance with law, confer honors and decorations.

Article 43. In case of a natural disaster, an epidemic, or a national financial or economic crisis that calls for emergency action, the President, if the Legislative Yuan happens to be in recess, may, by a resolution of the Executive Yuan Council and in accordance with the Law on Emergency Orders, issue emergency orders and take such measures as may be necessary to cope with the situation. But the action thus taken shall be submitted to the Legislative Yuan for confirmation within one month after issuance of the emergency orders. In case the Legislative Yuan withholds confirmation, the said orders shall immediately become null and void.

Article 44. In case of disputes, involving two or more Yuan, other than those for which provisions are made in this Constitution, the President may call a meeting of the Presidents of the Yuan concerned to work out a solution therefor.

Article 45. Any citizen of the Republic of China who has reached the age of forty may be elected President or Vice President.

Article 46. The election of the President and the Vice President shall be prescribed by law.

Article 47. The President and the Vice President shall serve a term of six years. If re-elected, they may serve one more term.

Article 48. On assuming office, the President shall take an oath, which shall read as follows:

"I do solemnly and with all sincerity swear before the people of the whole country that I will observe the Constitu-

tion, faithfully perform my duties, promote the welfare of the people, and safeguard the security of the State so as not to betray the people's trust. Should I break my oath, I will submit myself to severe punishment by the State. This is my solemn oath."

Article 49. In case the office of the President should become vacant, the Vice President shall succeed to it until the expiration of the original Presidential term. In case the office of both the President and the Vice President should become vacant, the President of the Executive Yuan shall act for the President and, in accordance with the provisions of Article 30 of this Constitution, convoke an extraordinary session of the National Assembly to elect a new President and a new Vice President to serve out the unfinished term of the preceding President. In case the President should, for any cause, be unable to attend to his official duties, the Vice President shall act for him. In case both the President and the Vice President should be unable to attend to their official duties, the President of the Executive Yuan shall act for the President.

Article 50. The President shall be relieved of his duties on the day his term of office expires. If, by that time, the next President has not yet been elected, or if the President-elect and the Vice President-elect have not yet assumed office, the President of the Executive Yuan shall act for the President.

Article 51. The period during which the President of the Executive Yuan acts for the President shall not exceed three months.

Article 52. Unless the President is guilty of rebellion or treason, he shall not be liable to criminal prosecution without having been recalled or relieved of his duties as President.

Chapter V. ADMINISTRATION

Article 53. The Executive Yuan shall be the highest administrative organ of the State.

Article 54. The Executive Yuan shall have a President, a Vice President, and a number of Ministers and Chairmen of Commissions, and Ministers without Portfolio

Article 55. The President of the Executive Yuan shall be nominated and, upon confirmation by the Legislative Yuan, appointed by the President of the Republic.

If the President of the Executive Yuan should resign or his office should become vacant when the Legislative Yuan is not in session, his duties and functions shall be performed for him by the Vice President of the Executive Yuan. But the President of the Republic shall, within forty days, request the Legislative Yuan to convoke a meeting for the confirmation of the nominee he has selected as the next President of the Executive Yuan. Pending confirmation of the nominee, the Vice President of the Executive Yuan shall temporarily perform the duties and functions of the President of the said Yuan.

Article 56. The Vice President of the Executive Yuan, Ministers and Chairmen of Commissions, and Ministers without Portfolio shall be appointed by the President of the Republic upon the recommendation of the President of the Executive Yuan.

Article 57. The Executive Yuan shall be responsible to the Legislative Yuan in accordance with the following provisions:

1. The Executive Yuan has the duty to present to the Legislative Yuan a policy statement and an administrative report. When the Legislative Yuan is in session, its Members have the right to interpellate the President of the Executive Yuan and Ministers and Chairmen of Commissions of the said Yuan.
2. In case the Legislative Yuan does not agree with any major policy of the Executive Yuan, it may, by a formal resolution, request the Executive Yuan to change it. Confronted with the Legislative Yuan's resolution, the Executive Yuan may, with the approval of the President of the Republic, request the Legislative Yuan for reconsideration. If, during reconsideration, two thirds of the members of the Legislative Yuan present at the meeting uphold the original resolution, the President of the Executive Yuan shall either accede to the Legislative Yuan's view or tender his resignation.
3. In case the Executive Yuan deems an enactment, a

budget, or a treaty passed by the Legislative Yuan difficult to enforce, it may, with the approval of the President of the Republic and within ten days after the transmission of the Legislative Yuan's message, request the latter for reconsideration. If, during reconsideration, two thirds of the members of the Legislative Yuan present at the meeting uphold the original resolution, the President of the Executive Yuan shall either abide by the Legislative Yuan's resolution or tender his resignation.

Article 58. In the Executive Yuan there shall be an Executive Yuan Council to be composed of its President, Vice President, Ministers and Chairmen of Commissions, and Ministers without Portfolio, with its President as Chairman.

Bills on proposed laws, budgets, martial law, amnesty, declaration of war, conclusion of peace, treaties, and other important matters to be submitted to the Legislative Yuan, as well as matters of common concern to all the ministries and commissions shall be laid before the Executive Yuan Council by the President of the Executive Yuan and by the various Ministers and Chairmen of Commissions for its consideration and decision.

Article 59. The Executive Yuan shall, three months before the beginning of each fiscal year, submit to the Legislative Yuan a budgetary bill for the following fiscal year.

Article 60. The Executive Yuan shall, within four months after the end of each fiscal year submit to the Control Yuan a final financial statement of the year.

Article 61. The organization of the Executive Yuan shall be prescribed by law.

Chapter VI. LEGISLATION

Article 62. The Legislative Yuan shall be the highest legislative organ of the State. It shall be composed of Members elected by the people and shall exercise legislative power on their behalf.

Article 63. The Legislative Yuan shall have the power to

pass bills on laws, budgets, martial law, amnesty, declaration of war, conclusion of peace, treaties, and other important matters of State.

Article 64. Members of the Legislative Yuan shall be elected in accordance with the following provisions:

1. Those to be elected from the Provinces or Municipalities under the direct jurisdiction of the Executive Yuan shall be five for each Province or Municipality with a population of not more than 3,000,000; where the population exceeds 3,000,000, one additional Member shall be elected for each additional 1,000,000.
2. Those to be elected from Mongolian Leagues and Banners.
3. Those to be elected from Tibet.
4. Those to be elected by the ethnic groups in frontier regions.
5. Those to be elected by Chinese citizens residing abroad.
6. Those to be elected by occupational groups.

The election of Members of the Legislative Yuan and the number of those to be elected under Items 2 to 6 of the preceding paragraph shall be prescribed by law. The number of women to be elected under all the items of the preceding paragraph shall be prescribed by law.

Article 65. Members of the Legislative Yuan shall serve a term of three years and shall be re-eleable. Their election shall be completed within three months prior to the expiration of each term.

Article 66. The Legislative Yuan shall have a President and a Vice President to be elected from among its Members.

Article 67. The Legislative Yuan may set up various committees.

The various committees of the Legislative Yuan may invite government officials and concerned individuals in society at large to be present at the committee meetings to present their views.

Article 68. The Legislative Yuan shall hold two sessions each year and shall convene of its own accord. The first

session shall be from February to the end of May, and the second from September to the end of December. Any session may be prolonged, if necessary.

Article 69. An extraordinary session of the Legislative Yuan may be held in either of the following circumstances:

1. At the request of the President of the Republic.
2. At the request of over one fourth of its own Members.

Article 70. The Legislative Yuan shall not propose any increase in the budget estimates submitted by the Executive Yuan.

Article 71. At meetings of the Legislative Yuan, the Presidents of the various Yuan concerned and the various Ministers and Chairmen of Commissions concerned may be present to present their views.

Article 72. Law bills passed by the Legislative Yuan shall be transmitted to the President of the Republic and the Executive Yuan. The President shall, within ten days after receipt of the bills, promulgate them, but he may also deal with them in accordance with the provisions of Article 57 of this Constitution.

Article 73. No Member of the Legislative Yuan shall be held responsible outside the Yuan for opinions expressed or votes cast in the Yuan.

Article 74. No Member of the Legislative Yuan shall, except in case of *flagrante delicto*, be arrested or detained without the permission of the Legislative Yuan.

Article 75. No Member of the Legislative Yuan shall concurrently hold a government post.

Article 76. The organization of the Legislative Yuan shall be prescribed by law.

Chapter VII. THE JUDICIARY

Article 77. The Judicial Yuan shall be the highest judicial organ of the State. It shall be responsible for the trial of civil, criminal, and administrative cases and the disciplinary punishment of public employees.