

# SUMMARY OF THE 1980 POLITICAL CONSTITUTION OF CHILE

The following is a summary of certain key provisions of the Chilean Constitution which was voted on in 1980 and came into effect on March 11, 1981. It replaced the 1925 Constitution and is the third Chilean constitution since 1833. Certain of the provisions of the Constitution are circumscribed under 29 Transitory Articles which govern the 1981-90 period. During this period General Pinochet is named **President and the military** Junta acts as the National Congress. Many personal freedoms which are otherwise "guaranteed" may be limited by General Pinochet under **Transitory Article 24**. Also, many freedoms may be circumscribed during "states of constitutional exception" which have, in fact, been in existence in some form throughout the 1980 Constitution's entire existence.

## **Chapter I: "Bases of Institutionalilty"**

This chapter sets forth basic principles, such as "Men are born free and equal" (Article 1), "Chile is a democratic republic" (Article 4), etc. It specifies in Article

7 that no "person nor group of persons may assume, not even under the pretext of extraordinary circumstances, any authority or rights other than those that have been **expressly conferred** on them by the Constitution or by law." This provision was also contained, in substance, in the 1925 Constitution which was in effect at the time of the 1973 coup.

One of the most important new concepts introduced in the 1980 Constitution is contained in **Article 8**, which provides, in part:

Any action by an individual or group intended to propagate doctrines which are antagonistic to the family or which advocate violence or a concept of society, State or juridical order of a totalitarian character or based on class warfare, is illegal and contrary to the institutional law of the Republic.

Organizations and political movements or parties which, by their purposes or the nature of the activities of their members, tend toward such objectives, are unconstitutional.

The Constitutional Tribunal will have cognizance of violations of the provisions set forth in the preceding paragraphs.

Notwithstanding other sanctions established by the Constitution or under law, persons who commit or who have committed the aforementioned violations shall not, for a period of ten (10) years from the date of the Tribunal's decision be eligible for public duties or positions, whether or not by popular election. Likewise, they may not become rectors or directors of educational establishments nor teach therein nor employ any medium of mass communication, nor become directors or, administrators of the same, nor hold in them positions related to the broadcast or dissemination of opinions or information. During the aforementioned period neither will they be able to act as leaders of political organizations nor of organizations concerned with education, or in general occupy positions of a local, professional, entrepreneurial, labor union, student or trade union nature.

**Article 9** states that "Terrorism in any of its forms is *fundamentally* against human rights." It states that a law defining "terrorist" conduct will be enacted and that, in addition to any other penalty for such crime, persons found guilty of "terrorism" will be precluded from the positions mentioned in **Article 8** for fifteen (15) years. The article prohibits amnesty, pardon and bail for those charged with "terrorist" crimes.

## **Chapter II: "Nationality and Citizenship"**

This section of the constitution defines nationality and citizenship and sets forth the circumstances under which they may be lost. **Article 15** makes voting mandatory and **Article 18** specifies that there will be "a public electoral system. "

### **Chapter III: "Constitutional Rights and Obligations"**

**Article 19(1)** guarantees the "right to life and to physical and psychic well being" and also specifies that the "use of illegal pressure [i.e., torture] is prohibited." Article 19(5) establishes the "inviolability of the home and all forms of private communications."

**Article 19(7)** establishes the "right to personal freedom and individual security" and the requirements for arrest warrants and the circumstances of detention. Subsection 19(7)(c) states that a warrant is not needed to make an arrest when an individual is caught in the act of committing a crime; however, following such an arrest, the individual must be brought before a judge within twenty - four hours. If an individual is arrested with a warrant, the competent judge must be notified within forty-eight hours following the arrest and the individual must be placed at his disposition at that time. For "probable cause" the judge may extend this period to five days and, in instances of crimes described as "terrorist," this period may be extended to ten days.

**Article 19(12)** establishes the freedom to "express opinions and to disseminate information without prior censorship in any form and by any means . . ." Every person or legal entity has the constitutional right to establish and maintain newspapers, magazines and periodicals. An individual has no right to establish and operate a television station. The persons or groups who may own television stations are to be established by law. There is to be a National Council for Radio and Television charged with governing the electronic media.

**Article 19(13)** establishes the right to assemble peacefully and unarmed, without prior permission. However, it adds that meetings "in squares and streets and other public places shall be ruled by general police regulations."

**Article 19(15)** establishes the right "to associate without prior authorization." However, it also states that associations "contrary to moral standards, public order and the Security of the State are prohibited." The constitution provides no further definition of these terms and does not specify who will determine which "associations" are prohibited under them. Article 19(15) also specifies that political parties must maintain public records and financial accounts and may not receive funds from outside Chile.

**Article 19(19)** states that unions and their leaders "may not participate in partisan political activities."

**Article 23** provides the following limitations on associations without further definitions:

Intermediate groups of the community and their leaders who make ill use of the autonomy accorded by the Constitution, participating unduly in activities alien to their specific objectives shall be

penalized in conformity with law. The position of trade union leader will be incompatible with taking an active participation in a political party.

The law will establish the corresponding sanctions to be applied to union leaders who participate in partisan political activities and to the leaders of political parties who interfere in the functioning of union organizations and other intermediate groups which appropriate law establishes.

## **Chapter IV: "Government"**

### **A. The Presidency**

**Articles 24 to 41** deal with the President of the Republic. Pursuant to **Article 25** the President serves an eight year term and cannot be re-elected. **Article 26** establishes that the President shall be elected by direct vote and by an absolute majority of the votes "validly cast." If no candidate receives more than half of the votes validly cast, a second election will be held between the two candidates who obtained the highest number of votes. The President has the following powers, among others, pursuant to subsections of **Article 32**:

**Article 32(5)** - to dissolve the Chamber of Deputies one time during his term;

**Article 32(6)** - to designate certain members of the Senate;

**Article 32(7)** - to declare certain states of constitutional exception (discussed below) ;

**Article 32(8)**- to exercise executive rule making power and to dictate regulations he deems "appropriate for the execution of the laws;"

**Article 32(9)** - to appoint and remove at will regional "intendants" and governors, as well as certain mayors (i.e., those governing major cities) and other officials;

**Article 32(14)** - to appoint judges, based on the recommendations of the Supreme Court and the Courts of Appeals, and certain members of the Constitutional Tribunal;

**Article 32(18)** - to appoint and remove Commanders in-Chief of the Army, Navy, Air Force and the Director-General of the Carabineros "in conformity with Article 93" (see below).

**Articles 39 through 41** establish four "states of constitutional exception" in which certain of the rights guaranteed under the constitution may be abridged. They are: (1) the "state of assembly" in the case of "foreign war;" (2) the "state of siege" in case of "internal war or internal commotion;" (3) the "state of emergency" in the event of "a grave disturbance of public order [or] harm or danger to the national security;" and (4) the "state of catastrophe" in the event of a "public disaster."

Each state of constitutional exception allows a different degree of derogation from constitutional norms. The President may, with the consent of the National Security Council (see below), declare states of assembly, emergency, and catastrophe. The President may declare a state of siege as well, but it may be terminated by Congress.

## **B. The Congress**

Articles 42 through 72 deal with the National Congress. The Congress is composed of two houses. The first is a Chamber of Deputies composed of one hundred and twenty members elected by direct vote in electoral districts. They serve four year terms and are all subject to re-election at the same time.

The Senate is composed of both elected and appointed members. First, there are two senators elected by direct vote from each of the thirteen regions of Chile (for a total of 26 elected Senators). The Senate also has the following members: (1) all former Presidents of the Republic who served as President for at least six years (they serve as Senators for life); (2) two former justices of the Supreme Court elected by the current members of the Supreme Court; (3) a former Comptroller-General elected by the Supreme Court; (4) a former commander of each of the armed services (Army, Navy, Air Force and Carabineros elected by the National Security Council (described below); (5) a former university rector appointed by the President and (6) a former minister of state appointed by the President. Thus, the Senate will have 26 elected members and a minimum of 9 non-elected members, plus former Presidents.

**Article 57** protects and enshrines the Constitution by sanctioning any member of Congress who is found to have promoted concepts inconsistent with the Constitution. It provides, in part, that:

A Deputy or Senator shall also lose his seat if, while exercising the functions of president of the respective Chamber or committee, he permits a vote on a motion or proposal which is declared openly contrary to the Political Constitution of the State by the Constitutional

Tribunal. The author or authors of such motion or proposal shall incur the same sanction.

**Article 60** is important because it specifies the topics which are considered "matters of law." Any item which is not a matter of "law" automatically falls within the President's "executive rule making power" pursuant to **Article 32(8)**. However, even as to matters of "law" the President is given an active role. For instance, if either chamber of Congress approves a Presidential bill, the other chamber must reject it by a two-thirds vote. (**Article 65.**) **Article 70** requires the vote of two-thirds of the members of both chambers present to override a presidential veto.

## **B. The Judiciary**

**Articles 73 to 80** discuss the judiciary. The Court is entrusted with administering all of the Supreme Court is entrusted with administering all of the courts in Chile except the Constitutional Tribunal and electoral courts. It has the power to remove lower court judges from office. **Article 77** provides that "judges shall remain in office during good behavior, but the lower ranking [judges] will perform their respective judgeships for the period determined by law." Pursuant to these provisions lower court judges serve for short, renewable terms, are graded annually and may be removed for poor performance.

## **Chapter IV: "Constitutional Tribunal"**

The Constitutional Tribunal is composed of seven members designated in the following manner: (1) three justices of the Supreme Court elected by the Supreme Court; (2) a lawyer appointed by the President; (3) two lawyers elected by the National Security Council (discussed below); and (4) a lawyer elected by the Senate. (Article 81.) The members of the Tribunal serve eight year terms, and the composition of the Tribunal is partially altered every four years. It acts with a quorum of five and adopts its decisions by simple majority.

The powers of the Constitutional Tribunal include: (1) determining the constitutionality of all "organic constitutional laws prior to their promulgation"; (2) resolving questions regarding the constitutionality of laws, constitutional amendments, and treaties; (3) resolving questions regarding the constitutionality of a plebiscite; and (4) declaring the unconstitutionality of persons, organizations, movements or political parties in accordance with **Article 8**.

## **Chapter VIII: "Electoral Justice"**

**Article 84** establishes a special court known as the "Electoral Qualifying Tribunal", which examines the tabulation of votes and certifies the returns in elections for President, Deputies and Senators. It is charged with the duty to "resolve complaints deriving there from" and to "proclaim those candidates who are elected.-" It also has power over the results of plebiscites.

The Tribunal has five members: (1) three justices or former justices of the Supreme Court elected by the Supreme Court; (2) a lawyer selected by the Supreme Court; and (3) one former President of the Senate or of the Chamber of Deputies. Members of the Tribunal serve four year terms.

The law also creates regional electoral tribunals (**Article 85**).

## **Chapter IX: "Office of the Comptroller-General"**

Pursuant to **Article 87** this powerful office "shall exercise control over the legality of the acts of the Administration, oversee receipt and expenditure of the funds of the government, municipalities and other organizations and services determined by laws ." The Comptroller-General is appointed by the President with the majority approval of the Senate and he "shall not be removable from office and will leave office on reaching 75 years of age."

The Comptroller-General must object to any executive decree or resolution which would "exceed or contravene the law delegating the authority [being exercised] or when contrary to the Constitution." Pursuant to Article 88, if the Comptroller-General determines that any executive decree is illegal he will carry it out only if the President insists with the written support of all of his ministers.

## **Chapter X: "Armed Forces, Forces of Order and Public Security"**

**Article 90** defines the "Armed Forces" as the Army, Navy and Air Force. It states that the Armed Forces "are essential for national security and guarantee the institutional order of the Republic."

The "Forces of Order and Public Security" consist of the Carabineros and the Bureau of Investigations. These forces exist "in order to provide efficacy to law and guarantee public order and internal public security ..."

The Constitution goes on to state, however, that the Carabineros (but not the Bureau of Investigations) join with the Armed Forces "in the mission of guaranteeing the institutional order of the Republic."

**Article 90** also states that the Armed Forces and the Carabineros are "essentially obedient and not deliberating [*i.e.*, *political*] bodies."

Pursuant to Article 93 the commanders of the Armed Forces and Carabineros are appointed by the President from among the five senior officers of each institution. They serve in their posts for four years, may not be reappointed and "shall not be subject to removal from their posts." However, in "qualified cases," the President may "retire" a commander if he can obtain the agreement of the National Security Council.<sup>1</sup>

## **Chapter XI: "National Security Council"**

**Article 95** creates a National Security Council presided over by the President of the Republic and consisting of the Presidents of the Senate and the Supreme Court, along with the Commanders of the Armed Forces and the Director-General of the Carabineros. It thus has seven voting members, four of whom head branches of the armed services or the Carabineros. Certain other ministers participate in the National Security Council but without the right to vote.

**Article 96** establishes the powers of the National Security Council, which include the power to:

**Article 96(b)**- express to any authority established by the Constitution its opinion regarding any deed, act or matter which in its judgment "gravely affects the basic principles of the Constitution (literally, "operates against the foundations of the institutionality") or which it feels "might affect national security"; and

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247/ This last provision seems inconsistent with the Commanders freedom from removal. There is no explanation of what the phrase "qualified cases" means, but Americas Watch has been told that the provision stems from the incident in which Air Force Commander Leigh was removed when all the other members of the Junta arbitrarily determined that there was an unspecified "impediment" preventing him from continuing in his post. (See Transitory Article 20.) Thus, the "qualified cases" language was reportedly added as an "escape clause" from the otherwise complete immunity of the Commanders. Nonetheless as written the Constitution provides both that Commanders may be removed and that they are not subject to removal and does not resolve the discrepancy.



**Article 96(d)** - "seek from authorities and officials of the Administration all the records relating to external and internal security of the State. In such case, the person to whom the petition has been made is obliged to furnish the records, and his refusal shall be punished in the manner established by law . . . ."

**Article 96** also permits the National Security Council to make its opinions public or to keep them confidential as it may determine in its sole discretion.

### **Chapter XII: "Central Bank"**

**Articles 97 and 98** establish a national Central Bank as "an autonomous body" with functions and membership to be determined by an organic constitutional law.

### **Chapter XIII: "Government and Internal Administration of the State"**

**Articles 99 through 115** set forth the powers and duties of regional, provincial and local government. The Constitution specifies that the heads of all regions ("Intendents") and province governors "shall serve at the sole pleasure of the President."

Mayors are appointed by either the President or by regional development councils, which contain the regional Intendent, the governors of provinces within the region, military representatives and representatives of other public and private organizations within the region. A separate law will determine which mayors are appointed by the President and which by the development councils. **(Article 108.)**<sup>2</sup>

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<sup>248/</sup> During the first eight years of the Constitution, however, General Pinochet has the power to "freely appoint and remove Mayors." See Transitory Article 15(A)(2).

## **Chapter XIV: "Amendment of the Constitution"**

Every bill to amend the Constitution requires, in the first instance, the approval of three-fifths of the members serving in each chamber. **(Article 116.)** Within sixty days following the approval of a bill to amend the *Constitution* both chambers of Congress must meet together in a public session and reapprove the bill by a majority of the full Congress. **(Article 117.)** If the President totally rejects the bill, it must be approved by three-fourths of the members serving in each chamber. If it receives such approval the President must promulgate the amendment unless he "should consult the citizenry through a plebiscite." **(Article 117.)**

**Article 118** sets forth special requirements for amending certain parts of the Constitution. First, any bill to modify the norms regarding plebiscites, to diminish the powers of the President or to grant greater powers to Congress absolutely requires the approval of the President. In order to amend provisions in **Chapter I (including Article 8 on class warfare and Article 9 on terrorism), Chapter IV (the Constitutional Tribunal), Chapter X (the Armed Forces) or Chapter XI (the National Security Council)** the bill must be approved by the President in all cases and two-thirds of the members in office in each chamber. However, even after such approval, the bill must be set aside until after the next congressional election. Following such election the Congress must again ratify the bill by two-thirds of the members in office of each branch. At that time, if the President wishes, he may seek the opinion of the citizens through a plebiscite.

### **Transitory Provisions**

The Constitution contains **29 "Transitory" articles** which govern the transition from complete military rule to the structure created by the main text of the Constitution. They govern the first eight year presidential term to be fulfilled by General Pinochet (during which the military Junta acts as the Congress), a yes/no plebiscite on an official government candidate for the next eight year Presidential term, an open election for President one year later if the government candidate loses in the plebiscite and the first congressional elections to be held approximately one year after the presidential plebiscite.

**The Eighth Transitory Article** discusses the four year term for Commanders-in-Chief established by Article 93 of the Constitution. It states that this **four year** limit will not be applied during **the eight year period** following the date on which the 1980 Constitution takes effect (i.e., the four year limit does not apply from March 11, 1981 to March 11, 1989). It goes on to state that the four year term for Commanders-in-Chief "shall commence four years following" March 11, 1989 (emphasis added). Thus, it appears that the four year limit does not begin to run until four years after the end of General Pinochet's term as President. Thus, General Pinochet will have the technical right to serve as Commander-in-Chief for eight years following March 11, 1989.<sup>3</sup>

**The Thirteenth Transitory Article** states that General Pinochet's term as President begins on the day the Constitution comes into effect and lasts eight years.

**The Fourteenth Transitory Article** states that for the eight years following the date on which the Constitution enters in force "General of the Army Augusto Pinochet Ugarte, shall continue as President of the Republic and shall remain in office *through* the end of said term." During this eight year period the Government Junta will be composed of the Commanders-in-Chief of the Army, Navy and Air Force and the Director-General of the Carabineros. It goes on to state, however, that because General Pinochet will be serving as President "he shall not form part of the Government Junta; the General Line Officer of the Army who follows him in seniority shall act, as titular member, in his stead. Nevertheless, the President of the Republic may replace said member at any time with another General Line Officer of his Service in the order of seniority."

**The Fifteenth Transitory Provision** gives General Pinochet the power to decree on his own states of "emergency" and "catastrophe" and to "freely appoint and remove mayors," among other powers.

Under the **Eighteenth Transitory Article** the Government Junta operates by unanimous vote of its members. It exercises the legislative power established under the Constitution and also has the power to issue laws to interpret the Constitution.

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249/ This seems to be the best interpretation of this some what confusing provision. However, others have interpreted it to mean that General Pinochet will serve four years after 1989. An aide to Air Force General Matthei, a Junta member, even insisted in a meeting with the Americas Watch delegation that a new President would have the right to immediately appoint new Commanders-in-Chief.

Pursuant to **the Twenty-First Transitory Article** the Constitution may only be amended by the Government Junta. However, for such amendments to be effective they must be approved by means of a plebiscite convoked by the President.

**The Twenty-Fourth Transitory Article** grants General Pinochet sweeping power to restrict civil liberties if he decides that there is even a "danger of disturbance of internal peace . . . ." Because of the significance of this provision its full text is included:

**TWENTY-FOURTH.** Notwithstanding that prescribed in Article 39, et seq. on the states of exception contemplated by this Constitution, if during the period referred to in the 13th transitory provision [General Pinochet's 1981-89 term as President] acts of violence designed to alter public order occur, or should there be danger of disturbance of internal peace, the President of the Republic shall so declare and he shall have the following powers for a renewable period of six months:

- a) To arrest persons for up to five days in their own homes or in places other than jails. Upon occurrence of terrorist acts of grave consequences, he may extend this period for fifteen (15) additional days;
- b) To restrict the right of assembly and the freedom of information, the latter only with reference to the founding, editing or circulating of new publications;
- c) To prohibit the entry into the national territory or to expel therefrom those who propagate doctrines alluded to in Article 8 of the Constitution, those who are or are reputed to be activists for such doctrines, as well as those who act contrary to the interests of Chile or constitute a danger for internal peace; and
- d) To order the mandatory residence of certain persons in an urban locality of the national territory for a period not exceeding three months.

The President of the Republic shall exercise the powers provided herein through a supreme decree signed by the Minister of Interior, in the form of "By Order of the President of the Republic". The measures adopted by virtue of this provision shall not be subject to any appeal whatsoever, except that of reconsideration thereof by the authority who ordered them.

**The Twenty-Fifth through Twenty-Ninth Transitory Articles** establish the structures and timing for the actual "transition" to the full constitutional structure of the main text, so they are included here in full text. In some

instances in which these articles refer to other provisions the substance of those provisions has been inserted for clarity. Of particular *significance* is the Twenty-Seventh Transitory Article which governs the upcoming Presidential plebiscite. The Council of State, referred to in these articles, is a civilian advisory panel created before the 1980 Constitution was adopted and is effectively controlled by General Pinochet.

**TWENTY-FIFTH.** During the [first eight years after the Constitution takes effect], the National Security Council shall be chaired by the President of the Republic and be joined by the members of the Government Junta, the President of the Supreme Court and the President of the Council of State.

**TWENTY-SIXTH.** The Council of State shall continue in its functions until such time as the Senate is constituted.

**TWENTY-SEVENTH.** The Commanders-in-Chief in office of the Armed Forces and the Director-General of the Carabineros shall unanimously propose to the country, subject to ratification by the citizens, the name of the person who is to assume the post of President of the Republic in the presidential term following [General Pinochet's term as President from 1981 to 1989], who must meet the requirements set forth in Article 25, first paragraph, of this Constitution, and who shall not be subject to the prohibition against reelection in the second paragraph of that same Article. To this effect, they shall meet at least ninety (90) days prior to the date on which the incumbent ends his term. The designation shall be communicated to the President of the Republic for the purpose of convoking a plebiscite.

Should unanimity not have been reached in the 48 hours following the meeting of the Commanders-in-Chief and the General-Director referred to in the previous paragraph, the proposal shall be made [by the National Security Council and the Comptroller-General by a majority vote] and the National Security Council shall communicate its decision to the President for the same purpose as indicated in the previous paragraph.

The plebiscite shall be held not prior to thirty (30) nor after sixty (60) days from the date of the proposal and shall be carried out in the form provided by law.

**TWENTY-EIGHTH.** If the will of the citizens, expressed in the plebiscite, should be to approve the proposal made in accordance with the preceding provision, the President of the Republic thus elected shall take office on the same day on which his predecessor leaves office; he shall be in office for [eight years], and all the precepts of the Constitution shall be applied as follows:

A. The President of the Republic shall, nine (9) months after assuming his post, call for general elections of Senators and Deputies to join the Congress in the manner provided far in the Constitution. The election shall be held not earlier than thirty (30) nor later than forty-five days (45) following its calling and it shall be held in accordance with provisions of the respective organic law.

B. The National Congress shall be installed three months following the calling of elections.

The Deputies of this first Congress shall remain in office three years. The Senators elected by the regions of uneven numbers shall likewise remain three years in office, and the Senators elected by the even-numbered regions and the metropolitan area as well as appointed members shall remain in office for seven (7) years, and

C. The Government Junta shall continue in full exercise of its powers until such time as the National Congress assumes it functions, and the transitory provisions governing the presidential term referred to in the 13th provision shall continue in force.

**TWENTY-NINTH.** It shall be understood that if the citizens should not approve the proposal submitted to plebiscite referred to in the 27th transitory provision, the presidential term referred to in the 13th transitory provision shall be extended, as a matter of law. The incumbent President of the Republic and the Government Junta shall remain in office in accordance with governing provisions, far the term of one more year. Upon completion of this term, all the precepts of the Constitution shall be in full force.

To this effect, ninety (90) days prior to the expiration of the extended period referred to in the above paragraph, the incumbent President shall call for an election for President of the Republic and of congressmen, in accordance with the permanent precepts of this Constitution and of law.