

The Provisional Charter

PREAMBLE

On the first of November, 1963 the Armed Forces heroically rose up and toppled a dictatorial family regime. That is an achievement the entire people remember and are grateful for.

But, after temporarily holding the reins of government for a time, the Armed Forces, through its proclamations and appeals, has reached the reasonable conclusion that for effective service to the nation and to respond to the aspirations of the entire people, it must return to its purely military position, and gradually return power to a civilian government.

The High National Council was convened to draft and promulgate a Provisional Charter with the objective of organizing the public powers during the transitional phase and, step by step, to carry out the transfer of authority from the military to civilians.

Drafted in the midst of war and disturbances, in an urgent pressing length of time in order the sooner to bring an end to the perils of a government lacking legal foundation, this Charter although provisional, nonetheless provides the elements of a democracy:

- Separation of powers
- Respect for fundamental liberties
- The pursuit of social equality.

Furthermore, this Charter has for objective the building of stable government which can speedily and peacefully solve the political crises that may arise.

However, faced with the pressing exigencies of the hour, a few restrictions cannot but be included in the Charter to protect the supreme interests of the homeland and facilitate the work of restoring and maintaining public safety.

The transfer of power to the High National Council, pending the convening of the National Convention, is a temporary expedient but practical and necessary to cope with the difficulties the nation is now confronting, and also so that the transfer of power may be accomplished within the time limit set by the present government.

CHAPTER ONE

Fundamental Provisions

ARTICLE 1.— Viet Nam is a Republic and its territory is one and indivisible.

ARTICLE 2.— Sovereignty belongs to the people and will be exercised by the people's duly designated representatives.

Owing to the present particular situation of the country, a National Convention will be convened in accordance with procedures to be set by a law promulgated after this Charter.

ARTICLE 3.— The Republic of Viet Nam accepts all principles of international law which do not conflict with national sovereignty and its anti-communist, anti-neutralist position.

CHAPTER TWO

Rights and duties of citizens

ARTICLE 4.— All Vietnamese citizens are equal before law, irrespective of sex, national origin and creed.

Following is the official English text of the Provisional Charter promulgated by the High National Council on October 20, providing the basis for civilian, democratic regime.—Ed.

ARTICLE 5.— The fundamental democratic liberties as contained in the United Nations Declaration of Human Rights, such as freedom of thought, freedom of speech, freedom of the press, freedom of assembly, freedom of religion, freedom of association and of movement, are guaranteed within the limits of the law on condition that the rights of other persons are respected and that the exercise of the of these rights is not prejudicial to national defense, public order and safety.

Freedom of speech may not be abused in order to make false accusations, slander, violate public morals and order, or to make propaganda for Communism and Neutralism.

ARTICLE 6.— Freedom to establish trade unions and the right to strike are recognized, but must be exercised in accordance with the law, and not prejudice national defense, public order or safety.

Civil servants and employees of agencies concerned with national defense, public safety, the essential needs of community life such as electricity, water and public transportation, are not allowed to strike. However special provisions of law will protect the legitimate interests of these civil servants and employees.

ARTICLE 7.— No one may be illegally arrested or detained all forms of torture and coercion are strictly prohibited the private life, family, dignity and residence of private citizens genuine must be respected.

ARTICLE 8.— The right to private ownership is recognized and guaranteed by the State, which advocates the accession to ownership of every citizen and genuine social equality.

For the common good, the State may requisition private property, but only within the limits of the law and with payment of appropriate compensation.

ARTICLE 9.— All citizens have the obligation to respect national discipline and defend their home land by carrying out military service obligation and contribute to the public expenditures in accordance with their ability.

CHAPTER THREE

Chief of State

ARTICLE 10.— The Chief of State will be selected according to procedures to be set by the National Convention.

ARTICLE 11.— The Chief of State will choose the Prime Minister. The Prime Minister will submit his action program to the National Convention.

The Chief of State will appoint the Prime Minister after obtaining the approval of the National Convention.

The Prime Minister will name the Deputy Prime Ministers, the Ministers and Secretaries of State, who will then be appointed by the Chief of State

The Chief of State will terminate the function of the Prime Minister and of other Cabinet members in the case their resignations are accepted by the National Convention, or in the cases covered in Articles 32 and 33 below.

If the National Convention consecutively rejects two candidates proposed by the Chief of State to succeed the resigning Prime Minister the National Convention has the duty to present a list of three people from which the Chief of State may choose.

ARTICLE 12.— The Chief of State, on the proposal of the government, will appoint at Cabinet meetings:

- Diplomatic representatives of all levels.
- University Rectors.
- The Prefect of Saigon.

At Cabinet meetings the Chief of State will also appoint and promote the judging magistrates, upon proposal of the High Council of the Magistracy.

The Chief of State will appoint and promote all general officers, and all field grade officers into the ranks of general officer, upon proposal of the Armed Force High Command after consulting with the Prime Minister.

ARTICLE 13.— The Chief of State is the supreme commander of the Republic's Armed Forces. The Chief of State appoints the Commander-in-Chief of the Armed Forces after consultation with the Prime Minister.

ARTICLE 14.— The Chief of State confers awards and decorations and exercises the right of pardon.

ARTICLE 15.— The Chief of State must be kept informed by the government on international negotiations and, with the endorsement of the National Convention, will sign and ratify international treaties and agreements. In accordance with the proposal of the National Security Council and with approval of the National Convention, the Chief of State declares war, the cessation of hostilities and signs peace treaties.

The Chief of State receives the credentials and represents the nation in international relations.

ARTICLE 16.— In accordance with the proposal of the National Security Council and with approval of the National Convention, the Chief of State declares the state of emergency, the state of martial law or the state of war, whose effect suspends the application of a number of prevailing laws over part or all of the national territory.

In the above situation and when the independence and integrity of the national territory are seriously threatened, the National Convention, after consulting with the National Security Council, may pass a law empowering the Chief of State, within a fixed period of time and scope, to sign decree-laws to avert emergency measures.

The National Convention will

be informed of all such decree-laws after their signing, Thirty days after the termination of the above period, those decree-laws not abolished by the National Convention will be considered as valid laws.

ARTICLE 17. In case the national budget has not been endorsed by the National Convention on the day it must be implemented, the Chief of State decree-law permitting the implementation of one-fourth of the national budget for the coming quarter and so on until the national budget is passed by the National Convention.

ARTICLE 18.— The Chief of State presides at Cabinet meetings.

All documents signed by the Chief of State, except for the appointment of the Prime Minister, must be counter-signed by the Prime Minister and the Ministers concerned.

ARTICLE 19.— The Chief of State promulgates the laws according to the provisions of Chapter Five.

ARTICLE 20.— In case the Chief of State dies or is otherwise unable to carry out his functions, the chairman of the National Convention will replace him, with the condition that there must be a new Chief of State within the next sixty days.

The Vice Chairman of the National Convention will replace the Chairman preside over the Convention.

ARTICLE 21.— The Chief of State may be held accountable only for the charge of treason, and will be tried by a Special Court.

CHAPTER FOUR

The Government

ARTICLE 22.— The Prime Minister presides over Cabinet meetings and determines and carries out national policy.

The Prime Minister is in charge of implementing the laws and has the power to sign decrees.

In the circumstances provided for in Article 16, the Prime Minister has the task of drafting decree-laws.

The Prime Minister utilizes the Armed Forces and organizes national defense in accordance with the decisions of the National Security Council.

The Prime Minister appoints high ranking civil and military officials, except for those functions mentioned in article 11, 12 and 13. The Prime Minister can delegate part of this right to the Deputy Prime Minister and Ministers.

ARTICLE 23.— Documents signed by the Prime Minister must be counter-signed by the ministers concerned.

ARTICLE 24.— The Prime Minister and the Ministers are jointly responsible to the National Convention for the common policy of the government, and individually responsible for their own official actions.

The procedures for motions of censure and the question of confidence are set forth in Chapter Five.

ARTICLE 25.— The government has the right to suggest draft laws and prepares the draft national budget.

(To be continued)

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CHAPTER FIVE

The Legislative Power

ARTICLE 26.— The legislative power belongs to the National Convention.

Members of the National Convention may not be prosecuted, detained or convicted for any opinions expressed or voted in the Convention.

Except in case of flagrant delicts members of the National Convention cannot be prosecuted, pursued, detained or tried throughout their term of office.

The prosecution and detention of any National Convention member will be suspended, if so requested by the National Convention.

By a majority vote of three-fourths of its membership, the National Convention may temporarily suspend the parliamentary Plimmunity of one of its members.

While carrying out their legislative power at the National Convention, members who are civil servants or military men must ask a long-term leave of absence. This does not apply to professors of a university or advanced technical school. Members and their spouses may not participate in any bids or sign any contracts for the supply of goods or services to governmental agencies.

ARTICLE 27.— The National Convention votes on the laws. It also votes on the recommendations of the government, when necessary.

ARTICLE 28.— The government proposes draft laws. The National Convention members have the right to introduce draft bills.

Within forty-eight hours after passage by the National Convention, all law will be forwarded to the Chief of State for promulgation within a period of 15 full days from the day of receipt.

During the above 15 days, the Chief of State may ask the National Convention to reconsider one or more provisions of the law.

On reconsideration, if the National Convention does not agree to amend the law in accordance with the proposal of the Chief of State, it will so decide by a majority vote of two-thirds of its members.

If the period set for the promulgation has expired but the Chief of State has not promulgated a law returned it to the National Convention for reconsideration; the law will tacitly become effective and will be promulgated by the Chairman of the National Convention.

ARTICLE 29.— In the case the National Convention declares it an urgent necessity, the promulgation period may be reduced to one full day.

ARTICLE 30.— The National Convention votes on the budget proposed by the government. The draft national budget must be forwarded to the National Convention at least three months before its implementation date.

The National Convention has the right to propose new expenditures, but at the same time

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must propose corresponding revenues.

If on the scheduled date for implementation of the budget the National Convention has not yet endorsed the draft budget, the Chief of State will sign a decree law to implement one-fourth of the budget for the coming quarter, as stipulated above.

ARTICLE 31.— The Nat'l Convention has the right to request the Prime Minister, Deputy Prime Minister, Ministers and Secretaries of State report to the Convention on a particular subject which he made known in writing at least one week in advance, or three days in urgent cases.

The Prime Minister, deputy Prime Minister, Minister and Secretaries of State may ask the National Convention to permit them to appear before it to report on a specific subject.

The government may appear before the National Convention accompanied by their aides members.

The Ministers and Secretaries of State may appear before and be invited to appear before the committees to report or give views on a specific subject, under the conditions mentioned above.

ARTICLE 32.— By a majority vote of two-thirds of its total membership, the National Convention may censure one or more Ministers or Secretaries of State. The concerned Ministers or Secretary of State will be considered as having tacitly resigned from his position.

By the same majority vote above, the National Convention may also censure the Prime Minister as well as the whole government. But, along with the censure motion the National Convention must, after the consent of the Chief of State is obtained, nominate another Prime Minister. The censured Prime Minister must be tacitly considered as having resigned from his office along with his entire government. The Chief of State will appoint the Prime Minister nominated by the National Convention. Pending the formation of the new government, the old government will act as caretaker.

ARTICLE 33.— After discussion with the cabinet, the Prime Minister has the right to bring the question of confidence before the National Convention.

If a two-thirds majority of the National Convention members vote non-confidence in the government, the latter is tacitly considered as having resigned after the National Convention nominates a new Prime Minister with the approval of the Chief of State.

ARTICLE 34.— Censure or non-confidence motions against the Prime Minister must be voted on only forty-eight hours

after the debate.

ARTICLE 35.— If within twelve months two cabinet crises result through the application of Articles 32 and 33, the National Convention may be dissolved by the Chief of State, with the approval of the Prime Minister and after consultation with the chairman of the National Convention; but the chief of State must convene the new National Convention within thirty days.

The new National Convention cannot be dissolved within the year immediately following its convening.

CHAPTER SIX

The Judiciary

ARTICLE 36.— The judging magistrates hand down their decisions in accordance with their conscience and the spirit of impartiality, respect for the law of the land and the national interests.

The prosecutors, under the control of the Ministry of Justice, supervise and follow the enforcement of the law in respect of morals and public safety.

ARTICLE 37.— To guarantee the independence of the judging magistrates, their transfer and disciplinary penalties will be decided by the High Council of the Magistracy.

ARTICLE 38.— A law will set forth the organization, operation and powers of the High Council of the Magistracy.

ARTICLE 39.— The trial of the Prime Minister Chairman of the High National Council and of the National Convention for treason or any other grave offense falls within the competency of the Special Court, whose organization, operations and prosecution procedures will be defined by law later.

CHAPTER SEVEN

Economy and welfare council

ARTICLE 40.— An Economy and Welfare Council will be established with the task of:

— Presenting its views on draft laws, projects and plans submitted to it by the National Convention, if necessary.

— Making suggestions and drafting plans on subjects under the jurisdiction of the Economy and Welfare Council for submission to the National Convention for consideration.

In addition, the National Convention and the government must consult the Economy and Welfare Council on all plans, drafts, bills of an economic or social welfare nature.

CHAPTER EIGHT

National security council

ARTICLE 41.— A National Security Council will be set up with the task of:

— proposing declarations of war, cessation of hostilities,

or the signing of peace treaties. — Proposing the proclamation of a state war — proposing the proclamation of a state of emergency or martial law on one part or the entirety of the national territory — reviewing and approving defense policy.

— advising and assisting the government in all plans related to national security.

ARTICLE 42.— The National Security Council consists of:

— the Chief of State Chairman

— the Prime Minister Vice Chairman.

— Minister of the Armed Forces Member

— Commander in Chief of the Armed Forces Member.

ARTICLE 43.— The organization and operations of the National Security Council will be set forth in a law.

CHAPTER NINE

Transitional Provisions

ARTICLE 44.— During the transitional period until the establishment of the National Convention, the High National Council, set up by Decision No. 7 of Sept. 8, 1964 of the Provisional Leadership Committee, will be entrusted with the powers provided for the National Convention by this Charter.

ARTICLE 45.— Upon establishment of the National Convention, the High National Council will become a body similar to the Senate in a two-chamber regime. A law will define the mission and powers of this Senate.

ARTICLE 46.— Pending the promulgation of a Constitution, the national institutions established by the High National Council acting as set forth in Article 44, will continue their operations in accordance with the provisions of this Charter.

CHAPTER TEN

Final provisions

ARTICLE 47.— The Chief of State, the Prime Minister or one-half the membership of the National Convention may propose the revision of the Charter.

Proposal for revision must be accompanied by the justifying reasons and submitted to the secretariat of the National Convention.

The proposed revision is accepted only upon approval by three-fourths of the total membership of the National Convention, and will be promulgated as a law.

ARTICLE 48.— The provisional Constitutional Act No. 1 of Nov. 4, 1963 the provisional Constitutional Act No. 2 of Feb. 7, 1964 and the Aug. 16 Charter are abolished.

All prevailing laws continue in force, except for those that conflict with this Charter.

ARTICLE 49.— The present Charter enters into effect from the day of its promulgation until a new Constitution is established.

Voted in Saigon on October 20, 1964

THE HIGH NATIONAL COUNCIL