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태국의 2007년 헌법

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태국의 2007년 헌법

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국문 요약

2008년 말, 태국 정국은 여전히 불안하다. 이러한 정쟁의 배후에는 물론 태국의 복잡한 정치, 사회, 경제적 배경이 자리잡고 있지만, 그 최종적인 향방은 언제나 새로운 헌법의 제정으로 귀결되었다는 점이 우리의 관심을 끈다.

이 보고서에는 태국의 헌법에 관한 두 가지의 관점, 즉 한국과 태국의 관점이 담겨 있다. 왜냐하면 이 보고서는 한국의 연구자와 태국의 연구자의 공동연구이며, 따라서 두 논문으로 한 보고서를 이루고 있기 때문이다.

먼저 한국 연구자의 보고서는 1997년헌법의 채택 이래 2006년 군사 쿠데타 발생, 그리고 2007년헌법의 성립까지의 주요한 정치적 과정과 관련된 헌법의 내용을 검토하고 있다. 아울러 현행 헌법인 2007년헌법과 한국 헌법과의 비교를 통해 태국 헌법의 주된 특징을 분석했다. 2007년헌법은 의회의 독립성을 어느 정도 희생하면서도 상원의원 약 반수에 대한 임명제의 도입, 하원의원선거에서의 중선거구제 도입, 총리 및 각료의 하원의원 겸직금지 삭제, 회기 중 정당의 합병 금지 등을 통해 정국의 안정을 도모하려고 시도했다. 그러나 태국 헌법의 지나치리만치 상세한 규정들과 헌법재판소가 국정의 어느 단계에서도 개입할 수 있도록 되어 있는 장치 등은 헌법의 권위에 대한 신뢰와 아울러 헌법의 정치 도구화라는 양면성을 가지고 있다.

다음으로, 태국 연구자의 보고서는 1932년 이래 태국 헌법의 전반적인 역사에 대한 소개와 아울러 2007년 헌법의 제정과정을 상세하게 검토하고 있다. 특히 2007년 헌법 제정의 기본원리를 현행 헌법의 내

용과 함께 구체적으로 제시함으로써 태국 헌법에 대한 이해를 돕고 있다. 마지막으로 최근까지 제기되고 있는 2007년헌법의 개정 움직임과 그 비판에 대해서도 소개하고 있다.

※ 키워드 : 태국, 헌법, 헌법재판소, 의회, 헌법 개정

Abstract

In the end of 2008, the political situation of Thailand still looks unstable. Even though various political, social and economic problems exists in the background of such a political strifes, it attracts our attention that the last outcome always directed the promulgation of new constitution.

This report shows two different viewpoints regarding to the Constitution of Thailand, i.e. Korean and Thai. Because this is a collaborate study consisting of two articles written by Korean and Thai.

The first article reviews the Constitution of Thailand promulgated in 2007 comparing to the Constitution of Korea. Since the change from an absolute monarchy to a constitutional monarchy in 1932, Thailand has been being democratically governed with the King as Head of the State and with the Constitution of the Kingdom of Thailand as the supreme law of the Kingdom. However, during the past seventy-six years, numerous charters and constitutions have since been promulgated and amended. It reflects the high degree of political instability as a result of implementation by the Constitution. The Constitution of 2007, has further more detailed provisions both in quality and quantity comparing to Korea's, and some conditions for the Constitutional Court intervening easier to the political process, and this represents a double-faced dilemma between trusting in the Constitution's authority and politicizing of the Constitution.

The second article is divided into three main parts. The first part explains the process of drafting the Constitution in Thailand. The second part addresses several fundamental principles contained within the current constitution and in particular the commonalities and differences between it and its forebears. A move to change the 2007 Constitution of Thailand has been and faced strong opposition. Thus, in the last part, an overview of those criticism regarding recent proposed constitutional amendments is provided.

※ Key words : Thailand, Constitution, Constitutional Court, National Assembly, Constitutional Amendment

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태국 2007년 헌법의 제정과정과 특징

손희두 (연구위원)

I. 머리말

2008년 말, 태국 정국은 여전히 불안하다. 이번 해만 하더라도 탁신계 신당 PPP(People Power Party: 국민의 힘당) 연립정부 구성(1. 19), 탁신 전 총리 귀국(2. 28), PAD(People's Alliance for Democracy: 시민민주주의연대) 반정부 시위 시작(5. 25), 탁신 전 총리 다시 망명 선언(8. 11), 헌법재판소의 PPP 소속 사막 총리에 대한 위헌판결(9. 9), 헌법재판소의 PPP를 포함한 연정 3당에 대한 해체 및 정치활동 금지명령(12.2) 등 태국은 정국과 관련한 많은 뉴스를 쏟아냈다. 이러한 정쟁의 배후에는 물론 태국의 복잡한 정치, 사회, 경제적 배경이 자리잡고 있지만, 그 최종적인 향방은 언제나 새로운 헌법의 제정으로 귀결되었다는 점이 우리의 관심을 끈다.

태국의 통치구조에서는 군사쿠데타가 성공하게 되면 헌법을 폐지하거나 수정하는 경우가 빈번했으며 군사정권에 의한 포고령으로 헌법을 대신하는 경우도 있었다.¹⁾ 2007년 8월 24일, 태국에서 「불력(佛曆)²⁾ 2550년 타이왕국헌법」(이하 ‘2007년헌법’이라고 한다)이 공포·시행되었다. 2006년 9월 군사쿠데타가 발생한지 약 1년 만의 일이었다. 쿠데타로 인해 「불력2540년 타이왕국헌법」(이하 ‘1997년헌법’이라고 한다)이

1) 변해철, “태국의 민주화와 1997년 헌법개정”, 한국외국어대학교 법학연구소, □□외법논집□□ 제18집, 2005. 2, 20면 참조.

2) 태국의 불력(佛曆, Buddha Era=B.E.)은 석가가 입적한 1년 후인 서력 기원전 543년을 불력 원년으로 하고 있다.

정지되고, 10월에는 「불력2549년 타이왕국임시헌법」(이하 ‘임시헌법’이라고 한다)이 공포·시행되다가 정식으로 헌법이 제정되게 된 것이다.

태국에서는 1932년의 입헌혁명으로 절대왕정으로부터 입헌군주제로 이행한 후, 쿠데타나 임시정권의 수립 등으로 헌법의 제정·개폐가 반복되었기 때문에 2007년헌법은 태국에서 18번째의 헌법이 되었다. 태국의 헌법 제·개정에 관한 자세한 연혁은 <표1>과 같다.

여기서는 1997년헌법의 채택 이래 2006년 군사쿠데타 발생, 그리고 2007년헌법의 성립까지의 주요한 정치적 과정과 관련된 헌법의 내용을 검토해 보기로 한다.³⁾ 아울러 현행 헌법인 2007년헌법과 우리 헌법과의 비교를 통해 태국 헌법의 주된 특징을 살펴보기로 한다.

<표1> 태국 헌법일람

순 번	제·개정 사항
1	* 불력2475(1932)년 삼임시통치헌장(1932.6.27)
2	불력2475(1932)년 삼왕국헌법(1932.12.10) - 헌법개정 ①국명에 관한 개정(1939.10.3) ②경과규정(의회제도)에 관한 개정(1940.10.1) ③하원의원선거에 관한 개정(1942.12.3)
3	불력2489(1946)년 타이왕국헌법(1946.5.9)
4	불력2490(1947)년 타이왕국헌법(1947.11.9) - 헌법개정 ①경과규정(하원의원선거)에 관한 개정(1947. 12.5) ②헌법기초의회 설치에 관한 개정(1948.1.23) ③헌법기초의회의원 특권에 관한 개정(1948.8.20)

3) 각주로 특별히 언급하지 않은 내용은 遠藤聰, “2007年タイ王國憲法の制定過程とその成立”, 國立國會圖書館調査及び立法考査局, □□外國の立法□□ 235, 2008. 3의 내용과 각종 인터넷 자료들을 참조하였다.

순 번	제·개정 사항
5	불력2492(1949)년 타이왕국헌법(1949.3.23) - 2494년 12월 6일부 불력2475년헌법의 적용에 관한 칙령(1951.12.6)
6	불력2475년헌법개정 불력2495(1952)년 타이왕국헌법(1952.3.8) - 2500년 9월 18일부 동 헌법의 적용에 관한 포고(1957.9.18)
7	*불력2502(1959)년 왕국통치헌장(1959.1.28)
8	불력2511(1968)년 타이왕국헌법(1968.6.20)
9	*불력2515(1972)년 왕국통치헌장(1972.12.15)
10	불력2517(1974)년 타이왕국헌법(1974.10.7) - 헌법개정 ①상원의원 임명에 관한 개정(1975.1.19)
11	불력2519(1976)년 타이왕국헌법(1976.10.22)
12	*불력2520(1977)년 왕국통치헌장(1977.11.9)
13	불력2521(1978)년 타이왕국헌법(1978.12.22) - 헌법개정 ①하원의원선거에 관한 개정(1985.8.8) ②국회의장에 관한 개정(1989.8.24)
14	*불력2534(1991)년 왕국통치헌장(1991.3.1)
15	불력2534(1991)년 타이왕국헌법(1991.12.9) - 헌법개정 ①~③국회의장 등에 관한 규정(1992.6.29) ④총리의 자격에 관한 개정(1992.6.29) ⑤상원정수, 유권자연령 등에 관한 개정(1995.2.10) ⑥헌법개정절차에 관한 개정(1996.9.27)
16	불력2540(1997)년 타이왕국헌법(1997.10.11) - 헌법개정 ①국가부패방지위원회에 관한 개정(2005.7.11)
17	*불력2549(2006)년 타이왕국헌법(임시)(2006.10.1)
18	불력2550(2007)년 타이왕국헌법(2007.8.24)

II. 2006년 군사쿠데타와 헌법

태국은 1990년대 민주화운동의 결과로 제정된 1997년헌법은 초기에는 비교적 안정되게 운영되었다. 1997년헌법 제정 후 최초의 하원의 원선거에서 선출된 하원의원 과반수의 찬성으로 총리지명자를 선출하고, 이를 국왕이 총리에 임명함으로써 과거 쿠데타에 성공한 군부지도자를 총리에 임명하던 관행에서 벗어나 선거를 통한 민주적 정권교체라는 새로운 관행이 형성되기 시작한 것이다.⁴⁾ 그러나 2001년 제23대 총리로 취임한 탁신 치나왓(Thaksin Shinawatra)이 2005년 총선에서 다시 압도적으로 승리하고 재집권하면서 터져나온 선거부정 및 부정부패 의혹은 다시 정치적 불안정을 불러 일으켰다.

2006년 9월 19일, 손티 분야랏글린(Sonthi Boonyaratgalin) 육군사령관을 의장으로 하는 「입헌군주제하의 민주개혁평의회」(The Council for Democratic Reform under Constitutional Monarchy=CDR, 이하 ‘민주개혁평의회’라 한다)에 의한 쿠데타가 발생하여 탁신 정권이 붕괴됨과 동시에 1997년헌법이 정지되었다. 손티 의장은 프렘 틴술라난다(Prem Tinsulananda) 추밀원 의장, 수라웃 출라농(Surayud Chulanont) 추밀원 의원과 함께 푸미폰 아둔야뎃(Bhumibol Adulyadej) 국왕을 알현하여 국왕이 이 사태를 용인하였다.

2006년의 쿠데타는, 1997년헌법 아래 2005년 2월 실시된 하원의원총선거에서 태국애국당(Thai Rak Thai Party=TRT)이 대승을 거두어 제2차 탁신정권이 성립된 후, 탁신 총리의 권위주의적 정치행태와 친족의 부정의혹 등에 대한 국내의 비판이 높아진 것으로부터 출발하였다. 2006년 4월 2일 실시된 하원의원총선거가 5월 8일 헌법재판소에 의해 무효로 재정되어 10월 15일에 재선거가 실시되게 되었다. 이런

4) 변해철, “2007년 태국헌법과 헌법재판”, 한국외국어대학교 법학연구소, □□외법논집□□ 제31집, 2008. 8, 64면 참조.

가운데 전술한 바와 같이 9월 19일 『입헌군주제 하의 민주개혁』이라는 이름 아래 군부에 의한 쿠데타가 발생한 것이다. 쿠데타 발생시 태국에서는 평온함이 감돌았다고 한다.

2006년 10월 1일에는 39개조로 된 임시헌법이 공포·시행되고, 전 육군사령관인 수라웃 추밀원 의원이 임시총리에 취임했다. 같은 날, 민주개혁평의회는 『국가안전보장평의회』(Council for National Security=CNS)로 명칭을 바꾸었다. 임시헌법은 신헌법 제정과정의 절차를 규정하는 것임과 동시에 그 과정에 있어서 국가안전보장평의회의 권한을 보장하는 것이었다.

임시헌법 하에서 2007년 1월 8일 헌법기초회의(Constitution Drafting Assembly=CDA)의 제1차회의가, 1월 25일에는 헌법기초위원회(Constitution Drafting Committee=CDC)의 제1차 위원회가 개최되었다. 그 후, 4월 18일 헌법기초위원회가 299개조로 된 『제1차 헌법초안』을 공포하고, 7월 6일 헌법기초회의가 309개조로 된 『최종헌법초안』을 승인하였다. 8월 19일, 신헌법 제정의 가부를 묻는 국민투표가 실시되고, 이 초안은 과반수의 찬성을 얻어 승인되었다(투표율은 57.61%이고, 찬성이 56.68%). 8월 24일, 푸미폰 국왕의 서명을 얻어 2007년헌법이 공포·시행되었다.

III. 1997년헌법의 정지

1. 1997년헌법과 탁신정권

1997년 10월에 공포·시행된 1997년헌법은 1992년 발생한 『5월유혈사건』을 계기로 하여 『불력2534년타이왕국헌법』(이하 ‘1991년헌법’이라고 한다) 대신에 의회제민주주의의 진전과 안정을 목적으로 제정되었다.⁵⁾

5) 이 1997년헌법은 1997년 경제위기를 기점으로 개혁지향적 민주세력의 입지가 확

1991년 2월, 수친다 크라프라운(Suchinda Kraprayoon) 육군사령관을 부단장으로 하는 『국가질서유지단』(National Peace Keeping Command=NPKC)의 쿠데타에 의해 차티차이 춘하반(Charthchai Chunhavan) 정권이 붕괴하고, 전 외교관인 아난 판야라춘(Arnan Panyarachun)을 총리로 하는 임시정부가 수립되었다. 그 후, 같은 해 12월 1991년헌법의 공포·시행, 1992년 3월 하원의원총선거를 거쳐, 4월 7일 육군사령관(총리 취임에 즈음하여 퇴역)이었던 앞의 수친다가 총리에 임명된 것에 대해 반정부운동이 발생하였고, 그 후 5월 17일부터 20일까지 수도 방콕에서 군과 경찰사이에 충돌사건이 발생했다. 이것이 사망 40명, 부상 600명 이상의 희생자를 낸 참사가 되어 『5월 유혈사건』이라고 불리고 있다.

이 사건은 5월 20일 푸미폰 국왕이 수친다 총리와 반정부운동의 지도자였던 잠롱 스리무앙(Chamlong Srimuang) 전 방콕시장을 배알하게 하여 화해를 요청함으로써 끝이 났다. 이 때의 영상이 TV로 방영되었기 때문에 그 후 2006년 9월의 쿠데타 발생에 이르는 정치적 혼란기에 『국왕조정』의 영상이 태국사회 가운데 다시 요구되게 되었다. 태국에서는 1991년헌법, 1997년헌법, 후술할 임시헌법, 2007년헌법에 있어서 다음과 같은 규정이 똑같이 규정되어 있어 국왕의 정치개입이 정당화되는 근거가 되었다.⁶⁾

“어떠한 사안에 관하여 본 헌법에 적용해야 할 규정이 없는 경우 관련 사안은 국왕을 원수로 하는 민주정체(democratic regime of government

대되면서 제정되어 『국민의 헌법(people's constitution)』이라고도 불린다. 송경아, “민주적 제도, 비민주적 정치, 군사쿠데타: 태국의 정치현실을 통해 본 신생민주주의의 제도적 역설”, 서강대 동아연구소, □□동아연구□□ 제53집, 2007. 8, 222면 참조.

6) 이처럼 태국 국왕의 정치적 역할은 1932년 이후 도입된 입헌군주제의 이성적, 법적 정통성이 취약한 정치적 환경 및 태국의 오랜 국왕에 대한 존경과 희망에서 기인된 것이라고 할 수 있다. 태국인들은 전통적으로 법의 실행능력을 이상적인 통치자가 갖추어야 할 가장 중요한 자질로 인식하여 왔으며, 이를 갖춘 통치자를 담마라자(Dhammaraja)라고 불렀다. 김홍구, “입헌군주제하에서의 태국국왕의 카리스마(charisma)와 정치적 역할 - 푸미폰국왕을 중심으로”, □□한국태국학회논총□□ 7권, 한국태국학회, 1998. 9, 140면 참조.

with the King as Head of the State)의 헌정관습(constitutional practice)에 따라서 판단하는 것으로 한다(2007년헌법 제7조).”

이 사건을 계기로 하여 1991년헌법 개정 움직임이 높아졌고, 사건 후인 1992년 6월에는 국회의장을 상원의장으로부터 하원의장으로 변경하는 등의 개정이, 같은 해 9월에는 총리는 하원의원이 아니면 안 된다고 하는 규정의 추가가, 1995년 2월에는 유권자연령을 20세로부터 18세로 인하하는 등의 개정이 이루어졌다. 1996년 12월에는 1991년헌법의 헌법개정규정이 개정되었고, 직선의원(각 주 1인, 계 76인), 국회임명의원(23인)으로 구성되는 헌법기초회의(99인)에 의한 헌법기초작업이 1997년 1월부터 8월까지 진행되었다. 이 헌법초안은 9월에 국회에서 승인되었고, 10월에 국왕의 서명을 얻어 1997년헌법이 공포·시행되게 된 것이다.

헌법 개정시에는 특히 부패로 인한 체제의 투명성의 결여(선거부정, 부패방지제도 결여, 부패정치인 처벌을 위한 정치적·법적 절차의 비효율성 등), 민간정부의 불안정성 및 정치제도의 비효율성이 개선의 대상으로 강조되었다. 결과적으로 이 헌법은 부패방지를 위해 국가부패방지위원회 설립, 공직자 재산등록, 각료급 이상의 재산공개, 민주화를 위해 5만 명 이상의 유권자가 탄원 시 부패혐의 조사, 하원 소선거구제 및 전국비례대표제 도입, 상원의 직선제 도입, 학사 이상의 학력 소지자에 대한 피선거권 부여, 독립적인 선거관리위원회 구성, 하원에 대한 상원의 견제기능 부여, 정부와 입법부 통제를 위한 독립된 헌법재판소와 행정법원의 설치, 인권위원회 설치, 지방분권화 등을 주요 내용으로 하고 있다.⁷⁾

1997년헌법에 있어서는 국회에 관하여 당시까지의 직선제의 하원, 칙선제(勅選制)의 상원으로 구성되는 이원제(二院制)로부터 양원 모두 직선제로 된 이원제로 바뀌었다. 하원은 총정수 500, 임기는 4년, 상

7) 변해철, “태국의 민주화와 1997년 헌법개정”, 4~5면 참조.

원은 총정수 200, 임기는 6년으로 되었다. 하원의원은 정당소속이라야 되도록 되어 정당정치의 확립을 도모하는 한편, 상원의원에게는 정치적 중립성이 요구되어 정당에 대한 소속은 인정되지 않았다.

의원내각제에 관하여는, 첫째, 하원의원선거를 그때까지의 중선거구제로부터 소선거구(정수 400)·비례대표(정수 100, 전국구) 병립제로 바꾸어 당시까지의 중소정당에 의한 연립정권으로부터 대정당을 중심으로 하는 정권 하에서의 정국안정화를 도모하였다. 한편, 상원의원선거는 주(Changwat)를 선거구로 하였다(76개주). 둘째, 총리 임명의 절차가 명확하게 되었다. 1991년헌법에 있어서도 전술한 바와 같이 1992년 9월 개정에서 총리는 하원의원이라야 한다고 규정되어 있었지만 그 임명절차가 명확하지는 않았다. 1997년헌법에서 하원에 의한 총리 임명절차가 명확화되어 총리의 임명에는 하원의원 총수의 과반수 찬성이 필요하도록 정해졌다.

1997년헌법은 과거 그 어느 헌법보다 입법부(하원)의 권한이 강화되었고, 권력분립의 제도적 정착이 어느 정도 이루어졌다고 볼 수 있다. 동시에 각료와 의원의 겸직금지규정을 통해 의회와 정부의 독립성을 제도적으로 보장하고 있다.⁸⁾

이처럼 정당정치를 기반으로 한 의회제민주주의 진전을 의도했던 1997헌법 하에서의 최초의 하원의원총선거가 2001년 1월 실시되었다. 결과는 탁신 당수의 풍부한 자금력을 배경으로 1998년 7월 결성된 태국애국당의 압승이었다. 태국애국당은 소선거구 201의석(정수 400), 비례대표 48의석(정수 100), 총의석 249(총정수 500)를 획득함과 동시에 선거 후에 다른 당과 연립을 형성하여 여당 339의석을 보유하는 제1차 탁신정권이 성립되었다. 그 후, 태국애국당은 다른 여야당과의 합병을 하여 2003년 1월에는 태국애국당이 295의석, 연립여당이 365의석을 보유하기에 이르렀다. 2005년 2월에 실시된 하원의원총선거에서

8) 변해철, “태국의 민주화와 1997년 헌법개정”, 20면 참조.

는 태국애국당이 소선거구 310의석, 비례대표 67의석, 총의석 377을 획득하여 태국에서는 최초로 단독여당에 의한 제2차 탁신정권이 성립되었다.

2. 반탁신운동의 전개

태국애국당이 1997년헌법 아래에서 선거에 의한 단독정권을 성립시킬 수 있었던 것은 대정당에 유리한 선거제도와, 선거 후에 정당간의 합병이 허용되는 법환경의 존재에 의한 것이다. 그러나 탁신 총리가 추진하던 농촌정책, 빈곤대책 등의 포퓰리즘 정책과 총리가 가진 리더십이 많은 국민의 지지를 모았다는 점도 또한 확실했다. 하지만 2006년에 들어 반탁신운동이 커다란 전개를 보이게 되었다.

2006년 1월 23일 탁신 총리 일가가 소유하는 정보통신기업 신 코포레이션(Shin Corporation)의 주식이 싱가포르정부계투자회사에 매각되었다는 것이 공표되고, 그 후 주식매각에 관한 과세, 외자규제에 대한 부정행위가 행해졌다는 의혹이 일었다. 2월 4일 방콕에서 5만명 규모의 집회가 개최되는 등 총리 퇴진 요구가 높아지는 가운데, 2월 24일 총리는 “국민에게 신임을 묻는다”고 하면서 하원을 해산시켰다.

하지만 2월 27일, 야당인 민주당(Democratic Party=DP, 해산시 의석 96), 태국국민당(Chatthai Party=CTP, 해산시 의석 25), 공중당(Mahachon Party=MCP, 해산시 의석 2)이 총선거 보이콧을 표명함과 동시에 전술한 잠룡 전시장도 참가한 『시민민주주의연대(PAD)』를 중심으로 한 총리 퇴진요구 데모와 집회가 반복되었다. 3월 25일에는 방콕에서 10만명 규모의 집회가 개최되기에 이르렀다. 이러한 반탁신운동 가운데에는 총선거에서 『백지투표』를 하도록 요청받기도 했다. 『1998년 하원 의원 및 상원위원의 선거에 관한 기본법』에서는 아래와 같이 규정한 것이 있었기 때문이다.

첫째, 이 법에는 하원의원총선거의 투표용지에 관하여 소선거구선거의 경우에는 「지지정당없음」, 비례대표선거의 경우에는 「지지정당없음」이라는 란을 두도록 규정하고 있었다(제51조). 둘째, 소선거구선거의 당선요건에 관하여 입후보자가 1명인 선거구에 있어서는 유권자총수의 20%의 득표가 필요하고, 당선요건에 미치지 못한 선거구에서는 재선거를 실시하도록 규정되어 있었다(제74조). 즉, 주요 야당이 총선거를 보이콧하면 태국애국당의 후보자 1명뿐인 소선거구가 다수가 되어 「지지후보자없음」을 포함한 「백지투표」에 의해 태국애국당의 후보자를 낙선시키는 것이 가능했다. 한편, 비례구에서는 총투표수의 5% 이상의 득표가 당선요건으로 되어있다(제76조).

4월 2일 실시된 하원의원총선거에서는 비례구에 있어서는 태국애국당이 전의석인 100의석을 독점했지만(득표율 56.5%) 백지투표가 31.1% 있었고, 소선거구에 있어서는 359의석을 획득했지만 규정득표수에 못미친 선거구가 38선거구로 백지투표가 태국애국당 후보자의 득표를 웃돈 선거구가 78선거구에 달했다. 야당을 중심으로 한 선거 보이콧운동이 계속되는 중 후보자가 입후보자격요건을 갖추지 못해 선거를 실시하지 못한 2선거구를 포함한 40소선거구에서의 재선거가 4월 23일 실시되었지만 14선거구에서 의석이 확정되지 않았다. 이 때문에 4월 29일 재재선거가 실시되게 되었다.

이런 가운데 4월 25일 푸미폰 국왕이 최고재판소 판사와 행정재판소 판사의 취임선서식 때 총선거의 유효성을 의심하는 발언을 하고 나서부터 헌법재판소, 최고재판소, 행정재판소의 세 사법기관에 의한 심리가 개시되었다. 이 때문에 재재선거는 실시되지 못했다. 5월 8일, 헌법재판소는 8대 6의 다수의견으로 선거무효의 재정을 내렸다. 그 이유로서, ①선거기간이 정권당에 유리하게 설정된 것, ②투표의 비밀이 지켜지지 않은 것, ③1후보자만의 선거구가 되지 않도록 하기 위해 대정당이 소선거구에 소정당 소속 후보자를 입후보시킨 의혹이 있

는 것, ④선거관리위원회에 의한 선거결과의 검증이 불충분했던 것 등을 들고 있다. 이렇게 해서 하원의원총선거의 재선거가 10월 15일 실시되게 되었다.

여기서 문제가 되는 것은 정치적 공백, 혼란기간이 장기화한 것이다.

첫째, 하원이 해산된 2월 24일부터 10월 15일까지의 기간동안 하원 의원이 부재하게 되었다.

둘째, 하원의 해산과 함께 1997년헌법의 규정에 따른 내각이 총사직 하였다. 1997년헌법에 있어서도 후술하는 2007년헌법에 있어서도 하원의원총선거 후의 국회에서 새로운 총리와 각료가 임명되고, 그 직무에 취임하기까지의 기간은 총사직한 내각이 계속하여 직무를 수행 하도록 되어 있다. 즉, 총리와 각료는 「임시」의 신분이었다.

셋째, 4월 2일 총선거 후의 혼란 중인 4월 4일 푸미폰 국왕 알현 후 탁신 총리는 공무휴양을 선언하고 치차이 완사디트(Chidchai Wannasathit) 부총리를 총리대행으로 지명함과 동시에, 자신은 새 국회에서 총리 지명을 받지 않을 것을 표명했다. 그럼에도 불구하고 탁신 총리는 5월 22일 공무에 복귀했다.

넷째, 임기만료와 함께 4월 19일 실시된 상원의원 선거 후 헌법 규정에서는 새로이 선출된 상원의원으로 구성된 상원만으로도 국회를 개회할 수 있었으나 실제로는 국회가 개회되지 않는 상황이 계속되었다.

다섯째, 헌법재판소가 7월 13일 태국애국당과 민주당 등 다섯 정당에 대해 총선거의 후보자 옹립을 둘러싼 매수용의로 해당(解黨)권고의 심리를 개시할 것을 결정했다. 1997년헌법에서는 총선거에서의 입후보 시에 투표일 이전 90일 이상의 정당소속기간이 요구되었기 때문에 10월 15일의 재선거 전에 해당명령이 내려진 당의 당원에게는 그 선거에 대한 입후보가 인정되지 않을 가능성이 생겼다.

이러한 시기에 태국에서는 푸미폰 국왕의 재위 60주년 기념식이 6월 12일 개최되었기 때문에 국민 사이에는 국왕에 대한 존경의 분위기가

고양되어 있었다. 이런 가운데, 6월 29일 각료회의에서 탁신 총리의 “헌법을 초월한 카리스마적 인물이 정치에 개입하고 있다”고 한 발언이 주목을 받았다. 이것은 전술한 프렘 추밀원 의장을 가리키는 발언으로 보였으나, 간접적으로는 국왕을 비판하는 발언으로도 볼 수 있었다. 한편, 프렘 의장은 전 육군사령관이었고, 1980년 3월부터 1988년 8월까지 총리를 지낸 바 있다.

3. 군사쿠데타와 임시헌법

2006년 9월 19일, 손티 육군사령관을 의장으로 하는 민주개혁평의회가 쿠데타를 감행했다. 20일에 UN총회에서 연설하기 위해 뉴욕에 체재하고 있던 탁신 총리는 19일 현지에서 비상사태를 선언하고 손티 사령관의 해임을 발령했으나 동 평의회는 그것을 무효라고 선언했다. 같은 날, 탁신은 런던으로 향했다. 다음날 20일 새벽, 손티 사령관 등은 푸미폰 국왕을 알현했다. 후에 이 알현 사진이 공개된 것 때문에 이 쿠데타가 ‘국왕의 승인’ 하에 일어났다고 태국국민 대다수가 해석하게 되었다.⁹⁾

쿠데타 다음 날인 9월 20일에 나온 민주개혁평의회 성명 요지는 아래와 같다.

- 태국에 있어서 정치적 신뢰의 결여, 정치적 혼란, 국민 사이의 불화를 종식시키는 것은 현 헌법에 따른 개혁프로세스로는 불가능하다.
- 국왕을 원수로 하는 민주주의를 수행하는 것이 곤란한 상황이었다.
- 평의회는 나라의 평화, 안전, 사회정의를 회복시킬 책무를 지닌다.

9) 태국의 현대 정치는 헌법 제정, 정당 결성, 총선 실시, 의회정치 개막, 밀월시대, 정치적 위기, 쿠데타 등의 상황이 지속적으로 반복되는 악순환구조를 보인다. 송경아, 앞의 논문, 227면 참조.

- 평의회는 2주일 이내에 임시헌법을 제정하고 문민 총리의 내각을 발족시키며, 신헌법초안기초를 위한 입법기관을 설치하고 조기에 총선거를 실시한다.

이처럼 동 평의회에 의한 쿠데타는 혼미한 정치상황을 타파하고 입헌군주제 하에서의 민주주의를 재건하는 것이 목적이었다.

10월 1일, 민주개혁평의회는 임시헌법을 공포·시행하고, 임시총리에는 전술한 수라웃 추밀원 의원이 임명되었다. 같은 날, 동 평의회는 국가안전보장평의회로 개칭되었다. 수라웃 임시총리는 1998년 10월부터 2002년 9월까지 육군사령관을, 2002년 10월부터 2003년 9월까지 국군최고사령관을 지낸 후 정년퇴임하고, 2003년 11월부터 추밀원 의원으로 일하고 있었다. 이 인선에 있어서는 ‘퇴역군인’은 ‘문민’으로 보았다.

임시헌법은 39개조로 되어 있고, 국정에 관하여 국가안전보장평의회의 권한이 보장되어 있었다. 입법기관, 행정기관, 사법기관, 국가안전보장평의에 관한 규정은 아래와 같다.

(1) 입법기관에 관한 규정

- 국왕이 임명하는 250인 이하의 의원에 의해 국가입법의회(National Legislative Assembly=NLA)를 설치한다(제5조).
- 국가입법의회는 하원, 상원 및 국회로서 기능한다(같은 조).
- 국가안전보장평의회 의장은 국가입법의회 의원, 의장 및 부의장을 임명하는 칙령에 부서한다(제7조).
- 국왕은 국가입법의회 의원 조안 및 동의를 얻어 법률을 제정한다(제10조).
- 법안은 25인 이상의 국가입법의회 의원 또는 내각에 의해 제출된다(같은 조).
- 예산관련 법안제출권은 내각만이 가진다(같은 조).

- 나라의 치안 및 안전, 국제경제의 안정을 유지하고, 공공의 참화를 막기 위하여 국왕은 법과 동등한 효력을 가진 비상사태직령을 발령한다(제15조).
- 국왕은 법에 반하지 않는 한 국왕령을 발령하는 대권을 갖는다(제16조).

(2) 행정기관에 관한 규정

- 국왕은 국정의 운영을 수행하는 임무를 가진 내각을 구성하는 총리 및 35인 이하의 각료를 임명한다(제14조).
- 국왕은 국가안전보장평의회 의장의 조언에 의해 총리를 파면하는 대권을 갖는다(같은 조).
- 국왕은 총리의 조언에 의해 각료를 파면하는 대권을 갖는다(같은 조).
- 국가안전보장평의회 의장은 총리를 임명하고 파면하는 칙령에 부서한다(같은 조).
- 총리 및 각료는 국가입법의회 의원, 헌법기초회의 의원 및 헌법기초위원회 위원을 겸무할 수 없다(같은 조).
- 총리 및 각료는 국가입법의회에 출석하여 사실 및 의견을 진술할 권리를 가지나 투표할 권리는 가지지 않는다(같은 조).

(3) 사법기관에 관한 규정

- 재판관은 국왕의 이름에 있어서 독립이며, 법률 및 이 헌법에 따라서 공정하게 재판 및 판결을 해야 한다(제18조).

(4) 국가안전보장평의회에 관한 규정

- 불력2549년(2006년) 9월 19일부터 이 헌법이 공포되기까지의 기간에 민주개혁평의회 또는 민주개혁평의회 지도자에 의해 발령

된 모든 성명 및 명령은 입법, 행정 및 사법의 장에 있어서 유효하다(제36조).

- 나라의 안전 및 공공의 질서를 유지하기 위하여 불력2549년(2006년) 9월 29일부로 민주개혁평의회 성명 제24호에 의해 국가안전보장평의회를 설치한다(제34조).
- 국가안전보장평의회 의장은 15인 이하의 평의회 의원을 임명한다(같은 조).
- 국가안전보장평의회 의장 및 총리는 나라의 안전 및 공공의 질서유지를 목적으로 하는 협의를 위해 국가안전보장평의회와 내각과의 합동회의의 개최를 요구할 수 있다(같은 조).

IV. 2007년헌법의 제정과정

1. 헌법제정기관

『국회』의 기능을 대행하는 국가입법의회와는 별도로 임시헌법은 신헌법 제정의 임무를 지는 기관으로서 국민회의(National Convention=NC), 헌법기초회의, 헌법기초위원회를 설치한다. 이들 기관의 의원·위원의 임명에 있어서도 국가안전보장평의회와 권한이 보장되고 있다.

(1) 국민회의

- 국민회의는 국왕이 임명하는 2,000인 이하의 의원으로 구성된다(제20조).
- 국가안전보장평의회 의장은 국민회의의원을 임명하는 칙령에 부서한다(같은 조).
- 국민회의는 제1회 회의 개최 후 7일 이내에 동 회의 의원 중에서 국왕의 임명에 의해 헌법기초회의 의원이 될 후보자 200인을 선출한다(제22조).

(2) 헌법기초회의

- 헌법기초를 위해 국왕에 의해 임명되는 100인의 의원으로 구성되는 헌법기초회의를 설치한다(제19조).
- 국가안전보장평의회 의장은 헌법기초회의의 의장 및 부의장을 임명하는 칙령에 부서한다(같은 조).
- 현재 또는 과거 2년간에 정당에 소속하고 있는 자는 헌법기초회의 의원이 될 자격을 가지지 못한다(같은 조).
- 국가안전보장평의회는 국민회의가 선출한 후보자 가운데 국왕의 임명에 의해 헌법기초회의 의원이 될 의원 100인을 선출한다(제23조).
- 국가안전보장평의회 의장은 헌법기초회의 의원을 임명하는 칙령에 부서한다(같은 조).

(3) 헌법기초위원회

- 헌법기초회의는 동 회의 의원인지 아닌지에 관계없이 헌법기초위원회 위원 25인을 임명한다(제25조).
- 헌법기초회의는 동 회의 의원인지 아닌지에 관계없이 국왕령에서 규정한 규칙 및 절차를 지켜 국가안전보장평의회 의장의 조언에 따라 헌법기초위원회 위원 10인을 임명한다(같은 조).

2. 헌법제정절차

임시헌법에 있어서 헌법의 기초 및 제정에 관한 절차는 아래와 같다.

(1) 헌법기초위원회에서의 기초

- 헌법기초위원회는 헌법기초과정에 있어서 새로운 헌법초안와 불력2540년(1997년)타이왕국헌법과의 상위(相違)에 대하여 아래의

기관에 보고서를 제출한다. 국가안전보장평의회, 국가입법의회, 내각, 최고재판소, 최고행정재판소, 선거관리위원회, 국가부패방지위원회, 국가회계검사위원회, 옴부즈만, 국가인권위원회, 국가경제사회자문회의, 고등교육기관(제26조).

- 헌법기초위원회는 헌법초안을 헌법기초회의에 제출한다(같은 조).

(2) 헌법기초회의에서의 초안 완성

- 헌법기초회의는 제1회 회의 개최 후 180일 이내에 헌법초안을 완성시킨다(제29조).
- 헌법기초회의는 헌법초안 완성 후 동 초안을 홍보한다(같은 조).
- 헌법초안이 헌법기초회의에 의해 홍보된 후 15일 이상 30일 이내에 초안 전체의 찬반을 묻는 국민투표를 실시한다(같은 조).

(3) 국민투표

- 국민투표에서 헌법초안이 과반수의 찬성을 얻은 경우 국가입법의회가 동 초안을 국왕에게 상주한다(제31조).

(4) 국왕에 의한 공포

- 국왕에 의한 서명 후 신헌법은 관보에 의해 공포된다(같은 조).

(5) 국회의원선거를 위한 법제화

- 헌법기초위원회는 헌법초안이 국가입법의회에 제출되고나서 45일 이내에 선거실시에 필요한 기본법 초안을 작성한다(제30조).
- 국가입법의회는 헌법기초위원회로부터 선거관련 기본법초안을 받고나서 45일 이내에 모든 수속을 마친다(같은 조).
- 이익충돌을 막기 위해 헌법기초위원회 위원은 동 위원회의 임기가 종료하고 2년간은 하원의원 선거 또는 상원의원 선거에 입후

보하는 것이 인정되지 않는다(같은 조).

(6) 신헌법이 작성·승인되지 않은 경우

- 헌법기초회의가 헌법초안을 작성할 수 없는 경우, 헌법기초회의가 헌법초안을 승인하지 않는 경우, 또는 국민투표에서 헌법초안이 거부된 경우는 헌법기초회의는 기능을 정지하고, 국민투표 일로부터 30일 이내에 국가안전보장평의회가 내각과 합동회의를 개최하여 당시까지 공포된 적이 있는 헌법을 개정하고, 동 개정 헌법을 국왕에게 상주하여 헌법의 공포를 위한 국왕의 서명을 구한다(제32조).

3. 제1차 헌법초안

임시헌법의 공포·시행 후 동 헌법의 규정에 따라 2006년 12월 14일 국민회의의 의원 1,982인이 임명되고, 12월 18일 그 중에서 헌법기초회의 의원의 후보 200인이 선출되었다. 2007년 1월 2일에는 국가안전보장평의회가 후보 중에서 헌법기초회의 의원 100인을 선출하고, 1월 8일 제1회 회의가 개최되었다. 1월 15일 헌법기초회의는 동 회의가 고른 헌법기초위원회 위원 25인을 임명하고, 1월 19일 국가안전보장평의회 의장의 조언에 기초하여 동 위원 10인을 임명했다. 이렇게 해서 35명으로 된 기초위원회에 의한 기초작업체제가 정비되어 1월 25일 제1회 위원회가 개최되었다.

4월 18일 헌법기초위원회가 299개조로 된 제1차 헌법초안을 공포했다. 입헌군주제 하에서의 민주주의를 추진하는 것이 신헌법 제정의 목적으로 되어 있었기 때문에 그 초안에는 입헌군주제에 관한 규정, 총리의 권한에 관한 규정, 하원의원 및 상원의원에 관한 규정이 주목을 끌었다.

(1) 입헌군주제에 관한 규정

국왕, 추밀원, 섭정, 왕위계승 등에 관한 규정에 대해서는 1997년헌법과의 차이는 없다. 예를 들면, 국왕에 관해서는 아래와 같은 규정이 들어있다.

- 국왕은 존경받는 신성한 지위에 있으며, 누구도 이것을 침범할 수 없다(제8조).
- 누구도 국왕에 대한 문책 또는 소송을 제기하는 것이 허용되지 않는다(같은 조).
- 국왕은 불교도이며, 종교의 수호자이다(제9조).
- 국왕은 태국군대 원수의 지위에 있다(제10조).

태국에서는 헌정사상 국왕은 불교도이라는 것이 정해져 있으나, 신앙의 자유를 보장하는 의미에서도 국왕이 그 외의 종교를 포함한 종교의 수호자라는 것이 정해져 있다. 인구의 약 95%가 불교도(거의가 상좌불교)¹⁰⁾이나 국교는 정해져 있지 않다. 이 초안에서는 종교에 관하여 1997년헌법과 같이 아래와 같은 규정을 두었다. 후술하는 최종 헌법초안에서는 불교에 관한 기술이 부가되어 있다.

- 국가는 불교 및 다른 종교를 옹호하고 보호하며, 덕(virtue)의 육성 및 사회생활의 질적 발전을 위하여 종교의 교의를 이용하는 것을 장려함과 동시에 모든 종교의 신도 간에 좋은 이해 및 조화를 촉진시켜야 한다(제78조).

10) 불교에는 크게 남전(南傳)과 북전(北傳)의 두 흐름이 있다. 남전은 인도에서 스리랑카로 전해져, 그곳을 근거로 하여 동남아시아 여러 나라로 퍼졌다. 북전은 인도에서 서역을 거쳐 중국으로 전파되고, 다시 한국을 거쳐 일본에 전해졌다. 전자를 남방불교 혹은 상좌불교(上座佛敎, Theravada)라 하고, 후자를 북방불교 혹은 대승불교(大乘佛敎, Mahayana)라고 부른다. 상좌불교를 소승불교라고도 하나 엄격히 말하면 소승불교와는 다르다.

(2) 총리에 관한 규정

총리에 관한 규정에 있어서는 다음의 두 가지 사항이 주목된다. 첫째는 내각의 직무수행에 있어 연대책임(joint responsibility)원칙을 명기한 것, 둘째는 총리의 임기를 연속 2기 또는 8년까지로 제한한 것이다. 이에 관한 규정은 아래와 같다.

- 국왕은 연대책임의 원칙에 의해 국정 운영을 수행하는 임무를 가진 내각을 구성하는 총리 및 35인 이하의 각료를 임명한다(제 167조).
- 총리는 연속 2기 또는 8년을 초과하여 그 직을 맡을 수 없다(같은 조).

(3) 하원의원에 관한 규정

1997년헌법에서는 하원은 선거구선출 400인(소선거구), 비례대표선출 100인(전국구)으로 된 하원의원 500인으로 구성되었다.

제1차 초안에서는 선거구선출 320인, 비례대표선출 80인(전국 4선거구, 정수 각 20)의 하원의원 총수 400인으로 되었다(제91조, 제92조). 선거구선출의원의 선거구의 분할에 관하여는 새로이 제정하는 「하원의원의 선거 및 상원의원의 선출에 관한 기본법」에 따르도록 되어(제 92조) 1선거구당 의원정수는 명확히 규정되지 않았으나 중선거구제의 채용이 예상되는 부분이었다.

하원의원의 임기에 관하여는 1997년헌법과 같은 4년이었다. 또한, 1997년헌법에서는 하원의원의 자격요건으로서 정당에 소속하고 있는 자로 ‘하원의원 또는 상원의원의 경험자를 제외한 학사 또는 이에 상당하는 교육을 받은 자’라는 학력조항이 들어 있었으나 제1차 초안에서 학력조항은 삭제되었다.

(4) 상원의원에 관한 규정

1997년헌법에서는 태국 헌정사상 최초로 상원의원의 선출이 직선제로 되었다. 그 이전은 국왕에 의한 칙선제였다. 이 헌법에서는 상원은 주(76주)를 선거구로 하는 200인의 상원의원으로 구성되었다.

제1차초안에서는 상원은 상원의원 선정위원회의 선출에 기초하여 국왕의 칙령에 의해 임명되는 160인의 의원으로 구성되는 임명제로 되었다(제106조).

상원의원의 임기는 1997년헌법과 같이 6년이고, 2기 연속취임이 금지되었다(제112조). 1997년헌법에서는 상원의원 자격요건으로서 정당에 소속하지 않은 자로서 하원의원의 경우와 같이 학력조건이 있었으나 제1차 초안에서도 그 규정은 이어졌다.

(5) 제1차 헌법초안의 골자

헌법기초위원회가 기초한 제1차 헌법초안은 ①총리의 임기의 제한, ②하원의원의 삭감(500인에서 400인), ③하원의원선거의 소선거구·비례대표병립제에서 중선거구·비례대표병립제로의 이행, ④상원의원의 삭감(200인에서 160인), ⑤상원의원의 직선제에서 임명제로의 이행이 주를 이루었다.

이러한 규정은 여당의 강대화를 방지하는 것, 특정의 총리에 의한 장기집권을 방지하는 것이 목적이라고 생각되나, 상원의 임명제로의 이행에 대해서는 반대의견도 많았다.

4. 최종헌법초안

2007년 7월 6일 헌법기초회의가 승인한 309개조로 된 최종헌법초안에서는 앞에서 설명한 규정들이 아래와 같이 수정되었다.

(1) 입헌군주제에 관한 규정

입헌군주제에 관한 규정에 대하여는 변경은 없었으나, 전술한 ‘불교’에 관한 규정이 “태국국민의 대다수가 오랜 기간에 걸쳐 신앙해 온 종교인 불교”로 가필되어 불교도인 국왕을 원수로 하는 입헌군주제를 보완하면서 아래와 같은 규정으로 되었다.

- 국가는 태국국민의 대다수가 오랜 기간에 걸쳐 신앙해 온 종교인 불교 및 다른 종교를 옹호하고 보호하며, 모든 종교의 신도간에 좋은 이해 및 조화를 촉진시키고, 양심(conscience)의 육성 및 사회생활의 질적 발전을 위하여 종교의 교의를 이용하는 것을 장려한다(제79조).

(2) 총리에 관한 규정

제1차 초안에서는 총리의 임기가 연속 2기 또는 8년까지로 제한되어 있었으나, 아래와 같이 연속 2기의 제한이 삭제되었다. 하원의 임기가 4년이기 때문에 하원의 해산·총선거나 내각의 총사퇴가 없으면 총리의 임기는 1기가 4년이 된다.

- 총리는 8년을 초과하여 계속하여 그 직을 맡을 수 없다(제171조).

(3) 하원의원에 관한 규정

최종초안에서는 하원은 선거구선출 400인, 비례대표선출 80으로 된 하원의원 480인으로 구성되는 것으로 되었다(제93조). 선거구의 분할에 관하여도 정해 중선거구제가 채용되었다(제94조). 비례구는 전국을 8선거구로 나누어 각각 정수를 10으로 했다(제95조).

(4) 상원의원에 관한 규정

최종초안에서는 상원은 150인의 의원으로 구성되는 것으로 되었다. 그 내역은 직선의원 및 임명의원으로 되었다(제111조). 직선의원은 주를 단위로 하는 선거구에서 1인이 선출되나, 현재 주가 76개이기 때문에 실제로는 직선의원 76인, 임명의원 74인으로 된다.

(5) 최종헌법초안의 골자

헌법기초회의가 승인한 최종헌법초안은 ①총리의 임기의 제한(연속해서 8년까지), ②하원의원의 삭감(500인에서 480인), ③하원의원선거의 소선거구·비례대표병립제에서 중선거구·비례대표병립제로의 이행, ④상원의원의 삭감(200인에서 150인), ⑤상원의원의 직선제에서 직선·임명병용제로의 이행이 주를 이루었다.

5. 국민투표와 경과규정

임시헌법의 규정에 따라 2007년 8월 19일 최종헌법초안에 관하여 찬반을 묻는 국민투표가 실시되었다. 투표의 결과는 유권자총수 45,092,955인 가운데 투표총수가 25,978,954표(투표율 57.61%), 찬성이 14,727,306표(56.69%), 반대가 10,747,441표(41.23%), 무효가 504,207표(1.94%)였다. 찬성표가 투표자의 과반수였다고는 하지만 유권자총수의 약 33%에 머문 것, 탁신 전 총리의 지지기반인 동북부에서 반대표(61.67%)가 찬성표(36.53%)를 웃돌았다는 것은 임시정부나 국가안전보장평의회가 충분한 지지를 얻지 못하고 있다는 증거로도 보였다.

8월 24일, 국왕의 서명을 얻어 2007년헌법이 공포·시행되었다. 이 헌법에 둔 경과규정에 의해 아래의 사항이 정해져 하원의원총선거 후의 국회에서 새로운 내각이 임명되기까지 군쿠데타세력을 중심으로

하는 국가안전보장평의회가 유지되게 되었다.

- 임시헌법 하에서 설치된 국가입법의회는 하원의원총선거 후에 국회가 개회되기까지 국회, 하원 및 상원으로서의 직무를 수행한다(제293조).
- 임시헌법 하에서 설치된 헌법기초회의 및 헌법기초위원회는 이 헌법의 공포에 즈음하여 폐지된다(제294조).
- 이 헌법의 공포일에 국정의 운영을 담당하고 있던 내각은 이 헌법의 규정에 따른 내각으로서 유지되고 이 헌법 하에서 새로운 내각이 임명되는 때 총사직한다(제298조).
- 임시헌법 하에서 설치된 국가안전보장평의회는 이 헌법의 공포일에 국정의 운영을 담당하고 있던 내각과 동시에 총사직한다(같은 조).

V. 2007년헌법의 내용과 특징

앞에서 살펴본 바와 같이 태국의 2007년헌법은 1997년헌법의 주요한 골자를 대부분 승계하면서도 정치적으로는 의회의 독자성이라는 면에서 약간 후퇴한 내용을 담고 있는 것으로 보인다.

태국의 2007년헌법을 형식적인 면에서 우리 헌법과 비교하면 매우 방대한 양을 담고 있다는 점을 하나의 특징으로 볼 수 있다. 먼저, 조문수가 우리 헌법이 본문 130개조 및 부칙 6개조로 구성되어 있는 데 반해, 태국 헌법은 본문만 총 309개조에 달해,¹¹⁾ 2배 이상의 조문을 가지고 있다. 태국 헌법의 양적 방대함은 비단 조문수뿐만 아니라 각 조문의 서술 분량에 있어서도 우리 헌법과 현격한 차이를 보일 정도로 상세하게 규정되어 있다.¹²⁾ 예를 들면, 우리 헌법 제14조에서는

11) 우리 헌법의 부칙에 해당하는 경과규정 18개조를 포함한다.

12) 태국헌법은 조문 내용의 구체성과 방대함이라는 면에서 보면, 우리 헌법보다 다소 자세하게 규정하고 있는 『독일기본법』을 훨씬 능가한다.

“모든 국민은 거주·이전의 자유를 가진다”고 간략하게 표현하고 있음에 반해, 태국 헌법 제34조는 “사람은 왕국 내에 있어서 이동할 자유 및 거주지를 선택할 자유를 가진다. 제1문단의 자유의 제한은 국가의 안전보장, 국민의 질서 또는 안전, 도시계획 혹은 청소년의 안전을 위해 특히 법률의 규정에 기초한 권한에 의한 경우를 제외하고는 이를 행할 수 없다. 태국국적보유자의 왕국 밖으로의 추방 또는 태국국적보유자의 왕국으로의 입국금지는 이를 행할 수 없다”고 거주·이전의 자유의 제한에 관한 구체적인 사항을 열거하고 있다.¹³⁾ 이러한 사례는 비단 이 조문에만 해당하는 것이 아니라 전문에 걸쳐 있는 공통적인 사항이다.

이처럼 헌법의 개별 조문에 대한 구체적인 내용을 상세하게 규정하는 것은 헌법규범의 명확성을 보장한다는 점, 같은 맥락에서 법률의 제·개정에 있어서의 헌법적 규범성의 확보, 헌법재판 시 헌법상 규정이 재판의 준거로서 확실하게 기능할 수 있다는 점에서는 장점이 될 수 있을 것이다. 그러나 권위주의정권 하에서 많은 나라들이 그랬던 것처럼 때로는 국민의 기본권 보장과 관련하여 기본권에 대한 법률유보의 헌법상 근거로 악용될 수 있다는 점, 또한 헌법은 국가의 구성, 이념, 조직, 국민의 권리와 의무 등에 관한 대강을 정하는 기본법으로서 어느 정도 규범적 포괄성과 유연성을 가져야 함에도 불구하고 너무 상세하게 규정함으로써 오히려 헌법의 권위를 손상시키고, 정치·경제·사회적 상황변화에 따라 너무 자주 헌법 개정 또는 침해의 압력과 유혹에 노출된다는 점 등을 단점으로 지적할 수 있겠다.

이하에서는 2007년헌법의 내용과 특징을 1997년헌법 및 우리 헌법과 비교하면서 고찰해 보기로 한다.

13) 이 규정은 『독일기본법』 제11조의 내용과 유사하다.

1. 총 칙

제1장 「총칙」에 있는 규정에서는 제3조에 제2문단이 추가된 이외에는 1997년헌법과 다름이 없다. 대부분 국가의 정체에 관한 사항을 규정하고 있는데, 몇 개의 규정을 들어 보면 아래와 같다.

- 태국은 일체불가분의 왕국이다(제1조).
- 태국은 국왕을 원수로 하는 민주정체(democratic regime of government with the King as Head of State)를 가진다(제2조).
- 주권은 태국국민에게 속한다. 원수인 국왕은 이 헌법의 규정에 따라 국회, 내각 및 재판소를 통하여 관련된 주권을 행사한다(제3조제1문단).
- 국회, 내각, 재판소와 헌법에 기초한 기관 및 국가기관의 권한행사는 법의 지배(Rule of Law) 원칙 하에서 하지 않으면 안된다(같은 조 제2문단).

이처럼 태국에 있어서 입헌군주제와 민주주의와의 관계를 나타내는 문언으로서 지금까지 공포되어온 다른 헌법과 같이 「국왕을 원수로 하는 민주정체」가 사용되고 있다. 여기에 제3조제2문단이 추가되어 「법의 지배」원칙이 명기된 것이다.

이외에 제7조에서는 “어떠한 사안에 관하여 본 헌법에 적용해야 할 규정이 없는 경우 관련 사안은 국왕을 원수로 하는 민주정체의 헌정관습에 따라서 판단하는 것으로 한다”고 규정함으로써 헌법을 보충할 수 있는 규범적 근거로서 국왕을 중심으로 한 통합의 역사와 그 경험에 대해 무한한 신뢰를 표현하고 있다.

2. 국왕의 지위와 권한

태국은 입헌군주제 국가로서 ‘국왕을 국가원수로 하는 민주정체’를 표방하고 있다(제2조). 따라서 주권은 국민에게 귀속하지만 국가원수

인 국왕은 헌법의 규정에 따라 국회, 내각 및 재판소를 통해 관련된 주권을 행사하도록 규정하고 있다(제3조). 헌법상 규정순서에 있어서도 제3장의 태국국민의 권리와 자유에 관한 내용보다 국왕에 관한 내용이 제2장에 먼저 서술되어 있다.

『국왕』에 관한 규정에서는 1997년헌법으로부터 변경이 없다. 즉, 국왕의 지위, 추밀원, 추밀원 의장, 추밀원 의원, 섭정, 왕위계승 등에 관한 규정이다. 아래와 같이 전술한 제1차 초안과 같은 내용으로 되어 있다.

- 국왕은 존경받는 신성한 지위에 있으며, 누구도 이것을 침범할 수 없다(제8조).
- 누구도 국왕에 대한 문책 또는 소송을 제기하는 것이 허용되지 않는다(같은 조).
- 국왕은 불교도이며, 종교의 수호자이다(제9조).
- 국왕은 태국군대 원수의 지위에 있다(제10조).

태국 헌법에서 국왕의 권한은 내용적으로 영국이나 일본 등 다른 입헌군주제국가들과는 달리 상징적인 위치에 그치지 않고 종교의 수호자(제9조), 국군의 원수(제10조), 하원의 해산권(제108조), 하원에서 승인된 총리와 각료의 임명(제171조)과 총리의 조언에 의한 각료의 해임(제183조), 상원의 제청에 의한 헌법재판소장 및 판사(제204조), 옴부즈만(제242조), 국가부패방지위원회 위원장 및 위원(제246조), 국가회계검사위원회 위원장 및 위원(제252조), 국가인권위원회 위원장 및 위원(제256조) 등의 임명, 국회의 심의를 거쳐 국가의 안전보장, 공공의 안전, 국가의 경제적 안정을 유지하기 위해 혹은 공공의 재해를 방지하기 위해 법률과 같은 효력을 가진 칙명(勅命)을 제정할 권한(제184조), 국가이익의 보전을 위해 긴급하고 비밀을 유지해야 하는 조세, 관세 또는 통화에 관한 법률을 제정할 필요가 있는 경우 법률과 동등한 효력을 가진 칙명을 제정할 권한(제186조), 법률에 위반하지

않는 칙령(勅令)을 제정할 권한(제187조), 법률에 따라 계엄령을 포고하고 해제할 권한(제188조) 등을 헌법으로부터 부여받고 있다. 물론 대부분의 권한은 국회(상원 또는 하원)의 심의 또는 제청이나 헌법과 법률에 정한 절차를 거치도록 하고 있지만, 그럼에도 불구하고 태국 국왕은 영국 및 일본과 비교할 때 상당히 많은 권한을 가지고 있으며,¹⁴⁾ 이러한 국왕의 권한과 권위가 문언상에만 그치지 않고 현실적으로도 정치과정에서 실질적인 권한을 행사하고 있음은 앞에서 살펴본 바와 같다. 이러한 형태는 영국이나 일본과 같은 입헌군주제 국가가 아니라 오히려 프랑스 제5공화국 헌법의 혼합형 정부형태와 비교적 비슷한 면이 있다. 프랑스의 경우는 국가 원수로서 대통령이 국민에 의하여 선출된다는 점에서 다른 역사적 환경을 지닌 태국의 국왕과 차이가 있지만, 내각은 의회에 의하여 구성되고 행정권만을 담당하는 지위에 있고, 국가수반인 대통령 또는 국왕이 내각은 물론 의회에 대해서도 우월적 지위에 있다는 점에서 지위와 기능만을 놓고 본다면 비슷한 형태를 보인다는 것이다.¹⁵⁾

이러한 국왕의 권능은 민주주의가 미성숙한 경우에는 국가 내부의 갈등과 정쟁을 조정하고 통합하는 순기능적인 역할을 담당할 수도 있고 역사적으로도 그러한 상황을 이끌어내기도 했으나, 민주주의가 발달하고 사회가 다원화될수록 민주적 절차에 따른 합법적 권위와 때때로 충돌하거나 불협화음을 빚을 가능성도 배제할 수 없다.

14) 일본 헌법에 따르면 ‘천황’은 국가와 국민통합의 상징이라고 밝히고 있으며(제1조), 국회의 지명에 따른 총리의 임명 및 내각의 지명에 따른 최고재판소장의 임명(제6조), 내각의 조언과 승인에 따라 헌법개정, 법률, 정령 및 조약의 공포, 국회 소집과 중의원 해산, 국무대신 및 법률로 정한 관리의 임면, 대사 및 공사의 신임장 제정, 사면, 감형, 복권의 인증(제7조) 등 국가의전에 해당하는 형식적인 역할만을 수행하고 있으며, 헌법에 정한 이외에 국정에 관여하는 권능이 없다(제4조).

15) 변해철, “태국의 민주화와 1997년 헌법개정,” 19면 참조.

3. 국민의 기본권과 의무

태국 헌법은 제3장에서 국민의 권리와 자유에 관하여 규정하고 있는데, 우리 헌법에 비해서는 각각의 기본적 권리와 자유의 내용과 개별적 법률유보의 조건에 대해 보다 상세하게 규정하고 있는 점이 특징이다.

먼저, 우리 헌법은 국민의 인권과 행복추구권, 그리고 자유와 권리 보호에 관하여 “모든 국민은 인간으로서의 존엄과 가치를 가지며, 행복을 추구할 권리를 가진다. 국가는 개인이 가지는 불가침의 기본적 인권을 확인하고 이를 보장할 의무를 진다”(제10조) 및 “국민의 자유와 권리는 헌법에 열거되지 아니한 이유로 경시되지 아니한다”(제37조제1항)고 단순하게 규정하고 있으나, 태국의 경우에는 권리 및 자유의 보호방법에 이르기까지 매우 상세하게 규정하고 있다. 즉, 모든 국가기관은 그 권한의 행사에 있어서 헌법의 규정에 따라 인간으로서의 존엄, 권리 및 자유에 유의해야 한다는 것(제26조), 헌법이 명시적 또는 간접적으로 보장하는 혹은 헌법재판소의 재결이 보장하는 권리 및 자유는 보호됨과 동시에, 어떠한 법률의 제정, 법률의 적용 및 법률의 해석에 있어서도 국회, 내각, 재판소와 헌법에 기초한 기관 및 국가기관을 직접 구속한다는 것(제27조), 타인의 권리 및 자유를 침해하지 않고, 헌법에 반하지 않으며, 혹은 사람들의 선량한 풍속에 반하지 않는 한, 사람은 자기의 인간로서의 존엄을 주장하고, 자기의 권리 및 자유를 행사할 수 있으며, 헌법이 보장하는 권리 또는 자유를 침해받은 자는 헌법의 규정에 기초하여 재판권을 행사하거나 또는 재판소에 있어서 소송의 쟁점으로 제기할 수 있고, 사람은 국가에 대하여 이장의 규정에 따라 이행하도록 요구하기 위해 직접 재판상의 권리를 행사할 수 있다는 것(제28조) 등이다. 즉, 국민의 권리와 자유에 관한

헌법의 규정이 직접 재판의 준거가 될 수 있음을 명시하고 있는 것이다.

그리고 헌법상 권리와 자유에 대한 일반적 법률유보에 관하여도 우리 헌법은 “국민의 모든 자유와 권리는 국가안전보장·질서유지 또는 공공복리를 위하여 필요한 경우에 한하여 법률로써 제한할 수 있으며, 제한하는 경우에도 자유와 권리의 본질적인 내용을 침해할 수 없다”(제37조제2항)고 간략하게 규정하고 있는 반면, 태국 헌법은 헌법이 보장하는 사람의 권리 및 자유의 제한은 헌법이 정하는 바에 한정되고, 필요불가결한 법률의 규정에 기초한 권한에 의한 경우를 제외하고는 이를 행할 수 없으며, 권리 및 자유의 본질을 침해하는 것이어서는 안된다는 점, 이 경우 법률은 일반적으로 적용되어야 하고 특정의 사안이나 특정의 개인에게 한정하는 것이어서는 안된다는 점, 또, 관련된 법률을 제정하는 권한을 부여하고 있는 헌법의 규정을 명기해야 한다는 점, 그리고 이 규정은 법률의 규정에 기초한 권한에 의해 공포된 규칙에 대해서도 준용된다는 점 등(제29조)을 구체적으로 명기하고 있다.

태국 헌법의 일반적 규정방식의 속성이라는 면에서도 그렇고, 권리와 자유의 유보 조건 및 구체적 내용에 대해서도 대체로 상세하게 규정한다는 점은 앞에서 설명한 바와 같으나, 그 중에서도 언론의 자유와 매스미디어에 관한 규정은 특히 자세하고 구체적인 사항까지 적시하고 있다.¹⁶⁾ 태국 헌법에서는 언론의 자유와 매스미디어에 관한 일반적인 사항을 규정함과 동시에(제45조 제1문단~제5문단),¹⁷⁾ 신문 또

16) 우리 헌법에서는 다음과 같이 규정한다.

제21조 ① 모든 국민은 언론·출판의 자유와 집회·결사의 자유를 가진다.

② 언론·출판에 대한 허가나 검열과 집회·결사에 대한 허가는 인정되지 아니한다.

③ 통신·방송의 시설기준과 신문의 기능을 보장하기 위하여 필요한 사항은 법률로 정한다.

④ 언론·출판은 타인의 명예나 권리 또는 공중도덕이나 사회윤리를 침해하여서는 아니된다. 언론·출판이 타인의 명예나 권리를 침해한 때에는 피해자는 이에 대한 피해의 배상을 청구할 수 있다.

17) 태국 헌법 제45조 사람은 발언, 집필, 인쇄, 광고 및 그 외의 전달방법에 의해 의

는 그 외의 매스미디어의 사업소유자는 태국국적자라야 한다는 점, 그리고 국가는 민간의 신문 또는 그 외의 매스미디어의 사업을 지원하기 위한 자금 또는 그 외의 재산을 공여해서는 안된다는 점을 명시하고 있다(제45조 제6문단 및 제7문단). 그리고 계속하여 매스미디어의 직업윤리(제46조), 방송·통신 주파수의 공공성(제47조), 정치인의 매스미디어 관여 금지(제48조) 등에 관하여 지나칠 정도로 상세하게 규정하고 있다. 이것은 매스미디어에 대한 정치적 탄압을 예방하고 중립성을 보장하기 위한 장치일 뿐만 아니라, 현실적으로는 통신회사를 경제적 기반으로 성장한 탁신 전 총리세력에 대한 견제의 의미도 갖고 있는 것으로 보인다.¹⁸⁾

그리고 태국 헌법은 정당을 설립할 자유와 아울러, 정당당원에 대해 소속정당의 결의 또는 규칙이 헌법 혹은 국왕을 원수로 하는 민주정체의 기본원칙에 대해 저촉 또는 위반되는지 여부에 관해 헌법재판소

견을 표명할 자유를 가진다.

제1문단의 자유는 국가의 안전보장의 유지, 권리, 자유, 명예, 명성, 가정 내의 권리 또는 다른 사람의 프라이버시 보호, 질서 또는 국민의 미풍양속의 유지, 혹은 국민의 심신악화의 예방 또는 방지를 위하여 특히 법률의 규정에 기초한 권한에 의한 경우를 제외하고는 이를 제한할 수 없다.

본 조의 자유를 제한하기 위하여 신문 기타의 매스미디어의 활동의 정지를 명령할 수 없다.

제2문단에 기초하여 제정된 법률의 규정에 의거한 권한에 의한 경우를 제외하고 본 조의 자유를 제한하기 위하여 신문 또는 그 외의 매스미디어에 의한 보도 또는 의견표명의 전부 또는 일부를 금지하는 것, 혹은 어떠한 방법에 의한 개입은 할 수 없다.

신문 또는 그 외의 매스미디어가 보도를 행하기 전에 당국이 기사 또는 내용을 검열하는 것은, 국가가 전쟁상태에 있는 동안에 하는 경우를 제외하고 이를 행할 수 없다. 또, 이것은 제2문단에 기초하여 제정된 법률의 규정에 의거한 권한에 의하지 않으면 안된다.

18) “정치직에 있는 자는 신문, 라디오방송, TV방송, 통신사업 소유자 또는 주식보유자가 될 수 없다. 이것은 자기 명의이든, 혹은 다른 자에게 사업을 소유하도록 하거나 주식을 소유하도록 하든, 또는 다른 방식이든, 직접적이든 간접적이든 묻지 않고 관련사업의 소유자 또는 보유자와 다른없는 형태로 관리운영할 수 있는 경우라도 안된다.”는 태국 헌법 제48조는 1997년헌법에는 유사한 규정이 없고, 2007년헌법에서 새로이 도입된 내용이다.

에 재결을 청구할 수 있는 조항을 두고 있고(제65조), 어떠한 개인 또는 정당이 헌법에 기초한 국왕을 원수로 하는 민주정체를 타도하거나 혹은 헌법에 정한 절차가 아닌 방법으로 국가의 통치권력을 획득하기 위한 행위가 있다는 것을 안 사람은 이를 최고검찰청으로 하여금 조사하게 하거나 헌법재판소에 관련행위의 정지하도록 하는 재결을 요청하고 고발할 권리(제68조), 그리고 이러한 행위에 대해 평화적인 방법으로 저항할 권리(제69조) 등 헌법 수호의 권리를 명시하고 있다.

태국 헌법은 또한 ‘공동체’의 권리를 명시하고 있는데, “공동체, 지역공동체 또는 전통적인 지역공동체로서 모인 사람들은 그들의 관습, 지역적 지식, 예술, 그리고 지역 및 국가의 훌륭한 문화를 보호하고 부흥시키며, 또한 천연자원의 관리, 유지와 활용, 조화롭고 지속가능한 방식의 환경과 생물학적 다양성에 참여할 권리를 가진다”고 규정(제66조)하고 있으며, 제67조에서는 사람은 국가 및 공동체와 더불어 환경, 천연자원 및 건강 등의 측면에서 안전하고 질적 생활을 할 수 있도록 보장받을 권리와 이에 관한 정부 및 공공기관의 부작위 또는 직무태만을 고발할 수 있는 권리를 규정하고 있다.

태국 헌법은 국민의 기본적 권리 이외에 의무도 제4장에서 규정하고 있는데, 국민들에게 헌법에 기초하여 국가, 종교, 국왕 및 국왕을 원수로 하는 민주정체를 수호할 의무(제70조), 국토방위, 국가이익 보호 및 법률준수 의무(제71조), 병역, 공공적 재해의 방지·구제를 위한 지원, 납세, 공무 지원, 교육·훈련, 국가의 예술문화 및 지역적 지식의 보호·계승, 천연자원 및 환경의 보전 등의 의무(제73조)를 규정하고 있으며, 특히 선거권의 행사를 의무로 부여(제72조)¹⁹⁾하고 있다. 선

19) 제72조에서는 “사람은 선거권을 행사할 의무를 진다. 권리를 행사한 자, 또는 권리를 행사할 수 없는 합당한 이유를 제출함이 없이 권리를 행사하지 않은 자는 각각 법률이 정하는 바에 따라 권리를 얻거나 혹은 권리를 잃는다. 투표할 수 없는 이유의 통지 및 투표를 위한 편의의 제공은 법률이 정하는 바에 의한다”고 규정하고 있다.

거권 행사를 의무로 하고 이에 관해 법률에 따른 이익과 불이익을 부여할 수 있도록 명시한 것은 전세계적인 현상인 현대인의 정치적 무관심을 극복하고 투표율과 정치참여를 제고하기 위한 방편으로 보인다.

4. 국가의 기본정책방침

태국 헌법 제5장에서는 ①국가의 안전보장, ②국가행정, ③종교, 사회, 공중위생, 교육 및 문화, ④법률 및 사법, ⑤외교, ⑥경제, ⑦토지, 천연자원 및 환경, ⑧과학, 지적재산 및 에너지, ⑨국민참가 등 9개 분야에 관한 정책방침에 관해 상세하게 기술하고 있다. 즉, 헌법으로 각 분야에 대한 이념적 기초와 정책방향을 설정해 둠으로써 국가가 이를 차질없이 이행하도록 제시하고 있는 것이다. 이 규정들을 태국 헌법은 “나라가 국가행정에 있어서 법률의 제정 및 정책의 책정을 함에 있어서의 국가의지”(제75조제1문단)라고 표현하고 있다.²⁰⁾

국가의 기본정책방침에 관하여 1997년헌법에서는 제5장 제71조부터 제89조까지 19개조로 구성되어 있었다. 2007년헌법에서는 제5장 제75조부터 제87조까지의 13개조로 구성되어 있으나 총칙과 각 분야별로 9개의 정책방침으로 구분함으로써 논점을 정리하고 동시에 그 내용도 확충되었다.

국가의 기본정책방침에 관한 규정에서 주목되는 점은 후술하는 내각에 관한 규정과도 관련되지만 내각의 국회에 대한 시정방침연설과 정책의 법제화에 관하여 정책방침의 위치를 명확히 한 점이다. 각 분

20) 이러한 성격의 국가의지는 우리 헌법에서는 ‘전문’이라든가 각 조문에 단편적으로 기술된 ‘자유민주적 기본질서’ 및 ‘평화적 통일’(제4조), ‘국제평화의 유지’(제5조), ‘전통문화의 계승·발전과 민족문화의 창달’(제9조), ‘사회보장·사회복지의 증진’(제34조제2항), ‘환경보전’(제35조), ‘개인과 기업의 경제상의 자유와 창의를 존중’, ‘균형있는 국민경제의 성장 및 안정과 적정한 소득의 분배’, ‘시장의 지배와 경제력의 남용 방지’, 및 ‘경제주체간의 조화를 통한 경제의 민주화’(제119조), ‘국토의 효율적이고 균형있는 이용·개발과 보전’(제122조) 등의 규정을 통해 간접적으로 유추할 수 있을 뿐이다.

야별 기본정책방침의 실질적 구현을 위하여, 국가행정을 개시하는 내각은 국회에 대한 시정연설에서 국가의 기본정책방침에 따라 국가행정을 행하기 위하여 어떠한 시책을 어느 기간에 실시할 것인가 명확히 설명해야 한다(제75조제2문단). 또한 1년에 1회 국회에 대해 시책의 성과를 보고서로 정리하여 문제와 과제를 포함하여 제출해야 한다(같은 조 제3문단). 이밖에도 내각은 국가의 기본정책방침에 합치되는 국가행정의 연도별 행동방침에 관한 조치 및 세부사항을 제시하기 위하여 국가행정계획을 책정하고 그 실시에 필요한 법제화계획을 작성해야 한다(제76조).

제7절 「경제에 관한 국가의 정책방침」에서는 아래와 같이 「충족경제」(Setthakit phoophiang=sufficiency economy)원리라는 용어가 들어 있다. 이것은 푸미폰 국왕이 재위하는 동안 지속적으로 제창해 오던 경제원리로서, 적당한 식생활을 할 수 있고, 생활할 수 있고, 자신에게 충분하다고 생각할 수 있는 정도의 국민경제 유지를 제일로 삼는 사고이다.²¹⁾

· 국가는 충족경제원리의 수행을 촉진하고 지원해야 한다(제83조).

이와 관련하여 제3절 「국정의 운영에 관한 나라의 정책방침」에 들어 있는 아래의 규정을 포함하여 「지속가능」(sustainable)이라고 하는

21) 충족경제철학은 태국국민의 행동과 개인, 가족, 공동체 수준에서의 생활방식에 대한 지배원리로서 ‘중도’를 강조한다. 이러한 철학적 구조 속에서 내·외부적 충격으로부터의 적절한 보호의 필요에 따라 세계화의 압력에 대응하는 국가의 균형 잡힌 발전전략의 선택이 고려된다. 특히, 태국의 수많은 기업들이 도산한 1997년 아시아 경제위기 이후, 국왕은 더욱 탄력적이고 지속가능한 경제로 이끄는 회복의 길로서 이 철학을 거듭 강조했다. 충족경제철학의 구조는 세 가지 구성요소와 두 가지 근본조건으로 구성된다. 첫째, 충족은 자기면역체계 즉, 내·외부의 변화로부터의 충격을 흡수하는 능력을 위해 중용, 분별, 필요라는 세 가지 구성요소를 요구한다. 둘째, 충족을 얻는 데 필요한 두 가지 근본조건은 지식과 도덕성이다. ‘충족경제’는 계획에서의 광범위함과 철저함, 지식을 적용함에 있어서의 조심성과 계획의 실행을 요구한다. 도덕적 조건에 관해서는 ‘충족경제’는 인내, 순수와 관용으로 삶을 살아가는 동안에 인간이 정직과 성실을 보유하게 되는 조건을 강조한다. Sooksan Kantabutra, “Development of the Sufficiency Economy Philosophy in the Thai Business Sector: Evidence, Future Research & Policy Implications”, pp.4-5, <http://www.sufficiencyeconomy.org/en/> 참조.

문언이 「지속가능한 경제성장」(제84조제1항)이나 「지속가능한 개발원리」(제85조제5항)와 같이 사용되고 있다.

- 국정의 운영은 충족경제원리의 수행이 촉진되고, 전체적인 국가 이익이 크게 존중되는 것을 조건으로 하여 지속가능한 방법으로 사회 및 경제의 발전과 나라의 안전보장의 촉진을 목적으로 실시된다(제78조제1항).

국정에 대한 시민의 참가를 규정한 제10절 「시민참가에 관한 나라의 정책방침」은 민주화의 촉진을 의도한 것으로 생각된다. 예를 들면 아래와 같은 규정이 있다.

- 국가차원 및 지방차원에서 경제적, 사회적 개발을 위한 정책 및 계획의 결정에 대한 시민의 참가를 촉진한다(제87조제1항).

5. 총리 및 내각의 임명과 권한

총리의 권한에 관하여는 앞의 최종초안에서 나타난 대로 아래와 같이 총리의 임기가 연속 8년까지 제한되었다. 또한, 직무수행에 있어 내각의 집단책임(collective responsibility)원칙이 명기되었다.

- 국왕은 집단책임원칙에 의해 국정의 운영을 수행하는 임무를 가진 내각을 구성하는 총리 및 35명 이하의 각료를 임명한다(제171조).
- 총리는 하원의원으로 제172조의 규정에 의해 임명된다(같은 조).
- 하원의장은 총리를 임명하는 칙령에 부서한다. 총리는 8년을 초과하여 계속하여 그 직을 맡을 수 없다(같은 조).

1997년헌법과 같이 총리는 하원의원 가운데 아래의 절차에 의해 선출된다.

- ①하원의원총선거로부터 30일 이내에 국회가 소집된다(제127조).
- ②하원은 소집 후 30일 이내에 하원의원 중에서 총리에 임명될만한 자의 심의 및 승인을 행한다. 이 경우 하원의원총수의 5분의 1 이상

의 추천을 얻어 심의가 행해지며, 과반수의 찬성에 의해 임명 승인이 결의되어야 한다(제172조).

③국회소집 후 30일을 경과해도 총리의 임명이 승인되지 않은 경우 15일 이내에 하원의장이 최다득표자에 대해 총리 임명을 국왕에게 상주한다(제173조).

④국왕이 총리를 임명한다(제171조).

1997년헌법에서는 총리 또는 각료에 임명된 하원의원은 하원의원을 사임하는 규정이 있었고, 당해 의원이 선거구선출의원인 경우에는 당해 선거구에서 보궐선거를 실시하며, 비례대표선출의원인 경우에는 정당명부의 차석자가 대체하여 하원의원에 선출되었다. 이렇게 의원의 총리 및 각료 겸직을 금지함으로써 보다 엄격한 권력분립형태를 취하게 되었지만 의원내각제로서는 부분적으로 변형된 형태라고 할 수 있다. 1997년헌법에서는 군부에 의해 장악된 정부에 의해 의회가 종속되는 것을 탈피하여 의회의 독립성과 권한을 강화함으로써 의회와 정부 간 상호균형과 견제가 가능한 형태로의 변화에 주안점을 둔 것이다.²²⁾

2007년헌법에서는 총리 또는 각료의 하원의원 사임규정이 삭제되었는데, 이것은 내각과 국회와의 연대책임성을 명확히 하는 것으로 의원내각제적 성격의 강화를 의도한 것으로 생각된다.

내각불신임결의안 제출에 관해서는 1997년헌법에서는 그 제출권한을 하원의원총수의 5분의 2 이상으로 하고 있었으나 제1차 초안에서는 4분의 1 이상 변경하여 동 결의안의 제출을 용이하게 했다. 최종 초안과 2007년헌법에서는 제출권한이 5분의 1 이상으로 되어(제158조), 동 결의안의 제출이 더욱 용이하게 되었다. 동 결의안은 과반수의 찬성으로 승인된다.

의원내각제에서는 일반적으로 의회의 내각불신임권과 내각의 의회해산권이 견제와 균형을 이루도록 되어있다. 그러나 태국의 경우에는

22) 변해철, “태국의 민주화와 1997년 헌법”, 12면 참조.

헌법상으로는 의회해산권이 국왕에게 부여되어 있고(제108조),²³⁾ 1997년헌법이나 2007년헌법 모두 내각이나 총리에게는 의회의 해산에 관련된 권한을 명시하지 않고 있다. 하지만 태국의 정치관행에서는 명시적 규정이 없음에도 불구하고 국왕은 총리의 건의를 받아 의회 해산의 칙령을 내리는 것으로 되어 있고, 실제로 탁신 전 총리도 국왕에게 의회의 해산을 요청하는 요식절차를 거쳤다.²⁴⁾

내각의 각료는 총리와 함께 국왕이 임명하는 것으로 되어 있고(제171조), 총리의 조언을 받아 각료를 해임할 수 있는 것으로 되어 있으나(제183조), 각료의 임면에 관해서는 실질적으로 총리가 관장한다.

내각은 국가행정을 시작함에 있어 취임일로부터 기산하여 15일 이내에 국회에 대해 시정방침 연설을 하고, 전술한 국가의 기본정책방침에 따라 어떻게 실행할 것인지 설명해야 하며, 연차별 행동방침을 정하는 국가행정계획을 책정해야 한다(제176조). 내각의 각료는 국회의 회의에 출석하여 사실관계의 진술 또는 의견표명을 할 수 있다(제177조).

6. 국회의 구성

태국의 국회는 하원 및 상원의 양원제로 구성되는데, 양원함동으로 또는 각원 단독으로 회의를 개최한다고 규정하고 있다(제88조). 하원 의장이 국회의장이 되고, 상원의장이 국회부의장이 된다(제89조). 법안의 우선결의권은 하원에 있다(제142조). 상원에는 정치적 중립성이 요구되는 한편, 총리, 각료, 국회의원 등에 대한 파면권이 부여되어 있다(제270조).

23) 태국 헌법 제108조는 “국왕은 새로이 하원의원선거를 실시하기 위하여 하원을 해산할 권한을 가진다. 하원의 해산은 칙령에 의하도록 하며, 새로운 하원의원총선거일을 하원해산일로부터 기산하여 45일 이상 60일 이내의 날로 정해야 하고, 또한 선거일은 왕국 전역에 있어서 같은 날로 해야 한다. 하원의 해산은 같은 사유로 1 회밖에 할 수 없다”고 규정하고 있다.

24) □□조선일보□□, 2006.2.25, 16면 기사 참조.

이러한 국회에 관한 규정에 관하여는 1997년헌법과의 차이는 없으나 이하에 설명하는 바와 같이 하원의원의 선거 및 상원의원의 선출에 관한 규정에 관하여 대폭의 변경이 있었다.

(1) 하원의 구성

전술한 바와 같이 1997년헌법에서는, 하원은 소선거구선출 400인, 비례대표선출 100인(전국구)의 총수 500인으로 구성되고 있었다. 이 선거제도 하에서 태국애국당의 거대여당화가 실현된 것이다.

2007년헌법에서는 하원의원의 선거제도가 중선거구선출 400인, 비례대표선출 80인(8선거구)의 총수 480인으로 변경되었으며(제93조), 임기는 4년이다(제104조).

중선거구의 선거구 분할과 정수는 주를 단위로 인구에 비례하여 산출된다. 인구가 적은 주에서는 정수 1 이상 3 이하로서 주가 하나의 선거구가 된다. 그 이외의 주에서는 주 내에 정수 2 이상 3 이하로 하는 선거구가 복수 설치된다(제94조).

비례대표의 선거구 분할에 관하여는 주를 단위로 한 8개의 주그룹(group of provinces)선거구가 거의 같은 인구를 갖도록 하여 설치된다. 각각의 선거구는 정수 10인이 된다(제96조).

하원의원의 피선거권에 관하여는 1997년헌법과 같이 ①출생에 의한 태국국적을 가질 것, ②만 25세 이상일 것, ③90일 이상 계속하여 정당의 당원일 것이 규정되어 있다(제101조제1항~제3항). 단, 정당소속요건에 관하여는 「하원해산 후의 총선거의 경우는 30일 이상 계속하여 정당의 당원인 자」라는 규정이 추가되었다(같은 조 제3항).

게다가 1997년헌법에서 규정되어 있던 하원의원자격요건을 채우는 년수가 아래와 같이 2007년헌법에서 확대되었다. 이것은 소위 「낙하산후보」의 다발을 저지할 목적으로 생각된다.

①선거구선거의 후보자의 자격요건(제101조제4항)

- 입후보등록일까지 5년 이상 계속하여 입후보하는 주의 주민등록대장에 성명이 기재되어 있을 것(1년 이상에서 5년 이상으로 변경).
- 입후보하는 주에서 출생했을 것
- 입후보하는 주내에 있는 교육기관에서 5년 이상 계속하여 교육을 받았을 것(2년 이상에서 5년 이상으로 변경)
- 입후보하는 주에서 5년 이상 공무원의 직에 있었거나 또는 주민등록대장에 성명이 기재되어 있었을 것(2년 이상에서 5년 이상으로 변경).

②비례대표선거의 후보자의 자격요건(같은 조 제5항)

- 제4항에서 규정하는 자격을 가져야 한다. 하나의 주에 있어서 어느 자격이라도 보유하고 있는 경우 주그룹에 관한 것으로 간주된다.

이상과 같은 선거제도의 변경에 의해 하원의원총선거에 있어서 하원의석의 대다수를 획득하는 정당이 출현할 가능성은 낮아졌다. 게다가 “하원의 임기 중에 있어서 하원에 의석을 보유하고 있는 정당간의 합병은 인정되지 않는다”(제104조)고 하는 이중의 방어막에 해당하는 규정을 두어 여당의 거대화 방지를 도모하고 있다.

하원은 국왕이 하원의 의결에 기초하여 하원의원 중에서 임명하는 의장 1명과 부의장 1명 또는 2명을 두는데, 하원의장 및 부의장은 하원의 임기 만료 또는 해산되기까지 재임한다(제124조).

태국 헌법상 하원에 관하여 특이한 것은 국왕이 임명하는 ‘야당지도자’에 관한 규정(제110조)을 두고 있는 것이다.²⁵⁾ ‘야당지도자’의 역할에 관해서는 구체적으로 적시하지 않고 있으나 국정의 파트너로서, 또한 장래의 총리 후보로서의 지위를 인정하는 조치로 보인다.

25) 태국 헌법 제110조는 “내각이 국가행정을 개시한 후, 국왕은 하원에 있어서 소속 당원이 각료의 지위에 취임하고 있지 않은 정당 중에서 가장 많은 의석수를 보유한 정당으로 개원 시 의원총수의 5분의 1 이상의 의석을 가진 정당의 당수인 하원의원을 하원의 야당지도자로 임명한다”고 정하고 있다.

(2) 상원의 구성

이것도 전술한 바와 같이 1997년헌법에서는 상원은 주를 선거구로 하는 직선의원 200인으로 구성되고 있었다. 상원의원자격요건으로서 정당에의 소속은 인정되지 않았다.

2007년헌법에서는 총수가 150인으로 삭감되고, 선출제도가 직선·임명병용제로 변경되었다(제111조). 직선의원 및 임명원의 정수는 규정되어 있지 않으나 직선의원은 주를 정수 1의 선거구로 하고 있기 때문에 총정수 150에서 주수 76을 뺀 74가 임명원의 정수가 된다. 임기는 6년이고 연속해서 임기를 맡는 것은 금지된다(제117조).

임명원은 아래와 같이 구성되는 상원의원선출위원회에 의해 임명된다(제113조).

- 헌법재판소장
- 선거관리위원회 위원장
- 옴부즈만의 장
- 국가부패방지위원회 위원장
- 국가회계검사원 총재
- 최고사법재판소에 의해 위임된 판사
- 최고행정재판소에 의해 위임된 판사

상원의원의 피선거권 또는 임명조건에 관하여는 1997년헌법과 같이 ①출생에 의한 태국국적을 가질 것, ②만 40세 이상일 것, ③학사 이상 또는 그와 동등한 교육을 받은 자일 것 등이 규정되어 있다(제115조제1항~제3항).

직선상원의원의 자격요건에 관하여도 전술한 하원의원의 경우와 같이 1997년헌법에서 규정된 요건보다 아래와 같이 엄격한 것이 되었다(같은 조 제4항).

- 입후보등록일까지 5년 이상 계속하여 입후보하는 주의 주민등록 대장에 성명이 기재되어 있을 것(1년 이상에서 5년 이상으로 변경).

- 입후보하는 주에서 출생했을 것
- 입후보하는 주내에 있는 교육기관에서 5년 이상 계속하여 교육을 받았을 것(2년 이상에서 5년 이상으로 변경)
- 입후보하는 주에서 5년 이상 공무원의 직에 있었거나 또는 주민등록대장에 성명이 기재되어 있었을 것(2년 이상에서 5년 이상으로 변경).

이상과 같이 상원의원의 선출방법이 변경되었지만 상원의원의 정당 소속이 인정되지 않는 것을 감안할 때 상원의원의 선출에 의해 정치적인 변화를 크게 가져오는 상황이 나타날 가능성은 크지 않다고 할 것이다. 후술하는 헌법개정에 대한 국회의 심의에 있어서 동 개정초안은 상하양원의원총수의 과반수의 찬성이 필요하도록 되어 있기 때문에 상원의원에 대한 임명제의 채용은 의회제민주주의로부터의 후퇴이기는 하지만 정국의 안정화를 도모하고 있는 것으로 보인다.

상원은 하원과 마찬가지로 국왕이 상원의 의결에 기초하여 상원의원 중에서 임명하는 의장 1명과 부의장 1명 또는 2명을 두는데, 상원의장 및 부의장은 새로운 상원의장 및 부의장을 선출하는 전일까지 재임한다(제124조).

(3) 상하양원 합동회의

태국 국회는 상하양원합동회의를 개최하는 사항에 관하여 섭정의 임명에 관한 승인, 섭정의 국회 선서, 불력2467년 왕위계승법 개정의 승인, 왕위 계승에 관한 양해 또는 승인, 입법의 통상회기에 있어서 기타 사항의 심의를 인정하는 의결, 회기의 종료에 관한 승인, 국회의 개회, 국회의 의사규칙의 제정, 헌법관련법률안 또는 법률안의 심의에 관한 승인, 헌법관련법률안 또는 새로운 법률안에 관한 협의, 헌법의 개정안의 심의에 관한 승인, 시정방침연설, 총리가 요청하는 국가행정에 관한 중요문제의 일반토의, 선전포고에 관한 승인, 조약에 관한 설

명칭취 및 승인, 헌법의 개정 등에 관한 사항으로 규정하고 있다(제 136조).

7. 법률안의 제출과 처리

태국에서 법률은 조직법과 일반 법률로 구분되며, 각각에 해당하는 처리절차를 갖고 있다.

(1) 조직법

조직법에 해당하는 법률은 다음과 같다(제138조).

- ①하원의원선거 및 상원의원 선출에 관한 조직법
- ②선거위원회에 관한 조직법
- ③정당에 관한 조직법
- ④국민투표에 관한 조직법
- ⑤헌법재판소 심리절차에 관한 조직법
- ⑥정치직에 있는 자의 형사소송심리절차에 관한 조직법
- ⑦국가옴부즈만에 관한 조직법
- ⑧부패방지조사에 관한 조직법
- ⑨국가회계검사에 관한 조직법

조직법안의 제출은 내각, 하원 재적의원총수의 10분의 1 이상의 하원의원, 또는 양원의 재적의원총수의 10분의 1 이상의 하원의원 및 상원의원, 조직법에 기초한 재판소의 장 및 독립기관의 장을 관할하고 있는 헌법재판소, 최고재판소 또는 헌법에 기초한 독립기관 등이 할 수 있다(제139조).

조직법의 하원 및 상원에서의 심의는 3독회를 거치며, 1독회는 원칙 승인의 단계, 2독회는 조항의 축조심의 단계이며, 표결은 각 원의 다수결에 의한다. 3독회는 조직법으로서 시행하기 위한 것으로 각 원의

재적의원총수의 과반수 이상의 찬성을 요한다(제140조). 조직법의 제정과 관련하여 특이한 절차는 국회가 조직법을 승인한 때 국왕의 재가를 얻기 위해 상주하기 전에 헌법재판소에 송부하여 법률안의 합헌성에 관하여 심의하는 절차를 둔 것이다. 헌법재판소가 조직법안에 헌법에 저촉 또는 위반하는 조항이 포함되어 있다고 재결한 경우 저촉 또는 위반한 조항은 삭제된다. 또한, 관련 조항이 중요한 내용이거나 혹은 조직법안이 헌법의 규정에 위반하여 규정되었다고 재결한 경우 당해 조직법안은 폐기된다. 헌법재판소의 재결에 의해 헌법에 저촉 또는 위반하는 조항이 삭제된 경우 조직법안은 순차심의하기 위해 하원 및 상원으로 반송된다. 이 경우 하원 또는 상원은 관련 조항이 헌법에 저촉 또는 위반하지 않도록 수정을 심의하며, 수정안에 관한 의결은 각 원 재적의원총수의 과반수 이상의 찬성에 의한다(제141조). 이처럼 헌법기관들의 구성에 관한 조직법에 대해 일반 법률과 구분하고 있고, 헌법재판소의 심의를 거치도록 한 것은 이 법률들이 헌법을 구현하는 실질적이고 핵심적인 기능을 담당하는 것으로 판단한 때문인 것으로 이해된다. 하지만 입법과정의 공포되기 전단계에서 헌법재판소의 심의를 거치도록 한 것은 국민의 대의기관인 입법부의 권한을 과도하게 제한한 측면이 있는 것으로 생각된다.

(2) 일반 법률

일반 법률안의 제출은 내각, 20명 이상의 하원의원, 재판소 또는 헌법에 기초한 독립기관(단, 기관의 설치에 관계되는 법률, 재판소의 장 및 기관의 장이 관할하고 있는 법률에 한한다), 법률을 제안하기 위한 청원에 서명한 1만명 이상의 선거권을 가진 자 등이 할 수 있으며, 법률안은 먼저 하원에 제출된다(제142조). 이 중에서 금전관련법률은 별도의 절차를 거치도록 정하고 있는데,²⁶⁾ 국가의 재정에 부담을

26) 내각이 아닌 20명 이상의 하원의원, 재판소 또는 헌법에 기초한 독립기관(단, 기

주는 내용의 법률안에 대해서는 더욱 강화된 심의절차를 거치도록 하기 위한 것으로 보인다.

일반 법률안은 상하양원의 일반 의사정족수와 같이 각 원 재적의원 과반수의 출석과 출석의원 과반수의 찬성으로 의결되며, 찬반동수의 경우 의장이 결정권을 행사한다(제126조). 국회에서 승인된 법률안은 총리가 국회로부터 법률안을 수령한 날로부터 기산하여 20일 이내에 국왕의 재가를 얻기 위해 상주하며, 국왕의 재가를 얻은 법률안은 관보에 고시한 때로부터 법률로서 시행한다(제150조).

법률의 제정절차 가운데 독특한 절차는 헌법에 저촉 또는 위반 가능성이 있는 법률안에 대해 헌법재판소 재결을 구할 수 있는 절차를 둔 것이다. 국회가 승인한 어떠한 법률안이나 혹은 국왕이 법률안을 거부하여 국회가 재의결을 한 법률안도 총리가 국왕의 재가를 구하기 위해 상주하기 전에 ①하원의원, 상원의원, 또는 양원의 의원이 양원의 재적의원총수의 10분의 1 이상으로 관련 법률안이 헌법에 저촉 또는 위반하는 조항이 포함되어 있거나 헌법 규정에 위반하여 제정되었다고 판단한 경우 각각 하원의장, 상원의장 또는 국호의장에 대해 의견을 제출하며, 관련 의견을 수리한 각 원의 의장은 그 의견을 헌법재판소에 재결을 위해 송부함과 동시에 지체 없이 총리에게 이를 통지하고, ②총리가 관련 법률안은 헌법에 저촉 또는 위반하는 조항이 포함되어 있거나 헌법 규정에 위반하여 제정되었다고 판단한 경우 관련 의견을 헌법재판소에 재결을 위해 송부함과 동시에 지체 없이 하원의장 및 상원의장에게 이를 통지하도록 하고 있다(제154조). 헌법재

관의 설치에 관계되는 법률, 재판소의 장 및 기관의 장이 관할하고 있는 법률에 한한다), 법률을 제안하기 위한 청원에 서명한 1만명 이상의 선거권을 가진 자 등에 의해 제출된 법률안 가운데 금전관련법률안인 경우에는 총리의 양해가 있을 때만 제출할 수 있다(제142조제2문단). 금전관련법률안이란 ①조세 또는 과징금의 부과, 폐지, 경감, 변경, 면제 또는 실시규칙의 제정, ②국가재원의 배분, 수령, 관리 또는 지출, 혹은 국가의 세출예산의 이관, ③차입, 보증, 차입금의 사용 또는 국가재원을 구속하는 행위, ④통화 등의 항목에 해당하는 법률안을 의미한다(제143조).

판소가 당해 법률안은 헌법에 저촉 또는 위반하는 조항이 포함되어 있거나 헌법 규정에 위반하여 제정되었고 관련 사항이 중대한 내용이라고 재결한 경우 당해 법률안은 폐기되며, 헌법에 저촉 또는 위반하는 조항이 포함되어 있으나 중대한 내용은 아니라고 재결한 경우 저촉 또는 위반한 조항을 삭제한 후 총리가 국왕의 재가 및 관보 게재 절차를 거치도록 하고 있다(같은 조 제3문단 및 제4문단). 이러한 절차는 조직법에 대한 헌법재판소 재결절차와 마찬가지로 법률이 헌법에 위반하는지 여부에 관해 신증을 기하려는 절차로 이해되나, 마찬가지로 국회의 입법권을 과도하게 제한할 가능성이 있다는 점, 그리고 아무리 사소한 조항이라 하더라도 이를 삭제한 후 다시 국회의 재의결절차를 거치지 않고 바로 법률로 확정하는 절차를 거칠 수 있도록 한 것은 법체계 전체의 통일성을 감안할 때 쉽게 납득하기 어려운 과정인 것으로 생각된다.

8. 헌법재판소의 구성과 기능

태국의 헌법재판소는 헌법재판소장 및 8명의 재판관으로 구성되며, 국왕이 ①최고재판소 전원회의에서 비밀투표로 선출되는 최고재판소 재판관 이상의 재판관 3명, ②최고행정재판소 재판관전원회의에서 비밀투표로 선출되는 최고행정재판소 재판관 2명, ③법학을 전공한 지식을 가지고, 일정한 절차를 거쳐 선출된 법학분야의 유자격자 2명, ④국가행정을 전문으로 하는 지식을 가지고, 일정한 절차를 거쳐 선출된 정치학, 행정학 또는 사회학분야의 유자격자 2명 등을 상원의 조언을 얻어 임명하도록 되어 있는데(204조), 우리 헌법과 달리 법관 자격자 이외에도 헌법재판관에 임명될 수 있도록 되어 있다.

선출된 재판관 중에서 호선으로 헌법재판소장을 선출하며, 그 결과는 상원의장에게 통지하고, 상원의장은 헌법재판소장 및 헌법재판소

재판관을 임명하는 칙령에 부서한다.

헌법재판소장 및 재판관의 임기는 국왕이 임명한 날로부터 기산하여 9년으로 하며, 1기에 한해 취임할 수 있다(208조).

태국의 헌법재판소는 헌법기관과 관련된 조직법의 사전심사(제141조), 법률이 공포되기 전에 헌법 위반 여부를 심판하도록 하는 형태의 추상적 규범통제(제154조), 법률의 규정이 헌법에 위반하는지 여부가 재판의 전제가 된 때 행하는 구체적 규범통제(제211조), 음부즈만의 청구에 의한 심판(제245조), 총리 및 각료에 대한 탄핵심판(제182조 및 제269조), 정당의 결의 및 규칙에 대한 위헌심판(제65조), 위헌정당 해산심판(제68조), 권한쟁의심판(제214조), 기본권을 침해하는 법률에 대한 헌법소원심판(제212조), 상·하원의원의 자격심사(제91조), 선거관리위원의 자격심사(제233조) 등의 권한을 갖고 있다.²⁷⁾

태국의 헌법재판소는 1997년헌법에서 처음으로 규정되었으며, 지금까지 그 설치목적에 따라 비교적 활발하게 기능해 왔다고 평가할 수 있다.²⁸⁾ 그럼에도 불구하고 태국 헌법에는 헌법재판소가 입법 및 정치과정에 너무 많이 개입할 수 있는 가능성을 열어둠으로써 오히려 헌법과 헌법재판소가 정치화될 수 있는 여지를 제공했다고도 할 수 있으며, 이는 앞으로도 계속적인 과제로 남을 것으로 보인다.

9. 헌법개정에 관한 규정

1997년헌법에 있어서 헌법개정에 관한 규정에서는 “국왕을 원수로 하는 민주정체의 변경 또는 국가의 형태에 변경을 가져오는 개정”의 발의는 금지되어 있었는데, 2007년헌법에 있어서도 이 규정에는 변함

27) 태국의 헌법재판소제도와 관련한 자세한 사항은 변해철, “태국의 헌법재판제도와 헌법현실”, 한국외국어대학교 법학연구소, □□외법논집□□ 제21집, 2006. 2 및 변해철, “2007년 태국헌법개정과 헌법재판”, 한국외국어대학교 법학연구소, □□외법논집□□ 제31집, 2008. 8 등 참조.

28) 변해철, “2007년 태국헌법개정과 헌법재판”, 66면 참조.

이 없다. 다만, 2007년헌법에서는 5만인 이상의 유권자에 의한 헌법개정의 청원이 인정되게 되었다. 헌법개정의 발의 및 청원에 관한 규정은 아래와 같다.

- 개정의 발의는 내각, 현재 하원의원총수의 5분의 1 이상의 연명에 의한 하원의원, 현재 의원총수의 5분의 1 이상의 연명에 의한 양원의원 또는 법안제안의 청원에 관한 법률에 따른 자격을 가진 유권자 5만인 이상의 어느 것에 의해 제출되어야 한다(제291조제1항).

국왕을 원수로 하는 민주정체의 변경 또는 국가의 형태에 변경을 가져오는 개정의 발의는 금지된다(같은 조 같은 항).

국회에서는 헌법개정안에 대해 3회의 독회를 거치는데, 1독회는 원칙 승인의 단계인데 표결은 점호방식의 공개투표로 양원 재적의원총수의 과반수 이상의 찬성으로 승인되며, 2독회는 조항의 축조심의 단계인데 표결은 다수결에 의하고, 3독회는 최종단계로 표결은 점호방식의 공개투표로 양원 재적의원총수의 과반수 이상의 찬성으로 승인된다(제291조제2항 내지 제6항). 국회를 통과하면 헌법개정안은 국왕의 재가를 얻기 위해 상주되며, 관보 고시를 거쳐 효력을 발생한다.

이처럼 헌법개정을 위한 절차에서 국민투표를 거치지 않고 국회에서의 의사정족수도 그렇게 강화되지 않는 점을 볼 때, 태국 헌법은 개정이 비교적 용이한 연성헌법이라고 할 수 있으며, 이는 앞서도 설명한 바와 같이 헌법이 매우 구체적이고 상세하게 기술되어 있는 것과도 무관하지 않은 것으로 보인다.

VI. 맺음말

이상 설명한 바와 같이 2007년 8월 24일 새로운 헌법이 제정됨으로써 태국은 군정에서 민정으로 복귀하게 되었으나, 태국의 정국이 안

정을 찾게 되기까지는 아직 많은 시간이 걸릴 것으로 보인다.

앞에서도 살펴본 바와 같이 2007년헌법은 의회의 독립성을 어느 정도 희생하면서도 상원의원 약 반수에 대한 임명제의 도입, 하원의원 선거에서의 중선거구제 도입, 총리 및 각료의 하원의원 겸직금지 삭제, 회기 중 정당의 합병 금지 등을 통해 정국의 안정을 도모하려고 시도했다. 그러나 이러한 노력도 국왕, 군부 및 여·야당 정치세력간의 뿌리깊은 권력다툼과 최근에는 시민세력까지 가세한 정쟁은 점점 그 갈등을 심화시켜 가고 있는 형편이다. 또한 그런 와중에서 헌법 및 헌법재판소의 역할도 점점 정치의 한가운데로 내몰리고 있는 형국이다. 태국 헌법의 지나치리만치 상세한 규정들과 헌법재판소가 국정의 어느 단계에서도 개입할 수 있도록 되어 있는 장치 등은 헌법의 권위에 대한 신뢰와 아울러 헌법의 정치 도구화라는 양면성을 가지고 있는 것이다. 앞으로 태국의 정치 및 사회가 헌법을 둘러싸고 어떤 양상을 보일지 귀추가 주목된다.

The Constitution of the Kingdom of Thailand

Tithiphan Cheurboonchai*

Thidaporn Sirithaporn**

Since the change from an absolute monarchy to a constitutional monarchy in 1932, Thailand has been being democratically governed with the King as Head of the State and with the Constitution of the Kingdom of Thailand as the supreme law of the Kingdom. On 10 December 1932 (the day is currently celebrated as Constitution Day), about three months after the Temporary Charter for the Administration of Siam Act B.E. 2475 (1932) was introduced, Thailand's first permanent constitution was promulgated - The Constitution of Siam Kingdom B.E. 2475(1932). However, during the past seventy-six years, numerous charters and constitutions have since been promulgated and amended. It appears that Thailand's constitutions were often abrogated and replaced by interim ones and that the impetus for such changes arose from a series of successful, predominantly military, coups - this phenomenon therefore reflects both the high degree of political(democratic) instability and the frequency of military coups faced by the nation. As a result of the administrative reform by the coup of the 19th September 2006, the Constitution of the Kingdom of Thailand B.E. 2540 (1997) was abrogated and replaced by the Constitution of the Kingdom of Thailand (Interim) of

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B.E. 2549 (2006). And by virtue of the provisions of that interim constitution the Constitution of the Kingdom of Thailand B.E. 2550 (2007) has been promulgated, and is the current constitution of the Kingdom.

This article is divided into three main parts. The first part explains the process of drafting the Constitution in Thailand. It is considered that to most effectively study the process a comparative study of all previous constitutions is preferable to a single detailed study of just one particular constitution. This article, therefore, also an analysis of what might be thought of as lessons learned from previous charters and in light of political and administrative contextual factors. First provided is a brief history of the drafting of previous Thai constitutions before describing organizations, process, and procedure in drafting the current constitution in Thailand. The rules and principles relating to the drafting of a constitution is clearly significant for all citizens. Indeed the degree of citizens' participation in the process of constitution drafting can be considered a factor in determining the worthiness of the constitution by the extent to which it expresses the will of the people. A constitution that has citizen participation imbedded as part of drafting process may generally be considered as being a more democratic one and therefore one which is more likely to protect the rights and liberties of the people.

The second part addresses several fundamental principles contained within the current constitution and in particular the commonalities and differences between it and its forebears. Not only has it amended core sections but also wholly new extra sections have been included. The 2007 Constitution contains 309sections. It is divided into fifteen chapters¹⁾

1) Chapter 1: General Provisions (§§1-7); Chapter 2: The King (§§8-25); Chapter 3: Rights and Liberties of the Thai People (§§26-69); Chapter 4: Duties of the Thai

along with one part dedicated for transitional provisions. This article describes the fundamental principles contained in current constitution by addressing it within a six part framework: (1) Drafting Background; (2) General Provisions and the Monarch; (3) Rights and Liberties of an Individual; (4) Core Institutions of the State and the Relationship amongst those Institutions; (5) The Independent Agencies under the Constitution; and (6) Inspection of the Exercise of State Power.

A move to change the 2007 Constitution of Thailand has been and faced strong opposition. Thus, in the last part, an overview of those criticism regarding recent proposed constitutional amendments is provided. The article concludes with the author's personal reflections on matters raised.

1. Drafting the New Constitution

On August 24, 2007, H.M. King Bhumibol Adulyadej (Rama IX) endorsed Thailand's 18th Constitution, five days after the kingdom - a constitutional monarchy since 1932 - voted in favor of the newly-drafted charter in the first national referendum on a constitution (August 19, 2007). This in turn paved the way for the general election on December 23, 2007. The constitution took effect immediately after it was announced in the Royal Gazette. Before proceeding to examining the current

People (§§70-74); Chapter 5: Directive Principles or Fundamental State Policies (§§75-87); Chapter 6: The National Assembly (§§88-162); Chapter 7: Citizen Participation (§§163-165); Chapter 8: Money, Finance and Budget (§§166-170); Chapter 9: The Council of Ministers (§§171-196); Chapter 10: The Courts (§§197-228); Chapter 11: Organizations under the Constitution (§§229-258); Chapter 12: Inspection of the Exercise of State Power (§§259-277); Chapter 13: Morality of Persons Holding Political Positions, Government Officials (§§279-280); Chapter 14: Local Government (§§281-290); Chapter 15: Amendment of Constitution (§291); Transitional Provisions (§§292-309).

constitution some background to its forerunners is provided to provide the necessary contextual backdrop for understanding the processes and impetus for the new constitution.

1.1 A Brief History of Previous Constitutions Drafting in Thailand

The current 2007 constitution is the 18th constitution in Thailand. All of Thailand's charters and constitutions have at their core the position of Thailand being a constitutional monarchy, at no point has this ever been considered anything but appropriate. The majority of charters and constitutions were the direct or indirect result of military coups. Charters have traditionally been temporary instruments, promulgated right after military coups, although there is a case where the coup did in fact result in an interim constitution rather than an interim charter, for example, the 2006 coup led to a promulgation of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006).

Below is a brief history of previous constitutions drafted in Thailand over the past seventy-six years.

1.1.1 The Temporary Charter for the Administration of Siam Act B.E. 2475 (1932)

Thailand's first codified constitution was promulgated in 1932 and entitled "the Temporary Charter for the Administration of Siam Act B.E. 2475 (1932)". On June 24, 1932, a group of Thai technocrats comprising

civil servants, princes, and army officers, named themselves as People Body (in Thai, “*Kana Raad*”) seized power in a bloodless coup. The coup brought the era of Thai absolute monarchy to an end. When H.M. King Prajadhipok (Rama VII) finally abdicated the throne, in 1935, at this abdication, He specifically criticized the regime that had replaced Him and transferred sovereignty to the people of Thailand - in his brief public message of abdication, the King showed his willingness of turning power over to the people as a whole, rather than to the government or to any particular person(s).²⁾

The People Body demanded that H.M. King Prajadhipok agree to become a constitutional monarch and grant the Thai people a constitution. A provisional constitution was sent to H.M. King Prajadhipok (Rama VII) along with an ultimatum from coup leaders. On June 27, 1932 the King met the leader and signed the temporary charter. Under this 1932 Temporary Charter, it prescribed precisely that sovereign power belongs to the people of Siam³⁾. The People’s Assembly(The Legislature), a fifteen member of People’s Committee (The Executive), the Courts of Law (The Judiciary), and the monarch were empowered to exercise power on behalf of the Siamese people.

2) This public message of abdication wrote by H.M. King Prajadhipok on March 2,1935, nearly three years after the coup. This document, about six pages inlength, is considered to be one of the most significant official documents in Thailandand it is currently kept in the National Achieves of Thailand.

3) Thailand is formerly called Siam. The country’s official namewas Siam until June 23, 1939, when it changed to Thailand, during the FieldMarshal Plaek Pibulsongkram’s administration; it was renamed Siam between 1945and May 11, 1949, after which the name Thailand was once again adopted.

1.1.2 The Constitution of the SiamKingdom B.E. 2475 (1932)

After the promulgation of the first Temporary Charter on June 27, 1932, the leader of the People Body asked the People's Assembly to draft a new permanent constitution replacing the 1932 Temporary Charter. The People's Assembly agreed and thus established the Constitution Drafting Sub-Committee to draft a permanent constitution. The Constitution Drafting Sub-Committee completed the draft in November 1932 and Phraya Manopakorn Nitithada (Gon Hutasingha), the Prime Minister, duly submitted the draft to the People's Assembly for consideration. The sitting started on November 25, 1932 and finished on December 2, 1932 before it was promulgated as a permanent constitution on December 10, 1932, the day is currently celebrated in Thailand as Constitution Day. The permanent constitution, the Constitution of the SiamKingdom B.E. 2475 (1932) continued to assert that sovereign power belonged to the Siamese people.⁴⁾ However, it gave the monarchy a significant increase in authority compared to the temporary charter by allowing for the monarchy to be the direct exerciser of power but critically with the advise and consent of the People's Assembly, the State Council, and the Courts.⁵⁾ In this sense absolute authority was to be limited through the other institutions of state but the acquiescence of the monarch's pivotal role was explicitly recognized.

4) §2, **The Constitution of the SiamKingdom B.E. 2475 (1932)**, Royal Gazette Vol. 49 (1932) (*Thail.*)

5) §§6-8, **The Constitution of the SiamKingdom B.E. 2475 (1932)**, Royal Gazette Vol. 49 (1932) (*Thail.*)

1.1.3 The Constitution of the Kingdom of Thailand B.E. 2489 (1946)

After more than a decade there was demand for constitutional reform on the grounds that the Constitution of the Siam Kingdom B.E. 2475 (1932) needed updating to ensure suitability with the situation of the country and change of time.⁶⁾ It is of note that this constitution came in the aftermath of the Second World War and when the democratic (anti-fascist movement) was on the ascendancy and also at a time when the Thai Monarch was principally based overseas. Nevertheless the King as a central figure within the constitution was maintained. In the drafting process, the House of Representatives established a Special Task Force Committee to draft a new constitution. The Draft Constitution was completed and presented to H.M. King Ananda Mahidol (Rama VIII) on April 29, 1946. As a result the Constitution of the Kingdom of Thailand B.E. 2489(1946) was promulgated on May 9, 1946. This 1946 Constitution has been considered as representing a distinct move towards since it was the first time that the House of Representatives would be fully elected by the Thai citizen.⁷⁾ Moreover the bicameralism had been introduced i.e. a Senate was established where its members would be elected by the House of Representatives for six-years term.⁸⁾

6) Preamble, **The Constitution of the Kingdom of Thailand B.E. 2489(1946)**, Royal Gazette Vol.63 Ch.30 (1946) (*Thail.*)

7) §29, **The Constitution of the Kingdom of Thailand B.E. 2489(1946)**, Royal Gazette Vol.63 Ch.30 (1946) (*Thail.*)

8) See, §§ 17, 24, 26 **The Constitution of the Kingdom of Thailand B.E. 2489 (1946)**, Royal Gazette Vol.63 Ch.30 (1946) (*Thail.*)

1.1.4 The Constitution of the Kingdom of Thailand (Interim) B.E. 2490 (1947)

On November 8, 1947, the military coup seized the elected government of Rear Admiral Thawal Thamrongnavasawadhi and restored power to Marshal Plaek Phibunsongkram as Prime Minister. The 1946 Constitution was abrogated and a new interim constitution, the Constitution of the Kingdom of Thailand (Interim) B.E. 2490 (1947) was promulgated. Under this 1947 Interim Constitution, the Constitution Drafting Assembly was established to draft a new permanent constitution. This charter also established a permanent Supreme State Council to advise the monarch and handle his personal affairs. The Council would be composed of five members, appointed by the monarch and acting as a regency council in his absence. The palace was also given increased control over its own operations, including the Royal Household, the Privy Purse, and the Royal Guards. A monarch-appointed⁹⁾ Senate was established, and, with one hundred members, equal in size to the House of Representatives.¹⁰⁾ The term of membership of senators is six years as from the appointed date. A person cannot be a member of the House of Representatives or a member of the Senate simultaneously. This Constitution allowed for potential amendments of the constitution if such amendments were passed by the National Assembly.

9) Words like “monarch-appointed,” “the King appointed,” “appointed by the King,” “approved by the King” “selected by the King” “royally appointed” etc. as express hereafter simply reflect Constitution position of the monarch following the advice of the government and not a personal decision.

10) §33, **The Constitution of the Kingdom of Thailand (Interim) B.E. 2490 (1947)**, Royal Gazette Vol.64, Ch.53 (1947) (*Thail.*)

1.1.5 The Constitution of the Kingdom of Thailand B.E. 2492 (1949)

This constitution was a result of an amendment of the 1947 (Interim) Constitution by the Constitution Drafting Assembly. When the Constitution Drafting Assembly completed the draft, it submitted the Draft Constitution to the National Assembly for consideration. The National Assembly approved the Draft of 1949 Constitution on January 28, 1949 and it was submitted to the Supreme State Council, later known as Privy Council, and promulgated on March 23, 1949 replacing the 1947 (Interim) Constitution. It elevated the monarchy to its most powerful position since the 1932 coup - A hundred-member Senate would also be selected by the King¹¹⁾ and the King's veto was strengthened, with a two-third's vote of Parliament required to overrule the veto.¹²⁾ One significant notion that derived from the process of drafting the 1949 Constitution was that it established, for the first time in Thailand's constitution drafting history, the Public Hearing Committee to organize a public hearing, although the scope of public hearing was limited to amended matters only.¹³⁾

1.1.6 The Constitution of the Kingdom of Thailand B.E. 2475 (1932) (Revised B.E.2495 (1952))

On November 29, 1951 the military coup led by Prime Minister Marshal Plaek Pibulsongkram seized power from his own government as

11) §82, **The Constitution of the Kingdom of Thailand B.E. 2492 (1949)**, Royal Gazette Vol.66, Ch.17, (1949) (*Thail.*)

12) §77, **The Constitution of the Kingdom of Thailand B.E. 2492 (1949)**, Royal Gazette Vol.66, Ch.17, (1949) (*Thail.*)

13) See, §174, **The Constitution of the Kingdom of Thailand B.E. 2492 (1949)**, Royal Gazette Vol.66, Ch.17, (1949) (*Thail.*)

well as from the Privy Council President Prince Dhani Nivat. As a result of the coup, the 1949 Constitution was abrogated. The coup appointed Marshal Plaek back as Prime Minister. A single one hundred and twenty three-member National Assembly was appointed, one hundred and three of which were from the military or police. The National Assembly re-used the 1932 Constitution with some additional amendments and it was promulgated on March 8, 1952.

1.1.7 The Charter for the Administration of the Kingdom B.E. 2502 (1959)

On September 16, 1957, General Sarit Dhanarajata executed a coup over Marshal Plaek Pibulsonggram. Sarit abrogated the 1952 Constitution, abolished the National Assembly, declared martial law, and ruled via a Revolutionary Council. Two years after the coup, on February 1959, a temporary charter was promulgated which consisted of just twenty articles making it the shortest charter in Thailand's constitutional history. The 1959 Charter gave the Prime Minister near absolute power over the executive and legislature and it was used for nine years. It also called for an appointed unicameral parliament, consisting of two hundred and forty mostly military appointees, making it probably the most repressive constitution in Thailand's history.¹⁴⁾

14) See, §§5-7, 116, **The Charter for the Administration of the Kingdom B.E. 2502(1959)**, Royal Gazette Vol. 76, Ch.19, (1959) (*Thail.*); See, also, Paul Chambers, **Good governance, political stability, and constitutionalism in Thailand 2002: The state of democratic consolidation five years after the implementation of the 1997 constitution**, King Prajadhipok's Institute, 2002.

1.1.8 The Constitution of the Kingdom of Thailand B.E. 2511 (1968)

The 1959 Charter required the establishment of the Constitution Drafting Assembly with the duty of drafting a new permanent constitution. On February 3, 1959, the Constitution Drafting Assembly was established consisting of two hundreds and forty members. The Constitution Drafting Assembly consisted of four main committees:

- Public Hearing Committee (consisting of twenty-one members)
- Rule and Procedure Committee (consisting of fifteen members)
- Constitution Drafting Committee (consisting of fifteen members)
- Conference Report Reviewing Committee (consisting of nine members)

The process of drafting the 1968 Constitution took place for nine years before the Draft Constitution was completed. The H.M. King Bhumibol Adulyadej (Rama IX) granted a Royal Signature thus the 1968 Constitution was promulgated on June 20, 1968. Under this 1968 Constitution, a bicameral Parliament was established, with an elected two hundred and nineteen-member House of Representatives and a royally-appointed 164-member Senate.¹⁵⁾ Crucially members of the House of Representative were banned from serving in the Council of Ministers.

1.1.9 The Temporary Charter for Administration of the Kingdom B.E. 2515 (1972)

On November 17, 1971 General Thanom Kittikachorn and his deputy General Praphas Charusathien overthrew the government that they had

¹⁵⁾ See, §§71, 78, 83, **The Constitution of the Kingdom of Thailand B.E. 2511 (1968)**, Royal Gazette Vol. 85, Ch. Special, (1968) (*Thail.*)

initially established, and, ironically, led by themselves, dissolving Parliament and the Cabinet in response to what they claimed was raising social and political tension. The military coup declared martial law and abrogated the 1968 Constitution. A National Executive Council was established to administer the Kingdom where General Thanom made himself the Prime Minister, the Supreme Commander as well as the Foreign Minister. After the coup, there were massive protests and strikes, coinciding with a recession and high inflation. A disastrous offensive against the Communist Party of Thailand was also launched. These factors created serious tensions and when they reached a boiling point General Thanom established a Constitution Drafting Committee to draft a charter and on December 15, 1972, the Temporary Charter was promulgated. The 1972 Charter contained several basic concepts in many ways similar to the 1959 Charter. A wholly-appointed unicameral two hundreds and ninety-nine member National Legislative Assembly was established.¹⁶⁾ The executive, under Prime Minister General Thanom's government, retained strong control over the legislature.

1.1.10 The Constitution of the Kingdom of Thailand B.E. 2517 (1974)

The 1972 Interim Charter failed to stem opposition to the General Thanom's administration. On 13 October 1973, a massive protest took place at the Democracy Monument. On the next morning, there was chaos where the police and army resulting in the shooting at the remaining demonstrators. During the mayhem, General Thanom and

16) §6, **The Constitution of the Kingdom of Thailand B.E. 2517(1974)**, Royal Gazette Vol.91, Ch.169, (1974) (*Thail.*)

General Praphas resigned their political appointments, but critically continued to lead the military. They ordered more troops to confront the remaining demonstrators, but were blocked by the then army deputy commander Krit Srivara,. As a result, General Thanom and Narong resigned from their military positions and, subsequently, fled overseas.

After the event, Sanya Dhammasakdi, Privy Councilor, was appointed as Prime Minister. Sanya appointed the Constitution Drafting Committee on October 24, 1973, consisting of eighteen members with the Justice Minister, Prakob Hutasing, as the president of the Committee. The Committee consisted of threesub-committees: (1) Sub-Committee on constitutional study and analysis; (2) Sub-Committee on public hearing; (3) Sub-Committee on constitution drafting. A one hundred person National Legislative Assembly was established to scrutinize the draft. The first draft was finished on January, 1974; it was, however, faced strong opposition and a new draft was demanded. Under the new draft, the monarch would appoint a Senate with the countersign of the President of the Privy Council.¹⁷⁾ Civil servants and soldiers could not become Members of the Parliament,¹⁸⁾ but could form up to half of the Cabinet.¹⁹⁾ The new draft, unlike the first draft, was not required a public referendum. The National Legislative Assembly, finally, approved this new draft and it was promulgated on October 7, 1974.

17) §107, **The Constitution of the Kingdom of Thailand B.E. 2517(1974)**, Royal Gazette Vol.91, Ch.169, (1974) (*Thail.*)

18) §118, **The Constitution of the Kingdom of Thailand B.E. 2517(1974)**, Royal Gazette Vol.91, Ch.169, (1974) (*Thail.*)

19) §177, **The Constitution of the Kingdom of Thailand B.E. 2517(1974)**, Royal Gazette Vol.91, Ch.169, (1974) (*Thail.*)

1.1.11 The Constitution of the Kingdom of Thailand B.E. 2519 (1976)

In 1976, during M.R. Seni Pramoj's administration, the coalition government was highly controversial and eventually massive protests erupted and the political tension finally exploded on October 6, 1976 when protesting students at Thammasat University clashed with military and police. A military coup led by Admiral Sangad Chalawyo as a result seized power and installed Tanin Kraivixien as the new Prime Minister. The new constitution, the Constitution of the Kingdom of Thailand B.E. 2519 was drafted by the Administrative Reform Council and promulgated on October 22, 1976. The 1976 Constitution granted the Prime Minister near absolute power²⁰).

1.1.12 The Charter for Administration of the Kingdom B.E.2520 (1977)

The administration under Tanin's government provoked severe opposition for being too stringently controlling the media. On October 20, 1977, another military coup, led by General Sangad Chalawyo overthrew Tanin's government and also abrogated the 1976 Constitution. The Charter for Administration of the Kingdom B.E. 2520 (1977), drafted by the National Policy Council, was then promulgated. The 1977 Charter was in many respects the same as the 1976 Constitution. However, the name of the junta was changed from the Administrative Reform Council to the National Policy Council.²¹) The 1977 Charter required a permanent

20) See, e.g., §21, **The Constitution of the Kingdom of Thailand B.E. 2519(1976)**, Royal Gazette (Special Edition) Vol.93, Ch.135, (1976) (*Thail.*)(The 1976 Constitution contained provisions that granted near absolute power to Prime Minister, such measures as summary justice)

constitution to be drafted and it set out specific rules and procedures for drafting the new constitution in its provisions.²²⁾

1.1.13 The Constitution of the Kingdom of Thailand B.E. 2521 (1978)

Under the 1977 Charter, the National Legislative Assembly was established to draft a new permanent constitution. The National Legislative Assembly, consisted of three hundreds and sixty members, established the Constitution Drafting Committee on December 1, 1977.²³⁾ The Constitution Drafting Committee consisted of thirty-five members: twenty-five members were members of the National Legislative Assembly and another ten members from non-members of the National Legislative Assembly. The Constitution Drafting Committee took more than six months to draft the constitution and the Draft Constitution it was however finally completed on June 8, 1978 and then submitted to the National Legislative Assembly for its consideration. The National Legislative Assembly approved the whole Draft Constitution on December 18, 1978 and it was therefore promulgated on December 22, 1978.

1.1.14 The Charter for Administration of the Kingdom B.E.2534 (1991)

On February 23, 1991, military coup d'etat led by General Sunthorn Kongsompong and General Suchinda Kraprayoon deposed the government

21) Paul Chambers, **Good governance, political stability, and constitutionalism in Thailand 2002: The state of democratic consolidation five years after the implementation of the 1997 constitution**, King Prajadhipok's Institute, (2002)

22) See §§6, 9-12, **The Charter for Administration of the Kingdom B.E.2520 (1977)**, Royal Gazette Vol.84, Ch.111, (1977) (*Thail.*)

23) See §9, **The Constitution of the Kingdom of Thailand B.E. 2521(1978)**, Royal Gazette (Special Edition) Vol.95, Ch.146, (1978) (*Thail.*)

of Prime Minister Chatichai Choonhavan. The coup also abrogated the 1978 Constitution and replaced it with a temporary charter, the Charter for Administration of the Kingdom B.E. 2534 (1991) which was duly promulgated on March 1, 1991 and countersigned by General Sunthorn Kongsompong. The military coup, calling themselves the National Peace Keeping Council, appointed a new unicameral National Assembly headed by Professor Dr. Ukrit Mongkolnavin and also appointed a new Prime Minister Anand Panyarachun.

1.1.15 The Constitution of the Kingdom of Thailand B.E. 2534 (1991)

According to the 1991 Charter, required the establishment of a National Legislative Assembly consisting of not less than two hundred members but no more than three hundred members being required to draft a new permanent constitution to replace the 1991 Charter. As a result the National Peace Keeping Council ultimately appointed a new unicameral National Legislative Assembly consisting of two hundreds and ninety-two members with Professor Dr. Ukrit Mongkolnavin as the President. The National Legislative Assembly established the Constitution Drafting Committee which was tasked in the drafting a permanent constitution. The Constitution Drafting Committee, having Meechai Ruchuphan as the President, was comprised of twenty members of which six were members of the National Legislative Assembly and fourteen were non-members of the National Legislative Assembly. After the Draft Constitution was completed, the National Legislative Assembly approved the Draft on November 25, 1991 and it was in due course promulgated on December 9, 1991.

1.1.16 The Constitution of the Kingdom of Thailand B.E. 2540 (1997)

As a result of a public uprising against the government in May 1992, oftentimes referred to as Black May, called for Constitutional reform. The 1991 Constitution was amended in order for the creation of an entirely new constitution by adding Chapter 12, the New Constitution Drafting, which required the establishment of a Constitution Drafting Assembly. The Constitution Drafting Assembly was established in 1996 consisting of ninety-nine members. Seventy-six members were directly elected from each province and twenty-three members were selected by the National Assembly. The 1997 Constitution has been heralded as one of the most democratic political reforms in Thailand as the drafting had a participative process by explicitly including the public. Moreover, it contained several political/democratic innovations compared to previous constitutions; for example: voting was made compulsory²⁴⁾ in order to reduce vote buying; a mixed electoral system between the party lists and single-member constituencies was introduced²⁵⁾; the executive branch was strengthened by various measures to increase the stability of governments; several new independent institutions such as the Constitutional Court, the Administrative Court, the National Counter Corruption Commission, an Ombudsman amongst others were established.²⁶⁾

24) §68, **The Constitution of the Kingdom of Thailand B.E. 2540 (1997)**, Royal Gazette Vol. 114, Ch.55, (1997) (*Thail.*)

25) §98, **The Constitution of the Kingdom of Thailand B.E. 2540 (1997)**, Royal Gazette Vol. 114, Ch.55, (1997) (*Thail.*)

26) See, e.g., §§196-200, 255, 276, 297-307, **The Constitution of the Kingdom of Thailand B.E.2540 (1997)**, Royal Gazette Vol. 114, Ch.55, (1997) (*Thail.*)

1.1.17 The Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006)

The Council for Democratic Reform led by General Sonthi Boonyaratglin successfully seized control over the administration of the State on September 19, 2006 and informed the King that the grounds for seizure and the annulment of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) represented a desire to ameliorate the deterioration of public faith in the administration of State affairs and the inefficient supervision of State administration and scrutiny over the exercise of State powers, which instigated wide scale corruption and misconduct, while failing to identify and punish the wrongdoers, resulting in a severe political and administrative crisis, as well as to heal conflicts within the mass population which was stirred into factional divisions to the extent of disintegrating national unity and constituting a severe social crisis.²⁷⁾ It also stated that the reason for establishing and applying an interim administrative mechanism is because it was considered the best way suitable to the prevailing situation at that time as many sectors had sought to resolve this crisis, but to no avail. Instead, there were signs of further aggravation to the point of physical violence leading to possible bloodshed and loss of life which they argued posing a serious threat to the national administration, economy and public order. A draft of the 2006 interim Constitution was released on September 27, 2006 and it was

27) See, Preamble of the (Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006). (subsequently references of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) unless state otherwise will be drawn from Office of the Council of State's Welfare Fund, **Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006)**, translation by Chukiert Ratanachaichan; available at <http://www.senate.go.th/pdf/const.pdf>)

promulgated on October 1, 2006.

In the preamble of this 2006 (interim) Constitution, it stated that the 2006(interim) Constitution took into consideration:

- the rule of law in accordance with Thailand's administrative conventions under the democratic form of government with the King as Head of State;
- the revival of a conscientious affection for national unity;
- the economic system and public order;
- the development of a strong corruption monitoring system and a virtuous ethical structure;
- the promotion and protection of rights and liberties of the people compliance with the United Nations Charter, obligations under treaties or international agreements;
- the promotion of friendly relations with other countries; and
- subsistence under the principle of sufficient economy.

This 2006 (interim) Constitution required, it was argued, an expeditious proceeding to be undertaken in order to prepare a new draft constitution (the 2007Constitution) with a call for extensive public participation at all stages. The process of drafting the 2007 Constitution is described in some greater detail below.

1.2 The Process of Drafting theConstitution of the Kingdom of Thailand B.E. 2550 (2007)

1.2.1 Background

The Chairperson of the Council for Democratic Reform successfully seized control over the administration of the State on September 19, 2006 and as a result, the 1997 Constitution was abrogated. The country was then ruled by martial law and executive decree for weeks, until it promulgated an interim constitution on October 1, 2006. The 2006 (Interim) Constitution, however, set rules and conditions to ensure that an expeditious proceeding would be undertaken to prepare a new draft constitution. By virtue of the provisions of the 2006 (Interim) Constitution, it required the establishment of the Constitutional Drafting Assembly and the Constitution Drafting Committee to be in charge of drafting a new Constitution with extensive public participation at all stages.²⁸⁾ In the process of drafting the 2007 Constitution, people have been allowed to extensively express their views and opinions and those views and opinions of the people have been gathered for use in drafting of the 2007 Constitution, for example, the Constitution Drafting Committee is required to ask for public consultation and the national referendum is required to be established. The national referendum resulted in a majority in favour of the new constitution (although there were significant regional differences in the vote with the North and North-East provinces voting overwhelmingly against the proposed constitution) in the event with an overall national majority approving the draft constitution the, President of the National Legislative Assembly presented the new draft Constitution to the King for His signature and as a result the 2007 Constitution, Thailand's 18th Constitution, was enacted.

28) *See*, Preamble of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006).

1.2.2 The Process

The process of drafting the 2007 Constitution was set forth in the 2006 (Interim) Constitution which required 8 separate stages to be followed:

(1) The Establishment of the Constitution Drafting Assembly

The 2006 (Interim) Constitution required a Constitution Drafting Assembly (CDA), consists of one-hundred members with one (1) President and no more than two Vice-Presidents, to be established in order to prepare a Draft Constitution.²⁹⁾ In a move to allay public fears over those actually involved in the process provisions were made regarding eligibility onto the CDA specifically according to Section 19 and Section 14 of the 2006(Interim) Constitution, a member of the Constitution Drafting Assembly:

- shall not be or have been a member of a political party or hold any position in a political party within two years prior to the date which he or she is selected to be a member of the Constitution Drafting Assembly; and
- shall not concurrently hold the position of member of the National Legislative Assembly (an institution under the 2006 (Interim) Constitution, consisting of two hundred and forty-two members appointed by the King on October 11, 2006, that act as the House of Representatives, the Senate and the National Assembly); and

²⁹⁾ §19, the Constitution of the Kingdom of Thailand (Interim)B.E. 2549 (2006).

- shall not concurrently hold the position as the Prime Minister and Ministers

The main institution directly involved in the establishment of the Constitution Drafting Assembly was the National Council. The National Council was charged with the duty to select among its members a panel for the purpose of preparing a list of the members of the Constitution Drafting Assembly.³⁰⁾ The *prima facie* requirement to become a member of the National Council were extremely open requiring only that the prospective individual be a Thai national by birth and had to be not less than eighteen years old. The 2006 (Interim) Constitution allowed the National Council to consist of not more than two thousand members from various groups - public, academic, social, and private sectors - and from all regions in Thailand as appropriate.³¹⁾ However, on December 9, 2006, there were only one thousand and eighty-two(1982) members that were appointed by the King to be members of the National Council. In the process of selection members of the Constitution Drafting Assembly by members of the National Assembly, each member of the National Council had the right to cast a vote for not more than three persons and the persons receiving the highest number of votes in respective order up to two hundred was deemed to be selected.³²⁾ Under this peer-vote system, members of National Assembly had elected two hundreds

30) §22, the Constitution of the Kingdom of Thailand (Interim)B.E. 2549 (2006).

31) §20, the Constitution of the Kingdom of Thailand (Interim) B.E. 2549(2006); see also, §5 the Constitution of the Kingdom of Thailand(Interim) B.E. 2549 (2006).

32) §22, the Constitution of the Kingdom of Thailand (Interim) B.E. 2549(2006); see also, §5 the Constitution of the Kingdom of Thailand(Interim) B.E. 2549 (2006). (In the case of a tie of votes in any order which results in more than two hundred selected persons, a draw of lots shall be made.)

candidates within seven days from its first sitting where seventy-two persons from public sector, thirty-four persons from academic sector, thirty-eight persons from social sector, and fifty-four persons from private sector. By the time the selection of members of the Constitution Drafting Assembly has been completed, the National Council was dissolved.

The next institution involved with the establishment of the Constitution Drafting Assembly after the National Council was dissolved was the Council for National Security, formerly known in English as the *Council for Democratic Reform under the Constitutional Monarchy*³³). The Council for National Security was required to select one hundred people from the list of two hundreds candidates provided by the National Council which were to be presented to the King for appointment as members of the Constitution Drafting Assembly. On January 1, 2007, the King gave a Royal Command appointing members of the Constitution Drafting Assembly by having the President of the Council for National Security, General Sonthi Boonyaratglin, countersign the Royal Command. The King appointed, in accordance with a resolution (No.1/2550) of the Constitution Drafting Assembly on January 8, 2007, Mr. Noranit Setabutr, as the President of the Constitution Drafting Assembly and other two members, Mr. Seree Suwannapanon, and Mr. Decho Sawananon, as the Vice-Presidents.. The President of the Council for National Security, General Sonthi Boonyaratglin, also countersigned the Royal Command appointing the President and Vice-president of the Constitution Drafting Assembly.

33) The Council for Democratic Reform was the name of the military regime that governed Thailand following the 2006 Coup led by Army Commander General Sonthi Boonyaratglin. Under the 2006 (Interim) Constitution, the Council in the name of Council for National Security continues to maintain considerable power during the process of the 2007 permanent constitution drafting.

The Constitution Drafting Assembly has thirteen committees; of which arguably the most important committee was the Constitution Drafting Committee itself, which is further described. The other twelve Committees were appointed as being a special unit to coordinate with the Constitution Drafting Assembly working on data from public hearings where there were Mr Pairoj Promsan and Assoc Prof Wutisan Tanchai being put in charge of the unit. Those twelve Committees in a special unit of the Constitution Drafting Assembly are:

1. Committee (Special Task Force) to coordinate activities concerning public participation and the Referendum
2. Committee concerned with listening to public opinions and with public participation for the Central Region
3. Committee concerned with listening to public opinions and with public participation for the North-Eastern Region
4. Committee concerned with listening to public opinions and with public participation for the Northern Region
5. Committee concerned with listening to public opinions and public participation for the Southern Region
6. Committee overseeing seventy-six province-based Special Task Forces
7. Committee seeking opinions of non-government organizations and other social groups
8. Committee for public relations and dissemination
9. Committee (Special Task Force) to vet the Draft Constitution and organic bills
10. Committee (Special Task Force) recording intentions and remarks, and checking minutes of meetings

11. Committee to draft the rules and voting procedures for the Referendum
12. Committee (Special Task Force) concerned with the general operations of the Constitution Drafting Assembly

(2) The Establishment of the Constitution Drafting Committee

The Constitution Drafting Assembly initially would be charged with consideration of whether to approve or disapprove the Draft Constitution in toto and on approval had to complete holding the Referendum one hundred and eighty days as from the date of its first sitting on January 8, 2007. In preparing the Draft Constitution, Section 25 of the 2006 (Interim) Constitution prescribed that the Constitution Drafting Assembly had to appoint a Constitution Drafting Committee consisting of thirty-five members within twenty days from its first sitting. Members of the Constitution Drafting Committee were appointed by the Constitution Drafting Assembly with ten of its members appointed on the advice of the Council for National Security, in other words, it consisted of:

- twenty-five qualified members - who were from the public, private, social and academic sectors, and not members of the Constitution Drafting Assembly - elected by a resolution of the Constitution Drafting Assembly; and
- ten qualified members who were or were not members of the Constitution Drafting Assembly as recommended by the President of the Council for National Security

A Royal Decree³⁴⁾ was issued that set rules and procedures relevant to the qualifications and duties of the Constitution Drafting Committee, to qualify a member of the Constitution Drafting Committee had to possess the following qualifications:

- Thai nationality by birth;
- Not being less than eighteen years old;
- Not being or have been a member of a political party or hold any position in a political party within two years prior to the date which he or she is selected to be a member of the Constitution Drafting Committee;
- Not being a monk (Bhikkhu), or a priest; and
- Not being under suspension of the right to vote

The Constitution Drafting Committee was composed of three working groups or Subcommittees, each with a clearly defined area of responsibilities:

- Group 1: Rights, liberties, participation by the people [in administration and inspection of the exercise of state power], and distribution of power.

Chair: Mr Chuchai Suphawong with twelve other members;

- Group 2 Political institutions: Parliament, Council of Ministers, relations between politicians and bureaucrats, and ethics of politicians and bureaucrats.

Chair: Mr Charan Phakdithanakul with nine other members.

- Group 3 Independent agencies (to scrutinize the exercise of state power), state audit, and parliamentary ombudsman.

Chair: Prof Vicha Mahakhun with fourteen other members.

³⁴⁾ Royal Decree on Rules and Procedures Regarding an Establishment of the Constitution Drafting Committee B.E. 2550 (2007), dated January 10, 2007.

(3) The Constitution Drafting Committee Prepares the Draft Constitution with an Explanatory Memorandum and Asks for Public Consultation

The Constitution Drafting Committee had to prepare the Draft Constitution as well as an explanatory memorandum to clarify the differences between the Draft Constitution and the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) together with reasons of amendments thereon.³⁵⁾ Thus, it is quite obvious that the 1997 Constitution was the basis for the Constitution Drafting Committee's deliberations. Upon the completion of the Draft Constitution, the Constitution Drafting Committee submitted the Draft Constitution along with other relevant documents to the following organizations and persons for further consideration and recommendation:³⁶⁾

- The Constitution Drafting Assembly;
- The National Security Council;
- The Council of Ministers;
- The Supreme Court;
- The Supreme Administrative Court;
- The Election Commission;
- The National Counter Corruption Commission;
- The Auditor-General of the State Audit;
- The Ombudsmen;
- The National Human Rights Commission;
- National Economic and Social Advisory Council; and

35) §26, The Constitution of the Kingdom of Thailand (Interim)B.E. 2549 (2006).

36) §26, the Constitution of the Kingdom of Thailand (Interim)B.E. 2549 (2006).

- Higher Education Institutions

Moreover, the Constitution Drafting Committee disseminated the Draft Constitution and its explanatory memorandum as information to general public and also enhanced and organized public consultation. The institutions and the public had thirty days to review and comment on the Draft Constitution. This was clearly designed to engage the public and garner confidence through enhanced transparency and public participation in the constitution drafting process. Various public discussion forums were conducted simultaneously during this drafting process.³⁷⁾

(4) The Motion to Make an Amendment to the Draft Constitution by a Member of the Constitution Drafting Assembly

After the Constitution Drafting Assembly received the Draft Constitution and its explanatory memorandum, a member of the Constitution Drafting Assembly could introduce a motion, together with relevant reasons, to make an amendment if such motion were endorsed by not less than one-tenths (1/10) of the existing members of the Constitution Drafting Committee.³⁸⁾ This motion had to be introduced within thirty days from the date that the Constitution Drafting Assembly received the Draft Constitution and explanatory memorandum, prior to the date of Constitution Drafting Assembly sitting for the purpose of approving (or disapproving) the Draft Constitution.³⁹⁾ Also under the 2006 (Interim) Constitution, a member who had introduced a motion or endorsed a motion of another

37) See §28, the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006).

38) §27, the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006).

39) §28, the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006).

member could not introduce another motion or endorse a motion of any other member⁴⁰).

(5) The Constitution Drafting Committee Prepare and Disseminate the Report of its Amendment or Non-Amendment to the Public and Submit the Draft Constitution to the Constitution Drafting Assembly

After the expiration of thirty days as from the date of submission of the Draft Constitution and documents for public consultation, the Constitution Drafting Committee considered recommendations received from public as well as motions received from Constitution Drafting Assembly in order to determine whether it should amend the Draft. Then it had prepared and disseminated the report of its amendment or non-amendment, together with reasons thereon, to the public and submitted the Draft Constitution to the Constitution Drafting Assembly for approval or disapproval consideration⁴¹)

(6) The Consideration of the Constitution Drafting Assembly to Approve or Disapprove the Draft Constitution

When the Constitution Drafting Assembly received the Draft Constitution from the Constitution Drafting Committee after the process detailed in (5), the Constitution Drafting Assembly had established sitting for the purpose of considering whether it should approve or disapprove the entire Draft Constitution and the specific provisions stipulated in the motions introduced by its members or by the Constitution Drafting Committee. When

40) §27, the Constitution of the Kingdom of Thailand (Interim)B.E. 2549 (2006).

41) §28, the Constitution of the Kingdom of Thailand (Interim)B.E. 2549 (2006).

the Constitution Drafting Assembly taking the entire Draft Constitution and other relevant provisions into consideration, no member of the Constitution Drafting Assembly could introduce a motion to make an amendment, unless the Constitution Drafting Committee so approved by not less than three-fifths (3/5) of members of the Constitution Drafting Assembly approves such amendment.

(7) The Constitution Drafting Assembly Disseminated Information to the Public and Organized a National Referendum

The process of drafting the 2007 Constitution called for what was a democratic innovation Thailand for it required ratification by public referendum. The 2006 (Interim) Constitution set the one hundred and eighty day deadline to complete the charter drafting by either approving or disapproving the whole draft charter before organizing the national referendum after fifteen days but not more than thirty days from the date of dissemination of the Draft Constitution.⁴²⁾ After the completion of drafting of the new Constitution, the Constitution Drafting Assembly presented the draft charter to the general public on July 31, 2007, and held a referendum for the people to vote whether to approve the whole constitution. The referendum took place on the same day throughout the Kingdom on August 19, 2007, and is considered to be the first national referendum in Thailand. The constitution draft was accepted by a majority vote nationwide, official results, announced by the Election Commission of Thailand, show that out of 45 million eligible voters, 25.9 million cast their ballots on the referendum day. A total of 56.69 percent

42) §29, the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006).

of voters (14,727,306 votes) voted to support the new charter, while 41.37 percent (10,747,441 votes) voted against it. Invalid ballots came to only 1.9 percent.

(8) Promulgation of the Constitution

Since in the referendum, the majority of people who had the right to vote approved the Draft Constitution, then, according to section 31 of the 2006 (Interim) Constitution, the President of the National Legislative Assembly, Mr. Meechai Ruchupan, presented the Draft Constitution to H.M. King Bhumibol for a Royal Signature. Upon Royal Signature, the constitution was published in the Government Gazette for promulgation on August 24, 2007.

Table 1
Instigators and Drafters of Constitutions of the Kingdom of Thailand
B.E. 2475 (1932) - 2550 (2007)

	Constitution	B.E. (A.C.)	Instigator	Drafter	Remarks
1	the Temporary Charter for the Administration of Siam Act B.E. 2475 (1932)	2475 (1932)	The People Body	The People Body	
2	The Constitution of the Siam Kingdom B.E. 2475 (1932)	2475 (1932)	The People Body	- Constitution Drafting Sub-Committee - The People’s Assembly	

The Constitution of the Kingdom of Thailand

	Constitution	B.E. (A.C.)	Instigator	Drafter	Remarks
3	The Constitution of the Kingdom of Thailand B.E. 2489 (1946)	2489 (1946)	The People Body	- Special Task Force Committee - House of Representative	
4	The Constitution of the Kingdom of Thailand (Interim) B.E. 2490 (1947)	2490 (1947)	Coup d'Etat, led by General Phin Choonhavan	Military Coup led by General Phin Choonhavan	
5	The Constitution of the Kingdom of Thailand B.E. 2492 (1949)	2492 (1949)	Coup d'Etat, led by General Phin Choonhavan	- Constitution Drafting Assembly - National Assembly	
6	The Constitution of the Kingdom of Thailand B.E. 2475 (1932) (Revised B.E. 2495 (1952))	2495 (1952)	Coup d'Etat, led by Field Marshal Plaek Pibunsongkram	House of Representative	
7	The Charter for the Administration of the Kingdom B.E. 2502 (1959)	2502 (1959)	Coup d'Etat, led by General Sarit Dhanarajata	- Revolutionary Council	
8	The Constitution of the Kingdom of Thailand B.E. 2511 (1968)	2511 (1968)	Coup d'Etat, led by General Sarit Dhanarajata	- Constitution Drafting Committee - Constitution Drafting Assembly	
9	The Temporary Charter for Administration of the Kingdom B.E. 2515 (1972)	2515 (1972)	Coup d'Etat, led by General Thanom Kittikachorn	- Revolutionary Council - Constitution Drafting Committee	

1. Drafting the New Constitution

	Constitution	B.E. (A.C.)	Instigator	Drafter	Remarks
10	The Constitution of the Kingdom of Thailand B.E. 2517 (1974)	2517 (1974)	- The King - Council of Ministers (Sanya Dharmasakti)	- Constitution Drafting Committee - National Legislative Assembly	
11	The Constitution of the Kingdom of Thailand B.E. 2519 (1976)	2519 (1976)	Coup d'Etat, led by Admiral Sangad Chalawyoo	The Administrative Reform Council led by Admiral Sangad Chalawyoo	
12	The Charter for Administration of the Kingdom B.E.2520 (1977)	2520 (1977)	Coup d'Etat, led by Admiral Sangad Chalawyoo	The National Policy Council led by Admiral Sangad Chalawyoo	
13	The Constitution of the Kingdom of Thailand B.E. 2521 (1978)	2521 (1978)	Coup d'Etat, led by Admiral Sangad Chalawyoo	- Constitution Drafting Committee - National Legislative Assembly	
14	Charter for Administration of the Kingdom B.E.2534 (1991)	2534 (1991)	Coup d'Etat, led by General Sunthorn Kongsompong	The National Peace Keeping Council, led by General Sunthorn Kongsompong	
15	The Constitution of the Kingdom of Thailand B.E. 2534 (1991)	2534 (1991)	Coup d'Etat, led by General Sunthorn Kongsompong	- Constitution Drafting Committee - National Legislative Assembly	
16	The Constitution of the Kingdom of Thailand B.E. 2540 (1997)	2540 (1997)	National Assembly	- Constitution Drafting Assembly - National Assembly	The nation-wide public hearing was held

The Constitution of the Kingdom of Thailand

	Constitution	B.E. (A.C.)	Instigator	Drafter	Remarks
17	The Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006)	2549 (2006)	Coup d'Etat, led by General Sonthi Boonyaratglin	The Council for Democratic Reform	
18	The Constitution of the Kingdom of Thailand B.E. 2550 (2007)	2550 (2007)	Coup d'Etat, led by General Sonthi Boonyaratglin	- Constitution Drafting Assembly - Constitution Drafting Committee	The national referendum was held

Table 2

Schedule of the Process of Drafting the 2007 Constitution

Activity	Implementation Schedule (2007) ⁴³⁾
1. Discussion of Broad Principle and Issues by Constitution Drafting Committee	February 8
2. Discussion at Subcommittee Level	February 23
3. Constitution Drafting Committee vetting the Subcommittee's Proposals	March 10
4. Preliminary Draft Constitution by the Secretary	March 20
5. First Draft with Section Listing by Constitution Drafting Committee	April 19
6. Documentation of Differences from the 1997 Constitution	April 26
7. Public Hearings	May 26
8. Final Draft Constitution to Constitution Drafting Assembly for Review	June 10
9. Approval by Constitution Drafting Assembly	July 5

2. Fundamental Principles in the Constitution of the Kingdom of Thailand B.E. 2550(2007)

Activity	Implementation Schedule (2007) ⁴³⁾
10. Constitution Drafting Process	July 6
11. Publication of Draft Constitution for Dissemination	August 4
12. Drafting Organic Bill	August 18
13. Referendum	September 3 (August 19) ⁴⁴⁾
14. Promulgated	(August 24)

2. Fundamental Principles in the Constitution of the Kingdom of Thailand B.E. 2550(2007)

The Constitution is the supreme law of the State that guarantees and protects the rights and liberties of the people as well as designates the country's political and administrative structure. The provisions of any law, rule or regulation, which are contrary to or inconsistent with the Constitution, are thus not enforceable.⁴⁵⁾ That is, if there is a conflict between a legal statute and the codified constitution, all or part of the statute can be declared ultra vires by a court and struck down as

43) ConstitutionDrafting Assembly, Press Release Issue No 2, at 1, January 29, 2007, available at http://www.parliament.go.th/parcy/sapa_db/committee0-upload/0-20070207145701_cdc%20news_0002e.pdf

44) The initial framework of the Constitution Drafting Committee scheduled thenational referendum on September 3, 2007 but the national referendum on the newconstitution was held in Thailandon August 19, 2007 before it was promulgated on August 24, 2007.

45) §6, the Constitution of the Kingdom of Thailand B.E. 2550(2007). (subsequently references of the Constitution of the Kingdom of Thailand B.E.2550 (2007) unless stated otherwise will be drawn from, Office of the Councilof State, **Constitution of the Kingdom of Thailand B.E. 2550(2007)**, translation by Pornthip Jala.)

unconstitutional. Even if in case when there are no provision under the Constitution is applicable to the case, the Constitution has set its own rule to fill the gap of the law by requiring that such case should be decided in accordance with the constitutional conventions of the democratic regime of government with the King as Head of the State⁴⁶⁾ - or otherwise, it would be stuck down as unconstitutional. The current constitution has several major differences from the previous one since it is not only amendment on a core Section but it is also added an extra section on various matters. This section will thus summarized fundamental principles in the current constitution in detail.

2.1 Drafting Background

All of Thailand's charters and constitutions have allowed a constitutional monarchy. Most of them have stipulated parliamentary systems; however, both unicameral parliament and bicameral parliaments system have been used. In the current constitution there are ten basic principles that the Constitution Drafting Committee agreed to keep it same:⁴⁷⁾

- (1) Thailand is an indivisible Kingdom.
- (2) Thailand is democratically governed with the King as Head of State and as commander-in-chief of the Royal Armed Forces.
- (3) The King shall be held in a position of high reverence, inviolate, not to be exposed to any kind of accusation, and exempt from legal action.

46) §7, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

47) Constitution Drafting Assembly, **Decision on the Guiding Principles of the New Constitution of Constitution Drafting Committee**, available at http://library2.parliament.go.th/giventake/content_cons/con2550_guide_en.pdf

2. Fundamental Principles in the Constitution of the Kingdom of Thailand B.E. 2550(2007)

- (4) Thailand is governed by the rule of law.
- (5) Thailand is governed by a parliamentary system.
- (6) The democratic or sovereign power belongs to the Thai people with the King as Head of State. The King as Head of State shall exercise such power through the National Assembly, the Council of Ministers, and the Courts.
- (7) The Constitution is the supreme law of the State. The provisions of any law, rule or regulation, which are contrary to or inconsistent with this Constitution, shall not be enforceable.
- (8) In cases where no provision under the Constitution is applicable, judgment shall be based on the tradition [widely accepted practice] of a democratic system of government with the King as Head of State.
- (9) Human dignity, rights, civic duties, liberties, equality, participation by the people, and community powers shall be recognized and protected.
- (10) Judges and Supreme Courts shall be free to adjudicate cases put before them impartially and justly as provided by the Constitution and law.

Moreover, during the drafting process, the Constitution Drafting Committee had prepared, as a proposal, three basic conceptual frameworks to solve what were seen as long standing endemic problems in the politics and administration of Thailand. Those three frameworks are:⁴⁸⁾

48) Constitution Drafting Assembly, **Decision on the Guiding Principles of the New Constitution of Constitution Drafting Committee**, available at http://library2.parliament.go.th/giventake/content_cons/con2550_guide_en.pdf; see also, Montree Rupsuwan, **Conceptual Framework of the New Constitution Drafting of the Kingdom of Thailand**, December

- (1) Rights, Liberties, Public Participation of the People, and Distribution of Powers;
- (2) Political Institutions;
- (3) Independent Agencies and the Judiciary.

It is noteworthy that during this phase the framework were kept reasonably open such that subsequently this issue could become more defined. For example, as shown in Framework 1 below, involvement to the public was open in “various aspects.” This was perhaps purposely ambiguous.

(1) Framework 1 - Rights, Liberties, Public Participation of the People, and Distribution of Powers

During the drafting process, the Constitution Drafting Committee proposed under the Framework that:⁴⁹⁾

Rights and liberties should be clearly specified and expanded in the new Constitution. Limitations of such rights and liberties should be clearly stated and explained.

The people should be encouraged to exercise the rights and liberties provided in the Constitution to the fullest extent, short of infringing on others’ in the process. Specific mechanisms should be set up to promote the exercise of such rights and liberties.

Human dignity, rights, liberties, and equality should be protected in line with any commitments made to the international community.

2006; *available at* http://library2.parliament.go.th/giventake/content_cons/conceptual_en.pdf

49) Constitution Drafting Assembly, **Decision on the Guiding Principles of the New Constitution of Constitution Drafting Committee**, *available at* http://library2.parliament.go.th/giventake/content_cons/con2550_guide_en.pdf

Provision should be made in the Constitution for participation by the people in various aspects.

Distribution of powers to local governments should increase.

(2) Framework 2 - Political Institutions

Under Framework 2, the Constitution Drafting Committee proposed that:⁵⁰⁾

There should be two Houses with the member of the Senate required to possess higher qualifications relative to House of Representative.

The way Members of both Houses was to be revised.

The election system should be changed to ensure honest, just, and more effective elections.

Members of the National Assembly should be independent of political parties, free from political control and conflicts of interest in carrying out their legislative duties.

The Prime Minister should be from the ranks of the Lower House, prohibited from having any conflict of interest during and after leaving office.

The Executive should be answerable to the National Assembly and subjected to vigorous scrutiny by it and independent agencies; the related procedure should be easy to apply. The role of the minority political parties in scrutinizing the Executive should be enhanced and strengthened.

Political parties should be bona fide political institutions with proper rules regarding financial support and contributions they receive, which

50) Constitution Drafting Assembly, **Decision on the Guiding Principles of the New Constitution of Constitution Drafting Committee**, available at http://library2.parliament.go.th/giventake/content_cons/con2550_guide_en.pdf

should be transparent and not excessive in amounts.

There should be legislation relating to the morality and ethics of politicians and bureaucrats, along with suitable penal codes.

There should be legislation governing the relations between politicians and bureaucrats.

(3) Framework 3: Independent Agencies and the Judiciary

With regards to Independent Agencies and the Judiciary, the Framework was set that:⁵¹⁾

All the existing statutory Independent Agencies and Courts should remain, with suitable changes to their powers and responsibilities to increase their efficacy and accountability.

The selection or recruitment process should be improved to ensure genuine independence and impartiality. It should not be left to the Senate alone as was historically the case.

There should be a system of monitoring and supervision over their operations.

It should be made easier for the people to participate directly in the scrutiny process of the courts and of the Independent Bodies.

Investigation of abuse of power should be prompt and timely. Rights, liberties, participation by the people [in administration and inspection of the exercise of state power], and distribution of power. Political institutions: National Assembly, Council of Ministers, relations between politicians and bureaucrats, and ethics of politicians and bureaucrats.

51) Constitution Drafting Assembly, **Decision on the Guiding Principles of the New Constitution of Constitution Drafting Committee**, available at http://library2.parliament.go.th/giventake/content_cons/con2550_guide_en.pdf

Independent agencies (to scrutinize the exercise of state power), state audit, and parliamentary ombudsman.

After the Draft Constitution was submitted to the Constitution Drafting Assembly and the public, it was reviewed and amended through that consultative process and finally the final draft was completed for the Constitution Drafting Assembly to make a consideration on whether to approve it followed by the national referendum on August 19, 2007. The conclusion of the 2007 Constitution was provided in the subsequent parts.

2.2 General Provisions and the Monarch

(1) Form of State and the Sovereignty

Thailand is one and indivisible Kingdom which adopts a democratic regime of government with the King as Head of State⁵²). The 2007 constitution provides that the sovereign power belongs to the Thai people where the King as Head of State shall exercise such power through the National Assembly, the Council of Ministers and the Courts⁵³). The new innovation in the 2007 Constitution is that it adds the principle of “rules of law” by requiring that duty performed by the National Assembly, the Council of Ministers, the Courts, as well as the constitutional-mandated organizations and the state agencies have to be in compliance to the rules of law principle.⁵⁴)

52) §§1, 2, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

53) §3, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

54) See §3 para. 2, the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

(2) The Monarch and the Privy Council

The King is considered to being the Head of the Kingdom of Thailand as well as being the Head of the Thai Armed Forces.⁵⁵⁾ He is enthroned in a position of revered worship and shall not be violated and no person shall expose the King to any sort of accusation or action.⁵⁶⁾ Under this Constitution, the King has his own power to select and appoint qualified persons to be the President of the Privy Council and not more than eighteen Privy Councilors to constitute the Privy Council which is charged with a duty to render an advice to the King on all matters pertaining to His functions as He may consult.⁵⁷⁾ However, members of the Privy Council are limited further in that no privy councilor may be a member of the House of Representatives, senate, Election Commissioner, Ombudsman, member of the National Human Rights Commission, Constitutional Court judge, Administrative Court judge, National Counter Corruption Commissioner, State Audit Commissioner, government official holding a permanent position or receiving a salary, official of a State enterprise, other State official or member or official of a political party, and must not manifest loyalty to any political party.⁵⁸⁾ Also whenever the King is absent from the Kingdom or unable to perform His functions for any reason, if there is no Regent appointed, neither by the King or by the National Assembly in the name of the King, the President of the Privy Council would be Regent *pro tempore*.⁵⁹⁾

55) §§2, 10, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

56) §8, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

57) §12, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

58) §14, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

59) §§18-20, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

2.3 Rights and Liberties of an Individual

The basic concept under the 2007 provision is that the Constitution protects the human dignity, right, liberty and equality of the Thai people; and, as a result, there should be a concern over human dignity, rights, and liberties when exercising of powers by all State authorities - the State has to support, encourage, and assist the exercise of the rights and liberties of Thai people and, indeed, the Constitution prohibited the State from the exercise of any action that would restrict a person's rights and liberties as recognized by the Constitution, unless by virtue of law specifically enacted for the purpose determined by the 2007 Constitution and only to the extent of necessity and provided that it does not affect the essential substances of such rights and liberties.⁶⁰⁾ The dignity, right, liberty, and equality of the Thai people are protected irrespective of their origins, sexes or religion.⁶¹⁾ A person whose rights or liberties recognized by the Constitution is violated can invoke the provisions of the Constitution to exercise rights in Courts or to defend himself in Courts.⁶²⁾ However, there is some limit in the scope for people seeking to invoke or exercise their dignity, rights, or liberty since such implementation of dignity, rights, or dignity cannot be exercised or invoked in a way that violates the Constitution or good morals of the people. The following are the basic right and liberties as explicitly recognized by the 2007 Constitution:⁶³⁾

60) §§4, 26, 28, 29, the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

61) §5, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

62) §28, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

63) See, e.g., Part 3: Rights and Liberties of an Individual, the Constitution of the

(1) Equality before the law All person, males or females, shall be equal before the law and enjoy equal protection under it. The Constitution prohibits any unjust discrimination against a person on grounds of difference in origin, race, language, sex, age, disability, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political view.⁶⁴⁾

(2) Personal rights and liberties In the sense of personal rights and liberties, the Constitution protect the right and liberty in relation to a person's life and their person; therefore, torture or a brutal act or punishment by a cruel or inhumane means is not to be inflicted except a punishment imposed pursuant to a Court judgment or by virtue of law.⁶⁵⁾ The protection of personal rights and liberties also includes: the liberty of dwelling (to have a peaceful habitation in and for possession of his or her dwelling); the liberty of travelling and making the choice of residence within the Kingdom (unless prohibited by virtue of law in order to maintain the security of the State, public order, public welfare, town and country planning, or welfare of youth); the rights, dignity, reputation and the right of privacy of a family member; the liberty of communication by lawful means; liberty to profess a religion, a religious denomination or creed, and observe religious precepts or commandments or exercise a form of worship in accordance to a person's belief (provided it is not contrary to his civic duties, public order, or good

Kingdom of Thailand B.E. 2550 (2007).

64) §30, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

65) §32, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

morals) etc.⁶⁶⁾ One notion was been added to the personal rights and liberties provision, by protecting rights and liberties of the people related to the judicial process so that officials would prosecute the criminal law lawfully and with due process of law.⁶⁷⁾

(3) Rights to access the judicial process The 2007 Constitution also differs from the 1997 Constitution in that it omits some detailed provisions relevant to the judicial process and those concepts were, instead, provided in the Criminal Procedural Code and other relevant laws so that it would be easier to update and amend. However, it added some concept to cover all possible areas related to the fundamental rights of the people in the judicial process as well as the right of the people to access the judicial process. Under the 2007 Constitution, it provided that persons shall have the rights in the judicial process as follows:⁶⁸⁾ (a) Right of easy, convenient, expedient and comprehensive access to the judicial process; (b) Fundamental a alright in the judicial process, which shall consist at least of the right to public trial, right to be adequately informed of the facts, and to inspect documents, right to present one's facts, defences and evidence, right to object to judges, right to be considered by the full bench of judges, and the right to informed of the reasons for a ruling, judgement or order; (c) Right to a proper, swift, and fair trial; (d) The injured person, suspect, plaintiff, defendant, interested party, interested person or witness in a case shall have the right to appropriate treatment during the judicial process, including the

66) §§33-38, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

67) *See*§32, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

68) §40, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

right to proper, swift and fair investigation and to withhold self-incriminating testimony; (e) The injured person, suspect, defendant and witness shall have the right to necessary and appropriate assistance from the State where remuneration, compensation, and other necessary expenses would be also provided by the virtue of the law; (f) Children, youth, woman, senior person or disable or handicapped person shall have the right to appropriate protection in judicial process and shall have the right to appropriate treatment in cases relating to sexual violence; (g) a suspect or defendant in a criminal case must have enough opportunity to defend his or her case as well as the right to examine or to be informed of evidence as appropriate and right to be assisted counsel in legal proceedings and the right to bail; (h) a person has the right in civil case to receive appropriate legal assistance from the State.

(4) Rights in property⁶⁹⁾ The property right as well as the succession of such rights are generally protected by the Constitution, and the expropriation of immovable property shall not be made except by virtue of the law specifically enacted for the State activity with respect to public utilities, essential elements of national defense, procurement of national resources, town and country planning, promotion and preservation of environmental quality, agricultural or industrial development, land reform, conservation of ancient monuments or historical sites, or other public interests, and fair compensation shall be paid in due time to the owner thereof, as well as to all persons having rights thereto, who suffer loss as a result of such expropriation, as provided by law.

69) §§41, 42, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

(5) Rights and liberties of occupation⁷⁰⁾ The liberty of a person to engage in an enterprise or an occupation and to undertake a fair and free competition is protected under the current constitution. Moreover, one particular right that had been newly added in the 2007 Constitution is the right of person to work safety and welfare and to living security irrespective of whether he is employed or unemployed.

(6) Liberty of expression of individuals and mass media A person has the liberty to express his or her opinion, make speeches, write, print, publicize, and make expression by other means unless the law restricts such liberty for the purpose of maintaining the security of the State, safeguarding the rights, liberties, dignity, reputation, family or privacy rights of the person, maintaining public or good morals or preventing the deterioration of the mind or health of the public. Moreover, evidence from past history had shown that media sometimes was dominated by persons holding political office which was deemed as being able to obstruct or deprive the liberty of people to receive non-biased information and news, thus, the new constitution contains some provisions that aim to deal with such problem. In the new constitution of 2007, the constitution allows only one independent regulatory body of the State responsible to distribute the transmission frequencies for radio and television broadcasting and telecommunication for the public interest as well as supervise radio or television broadcasting and telecommunications businesses so as to promote free and fair competition, and also to encourage the public to participate in the operation of public mass media.⁷¹⁾ It also specifies that

70) §§43, 44, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

71) See §47, the Constitution of the Kingdom of Thailand B.E. 2550(2007). Cp. §40 , the Constitution of the Kingdom of Thailand B.E. 2540 (1997)

there should be measures to prevent merger, cross-control or domination among the mass media or by other persons which may interfere with public's liberty to access information or hinder the public from access to a variety of information.⁷²⁾ Moreover, the 2007 Constitution also adds a new provision that provides a wholly new measure by specifying that persons holding a political position shall not be the owner of or hold shares in a newspaper, radio or television broadcasting, or telecommunication businesses either directly in his or her own name, or indirectly through the business ownership or share holding of others on his or her behalf, or by other direct or in direct means which enable the administration of such business in the same manner as an owner or shareholder of such business.⁷³⁾

(7) Rights and liberties in education Under the current constitution, the State has to provide basic education for the duration of not less than twelve years of a comprehensive and quality free of charge education; it also requires that the State has to ensure the basic education for the indigent, the disabled or handicapped, or destitute person on an equal basis as other persons.⁷⁴⁾ This concept to ensure the education right of the indigent, the disabled or handicapped, or destitute person was again a wholly new provision. Moreover academic freedom, on education and training, learning and teaching, research and disseminating of research according to academic principles is protected under the current constitution.⁷⁵⁾

72) §47, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

73) §48, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

74) §49, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

75) §50, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

(8) Rights to receive public health service and state welfare⁷⁶⁾ The Constitution provides an equal right for persons to receive appropriate and standard public health service, and the indigent shall have the right to receive free medical treatment from a State infirmary. The State also has to provide a state welfare to its citizen particularly to the children, youth, women, family members, elders, disabled, handicapped, and person who is homeless and insufficient income for living so as to guarantee that they would be protected and received appropriate aid from the State. The right to a person who is homeless to receive appropriate aid from the State is considered to be new innovation under the current constitution.⁷⁷⁾

(9) Rights to receive information and lodge complaints⁷⁸⁾ Generally, with regards to public information, a person shall have the right to be informed and to access public information in the possession of government agencies, State agencies, State enterprises, or local government organization, unless where disclosure of such information shall affect the security of the State, public safety, or the protected interests of other persons, or personal information as provided by law. And if any performance of administrative functions which affect or may affect a person rights and liberties, he have the right to participate in decision-making process of State officials in such performance. If a person uses his right to present a petition, he also has the right to be

76) §§51-55, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

77) §55, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

78) §§56-62, the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

informed of the result of its consideration within the appropriate time. Consumer rights under the current constitution in particular have been elaborated and further clarified upon.⁷⁹⁾

(10) Freedom of assembly and association⁸⁰⁾ Under the Constitution, people have the liberty to assemble peacefully and without arms, and they also have the liberty to unite and form an association, unions, federation, co-operative, farmers' group, private organizations, non-governmental organization or any other groups as well as the liberty to unite and form apolitical party. A new invention under the 2007 Constitution is that it allows Government officials and State officials to enjoy the liberty of assembly like the general public, provided that doing so does not affect the efficiency of State administration and the continuation of public services as provided bylaw.⁸¹⁾

(11) Community rights⁸²⁾ A community, local community, or traditional local community have the rights to preserve or restore their customs, local wisdom, arts or good culture of their community and of the nation and participate in the management, maintenance, and exploitation of natural resources, environment, and biological diversity in a balanced and sustainable fashion. Moreover, a person is protected against any environment that is hazardous to his or her health and sanitary condition, welfare and quality of life. The 2007 Constitution expands this community right to the general community and local communities which

79) §61, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

80) §§62-65, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

81) §64, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

82) §§66-67, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

is differs from the 1997 Constitution which limited such rights to only the traditional community.

(12) Rights to protect the Constitution⁸³⁾ A person is prohibited from using the rights and liberties provided in the Constitution to overthrow the democratic regime of government with the King as the Head of State; or to acquire the power to rule the country by any means which is contrary with the modes provided in the Constitution. The 2007 Constitution adds a new provision provided that where a person or political party acts in such a way that contradict to provisions provided in the Constitution, the person knowing of such act have the right to request the Attorney-General to investigate facts and to submit a motion to the Constitutional Court for an order to restrain such act without prejudice to the institution of a criminal action against such person.⁸⁴⁾

(13) Rights to engage in direct political participation It should be also noted that under the 2007 Constitution, in line with the 1997 Constitution, every person has a duty to exercise their right to vote at an election and if a person fails to attend an election for voting without notifying a reasonable justification for such failure, he or she will lose rights as provided by law.⁸⁵⁾ Indeed an attempt was made to refocus the issue of voting and rather emphasizing the punishment resulting from not voting focus would more place on the merits of voting - a person who exercises the right to vote at an election will be entitled to rights as

83) §68, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

84) §68 para.2, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

85) §72, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

provided by law. A person having the following qualifications is considered to have the right to vote at an election:⁸⁶⁾

1. Being of Thai nationality; provided that a person who has acquired Thai nationality by naturalization must hold the Thai nationality for not less than five years;
2. Being not less than eighteen years of age on 1st January of the year of the election; and
3. Having his or her name appears on the house register in the constituency for not less than ninety days up to the date of the election.

But in order to be able to vote a person who has the right to vote must not have the following prohibitions on the Election Day:⁸⁷⁾

1. Being a monk, novice, Brahm in priest, or member of the clergy;
2. Being under suspension of the right to vote;
3. Being detained by a warrant of the Court or by a lawful order;
4. Being of unsound mind or of mental infirmity.

The 2007 Constitution also encourages citizens to engage in direct political participation. For example, under Section 163, eligible voters of not less than ten thousand in number shall have the right to submit a petition to the President of the National Assembly to consider a bill.⁸⁸⁾ Moreover, eligible voters of not less than twenty-thousand in number have a right to lodge with the President of the Senate a complaint in order to request the Senate to pass a resolution removing the persons from

86) §99, the Constitution of the Kingdom of Thailand B.E. 2550(2007)

87) §100, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

88) §163, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

office.⁸⁹⁾ Also an eligible voter has the right to vote in a referendum which can potentially take place under certain circumstances, for example, where the Council of Ministers is of the opinion that any issue may affect the national or public interests, the Prime Minister with the approval of the Council of Ministers may consult the President of the House of Representatives and the President of the Senate for the purpose of calling for a referendum by publication in the Government Gazette etc.⁹⁰⁾

It should be noted that one of the most significant notions that is derived from the 2007 Constitution is that the ending clauses in the provisions regarding the rights and liberties of the people “as provided by law” and “the rights and liberties shall be in accordance with the provisions of law” were eliminated so that the people can refer directly to the rights and liberties in the Constitution and unlike previously where the practical provisions relating to right and liberties were to some extent limited by the clause “as provided bylaw” this is no longer the case.⁹¹⁾As a result, the people do not have their rights and liberties subjected to the conditions and methods as stipulated by the provisions of law and indeed the direct enforcement of the rights and liberties in the Constitution onto the people is available under the2007 Constitution. And in order to comply with this concept, section 28 of the current constitution prescribes that a person can directly bring a lawsuit to require the State to comply with the rights or liberties provision. However, where there already exists

89) §164, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

90) §165, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

91) MontreeRupsuwan, **Conceptual Framework of the New Constitution Drafting of the Kingdom of Thailand**, December 2006; *available at* http://library2.parliament.go.th/giventake/content_cons/conceptual_en.pdf

a law with details of the exercise of such rights and liberties enshrined in this Constitution, the exercise of the rights and liberties shall be in accordance with the provisions of the said law.

With regards to the directive principles of fundamental state policies, several innovations have been created and improved in the 2007 Constitution. First, the provisions related to directive principles of fundamental state policies in the Constitution are now considered to be an express intention of the State which, as a result, it is required to legislate and direct policies in administering the State affairs to ensure that those policies would be conducted in practice.⁹²⁾ Secondly, under the current constitution the duty to the State is expressly imposed: for example, the Council of Ministers, which is to assume the administration of the State affairs, shall expressly declare to the National Assembly what activities are to be carried out and in what associated time frame in order to administer the State's affairs in compliance with the Directive Principles of Fundamental State Policies, and shall prepare a report of performance progress, including problems and obstacles encountered before the National Assembly annually; the Council of Ministers have to prepare the national administration plan which presents the measures and details the direction of official performances for each year of administration, this must be in compliance with the Directive Principles of Fundamental State Policies; the Council of Ministers has to prepare a plan to enact the necessary legislation for the execution of the administration policy and program.⁹³⁾

92) §§75, 76, the Constitution of the Kingdom of Thailand B.E. 2550(2007)

93) §§75, 76, the Constitution of the Kingdom of Thailand B.E. 2550(2007)

2.4 Core Institutions of the State and the Relationship amongst those Institutions

Most constitutions seek to regulate the relationship between institutions of the state, in a basic sense the relationship between the legislature, the executive, and the judiciary.

(1) Legislature: The National Assembly

Thailand's Constitutions can be categorized into three main categories based on the degree and method by which the legislature was elected. First in the case where the legislature is completely elected, for example, the 1946 Constitution, the 1997 Constitution, and the 2007 Constitution. Second for groups of appointed legislatures, for example, the 1947 Charter, the 1949 Constitution, the 1952 Constitution, the 1968 Constitution, the 1974 Constitution, the 1978 Constitution, the 1991 constitution, where the legislature is partly elected and partly appointed by the executive. The last group is the case where the executive has absolute or a near absolute power, for example, the 1932 Constitutions, the 1959 Charter, the 1972 Charter, the 1976 Constitution, the 1991 Charter, the 2006 Constitution.

Under the 2007 Constitution, the National Assembly, the main organ that provides advice and its consent for a bill or an organic law bill before it can be acted as law, consists of the House of Representatives and the Senate. The term of the House of Representative is four years from the Election Day, and the 2007 Constitution adds a new provision

by providing that, during the term of the House of Representatives, political parties with seats in the House are not permitted to merge in order to prevent any chance of “buying” members of other political parties which may, in effect, undermine the democratic process.⁹⁴⁾ The term of the membership of senators is six years from the election day or the date the Election Commission publishes the result of the selection, as the case may be (and Senators cannot hold office more than one term).⁹⁵⁾ The President of the House of Representatives is President of the National Assembly while the President of the Senate is Vice-President of the National Assembly. The Constitution prohibits a person from simultaneously being a member of the House of Representatives and a Senator.⁹⁶⁾

The House of Representatives consists of four hundreds eighty members: four hundred members⁹⁷⁾ from the election on a constituency basis, and eighty from the election on a party-list basis. A person who desires to be a candidate in an election for membership of the House of Representatives must have the following qualifications:⁹⁸⁾

1. Being of Thai nationality by birth;
2. Being not less than twenty five years of age on the Election Day;
3. Being a member of any and only one political party, for a consecutive period of not less than ninety days up to the date of applying for candidacy in an election, or being a member of any and only one

94) §104, the Constitution of the Kingdom of Thailand B.E. 2550(2007)

95) §117, the Constitution of the Kingdom of Thailand B.E. 2550(2007)

96) §88, the Constitution of the Kingdom of Thailand B.E. 2550(2007)

97) Decreased from 1997 Constitution that allow 500 members of the House of Representative

98) §101, the Constitution of the Kingdom of Thailand B.E. 2550(2007)

political party for consecutive period of not less than thirty days up to the date of applying for candidacy in an election in the case where the general election is conducted on account of the dissolution of the House of Representative;

4. A candidate in an election on a constituency basis must also possess any of the following qualifications:
 - a. Having his or her name listed in the housing register in the Province (*Changwat*) where he or she stands for election for a consecutive period of not less than five years up to the date of applying for candidacy;
 - b. Born in the *Changwat* where he or she stands for the election;
 - c. Having studied in an education institution situated in *Changwat* where he or she stands for election for a consecutive period of not less than five academic years before;
 - d. Having served in the official service before or having had his or her name appear in the house register in *Changwat* where he or she stands for election for a consecutive period of not less than five years before.
5. A candidate in an election on a proportional basis (party-list basis) must also possess any of the qualification under 4 but, in this case, “*Changwat*,” refers to “group of *Changwat*”.
6. Having other qualifications as prescribed in the Organic Act on Election of Members of the House of Representatives and Obtaining Senators.

The list of qualifications have been changed from the 1997 Constitution for that there is no longer a specific educational qualification requirement on the basis that it would allow people who have a good knowledge

without any degree to be able to be a candidate. Moreover the exception for the requirement of being a member of any and only one political party, for a consecutive period of ninety days has been added in a case of a general election following an unexpected House dissolution in which case the period is reduced to thirty days instead of ninety days.

However, if a person falls within any of the following prohibitions, he or she shall have no right to be a candidate in an election of members to the House of Representatives:⁹⁹⁾

1. Being addicted to narcotics;
2. Being bankrupt or having been dishonestly bankrupt;
3. Being disfranchised under Section 101 (1), (2), or (4) (e.g. not being Thai nationality by birth; being less than twenty-five years of age on the Election Day);
4. Having been sentenced by a judgment to imprisonment and being detained by a warrant of the Court;
5. Having been discharged for a period of less than five years on the Election Day after being sentenced by a judgement to imprisonment, except for on offence committed through negligence or petty offences;
6. Having been expelled, dismissed or removed from the official service, a State agency or a State enterprise on the ground of dishonest performance of duties or deemed as having committed dishonest acts and malfeasance in the official service;
7. Having been ordered by a judgment or an order of the Court that his or her assets shall vest in the State on the grounds of unusual

⁹⁹⁾ §102, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

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- wealth or an unusual increase of his or her assets;
8. Being a Government official holding a permanent position or receiving salary except a political official;
 9. Being a member of a local assembly or a local administrator,
 10. Being a Senator, or having been a Senator who vacates office for a period of less than two years;
 11. Being an official or employee of a government agency, State agency or State enterprise or other State official;
 12. Being a judge of the Constitutional Court, an Election Commissioner, an Ombudsman, a National Counter Corruption Commissioner, a State Audit Commissioner, a National Human Rights Commissioner;
 13. Being under the prohibition from holding political position under section 263;
 14. Having been removed from office by the resolution of the Senate under section 274.

The Senate consists of one hundred and fifty members; one elected member from each Chang wat and the rest are selected members. In order to be qualified to be nominated for selection as a Senator, the following qualifications have to be met:¹⁰⁰⁾

1. Being of Thai nationality by birth;
2. Being of not less than forty years of age on the election day or the date of nomination;
3. Having graduated with not lower than a Bachelor's degree or its equivalent;
4. A candidate in an election of Senators must also possess any one or

100) §§115, 116, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

more of the following qualifications:

- a. Having his or her name listed on the house register in the *Changwat* where he or she stands for election for a consecutive period of not less than five years up to the date of applying for the candidacy;
 - b. Being born in the *Changwat* where he or she stands for the election;
 - c. Having studied in an education institution situated in *Changwat* where he or she stands for election for a consecutive period of not less than five academic years up to the date of applying for candidacy;
 - d. Having served in the official service or having had his or her name listed in the housing register in the *Changwat* where he or she stands for election for a consecutive period of not less than five years;
5. Not being an ancestor, spouse or child of a member of the House of Representatives or a person holding a political position;
 6. Not being a member or a person holding any position in a political party, or having been a member or having held a position in a political party and his membership has terminated or he vacates office in the political party for a period of not more than five years up to the date of applying for candidacy or the date of nomination

The National Assembly shall hold sittings in cases of, *inter alia*, the consideration of bills or organic law bills, the approval of an Emergency Decree, the approval of the declaration of war, the approval of a treaty, the interpellation and the amendment of the Constitution etc. Each year

there shall be an ordinary general session(generally for one hundred and twenty days) and ordinary legislative session.¹⁰¹⁾ Members of both Houses or member of the House of Representatives of not less than one-third of the total number of the existing number of both Houses have the right to present their petition for the convoking of an extraordinary session of the National Assembly.¹⁰²⁾ The House can control the administration of State affairs by, for example, raising an interpellation without specifying the question concerning the carrying out of duties by the Prime Minister or the Ministers responsible for the administration of State affairs on matter which involves an important problem of public concern, affects national or public interest, or requires urgency¹⁰³⁾; or, holding a general debate of no-confidence in the Prime Minister or individual Ministers¹⁰⁴⁾.

(2) The Executive

Due to the recent political crisis leading to the military coup in 2006, the issues principally concerned the appointment and accountability of the prime minister. During the drafting process, the question was raised whether the Prime Minister should be from the elected members of National Assembly or selected from outside. The Constitution Drafting Committee voted (27:7) in favor of having a prime minister selected from the ranks of elected Members of House of Representatives and this approach is shown in section 171 of the current constitution. The Council of Ministers consist of the Prime Minister and not more than thirty-five

101) §127, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

102) §129, the Constitution of the Kingdom of Thailand B.E. 2550(2007)

103) §157, the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

104) §158, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

other Ministers appointed by the King to perform the duties of carrying out the administration of the State affairs on the principle of collective responsibility. Under the 2007 Constitution, the Prime Minister could not hold office for more than eight consecutive years.¹⁰⁵⁾ The House of Representatives must complete its consideration and approval of the person suitable to be appointed as Prime Minister within thirty days as from the day the National Assembly is convoked for the first sitting and the nomination of a person who is suitable to be appointed as Prime Minister shall be endorsed by members of the House of Representatives of not less than one-fifth of the total number of the existing members of the House and such regulation must be passed by the votes of more than one-half of the total number of the existing members of the House of Representatives.¹⁰⁶⁾

In order to be a Minister, he or she must possess the qualifications and must not be under any of the prohibitions as follows:¹⁰⁷⁾

1. being of Thai nationality by birth;
2. being not less than thirty five years of age;
3. having graduated with not lower than a Bachelor's degree or its equivalent;
4. not being under any of the prohibitions under section 102 (1), (2), (3), (4), (6), (7), (8), (9), (11), (12), (13) or (14) (e.g. being addicted to narcotics, being bankrupt or having been dishonestly bankrupt, having been sentenced by a judgement to imprisonment and being detained by a warrant of the Court etc.);

105) §171, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

106) §172, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

107) §174, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

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5. having been discharged for a period of less than five years before the appointment after being sentenced by a judgment to imprisonment, except for an offense committed through negligence or a petty offense;
6. not being a senator or having been a senator whose membership has terminated for not more than two years up to the date of the appointment as Minister.

(3) The Judiciary

Under the Constitution, the judiciary is free and independent to adjudicate correctly, justly, and quickly in accordance with the Constitution and law, thus, Judges are prohibited to be political officials or hold political positions.¹⁰⁸⁾ A number of Courts are established under the constitution (detailed below) but no person may simultaneously become a member, whether an ex officio member or a qualified member, of the Judicial Commission of the Courts of Justice, the Administrative Court or any other Court as provided by law.¹⁰⁹⁾ Under the Constitution, there are four categories of Courts which are:

Constitutional Court: The Court consists of the President and eight other Judges to be appointed by the King upon advice of the Senate.¹¹⁰⁾ The President and Judges of the Constitutional Court shall hold office for nine years as from the date of their appointment by the King and shall

108) §197, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

109) §203, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

110) §204, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

hold office for only one term.¹¹¹⁾ Cases that fall within scope of the Constitutional Court are, inter alia, cases where it is required to consider and determine whether law, rule, or regulation are contrary to or inconsistent with the Constitution, dispute related to the powers and duties of two or more non-court organs under the Constitution.

Courts of Justice: The Courts of Justice have the powers to try and adjudicate all cases except those specified by the Constitution or the law deemed to be within the jurisdiction of other courts.¹¹²⁾ Generally, there are three levels of Courts of Justice, namely: Courts of First Instance, Courts of Appeal, and the Supreme Court of Justice.¹¹³⁾

Administrative Courts: The Administrative Courts have the powers to try and adjudicate cases of dispute between a government agency, State agency, State enterprise, local government organization, or Constitutional organ, or between State officials and a private individual, or between a government agency, State agency, State enterprise, local government organization or Constitutional organ, or among State officials themselves¹¹⁴⁾ Although the Constitution prescribed that there may be the Appellate Administrative Court,¹¹⁵⁾ in practice there are merely two levels of Administrative Courts which are: the Supreme Administrative Court and Administrative Courts of First Instance,

111) §208, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

112) §218, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

113) §219, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

114) §223, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

115) §223, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

Military Court: The Military Court have the powers to try and adjudicate criminal cases, where the perpetrators are within the jurisdiction of the Military Courts, and other cases as provided by law.¹¹⁶⁾

2.5 The Independent Agencies under the Constitution

A significant reform that derived from the 1997 Constitution was the institutionalization of independent agencies to serve as a check on corrupt politicians. During the current constitution's drafting process, the Constitution Drafting Committee also searched for ways to ensure their independencies and to improve their operations. Under the current constitution, there are seven main statutory independent agencies as followed:

(1) Election Commission

The Election Commission consists of a Chairperson and four other Commissioners appointed, by the King on the advice of the Senate, from persons of apparent political impartiality and integrity.¹¹⁷⁾ The Election Commissioners hold office for a term of seven years as from the date of their appointment by the King and serve for only one term.¹¹⁸⁾

In order to fulfill its task to control and hold, or cause to be held in an honest and fair manner an election of members of the House of Representatives, or selection of members of the Senate, election of

116) §228, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

117) §229, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

118) §232, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

members of a local assembly and local administrators including voting in a referendum; and, to have control and hold, or cause to be held in an honest and fair manner the election of members of the House of Representatives, or selection of members of the Senate, election of members of a local assembly and local administrators including voting in a referendum, the Election Commission have the following powers and duties:¹¹⁹⁾

1. To issue notifications or regulations determining all acts necessary for the implementation of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators, the Organic Act on Political parties, the Organic Act on Election Commission, the Organic Act on Referendum, and the law on election of members of local assemblies or local administrators including regulations relating to the launching of election campaigns and any act of political parties, candidates and persons having the right to vote to proceed in an honest and fair manner and determining rules to be complied by State in giving support of fair election and equal opportunity in campaigning;
2. To lay down regulations determining prohibitions in the performance of duties of the Council of Ministers and portfolio with due regard to the maintenance of interest of State and to honesty, fairness, equality, and equal opportunity in an election;
3. To determine measures and control on donation of money to political parties, the provision of financial support by the State, expenditures of political parties and election candidates, public audits of accounts of political parties, and controls on disbursements

119) §235, 236, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

and receipt of money for the benefit of voting at an election;

4. To give orders instructing Government officials, officials or employees of a government agency, State agency, State enterprise or local government organization or other State officials to perform all necessary acts under the laws on election;
5. To conduct investigations and inquiries for fact-finding and decision on arising problems or disputes under the laws on election;
6. To order a new election or a new voting at a referendum to be held in any or all polling stations when there is reasonable evidence to believe that the election or the voting at a referendum in that or those polling stations has not proceeded in an honest and fair manner;
7. To announce the results of an election, selection and referendum;
8. To promote and support or coordinate with a government agency, State agency, State enterprise or local government organization or to support private organization in giving education to the public on the democratic regime of government with the King as Head of State, and to promote people's participation in politics;
9. To perform other acts as provided by law.

(2) Ombudsmen

Under the 2007 Constitution, the Ombudsmen cannot be more than three in number and shall be appointed by the King with the advice of the Senate from persons recognized and respected by the public, with knowledge and experience in the administration of State affairs, enterprises, or activities of common interest of the public and with

apparent integrity.¹²⁰⁾ The ombudsmen have broad scope of powers and duties; for example, to consider and inquire into the complaint for fact-findings related to performance of duties or the unlawful performance of duties of, inter alia, the government official, an official or employee of a government agency, State agency, State enterprise; to conduct the proceeding in relation to ethics of persons holding political positions and State officials; to report the result of its investigation and performance together with comments to the Council of Ministers, the House of Representatives, and the Senate annually and such reports shall be published in the Government Gazette; to submit a case to Constitutional Court (if the provisions of any law begs the question of constitutionality) or Administrative Court (if rules, orders or actions of a government official, an official or employee of a government agency, State agency, State enterprise, or local government organization begs the question of the constitutionality or legality).¹²¹⁾

(3) National Counter Corruption Commission

The National Counter Corruption Commission consists of the President and eight qualified members, appointed by the King with the advice of the Senate, holding office for a term of nine years as from the date of their appointment by the King and shall serve for only one term.¹²²⁾ National Counter Corruption Commission generally deals with corruption, ethics of persons holding political positions and other related matters. The

120) §242, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

121) §§244, 245, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

122) §§246, 247, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

powers and duties of the National Counter Corruption Commission include, for example: to inquire into facts, summarize the case, and prepare opinions in relation to the removal from office to be submitted to the Senate; to inquire into the facts, summarize the case, and prepare opinions in relation to the criminal proceedings of a person holding political positions to be submitted to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions; to inquire and decide whether a state official of high administration level or a government official holding a position of a Divisional Director or its equivalent or higher level has become unusually wealthy or has committed an offence of corruption, malfeasance in office or malfeasance in judicial office; to supervise and monitor moral and ethics of persons holding political positions.¹²³⁾

(4) State Audit Commission

State Audit Commission is an independent and impartial body which carries out the State audit. The State Audit Commission consists of the Chairperson and six other members appointed by the King from persons with expertise and experience in state auditing, accounting, internal auditing, finance, and other fields.¹²⁴⁾ The members of the State Audit Commission shall hold office for a term of six years from the date of their appointment by the King and shall serve for only one term.¹²⁵⁾ The State Audit Commission has the power and duty to determine standards

123) §250, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

124) §252, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

125) §252, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

relating to State audit and to provide advice, suggestions and recommendations for the correction of defects in relation to State audit. Moreover, it also has the power and duty to appoint an independent Financial Disciplinary Committee to render decisions on actions relating to financial discipline, finance and budget.¹²⁶⁾

(5) The State Attorney

Under the 2007 Constitution, State attorneys are independent in considering and making orders in cases and in the performance of duties for fairness.¹²⁷⁾ A State attorney must not be neither a member of the board of directors of a State enterprise or other enterprises of State having similar nature nor engaging in any occupation or profession or in any enterprise that may affect the performance of duty or may detriment the dignity of his or her office unless an approval is given by the State Attorney Committee. Moreover, a State attorney should not be a member of the board of directors, manager, legal advisor or holding any other similar position having similar nature in any partnership or company.¹²⁸⁾

(6) The National Human Right Commission

The National Human Rights Commission consists of a President and six other members appointed by the King with the advice of the Senate from persons having apparent knowledge and experience in the protection

126) §253, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

127) §255, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

128) §255, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

of the rights and liberties of the people with due regard to the participation of representatives from private organizations in the field of human rights.¹²⁹⁾ The members of the National Human Rights Commission shall hold office for a term of six years from the date of their appointment by the King and shall serve for only one term.¹³⁰⁾ The National Human Right Commission has powers and duties to, inter alia, to examine and report the commission or omission of acts which violate human rights or which do not comply with human right obligations under international treaties to which Thailand is a party, and propose appropriate remedial measures where if it appears that no action has been taken as proposed, the Commission will report to the National Assembly for further proceeding; to submit the case together with opinions to the Courts as well as to bring the case to the Courts of Justice on behalf of the injured person upon the request of such person; to demand relevant documents or evidence from any person or summon any person to give statements of fact on human right matters.

(7) National Economic and Social Council

The National Economic and Social Council have the duties of giving advice and recommendations to the Council of Ministers on economic and social problems as well as related laws. The economic and social development plans or other plans as provided bylaw have to obtained opinions of the National Economic and Social Council beforethey can adopted and published.¹³¹⁾

129) §256, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

130) §256, the Constitution of the Kingdom of Thailand B.E. 2550(2007)

131) §258, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

2.6 Inspection of the Exercise of State Power

Under the 2007 Constitution, there are several mechanisms to inspect the exercise of State power consisting of such measures relating to the scrutiny of assets, rules relevant to acts detrimental to public interests (conflict of interest), rules regarding removal from office, and rules governing criminal proceedings against persons holding political positions. Several new innovations are added in the 2007 Constitution. For example, generally persons holding particular political positions such as Prime Minister, Minister, member of the House of Representatives, Senator, local administrators and member of a local assembly have to submit an account showing particulars of their assets and liabilities of themselves, their spouses and children who have not yet become *sui juris* to the National Counter Corruption Commission on each occasion of taking or vacating office.¹³²⁾ The 2007 Constitution also adds that such submission of an account showing the particulars of assets must also include the assets of the persons holding political positions under director indirect possession or care of other persons. Moreover, the 2007 Constitution provides further qualifications on the members of the House of Representative and Senators to prevent potential conflict of interests, for example, it added provisions that prohibit a member of the House of Representative and the Senator from, amongst other things, not holding any position or have any duty in a government agency, State agency or State enterprise, nor holding a position of a member of a local assembly, local administrator or local government official.¹³³⁾ It also prohibits a

132) §259, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

133) §265, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

member of the House of Representatives and Senator not to receive or interfere or intervene in any concession from the State, a government agency, State agency or State enterprise whether directly or indirectly. These prohibitions are also applied to the spouse and children of a member of the House of Representatives or Senate as well as to other persons who act as agents or partners of, or who are entrusted by members of the House of Representatives or Senators.¹³⁴⁾

3. The 2007 Constitution Amendment

After the 2007 Constitution was promulgated, there is an almost immediate move to amend some provisions contained within it.. The move to change the 2007 Constitution of Thailand has itself become a contentious and some have argued politically motivated issue and significant opposition to how it currently stands still exists at the time this paper was authored. The following sections provide a review on the general rules and procedures regarding potential amendments to the Constitution as well as some background and personal reflection on such attempts.

3.1 Rules and Procedures Regarding Amendment of the Constitution

Since the constitution is the supreme law, an extraordinary procedure is, thus, required in order to make a constitutional amendment. Also it should be noted that some of principles enshrined and deeply embedded in the constitution can not be abolished, even by amendment. For

134) §265, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

example, any motion for an amendment that has the effect of changing the democratic regime of government with the King as Head of State or changing the form of the State shall be prohibited.¹³⁵⁾ Out of eighteen Thailand's constitutions, there are only twelve constitutions that have made specific provisions prescribing the rule on constitutional amendments.¹³⁶⁾ The other six constitutions, most of them were interim constitution that were promulgated right after coup, had no specific provision regarding constitution amendment since drafters of those interim constitutions had no intention to amend those interim constitutions but rather their aim was to create a new draft for permanent constitution.

The current constitution has established rules with regards to any potential amendment to constitution in Chapter 15. Under the current provision, the 2007 Constitution can be amended only if the rules and procedures as set out in section 291 are adhered to. There are merely four ways to propose a motion for a constitutional amendment, such a proposal may emanate from:

- (1) Council of Ministers; or
- (2) Members of the House of Representative numbering not less than

135) See, e.g., §47, the Constitution of the Kingdom of Thailand B.E.2550 (2007).

136) The Constitution of the Siam Kingdom B.E. 2475 (1932) §63; The Constitution of the Kingdom of Thailand B.E. 2489 (1946) §85; The Constitution of the Kingdom of Thailand (Interim) B.E. 2490 (1947) §93; The Constitution of the Kingdom of Thailand B.E. 2492 (1949) §§173-76; The Constitution of the Kingdom of Thailand B.E. 2475 (1932) (Revised B.E. 2495 (1952)) §111; The Constitution of the Kingdom of Thailand B.E. 2511 (1968) §§169-72; The Constitution of the Kingdom of Thailand B.E. 2517 (1974) §§228-31; The Constitution of the Kingdom of Thailand B.E. 2519 (1976) §24, 28; The Constitution of the Kingdom of Thailand B.E. 2521 (1978) §194; The Constitution of the Kingdom of Thailand B.E. 2534 (1991) §211; The Constitution of the Kingdom of Thailand B.E. 2540(1997) §313.

one-fifth of the total number of the existing members of the House of Representatives; or

- (3) Members of both Houses (House of Representatives and House of Senate) numbering not less than one-fifth of the total number of existing members thereof; or
- (4) Eligible voters numbering not less than fifty thousand in number¹³⁷⁾
(This is a new innovation of the 2007 Constitution)

Under the 2007 Constitution¹³⁸⁾, a motion for amendment must be proposed in the form of a draft Constitution Amendment, and the National Assembly shall consider it in three readings:

- (1) The First Reading: the voting in the first reading for adoption in principle shall be by roll call and open voting, and the amendment must be approved by votes numbering not less than one-half of the total number of the existing members of both Houses;
- (2) The Second Reading: the consideration in the second reading shall be made section by section and a public hearing should be held to seek viewpoints from eligible voters who have submit a draft Constitution Amendment. The voting in the second reading for section by section deliberation shall be decided by a simple majority of votes;
- (3) The Third Reading: at the conclusion of the second reading, there shall be an interval of fifteen days, after which the National Assembly shall proceed with its third reading. The voting in the

137) Also need to be in accordance with the law on a petition for the proposal of bills as prescribed in Chapter 6 and Chapter 7 of the 2007 Constitution

138) §291, the Constitution of the Kingdom of Thailand B.E. 2550(2007).

third and final reading shall be by roll call and open voting, and its promulgation as the Constitution must be approved by votes of more than one-half of the total number of existing members of both Houses.

After the resolution has been passed approving the amendment, then the draft Constitution Amendment shall be presented to the King for his Royal Signature. Once the Amendment is announced in the Government Gazette, it would be then enforceable.

3.2 Proposed Amendment Criticism

After the promulgation of the 2007 Constitution, The Constitution, the 18th of its kind, led to the 23 December 2007 general election and the formation of the current coalition, led by the People Power Party. On May 21, 2008, a group of one hundred and sixty four coalition members of House of Representatives and senators submitted a motion to amend the 2007 Constitution giving a reason that a panel installed by the coup makers was the draftees and that in their opinion was not practicable.¹³⁹⁾ Prime Minister Samak Sundaravej, meanwhile, proposed a public referendum on constitutional amendments. The Government took steps to arrange the referendum, since the House of Representatives cannot do so as its duties are prescribed to enacting laws and proposing statutory not constitutional amendments save for as set out in section 291. However, it will take one hundred and eighty days in the House of Representatives

139) The Government Public Relation Department, **Amending the 2007: A Major Topic of Discussion in Thai Society**, available at, http://thailand.prd.go.th/view_inside.php?id=3460

and another ninety days in the Senate to issue a law for a public referendum. The organizing of the referendum requires a budget of two billion baht.

The move to amend the 2007 Constitution, however, has been opposed by various sectors, for example, the opposition Democrat Party held a meeting of its members on May 22 and issued a statement opposing both charter changes and a referendum on the changes by stating that there was no urgent need for constitutional amendments. It also pointed out that the proposed amendment; in particular, Section 237¹⁴⁰⁾ and Section 309¹⁴¹⁾, aimed to help former members of Thai Rak Thai Party facing election fraud charges escape legal penalties. Section 237 requires a political party to be dissolved if any of its executive members are found guilty of election fraud. Section 309 would allow individuals affected by

140) §237 “Any candidate in an election, who has committed, created or supported any person to commit any act in violation of the Organic Act on Election of Members of the House of Representatives and the Taking of Office of Senators or order sand announcements of the Election Commission, causing the election not to be proceeded in an honest and fair manner, shall be deprived of his or her voting rights in accordance with the Organic Act on Election of Members of the House of Representatives and the Taking of Office of Senators.

If any such act of person under paragraph one appears to have convincing evidence that the leader or an executive member of his or her political party has acknowledged or ignored that action or has known of the act but failed to prevent or rectify it in order to ensure an honest and fair election, that political party is assumed to have sought to gain power in state administration by means other than what is provided in Section 68 of the Constitution, and incase the Constitutional Court consequently orders its dissolution, the voting rights of its leader and executive board members shall be revoked for a period of 5 years as from the date of issuance of the party dissolution order.”

141) §309 “All actions that have been endorsed by the Interim Constitution of the Kingdom of Thailand B.E. 2549 as being lawful and constitutional, including all subsequent actions and activities taken both before and after the promulgation of this Constitution shall be deemed lawful and constitutional under this Constitution.”

the 2006 military coup to seek a judicial review of the Council for National Security's orders and announcements.

On a personal reflection, the history over the last thirty years has shown great political instability reflected in the 18th Constitution which has been put before the Thai public. *Prima facie*, this may seem a best incongruous. However, in reality the Thai people have often looked towards another institution as being an ultimate protector and defender of their rights namely the monarchy. To the outsider, such a number of constitutions might suggest that their values has become debased, however, to the extent that it is possible to discern a trend in this constitutions, it had become apparent that in the past few decades the general direction has been more towards enhancing and ensuring democratic principle and strengthening essential national institutions particularly the three branches of government. To the extent that calls are now being made for amendment to the 2007 Constitution, consideration need to be given to the drivers calling for such change as well as to a vocal group rejecting such calls fearing the underline political motive. A separation need to be made between those who seek constitution amendment for further political advantage and those for whom the amendment represent the necessary changes to truly reflect the will of the Thai people and provide the long term stable supreme law for the Kingdom.

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【 자료 】

Unofficial translation

CONSTITUTION OF THE KINGDOM OF THAILAND,
B.E. 2550 (2007)

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CONSTITUTION OF THE KINGDOM OF THAILAND

SOMDET PHRA PARAMINTHARAMAHA
BHUMIBOL ADULYADEJ
SAYAMMINTHARATHIRAT BOROMMANATTHABOPHIT

Enacted on the 24th Day of August B.E. 2550;
Being the 62 Year of the Present Reign.

May there be virtue. Today is the eleventh day of the waxing moon in the ninth month of the year of the Pig under the lunar calendar, being Friday, the twenty-fourth day of August under the solar calendar, in the 2550th year of the Buddhist Era.

Phrabat Somdet Phra Paramintharamaha Bhumibol Adulyadej Mahitalathibet Ramathibodi Chakkri Narubodin Sayammintharathirat Borommanatthabophit is graciously pleased to proclaim that the President of the National Legislative Assembly addresses royalty that the democratic regime of government with the King as Head of State has been evolved in Thailand for more than seventy five years and, through this period of time, the Constitutions had been promulgated, repealed and amended for the compliance with the situation of the nation and the changing circumstances and that the Constituent Assembly and the Constitution Drafting Commission have been established by the provisions of the Constitution of the Kingdom of Thailand (Interim), B.E. 2549 so as to prepare the new Constitution for the compatibility of the administration of State affairs in the forthcoming period with due regard to opinions of the public at all steps through the extensive public consultation and all invaluable opinions have been introduced incessantly into drafting process and to the consideration of motions thereon.

This prepared draft Constitution contains the significant principles in maintaining mutual interest of the Thai people in securing of independence and security of the nation, upholding all religions, revering the King as the Head of State and mental representation of the nation, upholding the democratic regime of government with the King as Head of State for the

administration of State affairs, rendering the crystallised promotion and protection of rights and liberties of the people, strengthening role and participation of the public in the administration of State affairs and in the examination of the exercise of State power, determining the mechanism for efficiently balancing of powers of political institutions both the legislative and the executive in accordance with the parliamentary regime and strengthening the Court and other independent organisations to perform their duties honestly and fairly.

At the completion of drafting process, the Constituent Assembly had published and disseminated the draft Constitution to the public extensively for acknowledgement and then organised the referendum for public approval thereto. The referendum result has shown that the majority of the people having the right to vote resolved approval to the draft Constitution. The President of the National Legislative Assembly then presents the draft Constitution to the King for His Royal signature to promulgate it as the Constitution of the Kingdom of Thailand and the King is graciously pleased in so doing for the compliance with public opinion.

Be it, therefore, commanded by the King that the Constitution of the Kingdom of Thailand be promulgated to replace, as from the date of its promulgation, the Constitution of the Kingdom of Thailand (Interim), B.E. 2549 promulgated on 1st Day of October B.E. 2549.

May the Thai people unite in observing, protecting and upholding the Constitution of the Kingdom of Thailand in order to maintain the

democratic regime of government and the sovereign power derived from the Thai people, and to bring about happiness, prosperity and dignity to His Majesty's subjects throughout the Kingdom according to the will of His Majesty in every respect.

CHAPTER I

General Provisions

Section 1. Thailand is one and indivisible Kingdom.

Section 2. Thailand adopts a democratic regime of government with the King as Head of State.

Section 3. The sovereign power belongs to the Thai people. The King as Head of State shall exercise such power through the National Assembly, the Council of Ministers and the Courts in accordance with the provisions of this Constitution.

The performance of duties of the National Assembly, the Council of Ministers, the Courts, the Constitutional organisations and State agencies shall be in accordance with the rule of laws.

Section 4. The human dignity, right, liberty and equality of the people shall be protected.

Section 5. The Thai people, irrespective of their origins, sexes or religions, shall enjoy equal protection under this Constitution.

Section 6. The Constitution is the supreme law of State. The provisions of any law, rule or regulation, which are contrary to or inconsistent with this Constitution, shall be unenforceable.

Section 7. Whenever no provision under this Constitution is applicable to any case, it shall be decided in accordance with the constitutional convention in the democratic regime of government with the King as Head of State.

CHAPTER II

The King

Section 8. The King shall be enthroned in a position of revered worship and shall not be violated.

No person shall expose the King to any sort of accusation or action.

Section 9. The King is a Buddhist and Upholder of religions.

Section 10. The King holds the position of Head of the Thai Armed Forces.

Section 11. The King has the prerogative to create titles and confer decorations.

Section 12. The King selects and appoints qualified persons to be the President of the Privy Council and not more than eighteen Privy Councilors to constitute the Privy Council.

The Privy Council has the duty to render such advice to the King on all matters pertaining to His functions as He may consult, and has other duties as prescribed in this Constitution.

Section 13. The selection, appointment or removal of Privy Councilors shall be at the King's pleasure.

The President of the National Assembly shall countersign the Royal Command appointing or removing the President of the Privy Council.

The President of the Privy Council shall countersign the Royal Command appointing or removing other Privy Councilors.

Section 14. A Privy Councilor shall not be a member of the House of Representatives, senator, Election Commissioner, Ombudsman, a member of the National Human Rights Commission, Constitutional Court judge, Administrative Court judge, a member of the National Counter Corruption Commission, a member of the State Audit Commission, government official holding permanent position or receiving a salary, official of State enterprise, other State official or member or official of political party, and must not manifest loyalty to any political party.

Section 15. Before taking office, a Privy Councilor shall make a solemn declaration before the King in the following words:

“I, (name of the declarer), do solemnly declare that I will be loyal to His Majesty the King and will faithfully perform my duties in the interests of the State and the people. I will also uphold and observe the Constitution of the Kingdom of Thailand in every respect.”

Section 16. A Privy Councilor vacates office upon death, resignation or removal by Royal Command.

Section 17. The appointment and removal of officials of the Royal Household and of the Royal Chief Aide-de-Camp shall be at the King's pleasure.

Section 18. Whenever the King is absent from the Kingdom or unable to perform His functions for any reason whatsoever, the King may appoint a person as Regent. In this regard, the President of the National Assembly shall countersign the Royal Command therefor.

Section 19. In the case where the King does not appoint the Regent under section 18, or the King is unable to appoint the Regent owing to He is not being sui juris or any other reason whatsoever, the Privy Council shall submit the name of a person suitable to hold the office of the Regent to the National Assembly for approval. Upon approval of the National Assembly, the President of the National Assembly shall make an announcement, in the name of the King, to appoint such person as Regent.

During the expiration of the term of the House of Representatives or the dissolution thereof, the Senate shall act as the National Assembly in giving an approval under paragraph one.

Section 20. While there is no Regent under section 18 or section 19, the President of the Privy Council shall be Regent pro tempore.

In the case where the Regent appointed under section 18 or section 19 is unable to perform his duties, the President of the Privy Council shall act as Regent pro tempore.

While being the Regent under paragraph one or acting as the Regent under paragraph two, the President of the Privy Council shall not perform his duties as President of the Privy Council. In such case, the Privy Council shall select a Privy Councilor to act as President of the Privy Council pro tempore.

Section 21. Before taking office, the Regent appointed under section 18 or section 19 shall make a solemn declaration before the National Assembly in the following words:

“I, (name of the declarer), do solemnly declare that I will be loyal to His Majesty the King (name of the King) and will faithfully perform my duties in the interests of the State and the people. I will also uphold and observe the Constitution of the Kingdom of Thailand in every respect.”

During the expiration of the term of the House of Representatives or the dissolution thereof, the Senate shall act as the National Assembly under this section.

Section 22. Subject to section 23, the succession to the Throne shall be in accordance with the Palace Law on Succession, B.E. 2467.

The Amendment of the Palace Law on Succession, B.E. 2467 shall be the prerogative of the King. At the initiative of the King, the Privy Council shall draft the Palace Law Amendment and shall present it to the King for His consideration. When the King has

already approved the draft Palace Law amendment and put His signature thereto, the President of the Privy Council shall notify the President of the National Assembly for informing the National Assembly. The President of the National Assembly shall countersign the Royal Command. The Palace Law Amendment shall come into force upon its publication in the Government Gazette.

During the expiration of the term of the House of Representatives or the dissolution thereof, the Senate shall act as the National Assembly in acknowledging the matter under paragraph two.

Section 23. In the case where the Throne becomes vacant and the King has already appointed His Heir to the Throne under the Palace Law on Succession, B.E. 2467, the Council of Ministers shall notify the President of the National Assembly. The President of the National Assembly shall then convoke the National Assembly for the acknowledgement thereof and shall invite such Heir to ascend the Throne and proclaim such Heir King.

In the case where the Throne becomes vacant and the King has not appointed His Heir under paragraph one, the Privy Council shall submit the name of the Successor to the Throne under section 22 to the Council of Ministers for further submission to the National Assembly for approval. For this purpose, the name of a Princess may be submitted. Upon the approval of the National Assembly, the President of the National Assembly shall invite such Successor to ascend the Throne and proclaim such Successor King.

During the expiration of the term of the House of Representatives or the dissolution thereof, the Senate shall act as the National

Assembly in acknowledging the matter under paragraph one or in giving an approval under paragraph two.

Section 24. Pending the proclamation of the name of the Heir or the Successor to the Throne under section 23, the President of the Privy Council shall be Regent pro tempore. In the case where the Throne becomes vacant while the Regent has been appointed under section 18 or section 19 or while the President of the Privy Council is acting as the Regent under section 20 paragraph one, such Regent, as the case may be, shall continue to be the Regent until the proclamation of the name of the Heir or the Successor to ascend the Throne as King.

In the case where the Regent who has been appointed and continues to be the Regent under paragraph one is unable to perform his duties, the President of the Privy Council shall act as Regent pro tempore.

In the case where the President of the Privy Council is the Regent under paragraph one or acts as Regent pro tempore under paragraph two, the provisions of section 20 paragraph three shall apply.

Section 25. In the case where the Privy Council has to perform its duties under section 19 or section 23 paragraph two, or the President of the Privy Council has to perform his duties under section 20 paragraph one or paragraph two or section 24 paragraph two, and there is, during that period, no President of the Privy Council or the President of the Privy Council is unable to perform his duties, the remaining Privy Councilors shall elect one among themselves

to act as President of the Privy Council or to perform the duties under section 20 paragraph one or paragraph two or section 24 paragraph three, as the case may be.

CHAPTER III

Rights and Liberties of Thai People

Part 1

General Provisions

Section 26. In exercising powers of all State authorities, regard shall be had to human dignity, rights and liberties in accordance with the provisions of this Constitution.

Section 27. Rights and liberties recognised by this Constitution explicitly, by implication or by decisions of the Constitutional Court shall be protected and directly binding on the National Assembly, the Council of Ministers, the Courts, the Constitutional organisations and all State organs in enacting, applying and interpreting laws.

Section 28. A person can invoke human dignity or exercise his rights and liberties in so far as it is not in violation of rights and liberties of other persons or contrary to this Constitution or good morals

A person whose rights and liberties recognised by this Constitution are violated can invoke the provisions of this Constitution to bring a

lawsuit or to defend himself in the Courts.

A person may bring a lawsuit against the State directly so as to act in compliance with the provisions in this Chapter. If there is a law enforcing the exercise of any right and liberty as recognised by this Constitution, the exercising of that right and liberty shall be in accordance with such law.

A person shall have the right to be enhanced, supported and assisted by the State in exercising of right under this Chapter.

Section 29. The restriction of such rights and liberties as recognised by the Constitution shall not be imposed on a person except by virtue of the law specifically enacted for the purpose determined by this Constitution and only to the extent of necessity and provided that it shall not affect the essential substances of such rights and liberties.

The law under paragraph one shall be of general application and shall not be intended to apply to any particular case or person; provided that the provision of the Constitution authorising its enactment shall also be mentioned therein.

The provisions of paragraph one and paragraph two shall apply *mutatis mutandis* to rules or regulations issued by virtue of the law.

Part 2

Equality

Section 30. All persons are equal before the law and shall enjoy equal protection under the law.

Men and women shall enjoy equal rights.

Unjust discrimination against a person on the grounds of the difference in origin, race, language, sex, age, disability, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political view, shall not be permitted.

Measures determined by the State in order to eliminate obstacle to or to promote persons' ability to exercise their rights and liberties as other persons shall not be deemed as unjust discrimination under paragraph three.

Section 31. Members of the armed forces or the police force, Government officials, other officials of the State and officers or employees of State agencies shall enjoy the same rights and liberties under the Constitution as those enjoyed by other persons, unless such enjoyment is restricted by law or rule issued by virtue of the law specifically enacted in regard to politics, efficiency, disciplines or ethics.

Part 3

Rights and Liberties of an Individual

Section 32. A person shall enjoy the right and liberty in his life and person.

A torture, brutal act or punishment by a cruel or inhumane means shall not be made; provided that punishment under judgments of the

Courts or by virtue of the law shall not be deemed the punishment by a cruel or inhumane means under this paragraph.

Arrest and detention of person shall not be made except by order or warrant issued by the Courts or there is a ground as provided by the law.

Search of person or act affecting the right and liberty under paragraph one shall not be made except by virtue of the law.

In the case where there is an act affecting right and liberty under paragraph one, the injured person, public prosecutor or any person acting for the benefit of the injured person shall have the right to bring lawsuit to the Courts so as to stop or nullify such act and to impose appropriate measure to alleviate damage occurred therefrom.

Section 33. A person shall enjoy the liberty of dwelling.

A person is protected for his peaceful habitation in and for possession of his dwelling.

The entry into a dwelling without consent of its possessor or the search of a dwelling or private place shall not be made except by order or warrant issued by the Courts or there is a ground as provided virtue of the law.

Section 34. A person shall enjoy the liberty of travelling and the liberty of making the choice of his residence within the Kingdom.

The restriction on such liberties under paragraph one shall not be imposed except by virtue of the law specifically enacted for maintaining the security of the State, public order, public welfare, town and country planning or welfare of youth.

No person of Thai nationality shall be deported or prohibited from entering the Kingdom.

Section 35. A person's family rights, dignity, reputation and the right of privacy shall be protected.

The assertion or circulation of a statement or picture in any manner whatsoever to the public, which violates or affects a person's family rights, dignity, reputation or the right of privacy, shall not be made except for the case which is beneficial to the public.

Personal data of a person shall be protected from the seeking of unlawful benefit as provided by the law.

Section 36. A person shall enjoy the liberty of communication by lawful means.

The censorship, detention or disclosure of communication between persons including any other act of disclosing a statement in the communication between persons shall not be made except by virtue of the law specifically enacted for security of the State or maintaining public order or good morals.

Section 37. A person shall enjoy full liberty to profess a religion, a religious denomination or creed, and observe religious precepts or commandments or exercise a form of worship in accordance with his belief; provided that it is not contrary to his civic duties, public order or good morals.

In exercising the liberty referred to in paragraph one, a person shall be protected from any act of the State, which is derogatory to

his rights or detrimental to his due benefits on the grounds of professing a religion, a religious denomination or creed or observing religious precepts or commandments or exercising a form of worship in accordance with his different belief from that of others.

Section 38. Forced labour shall not be imposed except by virtue of the law specifically enacted for the purpose of averting imminent public calamity or by virtue of the law which provides for its imposition during the time when the country is in a state of war or armed conflict, or when a state of emergency or martial law is declared.

Part 4

Rights in Judicial Process

Section 39. No person shall be inflicted with a criminal punishment unless he has committed an act which the law in force at the time of commission provides to be an offence and imposes a punishment therefor, and the punishment to be inflicted on such person shall not be heavier than that provided by the law in force at the time of the commission of the offence.

The suspect or the accused in a criminal case shall be presumed innocent.

Before the passing of a final judgement convicting a person of having committed an offence, such person shall not be treated as a convict.

Section 40. A person shall have the rights in judicial process as follows:

- (1) right to access to judicial process easily, comfortably, quickly and indiscriminately;
- (2) fundamental rights in judicial process composing of, at least, right to public trial; right to be informed of and to examine into facts and related documents adequately; right to present facts, defences and evidences in the case; right to object the partial judges; right to be considered by the full bench of judges; and right to be informed of justifications given in the judgement or order;
- (3) right to correct, prompt and fair trial;
- (4) an injured person, alleged offender, plaintiff, defendant or the accused, interested parties, interested person or witness to the case shall have the right to appropriate treatment in judicial process including the right to be investigated correctly, promptly and fairly and not to testify against himself;
- (5) an injured person, alleged offender, the accused and witness to a criminal case shall have the right to necessary and appropriate protection and assistance from State. The gratuity, compensation and expenses to be paid shall be provided by the law;
- (6) every child, youth, woman or aging or disabled person shall have the right to appropriate protection in judicial process and shall have the right to appropriate treatment in the case related to sexual offences;

- (7) an alleged offender and the accused in criminal case shall have the right to correct, prompt and fair investigation or trial with an adequate opportunity in defending his case, the right to examine or to be informed of evidence, right to defend himself through counsel and the right to bail;
- (8) a person shall, in civil action, have the right to appropriate legal assistance from State.

Part 5

Property Right

Section 41. The property right of a person is protected. The extent and the restriction of such right shall be in accordance with the provisions of the law.

The succession is protected. The right of succession of a person shall be in accordance with the provisions of the law.

Section 42. The expropriation of immovable property shall not be made except by virtue of the law specifically enacted for the purpose of public utilities, necessary national defence, exploitation of national resources, town and country planning, promotion and preservation of the quality of the environment, agricultural or industrial development, land reform, conservation of ancient monument and historic sites, or other public interests, and fair compensation shall be paid in due course to the owner thereof as well as to all persons having

the rights thereto, who suffer loss by such expropriation, as provided by law.

The amount of compensation under paragraph one shall be fairly assessed with due regard to the normal market price, mode of acquisition, condition and location of the immovable property, loss of the person whose property or right thereto is expropriated, and benefits that the State and the person whose property or right thereto is expropriated may receive from the use of the expropriated property.

The expropriation of immovable property law shall specify the purpose of the expropriation and shall clearly determine the period of time to fulfil that purpose. If the immovable property is not used to fulfil such purpose within such period of time, it shall be returned to the original owner or his heir.

The return of immovable property to the original owner or his heir under paragraph three and the claim of compensation paid shall be in accordance with the provisions of the law.

Part 6

Rights and Liberties in Occupation

Section 43. A person shall enjoy the liberties to engage in an enterprise or an occupation and to undertake a fair and free competition.

The restriction on such liberties under paragraph one shall not be imposed except by virtue of the law specifically enacted for maintaining the security and safety of State or economy of the country, protecting the public in regard to public utilities, maintaining public order and

good morals, regulating the engagement in an occupation, consumer protection, town and country planning, preserving natural resources or the environment, public welfare, preventing monopoly, or eliminating unfair competition.

Section 44. A person shall enjoy the right to work safety and welfare and to living security irrespective of whether he is employed or unemployed in accordance with the provisions of the law.

Part 7

Freedom of Expression of Individual and the Press

Section 45. A person shall enjoy the liberty to express his opinion, make speech, write, print, publicise, and make expression by other means.

The restriction on liberty under paragraph one shall not be imposed except by virtue of the law specifically enacted for the purpose of maintaining the security of State, protecting the rights, liberties, dignity, reputation, family or privacy rights of other person, maintaining public order or good morals or preventing or halting the deterioration of the mind or health of the public.

The closure of a newspaper or other mass media business in deprivation of the liberty under this section shall not be made.

The prevention of a newspaper or other mass media from printing news or expressing their opinions, wholly or partly, or interference in any manner whatsoever in deprivation of the liberty under this section shall not be made except by the provisions of the law

enacted in accordance with the provisions of paragraph two.

The censorship by a competent official of news or articles before their publication in a newspaper or other mass media shall not be made except during the time when the country is in a state of war; provided that it must be made by virtue of the law enacted under the provisions of paragraph two.

The owner of a newspaper or other mass media business shall be a Thai national.

No grant of money or other properties shall be made by State as subsidies to private newspapers or other mass media.

Section 46. Officials or employees in a private sector undertaking newspaper, radio or television broadcasting businesses or other mass media business shall enjoy their liberties to present news and express their opinions under the constitutional restrictions without mandate of any government agency, State agency, State enterprise or the owner of such businesses; provided that it is not contrary to their professional ethics, and shall enjoy the right to form organisation with balancing mechanism among professional organisations so as to protect rights, liberties and fairness.

Government officials, officials or employees of a government agency, State agency or State enterprise engaging in the radio or television broadcasting business or other mass media business enjoy the same liberties as those enjoyed by officials or employees under paragraph one.

Any act done by a person holding political position, State official or the owner of business with a view to obstruct or interfere the

presentation of news or an expression of opinions in public issue of the person under paragraph one or paragraph two, irrespective of whether such act has been done directly or indirectly, shall be deemed as wilfully misuse of power and take no effect except where such act has been done through the enforcement of law or professional ethics.

Section 47. Transmission frequencies for radio or television broadcasting and telecommunication are national communication resources for public interest.

There shall be an independent regulatory body having the duty to distribute the frequencies under paragraph one and supervise radio or television broadcasting and telecommunication businesses as provided by the law.

In carrying out the act under paragraph two, regard shall be had to utmost public benefit at national and local levels in education, culture, State security, other public interests and fair and free competition, including public participation in providing public mass media.

The supervision of the businesses under paragraph two shall constitute measures for the prevention of merger, acquisition or control among the mass media or by other persons which may deteriorate liberties to information of the public or may hinder the public from variety of information.

Section 48. No person holding a political position shall be the owner of, or hold shares in, newspaper, radio or television broadcasting or

telecommunication business, irrespective of whether he so commits in his name, or through his proxy or nominee, or by other direct or indirect means which enable him to administer such business as if he is the owner of, or hold shares in, such business.

Part 8

Rights and Liberties in Education

Section 49. A person shall enjoy an equal right to receive education for the duration of not less than twelve years which shall be provided by State thoroughly, up to the quality, and without charge.

The indigent, disabled or handicapped, or destitute person shall enjoy an equal right under paragraph one and shall be supported by State to receive equal education with other persons.

The education and training provided by professional or private organisation, alternative education of the public, self-directed learning and lifelong learning shall get appropriate protection and promotion from State.

Section 50. A person shall enjoy an academic freedom.

Education and training, learning and teaching, research and disseminating of research according to academic principles shall be protected; provided that it is not contrary to his civic duties or good morals.

Part 9

Rights to Public Health Services and Welfare

Section 51. A person shall enjoy an equal right to receive standard public health service, and the indigent shall have the right to receive free medical treatment from State's infirmary.

The public health service by the State shall be provided thoroughly and efficiently.

The State shall promptly prevent and eradicate harmful contagious diseases for the public without charge.

Section 52. Children and youth shall enjoy the right to survive and to receive physical, mental and intellectual development potentially in suitable environment with due regard to their participation.

Children, youth, women and family members shall have the right to be protected by State against violence and unfair treatment and shall have the right to medical treatment or rehabilitation upon the occurrence thereof.

An interference and imposition of rights of children, youth and family members shall not be made except by virtue of the law specially enacted for the maintenance of family institution or utmost benefit of such person.

Children and youth with no guardian shall have the right to receive appropriate care and education from the State.

Section 53. A person who is over sixty years of age and has insufficient income for living shall have the right to welfare, public facilities

and appropriate aids from State.

Section 54. The disabled or handicapped shall have the right to get access to, and to utilise of, welfare, public facilities and appropriate aids from State.

A person of unsound mind shall have the right to appropriate aids from State.

Section 55. A person who is homeless and has insufficient income for living shall have the right to appropriate aids from State.

Part 10

Rights to Information and Petition

Section 56. A person shall have the right to receive and to get access to public information in possession of a government agency, State agency, State enterprise or local government organisation, unless the disclosure of such information shall affect the security of State, public safety, interests of other persons which shall be protected, or personal data of other persons as provided by law.

Section 57. A person shall have the right to receive information, explanation and justification from a government agency, State agency, State enterprise or local government organisation before permission is given for the operation of any project or activity which may affect the quality of the environment, health and

sanitary conditions, the quality of life or any other material interest concerning him or a local community and shall have the right to express his opinions on such matters to the concerned agencies for their consideration.

The State shall organise public consultation thoroughly before the making of social, economic, politic and cultural development plan, the expropriation of immovable property, the making of town and country planning, the determination of land use, and the enactment of rule which may affect material interest of the public.

Section 58. A person shall have the right to participate in the decision-making process of State official in the performance of administrative functions which affect or may affect his rights and liberties, as provided by law.

Section 59. A person shall have the right to present a petition and to be informed of the result of its consideration within the appropriate time.

Section 60. A person shall have the right to sue a government agency, State agency, State enterprise, local government organisation or other State authority which is a juristic person to be liable for an act or omission done by its government official, official or employee.

Section 61. The right of a person who is a consumer to receive actual information shall be protected and a consumer shall have the right to make a complaint for remedy of damage and to amalgamate

with another so as to protect consumers' rights.

There shall be an autonomous consumer protection organisation which is not a State agency consisting of representatives of consumers for giving opinions to a State agency on the enactment and issuance of laws, rules and regulations and on the determination of various measures for consumer protection, and for examining and making a report on any act or omission related to consumer protection. The State shall provide financial support for an operation of such autonomous organisation.

Section 62. A person shall have the right to follow up, and to request for examination of, the performance of duties of a person holding political position, State agency and State officials.

A person who provides information related to the performance of duties of a person holding political position, State agency and State officials to the organisation examining the misuse of State power or State agency shall be protected.

Part 11

Liberties to Assembly and Association

Section 63. A person shall enjoy the liberty to assemble peacefully and without arms.

The restriction on such liberty under paragraph one shall not be imposed except by virtue of the law specifically enacted for the purpose of public assembling and for securing public convenience in

the use of public places or for the maintenance of public order during the time when the country is in a state of war, or when a state of emergency or martial law is declared.

Section 64. A person shall enjoy the liberty to unite and form an association, a union, a league, a co-operative, a farmer group, a private organisation, a non-governmental organisation or any other group.

The government officials and State officials shall enjoy the liberty to association as other individual if it is not affect efficiency of State administration and the continuation in providing public services as provided by law.

The restriction on such liberty under paragraph one and paragraph two shall not be imposed except by virtue of the law specifically enacted for preventing common interests of the public, maintaining public order or good morals or preventing economic monopoly.

Section 65. A person shall enjoy the liberty to unite and form a political party for the purpose of making political will of the people and carrying out political activities in fulfilment of such will through the democratic regime of government with the King as Head of State as provided in this Constitution.

The internal organisation, management and regulations of a political party shall be consistent with the fundamental principles of the democratic regime of government with the King as Head of State.

Members of the House of Representatives who are members of a political party, members of the Executive Committee of a political party, or members of a political party, of not less than the number

prescribed by the organic law on political parties shall, if of the opinion that their political party's resolution or regulation on any matter is contrary to the status and performance of duties of a member of the House of Representatives under this Constitution or contrary to or inconsistent with the fundamental principles of the democratic regime of government with the King as Head of State, have the right to refer it to the Constitutional Court for decision thereon.

In the case where the Constitutional Court decides that such resolution or regulation is contrary to or inconsistent with the fundamental principles of the democratic regime of government with the King as Head of State, such resolution or regulation shall lapse.

Part 12

Community Rights

Section 66. Persons assembling as to be a community, local community or traditional local community shall have the right to conserve or restore their customs, local wisdom, arts or good culture of their community and of the nation and participate in the management, maintenance and exploitation of natural resources, the environment and biological diversity in a balanced and sustainable fashion.

Section 67. The right of a person to participate with State and communities in the preservation and exploitation of natural resources and biological diversity and in the protection, promotion and conservation of the quality of the environment for usual and

consistent survival in the environment which is not hazardous to his health and sanitary condition, welfare or quality of life, shall be protected appropriately.

Any project or activity which may seriously affect the quality of the environment, natural resources and biological diversity shall not be permitted, unless its impacts on the quality of the environment and on health of the people in the communities have been studied and evaluated and consultation with the public and interested parties have been organised, and opinions of an independent organisation, consisting of representatives from private environmental and health organisations and from higher education institutions providing studies in the field of environment, natural resources or health, have been obtained prior to the operation of such project or activity.

The right of a community to sue a government agency, State agency, State enterprise, local government organisation or other State authority which is a juristic person to perform the duties under this section shall be protected.

Part 13

Right to Protect the Constitution

Section 68. No person shall exercise the rights and liberties prescribed in the Constitution to overthrow the democratic regime of government with the King as Head of State under this Constitution or to acquire the power to rule the country by any means which is not in accordance with the modes provided in this Constitution.

In the case where a person or a political party has committed the act under paragraph one, the person knowing of such act shall have the right to request the Prosecutor General to investigate its facts and submit a motion to the Constitutional Court for ordering cessation of such act without, however, prejudice to the institution of a criminal action against such person.

In the case where the Constitutional Court makes a decision compelling the political party to cease to commit the act under paragraph two, the Constitutional Court may order the dissolution of such political party.

In the case where the Constitutional Court makes the dissolution order under paragraph three, the right to vote of the President and the executive board of directors of the dissolved political party at the time the act under paragraph one has been committed shall be suspended for the period of five years as from the date the Constitutional Court makes such order.

Section 69. A person shall have the right to resist peacefully an act committed for the acquisition of the power to rule the country by a means which is not in accordance with the modes provided in this Constitution.

CHAPTER IV

Duties of the Thai People

Section 70. Every person shall have a duty to uphold the nation, religions, the King and the democratic regime of government with the King as Head of State under this Constitution.

Section 71. Every person shall have a duty to defend the country, to protect benefits of the nation and to obey the law.

Section 72. Every person shall have a duty to exercise his right to vote at an election.

The person who exercises his right to vote at an election or fails to attend an election for voting without notifying the reasonable cause of such failure shall be entitled to or lose the right as provided by law.

The notification of the cause of failure to attend an election and the provision of facilities for attendance thereat shall be in accordance with the provisions of the law.

Section 73. Every person shall have a duty to serve in armed forces, render assistance in providing public calamity prevention and rehabilitation, pay taxes, render assistance to the official service, receive education and training, protect, preserve and pass on the national arts and culture and local wisdom and conserve natural resources and the environment as provided by law.

Section 74. A Government official, official or employee of a government agency, State agency, State enterprise or local government organisation and other State official shall have a duty to act in compliance with the law in order to protect public interests, and provide convenience and services to the public according to the good public governance principle.

In performing the duty and other act relating to the public, the person under paragraph one shall be politically impartial.

In the case where the person under paragraph one neglect or fail to perform the duties under paragraph one or paragraph two, the interested person shall have the right to request the person under paragraph one or his superior to explain reason and request them to act in compliance with the provisions of paragraph one or paragraph two.

CHAPTER V

Directive Principles of Fundamental State Policies

Part 1

General Provisions

Section 75. The provisions of this Chapter are intended to serve as directive principles for legislating and determining policies for the administration of State affairs.

In stating its policies to the National Assembly, the Council of Ministers which will assume the administration of State affairs shall clearly state to the National Assembly the activities and their implementation period intended to be carried out for the administration of State affairs in implementation of the directive principles of fundamental State policies provided in this Chapter and shall prepare and submit to the National Assembly an annual report on the result of the implementation, including problems and obstacles encountered.

Section 76. The Council of Ministers shall prepare a plan for the administration of State affairs stating measures and their details

which shall be done for the administration of State affairs in each year and such plan shall be in compliance with the directive principles of fundamental State policies.

For the purpose of State administration, the Council of Ministers shall have the plan to enact laws necessarily to the administration of State affairs.

Part 2

National Security Policy

Section 77. The State shall protect and uphold the institution of kingship and the independence and integrity of its jurisdictions and shall arrange for the maintenance of necessary and adequate armed forces and ordnances as well as up-to-date technology for the protection and upholding of its independence, sovereignty, security of State, institution of kingship, national interests and the democratic regime of government with the King as Head of State, and for national development.

Part 3

State Administration Policy

Section 78. The State shall act in compliance with the State administration policy as follows:

- (1) carrying out the administration of State affairs with a view to establish sustainable development of social, economic and security of the nation and strengthening an implementation of the sufficient economy philosophy with due regard to general benefits of the nation materially;
- (2) making powers, duties and responsibilities among the central administration, provincial administration and local administration to be clear and suitable for national development, and supporting a Changwat to set up its development plan and providing financial support for the implementation of such plan for the benefit of the public within that area;
- (3) delegating powers to local governments for the purpose of autonomy and self-determination of local affairs, enhancing local governments to participate and act in compliance with the directive principles of fundamental State policies, develop local economics, public utilities and assistances and information infrastructure in the localities thoroughly and equally throughout the country as well as developing into a large sized local government organisation a Changwat ready for such purpose with due regard to the will of the people in that Changwat;
- (4) developing working system of public sector with due regard to the development of quality, merit and ethics of State officials along the line with the improvement of working processes for the efficiency of State administration, and encouraging State agencies to apply the good public governance principle in the performance of their official duties;

- (5) organising officials work and other works of State with a view to enhance quick, efficiency, transparency and accountability in making or providing public services and with due regard to public consultation;
- (6) preparing a legal agency providing legal opinion related to the performance of the State under the laws and examining draft laws for the State to perform its duties autonomously so as to ensure that the administration of State affairs is in accordance with the rule of law;
- (7) preparing a political development plan and establishing autonomously political development council to monitor an implementation of the plan;
- (8) ensuring the government officials and State officials to have appropriate rights and benefits.

Part 4

Religions, Social, Public Health, Education and Culture Policies

Section 79. The State shall patronise and protect Buddhism as the religion observed by most Thais for a long period of time and other religions, promote good understanding and harmony among followers of all religions as well as encourage the application of religious principles to create virtue and develop the quality of life.

Section 80. The State shall act in compliance with the social, public health, education and culture policies as follows:

- (1) protecting and developing child and youth, promoting childhood nourishment and education, promoting the equality between women and men, creating, reinforcing and developing family integrity and the strength of communities, as well as providing aids and welfare to the elderly, the indigent, the disabled or handicapped and the destitute person for their better quality of life and ability to become self-reliance;
- (2) promoting, supporting and developing health system with due regard to the health promotion for sustainable health conditions of the public, providing and promoting standard and efficient public health service thoroughly and encouraging private sector and the communities in participating in health promotion and providing public health service, and the person having duty to provide such service whose act meets the requirements of professional and ethical standards shall be protected as provided by law;
- (3) developing quality and standard in providing education at all levels and forms to be in line with economic and social changes, preparing the national education plan and the law for national education development, providing development of quality of teachers and educational personnel to meet the current changing in the present day world, and instilling awareness of being Thais, disciplines, common interests and a democratic regime of government with the King as Head of the State to learners;
- (4) promoting and supporting the delegation of powers to the local governments, communities, religious organisations and private

sector with a view to provide and participate in educational management for the development of educational quality standard equally and to be in line with the fundamental State policy;

(5) encouraging and supporting the making of researches in various disciplines of arts and sciences and disseminating all research results funded by the State;

(6) encouraging and instilling the right awareness of national unity and learning, and instilling and making known of arts, tradition and culture of the nation as well as good value and local wisdom.

Part 5

Law and Justice Policies

Section 81. The State shall act in compliance with the law and justice policies as follows:

(1) ensuring the compliance with, and the enforcement of, the law to be correct, quick, fair and thorough, enhancing the provision of legal assistances and knowledge to the public, providing efficient public service system and other State affairs in relation to the administration of justice with due regard to the participation of the public and the profession organisations, and providing legal aids service to the public;

(2) protecting rights and liberties of individual from any violation irrespective of whether such violation has been done by a State

official or other persons, and providing justice to the public on an equal basis;

- (3) preparing the law establishing the autonomous law reform organisation for the purpose of reforming and developing laws of the nation and revising the existing laws for the compliance with the Constitution, with due regard to opinions given by persons affected by such laws;
- (4) preparing the law establishing the autonomous organisation for reforming the judicial process for improving and developing the performance of all agencies concerned with the judicial process;
- (5) providing support for the operation of private organisations rendering legal assistance to the public, especially the people who suffers from domestic violence.

Part 6

Foreign Policy

Section 82. The State shall promote friendly relations with other countries and adopt the principle of non-discrimination and shall comply with human rights conventions in which Thailand is a party thereto as well as international obligations concluded with other countries and international organisations.

The State shall promote trade, investment and tourism with other countries and shall render protection and guardian to benefits of Thais living abroad.

Part 7

Economic Policy

Section 83. The State shall encourage and support an implementation of the sufficient economy philosophy.

Section 84. The State shall act in compliance with the economic policy as follows:

- (1) encouraging a free and fair economic system through market mechanism, ensuring the development of economics in sustainable fashion by repealing and refraining from the enactment of laws, rules and regulations controlling business which do not correspond with the economic necessity, and refraining from the engagement in an enterprise in competition with the private sector unless it is necessary for the purpose of maintaining the security of State, preserving common interests, or providing public utilities;
- (2) encouraging entrepreneurs to use merit, ethics and corporate governance principle in carrying out of their businesses;
- (3) preserving monetary and financial disciplines in order to strengthen balance and security of economic and social of the nation, improving tax system to be fair and compatible with the changing of economic and social conditions;

- (4) providing saving system for old age living to the public and State officials thoroughly;
- (5) regulating business activities for free and fair competition, antimonopoly whether direct or indirect monopoly, and consumer protection;
- (6) implementing fair distribution of incomes, and protecting, enhancing and extending the occasion to occupation of the public for economic development as well as promoting and supporting the development of local wisdom and Thai wisdom for the manufacturing of goods and providing of services and for use in occupation;
- (7) promoting people of working age to obtain employment, protecting child and woman labour, providing the system of labour relations and tripartite which entitling labours to elect their representatives, providing social security and ensuring labours working at equal value to obtain wages, benefits and welfares upon fair and indiscriminate basis;
- (8) protecting and maintaining the interests of farmers in manufacturing and marketing, ensuring maximise profits of the farm products, encouraging an association of farmers in the form of farmer council having with a view to agricultural planning and the protection of their mutual interests;
- (9) promoting, encouraging and protecting the autonomous cooperative system and the occupation or profession body as well as the association of the public to carry out economic activities;

- (10) providing infrastructures necessarily for the living of people with a view to maintain economic security of State and preventing private sector from monopolising such infrastructures that may be harmful to the State;
- (11) refraining from doing any act which may give rise to the transfer of ownership of the fundamental structure or network of infrastructures necessarily for the living of people or for national security to private sector or to the decrease of shares or capital held or invested by the State lower than fifty per cent;
- (12) encouraging and supporting the merchant marine and rail transportation, and carrying out the domestic and international logistics management system;
- (13) encouraging and strengthening the private sector organisations, both national and local level;
- (14) encouraging agricultural products transformation industry with a view to increase value added thereto.

Part 8

Land Use, Natural Resources and Environment Policies

Section 85. The State shall act in compliance with the land use, natural resources and environment policies as follows:

- (1) preparing and applying the rule on the use of land through out the country with due regard to the compliance with environmental

condition, nature of land and water and the way of life of local communities, the efficient measures for preservation of natural resources, the sustainable standard for land use and opinion of the people in the area who may be affected by the rule on the use of land;

- (2) distributing the right to hold land fairly, enabling farmers to be entitled to the ownership or the right in land for agriculture thoroughly by means of land reform or by other means, and providing water resources for the distribution of water to farmers for use in agriculture adequately and appropriately;
- (3) preparing town and country planning, and developing and carrying out the plan effectively and efficiently for the purpose of sustainable preservation of natural resources;
- (4) preparing systematic management plan for water and other natural resources for the common interests of the nation, and encouraging the public to participate in the preservation, conservation and exploitation of natural resources and biological diversity appropriately;
- (5) conducting the promotion, conservation and protection of the quality of the environment under the sustainable development principle, and controlling and eliminate pollution which may affect health and sanitary, welfare and quality of life of the public by encouraging the public, the local communities and the local governments to have participation in the determination of the measures.

Part 9

Science, Intellectual Properties and Energy Policies

Section 86. The State shall act in compliance with the science, intellectual properties and energy policies as follows:

- (1) enhancing the development of science, technology and innovation in all aspects by enacting specific law in so doing, preparing budget for studying and making of researches, establishing institution for research and development, encouraging the use of results emerging from researches and development, the efficient transfer of technology and the appropriate development of researchers, and disseminating science and modern technology knowledge to the public and encouraging the public to apply science into their living;
- (2) supporting an invention or excogitation for new wisdom, preserving and developing local wisdom and Thai wisdom, and protecting intellectual properties;
- (3) promoting and supporting continuously and systematically of the research, the development and the use of natural alternative energy which is beneficial to the environment.

Part 10

Public Participation Policy

Section 87. The State shall act in compliance with the public participation policy as follows:

- (1) encouraging public participation in the determination of public policy and the making of economic and social development plan both in the national and local level;
- (2) encouraging and supporting public participation to make decision on politics and the making of economic and social development plan and the provision of public services;
- (3) encouraging and supporting public participation in the examination of the exercise of State power at all levels in the form of profession or occupation organisation or other forms;
- (4) strengthening the politics power of the public, and preparing the laws establishing civil politics development fund for facilitating the communities to organise public activities and for supporting networks of the groups of people to express opinion and requirements of the communities in the localities;
- (5) supporting and providing education to the public related to the development of politics and public administration under the democratic regime of government with the King as Head of State, and encouraging the public to exercise their rights to vote honestly and uprightly.

In providing public participation under this section, regard shall be had to approximate proportion between women and men.

CHAPTER VI

The National Assembly

Part 1

General Provisions

Section 88. The National Assembly consists of the House of Representatives and the Senate.

Joint or separate sittings of the National Assembly shall be in accordance with the provisions of this Constitution.

No person shall be a member of the House of Representatives and a senator simultaneously.

Section 89. The President of the House of Representatives is President of the National Assembly. The President of the Senate is Vice-President of the National Assembly.

In the case where there is no President of the House of Representatives, or the President of the House of Representatives is not present or is unable to perform his duties, the President of the Senate shall act as President of the National Assembly in his place.

The President of the National Assembly shall have the powers and duties as provided in this Constitution and shall conduct the proceedings of the National Assembly at joint sittings in accordance with the rules of procedure.

The President of the National Assembly and the person who acts as President of the National Assembly in his place shall be impartial

in the performance of duties.

The Vice-President of the National Assembly shall have the powers and duties as provided in this Constitution and as entrusted by the President of the National Assembly.

Section 90. An organic law bill and a bill may be enacted as law only by and with the advice and consent of the National Assembly and when the King's signature has been given or deemed to be given thereto; it shall come into force upon its publication in the Government Gazette.

Section 91. Members of the House of Representatives or senators of not less than one-tenth of the total number of the existing members of each House shall have the right to lodge with the President of the House of which they are members a complaint asserting that the membership of any member of such House has terminated under section 106 (3), (4), (5), (6), (7), (8), (10), or (11) or section 119 (3), (4), (5), (7), or (8), as the case may be, and the President of the House with whom the complaint is lodged shall refer it to the Constitutional Court for decision as to whether the membership of such person has terminated.

When the Constitutional Court has made a decision, it shall notify the President of the House with which the complaint is lodged under paragraph one of such decision.

In the case where the Election Commission is of opinion that the membership of a member of the House of Representatives or a senator has terminated under paragraph one, it shall refer this matter to the

President of the House which such person is a member and the President of that House shall then refer it to the Constitutional Court for decision under paragraph one and paragraph two.

Section 92. The vacation of the office of a member of the House of Representatives or a senator after the day on which his membership terminates or the day on which the Constitutional Court decides that the membership of any member terminates does not affect any act done by such member in the capacity as member including the receipt of emolument or other benefits by such member before he vacates office or the President of the House of which such person is a member has been notified of the decision of the Constitutional Court, as the case may be, except that in the case of vacation of the office on the ground of his being elected or selected in violation of the organic law on election of members of the House of Representatives and acquisition of senators, emolument and other benefits received from being in office shall be returned.

Part2

The House of Representatives

Section 93. The House of Representatives consists of four hundred and eighty members, four hundred of whom are from the election on a constituency basis and eighty of whom are from the election on a proportional basis.

The election of member of the House of Representatives shall be by direct suffrage and secret ballot, and the ballot to be used in an election shall be varied upon the election basis.

The rules and procedure for the election of members of the House of Representatives shall be in accordance with the organic law on election of members of the House of Representatives and acquisition of senators.

In the case where the office of a member of the House of Representatives becomes vacant for any reason and an election of a member of the House of Representatives has not been held to fill the vacancy, the House of Representatives shall consist of the existing members of the House.

Subject to section 109 (2), in the case where there occurs, during the term of the House of Representatives, any cause resulting in the members elected from the election on a proportional basis being less than eighty in number, such members shall consist of the existing members.

In the case where there occurs, during the general election, any cause resulting in the members of the House of Representatives elected from the election being less than four hundred and eighty in number but not less than ninety-five per cent of the total number of members of the House of Representatives, such members is deemed to constitute the House of Representatives. In this case, the acquisition for the fulfillment of the total number of members of the House of Representatives shall be completed within one hundred and eighty days and the new coming members shall hold office for the remaining term of the House of Representatives.

Section 94. In the election of members of the House of Representatives on a constituency basis, the person having the right to vote shall cast ballot for the equal number of members of the House in each constituency.

The determination of the number of members of the House of Representatives in each constituency and the determination of constituencies shall be as follows:

- (1) the determination of the ratio of the number of inhabitants to one member shall be made by reference to the division of such number of inhabitants throughout the country as evidenced in the census announced in the year preceding the year of election by the number of four hundred members of the House of Representatives;
- (2) any Changwat with inhabitants below the number of inhabitants per one member under (1) shall have one member of the House of Representative. Any Changwat with more inhabitants than the number of inhabitants per one member shall have an additional member of the House of Representatives for every such number of inhabitants as representing the number of inhabitants per one member;
- (3) upon the number of members of the House of Representatives of each Changwat being obtained under (2), if the number of members of the House of Representatives is still less than four hundred, any Changwat with the largest fraction remaining from the determination under (2) shall have an additional member of

the House of Representatives and the addition of the members of the House of Representatives in accordance with such procedure shall be made to other Changwat in respective order of fractions remaining from the determination under (2) until the number of four hundred is obtained;

- (4) in a Changwat where the number of members of the House of Representatives to be elected is not more than three, the area of that Changwat shall be regarded as the constituency and in a Changwat where the number of members of the House of Representatives is more than three, the area of such Changwat shall be divided into constituencies and, for this purpose, each constituency shall have three members of the House of Representatives;
- (5) in a Changwat which is divided into many constituencies, if there is unable to have three members of the House of Representatives in all constituencies, the area of such Changwat shall be firstly divided into the constituency with three members of the House of Representatives and the rest constituencies shall have not less than two members of the House of Representatives and in a Changwat where the number of members of the House of Representatives to be elected is four, the area of such Changwat shall be divided into two constituencies and each constituency shall have two members of the House of Representatives;
- (6) in a Changwat which is divided into more constituencies than one, the boundary of each constituency shall be adjoining and the number of inhabitants in each constituency must be closely apportioned.

The counting of votes shall be conducted at the polling station and the result of the vote-counting shall be reported to the constituency for calculation of total votes-counting in that constituency and the result of the total vote-counting shall be announced publicly at any single place in that constituency as designated by the Election Commission, except that in the case where necessity arises in a particular locality, the Election Commission may otherwise prescribe the counting of votes, the calculation of total vote-counting and the announcement of the result of the total vote-counting in accordance with the organic law on election of members of the House of Representatives and acquisition of senators.

Section 95. An election of members of the House of Representatives on a proportional basis is an election for members of the House of Representatives from the lists of candidates prepared by political parties whereby the person having the right to vote in each constituency shall cast ballot for one political party preparing the list of candidates for such constituency.

A political party may submit the lists of candidates for the election on proportional basis for some or all constituencies.

In the case where there occurs to the submitted list of candidates for the election on proportional basis of a political party, whether on or before an election day, any cause resulting in the remaining candidates being less than the number of candidates as specified in the submitted list, the remaining candidates are deemed to be candidates of such political party and, in this case, it shall be

deemed that the House of Representatives consists of the remaining members.

Section 96. The determination of the constituencies for the election of the members of the House of Representatives on a proportional basis shall be as follows:

- (1) the country shall be divided into eight groups of Changwat and each group of Changwat shall be regarded as one constituency having ten members of the House of Representatives;
- (2) in grouping of Changwat, the boundary of each Changwat in each group shall be adjoining and the number of inhabitants in each group must be closely apportioned by reference to the division of such number of inhabitants throughout the country as evidenced in the census announced in the year preceding the year of election and the whole area of each Changwat shall be in on constituency.

Section 97. The preparation of the lists of candidates prepared by a political party for the election of the members of the House of Representatives on a proportional basis shall be as follows:

- (1) the lists of candidates for each constituency shall consist of candidates in equal number of members of the House of Representatives to be elected on a proportional basis in each constituency and placed in numerical order and shall be submitted to the Election Commission before the date an

application for candidacy in an election on the constituency basis commences;

- (2) candidates under (1) shall not be candidates in an election both on the constituency basis and on proportional basis of any political party and, in preparing the list of candidates, regard shall be had to opportunity and approximate proportion between women and men.

Section 98. The determination of the proportion of candidates in the list of candidates of each political party as being elected in each constituency shall be conducted by accumulating the votes received by each political party in each constituency as basis for reckoning the proportion of candidates to be elected of each political party which shall be reflected to the result of the accumulation of the votes as aforesaid, the votes received by each political party and the numbers of members of the House of Representatives to be elected on a proportional basis in such constituency. The candidates named in the list of candidates of each political party shall be regarded as being elected in accordance with the result of reckoning by numerical order as specified the list of candidates of each political party under the rules and procedure as prescribed in the organic law on election of members of the House of Representatives and acquisition of senators.

The provisions of section 94 paragraph three shall apply *mutatis mutandis* to the counting of votes for the election of members of the House of Representatives on a proportional basis, provided that the

Election Commission prescribes to conduct the preliminary calculation of total vote-counting at Changwat.

Section 99. A person having the following qualifications has the right to vote at an election:

- (1) being of Thai nationality; provided that a person who has acquired Thai nationality by naturalisation must hold the Thai nationality for not less than five years;
- (2) being not less than eighteen years of age on 1st January of the year of the election; and
- (3) having his name appear on the house register in the constituency for not less than ninety days up to the election day.

A voter who has a residence outside the constituency within which his appear in the house register, or who has his name appear in the house register in the constituency for the period of less than ninety days up to the date of the election, or who has a residence outside the Kingdom of Thailand shall have the right to cast ballot in an election in accordance with rules, procedure and conditions provided by the organic law on election of members of the House of Representatives and acquisition of senators.

Section 100. A person under any of the following prohibitions on the election day is disfranchised:

- (1) being a Buddhist priest, novice, monk or clergy;
- (2) being under suspension of the right to vote;
- (3) being detained by a warrant of the Court or by a lawful order;
- (4) being of unsound mind or of mental infirmity.

Section 101. A person having the following qualifications has the right to be a candidate in an election of members of the House of Representatives:

- (1) being of Thai nationality by birth;
- (2) being not less than twenty five years of age on the election day;
- (3) being a member of any and only one political party for a consecutive period of not less than ninety days up to the date of applying for candidacy in an election, or being a member of any and only one political party for a consecutive period of not less than thirty days up to the date of applying for candidacy in an election in the case where the general election is conducted on account of the dissolution of the House of Representatives;
- (4) a candidate in an election on a constituency basis shall also possess any of the following qualifications:
 - (a) having his name appear in the house register in Changwat where he stands for election for a consecutive period of not less than five years up to the date of applying for candidacy;
 - (b) being born in Changwat where he stands for election;
 - (c) having studied in an education institution situated in Changwat

where he stands for election for a consecutive period of not less than five academic years;

- (d) having served in the official service or having had his name appear in the house register in Changwat where he stands for election for a consecutive period of not less than five years;
- (5) a candidate in an election on a proportional basis shall also possess any of the qualifications under (4) but the reference to Changwat therein shall mean a group of Changwat;
- (6) other qualifications as prescribed in the organic law on election of members of the House of Representatives and acquisition of senators.

Section 102. A person under any of the following prohibitions shall have no right to be a candidate in an election of members of the House of Representatives:

- (1) being addicted to narcotics;
- (2) being bankrupt or having been dishonestly bankrupt;
- (3) being disfranchised under section 100 (1), (2) or (4);
- (4) having been sentenced by a judgement to imprisonment and being detained by a warrant of the Court;
- (5) having been discharged for a period of less than five years on the election day after being sentenced by a judgement to imprisonment except for an offence committed through negligence;
- (6) having been expelled, dismissed or removed from the official service, a State agency or a State enterprise on the ground of dishonest performance of duties or corruption;

- (7) having been ordered by a judgement or an order of the Court that his assets shall vest in the State on the ground of unusual wealth or an unusual increase of his assets;
- (8) being a government official holding a permanent position or receiving salary except a political official;
- (9) being a member of a local assembly or a local administrator;
- (10) being a senator or having been a senator who vacates office for a period of less than two years;
- (11) being an official or employee of a government agency, State agency or State enterprise or other State official;
- (12) being a judge of the Constitutional Court, an Election Commissioner, an Ombudsman, a member of the State Audit Commission or a member of the National Human Right Commission;
- (13) being under the prohibition from holding a political position under section 263;
- (14) having been removed from office by the resolution of the Senate under section 274.

Section 103. A political party presenting its members as candidates in the election in any constituency shall present its members as candidates in an equal amount to the number of members of the House of Representatives in such constituency.

In the case where there occurs, after presenting the complete number of candidates as required in paragraph one, any cause resulting in the remaining candidates being less than the required number, it shall be deemed that such political party has presented the complete number of candidates.

After presenting its members as candidates in the election, neither a political party nor a candidate shall revoke such presentation or alter the candidates.

Section 104. The term of the House of Representatives is four years from the election day.

During the term of the House of Representatives, the amalgamation of the political parties having their members as members of the House of Representatives shall not be made.

Section 105. Membership of the House of Representatives commences on the election day.

Section 106. Membership of the House of Representatives terminates upon:

- (1) expiration of the term or dissolution of the House of Representatives;
- (2) death;
- (3) resignation;
- (4) being disqualified under section 101;
- (5) being under any prohibition under section 102;
- (6) acting in contravention of any prohibition under section 265 or section 266;
- (7) resignation from membership of his political party or his political party passing a resolution, with the votes of not less than three-fourths of the joint meeting of the Executive Committee

of that political party and members of the House of Representatives belonging to that political party, terminating his membership of the political party. In such cases, his membership shall be deemed to have terminated as from the date of the resignation or the resolution of the political party except where such member of the House of Representatives appeals to the Constitutional Court within thirty days as from the date of the resolution of the political party for raising an objection that such resolution is of such nature as specified in section 65 paragraph three. If the Constitutional Court decides that the said resolution is not of the nature as specified in section 65 paragraph three, his membership shall be deemed to have terminated as from the date of the decision of the Constitutional Court. If the Constitutional Court decides that the said resolution is of such nature as specified in section 65 paragraph three, that member of the House of Representatives may become a member of another political party within thirty days as from the date of the decision of the Constitutional Court;

- (8) loss of membership of the political party in the case where the political party of which he is a member is dissolved by an order of the Constitutional Court and he is unable to become a member of another political party within sixty days as from the date on which the Constitutional Court issues its order. In such case, his membership shall be deemed to have terminated as from the day following the date on which such period of sixty days has elapsed;

- (9) the Senate passing a resolution under section 274 removing him from office or the Constitutional Court having a decision terminating his membership under section 91. In such cases, his membership shall be deemed to have terminated as from the date on which the Senate passes a resolution or the Constitutional Court has a decision, as the case may be;
- (10) having been absent for more than one-fourth of the number of days in a session the length of which is not less than one hundred and twenty days without permission of the President of the House of Representatives;
- (11) being sentenced by a judgment to imprisonment notwithstanding the suspension of the execution of imprisonment has been granted, except for an offence committed through negligence, a petty offence or a defamation offense.

Section 107. Upon the expiration of the term of the House of Representatives, the King will issue a Royal Decree calling for a general election of members of the House of Representatives in which the election day must be fixed within forty five days as from the date of the expiration of the term of the House of Representatives and the election day must be the same throughout the Kingdom.

Section 108. The King has the prerogative to dissolve the House of Representatives for a new election of members of the House. The dissolution of the House of Representatives shall be made in

the form of a Royal Decree in which the day for a new general election must be fixed for not less than forty-five days but not more than sixty days as from the day the House of Representatives has been dissolved and such election day must be the same throughout the Kingdom.

The dissolution of the House of Representatives may be made only once under the same circumstance.

Section 109. When the office of member of the House of Representatives becomes vacant for any reason other than the expiration of the term or the dissolution of the House of Representatives, the following actions shall be taken:

- (1) in the case where the vacancy is that of the office of a member of the House of Representatives elected from the election on a constituency basis, an election of a member of the House of Representatives to fill the vacancy shall be held within forty-five days as from the date of the vacancy unless the remainder of the term of the House of Representatives is less than one hundred and eighty days.
- (2) in the case where the vacancy is that of the office of a member of the House of Representatives elected from the election on a proportional basis, the President of the House of Representatives shall, by publication in the Government Gazette within seven days as from the date of the vacancy, elevate the person whose name in the list of that political party is placed in the next order to be a replacing member of the House of

Representatives, except where there is no person to be elevated and, in such case, the House of Representatives consists of the remaining members;

Membership of the replacing member of the House of Representatives under (1) shall commence as from the day on which the election to fill the vacancy is held, while membership of the replacing member of the House of Representatives under (2) shall commence as from the day following the date of the publication of the name of the replacing member in the Government Gazette. The replacing member of the House of Representatives may serve only for the remainder of the term of the House.

Section 110. After the Council of Ministers has assumed the administration of State affairs, the King will appoint as Leader of the Opposition in the House of Representatives a member of the House who is the leader of the political party having its members holding no ministerial positions and having the largest number of members among the political parties having their members holding no ministerial positions, provided that such number must not be less than one-fifth of the total number of members of the House of Representatives at the time of the appointment.

In the case where no political party in the House of Representatives has the description as prescribed under paragraph one, the leader of the political party, who receives a majority of supporting votes from the members of the House who belong to the political parties having their members holding no ministerial positions, shall be the Leader of

the Opposition in the House. In case of an equality of supporting votes, it shall be decided by lot.

The President of the House of Representatives shall countersign the Royal Command appointing the Leader of the Opposition in the House of Representatives.

The Leader of the Opposition in the House of Representatives shall vacate office upon being disqualified as specified in paragraph one or paragraph two, and section 124 paragraph four shall apply mutatis mutandis, and in such case, the King will appoint a new Leader of the Opposition in the House of Representatives to fill the vacancy.

Part 3

The Senate

Section 111. The Senate consists of one hundred and fifty members acquired upon the basis of election in each Changwat, one elected senator for each Changwat, and upon the selection basis in an amount equal to the total number of senators deducted by the number of senators from the election basis.

In the case where the number of Changwat is increased or decreased during the term of office of the senators whom acquired by the election basis, the Senate shall be regarded as consisting of the existing senators.

Upon the vacancy of a senator by whatever reasons and the election or selection for the fulfilment of the vacancy has not yet conducted, as the case may be, the Senate shall be regarded as

consisting of the remaining senators.

In the case where there occurs any cause resulting in the number of senators being less than the total number of the senators under paragraph one but not less than ninety-five per cent of the total number of senators, such senators is deemed to constitute the Senate. In this case, the election or selection for the fulfillment of the total number of senators under paragraph one shall be completed within one hundred and eighty days as from the date the aforesaid situation has occurred and the new coming senator shall hold office for the remaining term of the Senate.

Section 112. In an election of senators, the area of Changwat shall be regarded as one constituency and the number of senator for each Changwat is one. The person having the right to vote at an election of senators may cast ballot, at the election, for one candidate and the election shall be by direct suffrage and secret ballot.

For the purpose of the election of senators, the campaign to be launched by the candidates in the election is limited to the matters related to the performance of duties of the Senate.

The rules, procedure and conditions for the election of, and the launching of election campaign of candidates for, senators shall be in accordance with the organic law on election of members of the House of Representatives and acquisition of senators.

Section 113. There shall be the Senators Selective Committee consisting of the President of the Constitutional Court, the Chairperson of the Election Commission, the President of the Ombudsmen, the

Chairperson of the National Counter Corruption Commission, the Chairperson of the State Audit Commission, a judge of the Supreme Court of Justice holding the position of not lower than judge of the Supreme Court of Justice as entrusted by the general meeting of the Supreme Court of Justice and a judge of the Supreme Administrative Court as entrusted by the general meeting of the Supreme Administrative Court, having a duty to select persons under section 114 within thirty days as from the date of receiving the list of candidates from the Election Commission and to notify the selection result to the Election Commission for publication of the persons selected as senators.

Members of the Committee under paragraph one shall select one among themselves to be the Chairperson of the Committee.

In the absent of any member or a member is unable to perform his duty and the remaining members are not less than one-half of the total number of members, the Senators Selective Committee shall consist of the remaining members.

Section 114. The Senators Selection Committee shall carry out the selection process for persons who may be beneficial to the performance of powers and duties of the Senate from persons nominated by academic institutions, public sector, private sector, professional organisations and other organisations to be senators in an amount as prescribed in section 111 paragraph one.

In selection of person under paragraph one, regard shall be had to knowledge, skills or experience of the nominated persons which will be beneficial to the performance of the Senate, and the composition

of the selected persons shall be regarded to interdisciplinary knowledge and experience, genders opportunity and equality, closely apportion of the persons nominated by the organisations under paragraph one and opportunity of social vulnerable groups.

The rules, procedure and conditions for the selection of senators shall be in accordance with the organic law on election of members of the House of Representatives and acquisition of senators.

Section 115. A person having the qualifications and having no any of the prohibitions as mentioned below has the right to be a candidate in an election or selection of senators:

- (1) being of Thai nationality by birth;
- (2) being of not less than forty years of age on the election day or the date of nomination;
- (3) having graduated with not lower than a Bachelor's degree or its equivalent;
- (4) a candidate in an election of senators shall also possess any of the following qualifications:
 - (a) having his name appear on the house register in Changwat where he stands for election for a consecutive period of not less than five years up to the date of applying for candidacy;
 - (b) being born in Changwat where he stands for election;
 - (c) having studied in an education institution situated in Changwat where he stands for election for a consecutive period of not less than five academic years;

- (d) having served in the official service or having had his name appear in the house register in Changwat where he stands for election for a consecutive period of not less than five years;
- (5) not being ascendants, spouse or child of a member of the House of Representatives or a person holding a political position;
- (6) not being a member or a person holding any position in a political party, or having been a member or having been holding a position in a political party and his membership has terminated or he vacates office in a political party for a period of not more than five years on the date of applying for candidacy or the date of nomination;
- (7) being disfranchised under section 102 (1), (2), (3), (4), (5), (6), (7), (8), (9), (11), (12), (13) or (14);
- (8) not being a Minister or a person holding a political position other than a member of a local assembly or a local administrator or vacating office for a period of not more than five years.

Section 116. A senator shall not be a Minister or a person holding any political position or a person holding position in the independent constitutional organisation.

The person having held office of senator with membership having terminated for not more than two years shall not be a Minister or a person holding any political position.

Section 117. Membership of the senators acquired on the election basis commences on the election day and membership of the senators

acquired on the selection basis commences on the day the Election Commission publishes the result of the selection.

The term of membership of the senates is six years as from the election day or the day the Election Commission publishes the result of the selection, as the case may be, and no senator shall hold office more than one term.

At the end of the term of office, the senators vacating office shall remain in office to continue their duties until the acquisition of the new senators.

Section 118. Upon the expiration of membership of the senators acquired on the election basis, the King will issue a Royal Decree calling for a new general election of senators in which the election day must be fixed within thirty days as from the date of the expiration of membership of the senator acquired on the election basis and the election day must be the same throughout the Kingdom.

Upon the expiration of membership of the senators acquired on the selection basis, the Senators Selection Committee shall announce the commencing and period for selection process which shall complete within sixty days as from the date of the expiration of membership of the senator acquired on the selection basis.

Section 119. Membership of the Senate terminates upon:

- (1) expiration of membership;
- (2) death;

- (3) resignation;
- (4) being disqualified under section 115;
- (5) acting in contravention of any of the prohibitions under section 116, section 265 or section 266;
- (6) the Senate passing a resolution under section 274 removing him from office or the Constitutional Court having a decision terminating his membership under section 91 or the Supreme Court having a decision under section 239 paragraph two or section 240 paragraph three; in such cases, his membership shall be deemed to have terminated as from the date of the resolution of the Senate or the decision of the Court, as the case may be;
- (7) having been absent for more than one-fourth of the number of days in a session the length of which is not less than one hundred and twenty days without permission of the President of the Senate;
- (8) being sentenced by a judgment to imprisonment notwithstanding the suspension of the execution of imprisonment has been granted, except for an offence committed through negligence, a petty offence or a defamation offense.

Section 120. When the office of a senator becomes vacant under section 119, the provisions of section 112, section 113, section 114 and section 118 shall apply *mutatis mutandis* to the election or selection of a senator, as the case may be, and the replacing senator shall remain in office for the unexpired term of office of the member he replaces. In the case where the term of office of a

senator who vacates office is less than one hundred and eighty days, the election or selection may be omitted.

Section 121. In considering the selection of a person to hold any position under this Constitution, the Senate shall appoint a committee for examining past records, behaviours and ethics of the person nominated for holding such position as well as gathering necessary facts and evidences to be reported to the Senate for its further consideration.

The proceeding of the committee under paragraph one shall be in accordance with the rules of procedure of the Senate.

Part 4

Provisions Applicable to both Houses

Section 122. Members of the House of Representatives and senators are representatives of the Thai people and free from any mandate, commitment or control, and shall honestly perform the duties for the common interests of the Thai people without conflict of interest.

Section 123. Before taking office, a member of the House of Representatives and a senator shall make a solemn declaration at a sitting of the House of which he is a member in the following words:

“I, (name of the declarer), do solemnly declare that I shall perform my duties in accordance with the honest dictates of my conscience for the common interests of the Thai people. I shall also uphold and observe the Constitution of the Kingdom of Thailand in every respect.”

Section 124. The House of Representatives and the Senate shall each have one President and one or two Vice-Presidents who are appointed by the King from the members of such House in accordance with its resolution.

The President and the Vice-Presidents of the House of Representatives hold office until the expiration of the term or the dissolution of the House.

The President and the Vice-Presidents of the Senate hold office until the day preceding the date of the election the new President and Vice-Presidents.

The President and the Vice-Presidents of the House of Representatives and the President and the Vice-Presidents of the Senate vacate office before the expiration of the term of office under paragraph one or paragraph two, as the case may be, upon:

- (1) loss of membership of the House of which he is a member;
- (2) resignation;
- (3) holding a position of Prime Minister, Minister or other political official;
- (4) being sentenced by a judgment to imprisonment notwithstanding the case is not come to an end or the suspension of the execution

of imprisonment has been granted, except for an offence committed through negligence, a petty offence or a defamation offense.

While being in office, the President and the Vice-Presidents of the House of Representatives shall not be members of the Executive Committee of a political party or members of a political party simultaneously.

Section 125. The President of the House of Representatives and the President of the Senate shall have the powers and duties to carry out the business of each House in accordance with its rules of procedure. The Vice-presidents have the powers and duties as entrusted by the President and act on behalf of the President when the President is not present or unable to perform his duties.

The President of the House of Representatives, the President of the Senate and the persons who act on behalf of the President shall be impartial in the performance of duties.

When the President and the Vice-Presidents of the House of Representatives or the President and the Vice-Presidents of the Senate are not present at any sitting, the members of each House shall elect one among themselves to preside over such sitting.

Section 126. At a sitting of the House of Representatives or the Senate, the presence of not less than one-half of the total number of the existing members of each House is required to constitute a quorum, except that in the case of considering the agenda on interpellation under section 156 and section 157, the House of

Representatives and the Senate may otherwise prescribe a quorum in the rules of procedure.

A resolution on any issue shall be made by a majority of votes, unless it is otherwise provided in this Constitution.

In casting a vote, each member has one vote. In case of an equality of votes, the presiding member shall have an additional vote as a casting vote.

The President of the National Assembly, the President of the House of Representatives and the President of the Senate shall cause the voting of each member to be recorded and disclose such record in a place where the public entry for its inspection is possible, except for the case of the voting by secret ballot.

The casting of votes to elect or give approval to a person for holding office shall be secret, unless otherwise provided in this Constitution, and members shall have autonomy and shall not be bound by resolutions of their political parties or any other mandate.

Section 127. The National Assembly shall, within thirty days as from the date of the election of members of the House of Representatives, be summoned for the first sitting.

Each year, there shall be a general ordinary session and a legislative ordinary session.

The day on which the first sitting under paragraph one is held shall be considered as the first day of the general ordinary session, and the first day of the legislative ordinary session shall be fixed by the House of Representatives. In the case where the first sitting under in paragraph one has less than one hundred and fifty days up

to the end of a calendar year, the legislative ordinary session may be omitted in that year.

During the legislative ordinary session, the National Assembly shall hold a sitting only in such cases as prescribed in Chapter 2 or in cases of the consideration of bills or organic law bills, the approval of an Emergency Decree, the approval of the declaration of war, the hearing and approval of a treaty, the election or approval of a person for holding office, the removal of a person from office, the interpellation and the amendment of the Constitution, unless the National Assembly has passed a resolution, by the votes of more than one-half of the total number of the existing members of both Houses, for considering other matters.

An ordinary session of the National Assembly shall last one hundred and twenty days but the King may prolong it.

An ordinary session may be prorogued before the end of one hundred and twenty days only with the approval of the National Assembly.

Section 128. The King convokes the National Assembly, opens and prorogues its session.

The King may be present to perform the opening ceremony of the first general ordinary session under section 127 paragraph one or may command the Heir to the Throne who is sui juris or any person to perform the ceremony as His Representative.

When it is necessary for the interests of State, the King may convoke an extraordinary session of the National Assembly.

Subject to section 129, the convocation, the prolongation of session and the prorogation of the National Assembly shall be made by a Royal Decree.

Section 129. Members of both Houses or members of the House of Representatives of not less than one-third of the total number of the existing members of both Houses have the right to present their petition to the King for the issuance of a Royal Command convoking an extraordinary session of the National Assembly.

The petition referred to in paragraph one shall be lodged with the President of the National Assembly.

The President of the National Assembly shall present the petition to the King and countersign the Royal Command.

Section 130. At a sitting of the House of Representatives or the Senate or at a joint sitting of the National Assembly, words expressed in giving statements of fact or opinions or in casting the vote by any member are absolutely privileged. No charge or action in any manner whatsoever shall be brought against such member.

The privilege under paragraph one does not extend to a member who expresses words at a sitting which is broadcast through radio or television if such words appear out of the precinct of the National Assembly and the expression of such words constitutes a criminal offence or a wrongful act against any other person, who is not a Minister or member of that House.

In the case of paragraph two, if the words expressed by the member cause damage to other person who is not a Minister or

member of that House, the President of that House shall cause explanations to be published as requested by that person in accordance with procedure and within such period of time as prescribed in the rules of procedure of that House, without prejudice to the right of such person to bring the case before the Court.

The privilege provided in this section extends to printers and publishers of the minutes of sittings in accordance with the rules of procedure of the House of Representatives, the Senate or the National Assembly, as the case may be, and to persons permitted by the presiding member to give statements of fact or opinions at such sitting as well as to persons who broadcasts the sitting through radio or television with the permission of the President of such House *mutatis mutandis*.

Section 131. No member of the House of Representatives or senator shall, during a session, be arrested, detained or summoned by a warrant for inquiry as the suspect in a criminal case unless permission of the House of which he is a member is obtained or he is arrested in *flagrante delicto*.

In the case where a member of the House of Representatives or a senator has been arrested in *flagrante delicto*, it shall be forthwith reported to the President of the House of which he is a member and such President may order the release of the person so arrested.

In the case where a criminal charge is brought against a member of the House of Representatives or a senator, whether the House is in session or not, the Court shall not try the case during a session, unless permission of the House of which he is a member is obtained

or it is a case concerning the organic law on election of members of the House of Representatives and acquisition of senators, the organic law on Election Commission or the organic law on political parties; provided that the trial of the Court shall not hinder such member from attending the sitting of the House.

The trial and adjudication of the Court conducted before it is invoked that the accused is a member of either House are valid.

If a member of the House of Representatives or a senator is detained during the inquiry or trial before the beginning of a session, when the session begins, the inquiry official or the Court, as the case may be, must order his release as soon as the President of the House of which he is a member has so requested.

The order of release under paragraph one shall be effective as from the date of such order until the last day of the session.

Section 132. During the expiration of the term or the dissolution of the House of Representatives, the Senate shall not hold its sitting except in the following cases:

- (1) a sitting at which the Senate shall act as the National Assembly under section 19, section 21, section 22, section 23 and section 189, and the votes taken shall be based on the number of senators;
- (2) a sitting at which the Senator shall consider of a person for holding office under the provision of this Constitution;
- (3) a sitting at which the Senate shall consider and pass a resolution removing a person from office.

Section 133. A sitting of the House of Representatives and of the Senate and a joint sitting of the National Assembly shall be in public under the conditions stipulated in the rules of procedure of each House. Nevertheless a sitting in camera shall be held at the request of the Council of Ministers or members of not less than one-fourth of the total number of the existing members of each House or of both Houses, as the case may be.

Section 134. The House of Representatives and the Senate have the power to make the rules of procedure governing the election and performance of duties of the President, Vice-Presidents, matters or activities which are within the powers and duties of each standing committee, performance and quorum of committees, sittings, submission and consideration of bills and organic law bills, submission of motions, consultation, debate, passing of a resolution, recording and disclosure of the passing of a resolution, interpellation, general debate, observation of the rules and orders and other relevant matters and the power to make the codes of ethics of members and committee members and other matters for the execution under this Constitution.

Section 135. The House of Representatives and the Senate have the power to select and appoint members of each house to constitute a standing committee and have the power to select and appoint persons, being or not being its members, to constitute a non-standing committee in order to perform any act, inquire into

or study any matter within the powers and duties of the House and report its findings to the House. The resolution appointing such non-standing committee must specify its activities or the responsible matters clearly and without repetition or duplication.

The committee under paragraph one has the power to demand documents from any person or summon any person to give statements of fact or opinions on the act or the matter under its inquiry or study and such demand or summoning is enforceable as provided by law but it is not applicable to a judge performing his powers and duties in trial of the case or to the personnel management of each Court and to the Ombudsman or members of the independent Constitutional organisation in the performance of their powers and duties under the Constitution or the organic laws, as the case may be.

In the case where the person under paragraph two is a government official, official or employee of government agency, State agency, State enterprise or local government organisation, the Chairperson of the committee shall notify the Minister who supervises and controls the agency to which such person is attached in order to instruct him to act as prescribed in paragraph two, except that, in the case of the safety of or important benefit to the State, it shall be deemed as a ground for the exemption to the compliance with paragraph two.

The privileges provided in section 130 shall also extend to the persons performing their duties under this section.

The number of members of a standing committee appointed solely from members of the House of Representatives shall be in proportion to or in close proportion to the number of members of the House of

Representatives of each political party or group of political parties in the House of Representatives.

In the absence of the rules of procedure of the House of Representatives under section 134, the President of the House of Representatives shall determine the proportion under paragraph five.

Part 5

Joint Sitzings of the National Assembly

Section 136. The National Assembly shall hold a joint sitting in the following cases:

- (1) the approval of the appointment of the Regent under section 19;
- (2) the making of a solemn declaration by the Regent before the National Assembly under section 21;
- (3) the acknowledgment of an amendment of the Palace Law on Succession, B.E. 2467 under section 22;
- (4) the acknowledgment or approval of the succession to the Throne under section 23;
- (5) the passing of a resolution for the consideration by the National Assembly of other matters during a legislative ordinary session under section 127;
- (6) the approval of the prorogation of a session under section 127;
- (7) the opening of the session of the National Assembly under section 128;

- (8) the making of the rules of procedure of the National Assembly under section 137;
- (9) the approval of the further consideration of a bill or an organic law bill under section 145;
- (10) the reconsideration of a bill or an organic law bill under section 151;
- (11) the approval of the further consideration of a Constitution Amendment, a bill or an organic law bill under section 153 paragraph two;
- (12) the announcement of policies under section 176;
- (13) the holding of a general debate under section 179;
- (14) the approval of the declaration of war under section 189;
- (15) the hearing and approval of a treaty under section 190;
- (16) the amendment of the Constitution under section 291;

Section 137. At a joint sitting of the National Assembly, the rules of procedure of the National Assembly shall apply. While the rules of procedure of the National Assembly has not yet been issued, the rules of procedure of the House of Representatives shall apply *mutatis mutandis*.

The provisions applicable to both Houses shall apply *mutatis mutandis* to the joint sitting of the National Assembly, except that, for the appointment of a committee, the number of committee members appointed from the members of each House must be in

proportion to or in close proportion to the number of members of each House.

Part 6

The Enactment of the Organic Law

Section 138. There shall be the following organic law:

- (1) the organic law on election of members of the House of Representative and acquisition of Senators;
- (2) the organic law on Election Commission;
- (3) the organic law on political parties;
- (4) the organic law on referendum;
- (5) the organic law on rules and procedure of the Constitutional Court;
- (6) the organic law on criminal proceeding against persons holding political positions;
- (7) the organic law on Ombudsman;
- (8) the organic law on counter corruption;
- (9) the organic law on State Audit.

Section 139. An organic law bill may be introduced only by the followings:

- (1) the Council of Ministers;
- (2) members of the House of Representatives of not less than one-tenth of the total number of the existing number of the House of Representatives or members of the House of Representatives and senators of not less than one-tenth of members of the both Houses; or
- (3) the Constitutional Court, the Supreme Court of Justice or other independent Constitutional organisation by through the President of such Court or of such organizations whom having charge and control of the execution of the organic law.

Section 140. The consideration of the organic law bill of the House of Representatives and the Senate shall be made in three readings as follows:

- (1) the voting for the acceptance of the principle of the bill in the first reading and for each section of the bill in the second reading shall be made by majority of votes of each House;
- (2) the voting for approval of the bill to be enacted as the organic law in the third reading shall be made by more than one-half of the total number of the existing members of each House.

The provisions in Chapter 6, Part 7 the enactment of the Act shall apply *mutatis mutandis* to the consideration of the organic law bill.

Section 141. Before presenting the organic law bill as approved by the National Assembly to the King for His signature, it shall be submitted to the Constitutional Court for considering of its

constitutionality and, in such case, the Constitutional Court shall have a decision thereon within thirty days as from the date of receiving thereof.

If the Constitutional Court decides that the provisions of an organic law bill are contrary to or inconsistent with the Constitution, such provisions shall lapse and if the Constitutional Court decides that such provisions are the essential element thereof or the organic law bill is enacted inconsistent with the provisions of the Constitution, such organic law bill shall lapse.

In the case where the decision of the Constitutional Court resulting in the lapse of the provisions which are contrary to or inconsistent with the Constitution under paragraph two, such organic law bill shall be returned to the House of Representatives and the Senate respectively for their reconsideration. In such case, the House of Representatives or the Senate shall make an amendment to the organic law bill for its constitutionality by through the votes of more than one-half of the total number of the existing members of each House and the Prime Minister shall then proceed further under section 90 and section 150 or section 151, as the case may be.

Part 7

The Enactment of an Act

Section 142. Subject to section 139, a bill may be introduced only by the followings:

- (1) the Council of Ministers;
- (2) members of the House of Representatives of not less than twenty in number;
- (3) the Court or the independent Constitutional organisation, only for the bills relating to the administration of their organisations and the law in which the President of such Court or of such organisations whom having charge and control of the execution of the Act;
- (4) the persons having the right to vote of not less than ten thousand in number whom jointly introduce a bill under section 163.

If the bill under (2), (3) or (4) is a money bill, it shall be introduced only with the endorsement of the Prime Minister.

In the case where the person having the right to vote have introduced the bill under (4) and thereafter the person under (1) or (2) introduces the bill having the same principle thereto, the provisions of section 163 paragraph four shall apply to the consideration of such bill.

A bill shall be first submitted to the House of Representatives.

In an introduction of a bill under paragraph one, a bill and its explanatory memorandum shall be submitted altogether.

A bill introduced to the National Assembly shall be opened to public and the public shall get access thereto conveniently.

Section 143. A money bill means a bill with provisions dealing with any of the following matters:

- (1) the imposition, repeal, reduction, alteration, modification, remission, or regulation of taxes or duties;
- (2) the allocation, receipt, custody, payment of the State funds, or transfer of expenditure estimates of the State;
- (3) the raising of loans, or guarantee or redemption of loans, or any binding of State's properties;
- (4) currency.

In case of doubt as to whether a bill is a money bill which requires the endorsement of the Prime Minister or not, it shall be the power of a joint sitting of the President of the House of Representatives and Presidents of all its standing committees to make a decision thereon.

The President of the House of Representatives shall hold a joint sitting to consider the case under paragraph two within fifteen days as from the date such case occurs.

The resolution of the joint sitting under paragraph two shall be decided by a majority of votes. In case of an equality of votes, the President of the House of Representatives shall have an additional vote as a casting vote.

Section 144. For any bill introduced by members of the House of Representatives which, at the stage of the adoption of its principle, was not a money bill but was then amended by the House of Representatives and, in the opinion of the President of the House,

such amendment has rendered it to exhibit the characteristic of a money bill, the President of the House shall suspend the consideration of such bill and, within fifteen days as from the day on which such case occurs, shall refer it to a joint sitting of the President of the House of Representatives and Chairpersons of all its standing committees to make a decision thereon.

If the joint sitting under paragraph one decides that the amendment resulted in such bill exhibiting the characteristic of a money bill, the President of the House shall refer it to the Prime Minister for endorsement. In the case where the Prime Minister does not endorse it, the House of Representative shall amend it so as to prevent it from being a money bill.

Section 145. When a bill which has been specified by the Council of Ministers, in its policies stated to the National Assembly under section 176, as necessary for the administration of State affairs, if it is not approved by a resolution of the House of Representatives and the votes disapproving it are less than one-half of the total number of the existing members of the House, the Council of Ministers may request the National Assembly to hold a joint sitting for passing a resolution on another occasion. If it is approved, the National Assembly shall appoint the persons, being or not being its members, in such an equal number as proposed by the Council of Ministers, to constitute a joint committee of the National Assembly for considering such bill, and the joint committee of the National Assembly shall prepare a report thereon and submit the bill which it has already considered to the

National Assembly. If such bill is approved by the National Assembly, further proceedings under section 150 shall be taken. If it is not approved, such bill shall lapse.

Section 146. Subject to section 168, when the House of Representatives has considered a bill submitted under section 142 and resolved to approve it, the House of Representatives shall submit such bill to the Senate. The Senate must finish the consideration of such bill within sixty days; but if it is a money bill, the consideration thereof must be finished within thirty days; provided that the Senate may, as a special case, resolve to extend the period for not more than thirty days. The said period shall mean the period during a session and shall be counted as from the day on which such bill reaches the Senate.

The period referred to in paragraph one shall not include the period during which the bill is under the consideration of the Constitutional Court under section 149.

If the Senate has not finished the consideration of the bill within the period referred to in paragraph one, it shall be deemed that the Senate has approved it.

In the case where the House of Representatives submits a money bill to the Senate, the President of the House of Representatives shall also notify the Senate that the bill so submitted is a money bill. The notification of the President of the House of Representatives shall be deemed final.

In the case where the President of the House of Representatives does not notify the Senate that the bill is a money bill, such bill

shall not be deemed a money bill.

Section 147. Subject to section 168, after the Senate has finished the consideration of a bill,

- (1) if it agrees with the House of Representatives, further proceedings under section 150 shall be taken;
- (2) if it disagrees with the House of Representatives, such bill shall be withheld and returned to the House of Representatives;
- (3) if there is an amendment, the amended bill shall be returned to the House of Representatives. If the House of Representatives approves such amendment, further proceedings under section 150 shall be taken. In other cases, each House shall appoint persons, being or not being its members, in such an equal number as may be fixed by the House of Representatives, to constitute a joint committee for considering the bill and the joint committee shall prepare a report thereon and submit the bill which it has already considered to both Houses. If both Houses approve the bill already considered by the joint committee, further proceedings under section 150 shall be taken. If either House disapproves it, the bill shall be withheld.

The joint committee has the power to demand documents from any person or summon any person to give statements of fact or opinions in respect of the consideration of the bill and the privileges provided in section 130 shall also extend to the person performing his duties

under this section.

At a meeting of the joint committee, the presence of the members of the joint committee appointed by both Houses of not less than one-half of the total number of its members is required to constitute a quorum and the provisions of section 137 shall apply *mutatis mutandis*.

If the Senate fails to return the bill to the House of Representatives within the period under section 146, it shall be deemed that the Senate approves such bill and further proceeding under section 150 shall be taken.

Section 148. A bill withheld under section 147 may be reconsidered by the House of Representatives only after the lapse of one hundred and eighty days as from the date the bill or the organic law bill is returned to the House of Representatives by the Senate in case of withholding under section 147 (2) and as from the date either House disapproves it in case of withholding under section 147 (3). In such cases, if the House of Representatives resolves to reaffirm the original bill or the bill considered by the joint committee by the votes of more than one-half of the total number of the existing members of the House of Representatives, such bill shall be deemed to have been approved by the National Assembly and further proceedings under section 150 shall be taken.

If the bill withheld is a money bill, the House of Representatives may forthwith proceed to reconsider it. In such case, if the House of Representatives resolves to reaffirm the original bill or the bill considered by the joint committee by the votes of more than one-half

of the total number of the existing members of the House of Representatives, such bill shall be deemed to have been approved by the National Assembly and further proceedings under section 150 shall be taken.

Section 149. While a bill is being withheld under section 147, the Council of Ministers or members of the House of Representatives may not introduce a bill having the same or similar principle as that of the bill so withheld.

In the case where the House of Representatives or the Senate is of the opinion that the bill so introduced or referred to for consideration has the same or similar principle as that of the bill being withheld, the President of the House of Representatives or the President of the Senate shall refer the said bill to the Constitutional Court for decision. If the Constitutional Court decides that it is a bill having the same or similar principle as that of the bill so withheld, such bill shall lapse.

Section 150. The Prime Minister shall present the bill approved by the National Assembly to the King for His signature within twenty days as from the date of receiving such bill from the National Assembly and the bill shall come into force as an Act upon its publication in the Government Gazette.

Section 151. If the King refuses His assent to a bill and either returns it to the National Assembly or does not return it within ninety days, the National Assembly must reconsider such bill. If the National

Assembly resolves to reaffirm the bill with the votes of not less than two-thirds of the total number of existing members of both Houses, the Prime Minister shall present such bill to the King for signature once again. If the King does not sign and return the bill within thirty days, the Prime Minister shall cause the bill to be promulgated as an Act in the Government Gazette as if the King had signed it.

Section 152. In considering a bill the substance of which is decided by the President of the House of Representatives to be concerned with children, the youth, women, the elderly, the disabled or handicapped, if the House of Representatives does not consider it by its full committee, the House of Representatives shall appoint a non-standing committee consisting of representatives, from private organisations concerned with the respective types of persons, of not less than one-third of the total number of members of the committee and the members thereof shall consist of women and men in closely apportion.

Section 153. In the case where the term of the House of Representatives expires or the House of Representatives is dissolved, the draft Constitution Amendment or all bills to which the King has refused His assent or which have not been returned by the King within ninety days, shall lapse.

In the case where the term of the House of Representatives expires or where the House of Representatives is dissolved, the National Assembly, the House of Representatives or the Senate, as the case

may be, may, after a general election of members of the House of Representatives, continue the consideration of the draft Constitution Amendment or the bill which has not yet been approved by the National Assembly if the Council of Ministers which is newly appointed after the general election so requests within sixty days as from the first sitting day of the National Assembly after the general election and the National Assembly approves it. If the Council of Ministers does not so request within such period of time, such draft Constitution Amendment or bill shall lapse.

The further consideration of the draft Constitution Amendment or the bill under paragraph two shall be in accordance with the rules of procedure of the House of Representatives, the Senate or the National Assembly, as the case may be.

Part 8

Constitutionality of Laws

Section 154. After any bill has been approved by the National Assembly under section 150 or has been reaffirmed by the National Assembly under section 151, before the Prime Minister presents it to the King for signature:

- (1) if members of the House of Representatives, senators or members of both Houses of not less than one-tenth of the total number of the existing members of both Houses are of the opinion that provisions of the said bill are contrary to or

inconsistent with this Constitution or such bill is enacted contrary to the provisions of this Constitution, they shall submit their opinion to the President of the House of Representatives, the President of the Senate or the President of the National Assembly, as the case may be, and the President of the House receiving such opinion shall then refer it to the Constitutional Court for decision and, without delay, inform the Prime Minister thereof;

- (2) if the Prime Minister is of the opinion that the provisions of the said bill are contrary to or inconsistent with this Constitution or it is enacted contrary to the provisions of this Constitution, the Prime Minister shall refer such opinion to the Constitutional Court for decision and, without delay, inform the President of the House of Representatives and the President of the Senate thereof.

During the consideration of the Constitutional Court, the Prime Minister shall suspend the proceedings in respect of the promulgation of the bill until the Constitutional Court gives a decision thereon.

If the Constitutional Court decides that the provisions of such bill are contrary to or inconsistent with this Constitution or it is enacted contrary to the provisions of this Constitution and that such provisions of the bill form the essential element thereof, such bill shall lapse.

If the Constitutional Court decides that the provisions of such bill are contrary to or inconsistent with this Constitution otherwise than in the case specified in paragraph three, such conflicting or inconsistent provisions shall lapse and the Prime Minister shall proceed further in accordance with section 150 or section 151, as the case may be.

Section 155. The provisions of section 154 shall apply *mutatis mutandis* to draft rules of procedure of the House of Representatives, draft rules of procedure of the Senate and draft rules of procedure of the National Assembly which have already been approved by the House of Representatives, the Senate or the National Assembly, as the case may be, but remain unpublished in the Government Gazette.

Part 9

Control of the Administration of State Affairs

Section 156. Every member of the House of Representatives or senator has the right to interpellate a Minister on any matter within the scope of his authority, but the Minister has the right to refuse to answer it if the Council of Ministers is of the opinion that the matter should not yet be disclosed on the ground of safety or vital interest of the State.

Section 157. In the administration of State affairs on any matter which involves an important problem of public concern, affects national or public interest, or requires urgency, a member of the House of Representatives may notify the President of the House of Representatives in writing prior to the commencement of the sitting of the day, that he will interpellate the Prime Minister or the Minister responsible for the administration of State affairs on

that matter without specifying the question, and the President of the House of Representatives shall place such matter on the agenda of the meeting of that day.

The interpellation and the answer to the interpellation under paragraph one may be made once a week, and a verbal interpellation by a member of the House of Representatives on a matter involving the administration of State affairs may be made not exceeding three times on each matter in accordance with the rules of procedure of the House of Representatives.

Section 158. Members of the House of Representatives of not less than one-fifth of the total number of the existing members of the House have the right to submit a motion for a general debate for the purpose of passing a vote of no-confidence in the Prime Minister. Such motion must nominate the suitable next Prime Minister who is also a person under section 171 paragraph two and, when the motion has been submitted, the dissolution of the House of Representatives shall not be permitted, except that the motion is withdrawn or the resolution is passed without being supported by the vote in accordance with paragraph three.

In the submission of the motion for a general debate under paragraph one, if it is concerned with the behaviour of the Prime Minister, which involves circumstances of unusual wealthiness, exhibits a sign of malfeasance in office or intentionally violates the provisions of the Constitution or law, it shall not be submitted without the petition under section 271 having been presented. Upon the submission of the petition under section 271, it may be

proceeded without awaiting the outcome of the proceedings under section 272.

If the general debate is concluded with a resolution not to pass over the agenda of the general debate, the House of Representatives shall pass a vote of confidence or no-confidence. Voting in such case shall not take place on the date of the conclusion of the debate. The vote of no-confidence must be passed by more than one-half of the total number of the existing members of the House of Representatives.

In the case where a vote of no-confidence is passed by not more than one-half of the total number of the existing members of the House of Representatives, the members of the House of Representatives who submit the motion for the general debate shall no longer have the right to submit another motion for a general debate for the purpose of passing a vote of no-confidence in the Prime Ministers throughout the session.

In the case where a vote of no-confidence is passed by more than one-half of the total number of the existing members of the House of Representatives, the President of the House of Representatives shall submit the name of the person nominated under paragraph one to the King for further appointment and section 172 shall not apply.

Section 159. Members of the House of Representatives of not less than one-sixth of the total number of the existing members of the House of Representatives have the right to submit a motion for a general debate for the purpose of passing a vote of no-confidence in an individual Minister and the provisions of section 158 paragraph two, paragraph three and paragraph four shall apply

mutatis mutandis.

In the case where the Minister vacates his portfolio but being appointed to hold another portfolio after the submission of a motion under paragraph one, he still be a subject of a general debate for the purpose of passing a vote of no-confidence under paragraph one.

The provisions of paragraph two shall apply *mutatis mutandis* to the Minister who vacates his portfolio for the period of not exceeding ninety days before the submission of a motion under paragraph one but being appointed to be the Minister of another portfolio.

Section 160. In the case where the number of members of the House of Representatives whose their political parties having members holding no ministerial positions is less than the number of members of the House required for the making of submission of a motion for a general debate under section 158 or section 159, more than one-half of the existing number of such members of the House of Representatives have the right to submit a motion for a general debate for the purpose of passing a vote of no-confidence in the Prime Minister or in an individual Minister under section 158 or section 159 if the Council of Ministers conducts the administration of State affairs for more than two years.

Section 161. Senators of not less than one-third of the total number of the existing members of the Senate have the right to submit a motion for a general debate in the Senate for the purpose of requesting the Council of Ministers to give statements of fact or

explain important problems in connection with the administration of State affairs without a resolution to be passed.

The motion for the general debate under this section may be submitted only once in each session.

Section 162. In the sitting of the House of Representatives or the Senate for consideration of an interpellation on any matter within the scope of the authority of Minister or for a general debate for the purpose of passing a vote of no-confidence in the Prime Minister or in an individual Minister, the Prime Minister or such Minister shall attend the sitting of the House of Representatives or the Senate for giving statement or answer thereon by himself, provided that there occurs an inevitably cause which hinder him in so doing but he shall notify the President of the House of Representatives or the President of the Senate on or before the sitting date.

A member of the House of Representatives is not bound by the resolution of his political party in submitting an interpellation, debating and voting of no-confidence.

CHAPTER VII

Direct Political Participation of the Public

Section 163. The persons having the right to vote of not less than ten thousand in number shall have a right to submit a petition to the President of the National Assembly to consider such bill as prescribed in Chapter 3 and Chapter 5 of this Constitution.

A bill must be attached to the petition referred to in paragraph one.

The rules and procedure for the petition and the examination thereof shall be in accordance with the provisions of the law.

In considering the bill under paragraph one, the House of Representatives and the Senate shall facilitate representatives of the persons submitting a petition to state the principles of the bill and the non-standing committee for considering such bill shall consist of representatives of the persons submitting a petition in an amount of not less than one-third of the total number of its members.

Section 164. The persons having the right to vote of not less than twenty thousand in number shall have a right to lodge with the President of the Senate a complaint in order to request the Senate to pass a resolution under section 274 removing the persons under section 270 from office.

The request under paragraph one shall clearly itemise circumstances in which such persons have allegedly committed the act.

The rules, procedure and conditions for the lodging of the complaint by the voters under paragraph one shall be in accordance with the organic law on counter corruption.

Section 165. A person having the right to vote in an election shall have the right to vote in a referendum.

A referendum shall be held when:

- (1) the Council of Ministers is of the opinion that any issue may affect national or public interests, the Prime Minister, with the

approval of the Council of Ministers, may consult the President of the House of Representatives and the President of the Senate for the purpose of publishing in the Government Gazette calling for a referendum;

(2) it is required by law.

A referendum under (1) or (2) may be held for the purpose of finding solution of the subject matter of a referendum through the majority of votes in a referendum or for the purpose of public consultation to the Council of Ministers, provided that otherwise prescribed by law.

A vote in a referendum shall be made for either approval or not approval to the subject matter of a referendum. A referendum shall not be held on an issue specifically relating to any individual or group of persons.

Before the referendum day, the State shall provide sufficient information to the public and provide equal opportunity to the peoples who agree or disagree with the subject matter of a referendum to state their opinions.

The rules and procedure for voting in a referendum shall be in accordance with the organic law on referendum which shall at least consist of details of the procedure for voting, referendum period and the number of votes required for final decision.

CHAPTER VIII

Monetary, Finance and Budget

Section 166. The expenditure estimates of the State shall be made in the form of an Act. If the Annual Appropriations Act for the following fiscal year is not enacted in time, the law on annual appropriations for the preceding fiscal year shall apply for the time being.

Section 167. In an introduction of the annual appropriations bill, the bill shall be annexed with documents stating estimated incomes, obscure objectives, activities, plans or projects of each item of expenditures including monetary and financial status of the country through the overview of economic condition arising from spending and gathering of incomes, benefits and deficiencies resulting from any specific tax exemption, justification for binding of over-year obligations, State debts and its incurring and financial status of State enterprises of that year and the previous year.

If any expenditure is unable to be directly allocated to a government agency, State enterprise or other State agencies, it shall be allocated to the item of reserved expenditure and, in such case, justification and necessary of such allocation shall also be stated.

There shall be a law on State monetary and finance laying down monetary and financial disciplines as well as the rules relating to a financial planning for medium term range, the gathering of incomes, a determination of guidelines for the making of expenditure estimates of State, the financial and properties management, an accounting, the

public funds, an incurring of debts or any act resulting in the binding of properties of or the incurring of financial obligation of State, the rule for a determination of the amount of reserved money to be paid for emergency or necessity situation and other relevant acts which are the scope for the gathering of incomes and supervising of spending in accordance with the principles of balancing, economic sustainable development and social fairness.

Section 168. The House of Representatives must finish the consideration of an annual appropriations bill, a supplementary appropriations bill and a transfer of appropriations bill within one hundred and five days as from the date the bill reaches the House of Representatives.

If the House of Representatives has not finished the consideration of the bill within the period referred to in paragraph one, such bill shall be deemed to have been approved by the House of Representatives and shall be submitted to the Senate.

In the consideration by the Senate, the Senate must approve or disapprove the bill without any amendment within twenty days as from the date the bill reaches the Senate. Upon the lapse of such period, such bill shall be deemed to have been approved; in such case and in the case where the Senate approves it, further proceedings under section 150 shall be taken.

If the Senate disapproves the bill, the provisions of section 148 paragraph two shall apply *mutatis mutandis*.

In the consideration of the annual appropriations bill, the supplementary appropriations bill and the transfer of appropriations bill, a member of the House of Representatives shall not submit a motion adding

any item or amount to the bill, but may submit a motion reducing or abridging the expenditures which are not expenditures according to any of the following obligations:

- (1) money for payment of the principal of a loan;
- (2) interest on a loan;
- (3) money payable in accordance with the law.

In the consideration by the House of Representatives, the Senate or a committee, any proposal, submission of a motion or commission of an act, which results in direct or indirect involvement by members of the House of Representatives, senators or members of a committee in the use of the appropriations, shall not be permitted.

In the case where members of the House of Representatives or senators of not less than one-tenth of the total number of the existing members of each House are of the opinion that the violation of the provisions of paragraph six has occurred, they shall refer it to the Constitutional Court for decision and the Constitutional Court shall decide it within seven days as from the date of its receipt. In the case where the Constitutional Court decides that the violation of the provisions of paragraph six has occurred, such proposal, submission of the motion, or commission of the act shall be ineffective.

The State shall allocate adequate budgets for the autonomous administration of the National Assembly, the Constitutional Court, the Courts of Justice, the Administrative Courts and other Constitutional organisations.

In the consideration of the expenditure estimates of the National Assembly, the Courts and the organisations under paragraph eight, if such organisation is of the opinion that the allocated budget is insufficient, it shall submit a motion to the committee directly.

Section 169. The payment of State funds shall be made only when it has been authorised by the law on appropriations, the law on budgetary procedure, the law on transfer of appropriations or the law on treasury balance, except that it may be prepaid in the case of urgent necessity under the rules and procedure provided by law. In such case, the expenditure estimates for reimbursement must be set aside in the Transfer of Appropriations Act, the Supplementary Appropriations Act, or the Annual Appropriations Act for the following fiscal year, and the sources of incomes for reimbursement of expenditures paid-up from the treasury balance must be stated.

During the time when the country is in state of war or fighting, the Council of Ministers has the power to transfer or shift the budget allocated for any government agency or State enterprise to be used for other items forthwith even it is different from the provisions of the Annual Appropriation Act and it shall be reported to the National Assembly without delay.

If there is a transfer or shift of the budget allocated for any item to be used for other items of any government agency or State enterprise, the Government shall report the National Assembly for information every six months.

Section 170. A State agency having income which is not required to be remitted as State revenue shall report the receipt and spending of such money to the Council of Ministers at the lapse of each fiscal year and the Council of Ministers shall report further to the House of Representatives and the Senate.

A spending of income under paragraph one shall be in accordance with the monetary and financial disciplines under this Chapter.

CHAPTER IX

The Council of Ministers

Section 171. The King appoints the Prime Minister and not more than thirty-five other Ministers to constitute the Council of Ministers having the duty to carry out the administration of State affairs with collective accountability.

The Prime Minister must be a member of the House of Representatives appointed under section 172.

The President of the House of Representatives shall countersign the Royal Command appointing the Prime Minister.

The Prime Minister shall not hold office for more than eight consecutive years.

Section 172. The House of Representatives shall complete its consideration and approval of the person suitable to be appointed as Prime Minister within thirty days as from the day the National Assembly is convoked for the first sitting under section 127.

The nomination of a person who is suitable to be appointed as Prime Minister under paragraph one shall be endorsed by members of the House of Representatives of not less than one-fifth of the total number of the existing members of the House.

The resolution of the House of Representatives approving the appointment of a person as Prime Minister shall be passed by the votes of more than one-half of the total number of the existing members of the House of Representatives. The passing of the resolution in such case shall be by open votes.

Section 173. In the case where the period of thirty days as from the date the National Assembly is convoked for the first sitting of members of the House of Representatives has elapsed and no one has been approved for appointment as Prime Minister under section 172 paragraph three, the President of the House of Representatives shall, within fifteen days as from the lapse of such period, present to the King for the issuance of a Royal Command appointing the person who has received the highest votes as Prime Minister.

Section 174. A Minister must possess the qualifications and must not be under any of the prohibitions as follows:

- (1) being of Thai nationality by birth;
- (2) being not less than thirty five years of age;
- (3) having graduated with not lower than a Bachelor's degree or

its equivalent;

- (4) not being under any of the prohibitions under section 102 (1), (2), (3), (4), (6), (7), (8), (9), (11), (12), (13) or (14);
- (5) having been discharged for a period of less than five years before the appointment after being sentenced by a judgment to imprisonment, except for an offence committed through negligence or petty offence;
- (6) not being a senator or having been a senator whose membership has terminated for not more than two years up to the date of the appointment as Minister.

Section 175. Before taking office, a Minister must make a solemn declaration before the King in the following words:

“I, (name of the declarer), do solemnly declare that I will be loyal to the King and will faithfully perform my duty in the interests of the country and of the people. I will also uphold and observe the Constitution of the Kingdom of Thailand in every respect.”

Section 176. The Council of Ministers which will assume the administration of State affairs must, within fifteen days as from the date it takes office, state its policies and explanation for an implementation of the directive principles of fundamental State policies under section 75; provided that no vote of confidence shall be passed, and must, after giving such statement, prepare a plan for the administration of State affairs as guideline for the administration of State affairs

for each year under section 76.

Before stating policies to the National Assembly under paragraph one, if there occurs a case of importance and necessary urgency which, if left delayed, will affect material benefits of State, the Council of Ministers which has taken office may, for the time being, carry out such acts in so far as it is necessary.

Section 177. A Minister has the right to attend and give a statement of facts or opinions at a sitting of the House. In the case where the House of Representatives or the Senate has passed a resolution requiring Ministers to attend a sitting for any matter, he shall attend the sitting. The provisions of section 130 governing privileges shall apply *mutatis mutandis*.

In the case where a Minister is a member of the House of Representatives simultaneously, he must, in the sitting of the House of Representatives, abstain from voting in relation to the matter concerning with the holding of his position or the performance of his duty or the matter he has interests therewith.

Section 178. Ministers shall carry out the administration of State affairs in accordance with the provisions of the Constitution, laws and the policies stated under section 176, and shall be accountable individually to the House of Representatives for the performance of their duties and shall also be accountable collectively to the National Assembly for the general policies of the Council of Ministers.

Section 179. In the case where there is an important problem in the administration of State affairs in regard to which the Council of Ministers deems it advisable to take opinion of members of the House of Representatives and senators, the Prime Minister may give a notice to the President of the National Assembly requesting that a general debate be held at a joint sitting of the National Assembly. In such case, no resolution shall be passed by the National Assembly on the issue put in the debate.

Section 180. Ministers vacate office en masse upon:

- (1) the termination of ministership of the Prime Minister under section 182;
- (2) the expiration of the term or the dissolution of the House of Representatives;
- (3) the resignation of the Council of Ministers.

In the case where the ministership of the Prime Minister terminates under section 182 (1), (2), (3), (4), (5), (7) or (8), the procedure under section 172 and section 173 shall apply *mutatis mutandis*.

Section 181. The outgoing Council of Ministers shall remain in office for carrying out duty until the newly appointed Council of Ministers takes office, but in case of vacation of office under section 180 (2) the Council of Ministers and a Minister is able to carry out any duty as necessary within the following conditions:

- (1) refraining from the exercise of power which resulting in the appointment or transfer of government officials holding permanent positions or salaries or of officials of State agency, State enterprise or any enterprise in which the State is a major shareholders or resulting in leaving such persons from the performance of their duties or offices or replacing other persons to replace him except by prior approval of the Election Commission;
- (2) refraining from doing an act which resulting in giving of approval to spend budget reserved for emergency or necessity situation except by prior approval of the Election Commission;
- (3) refraining from doing an act which resulting in giving approval of work or project or which the forthcoming Council of Ministers may be bound;
- (4) refraining from using resources or personnel of State to do an act which may affect the result of a general election, and refraining from the violation of any prohibitions under the rules prescribed by the Election Commission.

Section 182. The ministership of an individual Minister terminates upon:

- (1) death;
- (2) resignation;
- (3) being sentenced by a judgment to imprisonment notwithstanding the suspension of the execution of imprisonment has been

- granted, except for an offence committed through negligence, a petty offence or a defamation offense;
- (4) the passing of a vote of no-confidence by the House of Representatives under section 158 or section 159;
 - (5) being disqualified or being under any of the prohibitions under section 174;
 - (6) the issuance of a Royal Command to remove a Minister from office under section 183;
 - (7) having done an act prohibited by section 267, section 268 or section 269;
 - (8) being removed from office by a resolution of the Senate under section 274.

Apart from the termination of ministership of individual Minister under paragraph one, the ministership of the Prime Minister terminates upon the lapse of the period under section 171 paragraph four.

The provisions of section 91 and section 92 shall apply to the termination of ministership under (2), (3), (5) or (7) or paragraph two and, in such case, the Election Commission may also refer the matter thereof to the Constitutional Court for decision.

Section 183. The King has the prerogative to remove a Minister from his office upon the advice of the Prime Minister.

Section 184. For the purpose of maintaining national or public safety or national economic security, or averting public calamity, the King

may issue an Emergency Decree which shall have the force as an Act.

The issuance of an Emergency Decree under paragraph one shall be made only when the Council of Ministers is of the opinion that it is the case of emergency and necessary urgency which is unavoidable.

In the next succeeding sitting of the National Assembly, the Council of Ministers shall submit the Emergency Decree to the National Assembly for its consideration without delay. If it is out of session and it would be a delay to wait for the opening of an ordinary session, the Council of Ministers must proceed to convoke an extraordinary session of the National Assembly in order to consider whether to approve or disapprove the Emergency Decree without delay. If the House of Representatives disapproves it or approves it but the Senate disapproves it and the House of Representatives reaffirms its approval by the votes of not more than one-half of the total number of the existing members of the House, the Emergency Decree shall lapse; provided that it shall not affect any act done during the enforcement of such Emergency Decree.

If the Emergency Decree under paragraph one has the effect of amending or repealing any provisions of any Act and such Emergency Decree has lapsed in accordance with paragraph three, the provisions of the Act in force before the amendment or repeal shall continue to be in force as from the day the disapproval of such Emergency Decree is effective.

If the House of Representatives and the Senate approve the Emergency Decree, or if the Senate disapproves it but the House of Representatives reaffirms its approval by the votes of more than

one-half of the total number of the existing members of the House, such Emergency Decree shall continue to have the force as an Act.

The Prime Minister shall cause the approval or disapproval of the Emergency Decree to be published in the Government Gazette. In case of disapproval, it shall be effective as from the day following the date of its publication in the Government Gazette.

The consideration of an Emergency Decree by the House of Representatives and the Senate in case of reaffirmation of an Emergency Decree must take place at the first opportunity when such Houses hold their sittings.

Section 185. Before the House of Representatives or the Senate approves an Emergency Decree under section 184 paragraph three, members of the House of Representatives or senators of not less than one-fifth of the total number of the existing members of each House have the right to submit an opinion to the President of the House of which they are members that the Emergency Decree is not in accordance with section 184 paragraph one or paragraph two, and the President of such House shall, within three days as from the date of receipt of such opinion, refer it to the Constitutional Court for decision. After the Constitutional Court has given a decision thereon, it shall notify such decision to the President of the House referring such opinion.

When the President of the House of Representatives or the President of the Senate has received the opinion from members of the House of Representatives or senators under paragraph one, the consideration of such Emergency Decree shall be deferred until the

decision of the Constitutional Court under paragraph one has been notified.

In the case where the Constitutional Court decides that any Emergency Decree is not in accordance with section 184 paragraph one or paragraph two, such Emergency Decree shall not have the force of law *ab initio*.

The decision of the Constitutional Court that an Emergency Decree is not in accordance with section 184 paragraph one or paragraph two, must be given by the votes of not less than two-thirds of the total number of judges of the Constitutional Court.

Section 186. If, during a session, it is necessary to have a law on taxes, duties or currency, which, in the interests of State, requires an urgent and confidential consideration, the King may issue an Emergency Decree which shall have the force as an Act.

The Emergency Decree issued under paragraph one must be submitted to the House of Representatives within three days as from the day following the date of its publication in the Government Gazette, and the provisions of section 184 shall apply *mutatis mutandis*.

Section 187. The King has the prerogative to issue a Royal Decree which is not contrary to the law.

Section 188. The King has the prerogative to declare and lift the martial law in accordance with the conditions and manner under the Martial Law.

In the case where it is necessary to declare the martial law in a certain locality as a matter of urgency, the military authority may do so under the Martial Law.

Section 189. The King has the prerogative to declare war with the approval of the National Assembly.

The approval resolution of the National Assembly must be passed by the votes of not less than two-thirds of the total number of the existing members of both Houses.

During the expiration of the term or the dissolution of the House of Representatives, the Senate shall perform the function of the National Assembly in giving the approval under paragraph one, and the resolution shall be passed by the votes of not less than two-thirds of the total number of the existing senators.

Section 190. The King has the prerogative to conclude a peace treaty, armistice and other treaties with other countries or international organisations.

A treaty which provides for a change in the Thai territories or the Thai external territories that Thailand has sovereign right or jurisdiction over such territories under any treaty or an international law or requires the enactment of an Act for its implementation or affects immensely to economic or social security of the country or results in the binding of trade, investment budget of the country significantly must be approved by the National Assembly. In such case, the National Assembly must complete its consideration within sixty days as from the date of receipt of such matter.

Before the conclusion of a treaty with other countries or international organisations under paragraph two, the Council of Ministers must provide information thereon to the public, conduct public consultation and state information in relevant thereto to the National Assembly. In such case, the Council of Ministers must submit negotiation framework to the National Assembly for approval.

Upon giving signature to the treaty under paragraph two, the Council of Ministers shall, prior to give consent to be bound, facilitate the public to get access to the details of such treaty. In the case where the application of such treaty has affected the public or small and medium entrepreneurs, the Council of Ministers must revise or render remedy to such effects rapidly, expediently and fairly.

There shall be a law determining measure and procedure for the conclusion of a treaty having immense effects to economic or social security of the country or resulting in the binding of trade or investment of the country significantly and the revision or rendering of remedy to the effects of such treaty with due regard to the fairness among the beneficiaries, the affected persons and the general public.

A matter arising from the provisions of paragraph two falls within the jurisdiction of the Constitutional Court and the provisions of section 154 (1) shall apply *mutatis mutandis* to the referring of the matter to the Constitutional Court.

Section 191. The King has the prerogative to grant a pardon.

Section 192. The King has the prerogative to remove titles and recall decorations.

Section 193. The King appoints and removes officials in the military service and civil service who hold the positions of Permanent Secretary of State, Director-General and their equivalents except in the case where they vacate office upon death.

Section 194. A government official and a State official holding a permanent position or receiving a salary and not being a political official shall not be a political official or hold other political positions.

Section 195. All laws, Royal Prescripts and Royal Commands relating to State affairs must be countersigned by a Minister unless otherwise provided in this Constitution.

All laws which have been signed or deemed to have been signed by the King shall forthwith be published in the Government Gazette.

Section 196. Emoluments and other remuneration of Privy Councillors, President and Vice-Presidents of the House of Representatives, President and Vice-Presidents of the Senate, Leader of the Opposition in the House of Representatives, members of the House of Representatives and senators shall be prescribed by the Royal Decree which the provisions thereof must not allow payment prior to the date such persons taking offices.

Gratuities, pensions or other remuneration of Privy Councillors who vacate their office shall be prescribed by the Royal Decree.

CHAPTER X

The Courts

Part 1

General Provisions

Section 197. The trial and adjudication of cases are the power of the Courts, which must be proceeded by justice in accordance with the Constitution and the law and in the name of the King.

Judges are independent in the trial and adjudication of cases with accurate, rapid and impartial practice in accordance with the Constitution and the law.

The transfer of a judge without his prior consent shall not be permitted except in the case of termly transfer as provided by law, promotion to a higher position, being under a disciplinary action or becoming a defendant in a criminal case, being affected to justice in the trial and adjudication or in case of force majeure or any other inevitable necessity as provided by law.

Judges shall not be political officials or hold political positions.

Section 198. All Courts may be established only by Acts.

A new Court for the trial and adjudication of any particular case or a case of any particular charge in place of the Court existing under the law and having jurisdiction over such case shall not be established.

A law having an effect of changing or amending the law on the organisation of Courts or on judicial procedure for the purpose of its application to a particular case shall not be enacted.

Section 199. In the case where there is a dispute on the competent jurisdiction among the Court of Justice, the Administrative Court, the Military Court or any other Court, it shall be decided by a committee consisting of the President of the Supreme Court of Justice as Chairperson, the President of the Supreme Administrative Court, the President of such other Court and not more than four qualified persons as provided by law as members.

The rules for the submission of the dispute under paragraph one shall be as provided by law.

Section 200. The King appoints and removes judges except in the case of removal from office upon death.

The appointment and removal from office of a judge of any Court other than the Constitutional Court, the Court of Justice, the Administrative Court and the Military Court as well as the adjudicative jurisdiction and procedure of such Courts shall be in accordance with the law on the establishment of such Courts.

Section 201. Before taking office, a judge shall make a solemn declaration before the King in the following words:

“I, (name of the declarer) do solemnly declare that I will be loyal to His Majesty the King and will faithfully perform my duty in the

name of the King without any partiality in the interest of justice, of the people and of the public order of the Kingdom. I will also uphold and observe the democratic regime of government with the King as Head of the State, the Constitution of the Kingdom of Thailand and the law in every respect.”

Section 202. Salaries, emoluments and other benefits of judges shall be as prescribed by law; provided that the system of salary-scale or emoluments applicable to civil servants shall not be applied.

The provisions of paragraph one shall apply to Election Commissioners, Ombudsmen, members of the National Counter Corruption Commission and members of the State Audit Commission *mutatis mutandis*.

Section 203. No person may simultaneously become a member, whether an *ex officio* member or a qualified member, of the Judicial Commission of the Courts of Justice, the Administrative Court or any other Court as provided by law.

Part 2

The Constitutional Court

Section 204. The Constitutional Court consists of the President and eight judges of the Constitutional Court to be appointed by the King upon advice of the Senate from the following persons:

- (1) three judges of the Supreme Court of Justice holding a position of not lower than judge of the Supreme Court of Justice and

elected at a general meeting of the Supreme Court of Justice by secret ballot;

(2) two judges of the Supreme Administrative Court elected at a general meeting of the Supreme Administrative Court by secret ballot;

(3) two qualified persons in law who having orientated knowledge and experience in this field and having been selected under section 206;

(4) two qualified persons in political science, public administration or other social sciences who having orientated knowledge and experience in the administration of State affairs and having been selected under section 206.

In the case where no judge of the Supreme Court of Justice or judge of the Supreme Administrative Court having been elected under (1) or (2), the Supreme Court of Justice or the Supreme Administrative Court, as the case may be, shall elect, at its general meeting, other persons whom qualified and not being under the prohibitions provided in section 205, having orientated knowledge and experience in law and suitable for the performance of the duty as judges of the Constitutional Court to be judges of the Constitutional Court under (1) or (2), as the case may be.

The elected persons under paragraph one shall hold a meeting and elect one among themselves to be the President of the Constitutional Court and notify the result to the President of the Senate accordingly.

The President of the Senate shall countersign the Royal Command appointing the President and judges of the Constitutional Court.

Section 205. The qualified persons under section 204 (3) and (4) shall possess the qualifications and shall not be under any of the prohibitions as follows:

- (1) being of Thai nationality by birth;
- (2) being not less than forty five years of age;
- (3) having been a Minister, a judge of the Supreme Military Court, an Election Commissioner, an Ombudsman, a member of the National Counter Corruption Commission, a member of the State Audit Commission or a member of the National Human Rights Commission, or having served in a position of not lower than Deputy Prosecutor General, Director-General or a person holding an administrative position in a government agency having administrative power equivalent to Director-General, or holding an academic position of not lower than Professor or having been a lawyer practicing legal profession regularly and continuously for not less than thirty years up to the date of nomination;
- (4) not being under any of the prohibitions under section 100 or section 102 (1), (2), (4), (5), (6), (7), (13) or (14);
- (5) not being a member of the House of Representatives, senator, political official, member of a local assembly or local administrator;
- (6) not being or having been a member or holder of other position of a political party over the period of three years preceding the taking of office;

- (7) not being an Election Commissioner, an Ombudsman, a member of the National Counter Corruption Commission, a member of the State Audit Commission or a member of the National Human Rights Commission.

Section 206. The selection and election of judges of the Constitutional Court under section 204 (3) and (4) shall be proceeded as follows:

- (1) there shall be a Selective Committee for Judges of the Constitutional Court consisting of the President of the Supreme Court of Justice, the President of the Supreme Administrative Court, the President of the House of Representatives, the Leader of the Opposition in the House of Representatives and the President of the Constitutional independent organisations whom elected among themselves to be one in number, as members. The Selective Committee must complete the selection under section 204 (3) and (4) within thirty days as from the date a ground for the selection occurs and then nominates the selected persons, with their consents, to the President of the Senate. The selection resolution shall be by open votes and passed by the votes of not less than two-thirds of the total number of the existing members of the Selective Committee. In the case where there is no member in any position or a member is unable to perform his duty and the number of the remaining members is not less than one-half thereof, the Selective Committee shall consist of the remaining members; provided that the provisions

of section 113 paragraph two shall apply *mutatis mutandis*;

(2) the President of the Senate shall convoke a sitting of the Senate for the passing of approval resolution to the selected persons under (1) within thirty days as from the date of receipt of the nomination. A resolution shall be made by secret ballot. In case of approval resolution, the President of the Senate shall tender the nominated persons to the King for His appointment. In the case where the Senate disapproves the nomination, whether wholly or partly, it shall be returned to the Selective Committee for reselection. In such case, if the Selective Committee disagrees with the Senate and reaffirms its resolution unanimously, the names of the selected person shall be nominated to the President of the Senate to present to the King for His appointment, but if the reaffirmation is not passed by unanimous resolution, the reselection shall be commenced and it shall complete within thirty days as from the date a ground for the selection occurs.

If it is unable to complete the selection under (1) within the specified period by any cause, the Supreme Court of Justice shall, at its general meeting, appoint three judges of the Supreme Court of Justice holding a position of not lower than a judge of the Supreme Court of Justice and the Supreme Administrative Court shall, at its general meeting, appoint two judges of the Supreme Administrative Court to be members of the Selective Committee for the carrying out the duty under (1).

Section 207. The President and judges of the Constitutional Court shall not:

- (1) be a government official holding a permanent position or receiving a salary;
- (2) be an official or employee of a State agency, State enterprise or local government organisation or a director or adviser of a State enterprise or State agency;
- (3) hold any position in a partnership, a company or an organisation carrying out business with a view to sharing profits or incomes, or be an employee of any person;
- (4) engage in any independent profession.

In the case where the general meeting of the Supreme Court of Justice or of the Supreme Administrative Court or the Senate, has approved the person in (1), (2), (3) or (4) with the consent of that person, the selected person can commence the performance of duty only when he has resigned from the position in (1), (2) or (3) or has satisfied that his engagement in such independent profession has ceased to exist. This must be done within fifteen days as from the date of the selection or approval. If such person has not resigned or has not ceased to engage in the independent profession within the specified period, it shall be deemed that that person has never been selected or approved to be a judge of the Constitutional Court and the provisions of section 204 and section 206, as the case may be, shall apply.

Section 208. The President and judges of the Constitutional Court shall hold office for nine years as from the date of their appointment by the King and shall hold office for only one term.

The outgoing President and judges of the Constitutional Court shall remain in office to perform duty until the newly appointed President and judges of the Constitutional Court take office.

The President and judges of the Constitutional Court shall be judicial officials under the law.

Section 209. In addition to the vacation of office upon the expiration of term, the President and judges of the Constitutional Court vacate office upon:

- (1) death;
- (2) being of seventy years of age;
- (3) resignation;
- (4) being disqualified or being under any of the prohibitions under section 205;
- (5) having done an act in violation of section 207;
- (6) the Senate passing a resolution under section 274 for the removal from office;
- (7) being sentenced by a judgment to imprisonment notwithstanding the suspension of the execution of imprisonment has been granted, except for an offence committed through negligence, a petty offence or a defamation offense.

When a case under paragraph one occurs, the remaining judges shall continue to perform their duties subject to section 216.

Section 210. In the case where the President and judges of the Constitutional Court vacate office en masse at the expiration of term, the proceedings under section 204 and section 206 shall be taken within thirty days as from the date of the vacation of office.

In the case where the President and judges of the Constitutional Court vacate office otherwise than in the case under paragraph one, the following proceedings shall be taken:

- (1) in the case of the judge of the Constitutional Court who was selected at the general meeting of the Supreme Court of Justice, the proceedings under section 204 shall complete within thirty days as from the date of the vacation of office;
- (2) in the case of the judge of the Constitutional Court who was selected at the general meeting of the Supreme Administrative Court, the proceedings under section 204 shall complete within thirty days as from the date of the vacation of office;
- (3) in the case of the judges of the Constitutional Court under section 204 (3) or (4), the proceedings under section 206 shall complete within thirty days as from the date of the vacation office.

In the case where some or all judges of the Constitutional Court vacate office out of a session of the National Assembly, the proceedings under section 206 shall be taken within thirty days as from the date of the opening of a session of the National Assembly.

In the case where the President of the Constitutional Court vacates office, the provisions of section 204 paragraph three shall apply.

Section 211. In the application of the provisions of any law to any case, if the Court by itself is of the opinion that, or a party to the case raises an objection with reasons that, the provisions of such law fall within the provisions of section 6 and there has not yet been a decision of the Constitutional Court on such provisions, the Court shall submit, in the course of official service, its opinion to the Constitutional Court for consideration and decision. During such period, the Court may continue the trial, but the adjudication to the case shall be suspended until the Constitutional Court has made its decision.

In the case where the Constitutional Court is of the opinion that the objection of a party under paragraph one is not essential for decision, the Constitutional Court may refuse to accept the case for consideration.

The decision of the Constitutional Court shall apply to all cases but shall not affect final judgments of the Courts.

Section 212. A person whose rights and liberties recognised by this Constitution are violated, has the right to submit a motion to the Constitutional Court for its a decision as to whether the provisions

of the law are contrary to or inconsistent with the Constitution.

The exercise of right under paragraph one must be in the case of unable to exercise the right by other means as provided in the organic law on rules and procedure of the Constitutional Court;

Section 213. In the performance of duty, the Constitutional Court shall have the power to demand documents or relevant evidence from any person or summon any person to give statements of fact as well as request inquiry officials, a government agency, State agency, State enterprise or local government organisation to carry out any act for the purpose of its consideration.

The Constitutional Court shall have the power to appoint a person or a group of persons to carry out duty as entrusted.

Section 214. In the case where a dispute arises as to the power and duty among the National Assembly, the Council of Ministers or the Constitutional organisation other than the Courts and such dispute arises between two or more of such organisations, the President of the National Assembly, the Prime Minister, or such organisation shall submit a matter together with its opinion to the Constitutional Court for decision.

Section 215. In the case where the Constitutional Court is of the opinion that a matter or issue submitted for its consideration has been decided, the Constitutional Court may refuse to accept such matter or issue for consideration.

Section 216. The quorum of judges of the Constitutional Court for hearing and rendering a decision shall consist of not less than five judges. The decision of the Constitutional Court shall be made by a majority of votes, unless otherwise provided in this Constitution.

Every judge of the Constitutional Court who constitutes a quorum shall give a decision on his own part and make an oral statement to the meeting before passing a resolution.

The decisions of the Constitutional Court and all judges thereof shall be published in the Government Gazette.

The decision of the Constitutional Court must at least consist of the background or allegation, summary of facts obtained from hearings, reasons for the decision on questions of fact and questions of law and the provisions of the Constitution and the law invoked and resorted to.

The decision of the Constitutional Court shall be deemed final and binding on the National Assembly, Council of Ministers, Courts and other State organs.

The rules and procedure of the Constitutional Court shall be in accordance with the organic law on rules and procedure of the Constitutional Court.

Section 217. The Constitutional Court shall have its autonomous secretariat, with the Secretary-General of the Office of the Constitutional Court as the superintendent responsible directly to the President of the Constitutional Court.

A person to be appointed as the Secretary-General of the Office of the Constitutional Court must be nominated by the President of the

Constitutional Court with approval of judges of the Constitutional Court as provided by law.

The Office of the Constitutional Court shall have autonomy in its personnel administration, budget and other activities as provided by law.

Part 3

Courts of Justice

Section 218. The Courts of Justice have the power to try and adjudicate all cases except those specified by this Constitution or the law to be within the jurisdiction of other Courts.

Section 219. There shall be three levels of Courts of Justice, viz, Courts of First Instance, Courts of Appeal and the Supreme Court of Justice, except otherwise provided by this Constitution or other laws.

The Supreme Court of Justice has the power to try and adjudicate cases provided by the Constitution or the law to submit directly to the Supreme Court of Justice and appeals against judgments or orders of Courts of First Instance or Courts of Appeal as provided by law, except where the Supreme Court of Justice is of the opinion that the question of law or the question of fact of the such appeals is not essential for decision, it has the power to refuse the acceptance of such cases for consideration in accordance with the rule provided by its general meeting.

The Supreme Court of Justice has the power to try and adjudicate the election related cases and the suspension of the right to vote at an election of members of the House of Representatives and acquisition of senators, and the Court of Appeal has the power to try and adjudicate the election related cases and the suspension of the right to vote at an election of members of a local assembly or local administrators; provided that, the rules and procedure for trial and adjudication of such cases shall base upon inquisitorial system in accordance with the rules and procedure provided by a general meeting of the Supreme Court of Justice and shall be conducted without delay.

There shall be in the Supreme Court of Justice a Criminal Division for Persons Holding Political Positions, the quorum of which consists of nine judges of the Supreme Court of Justice holding a position of not lower than judge of the Supreme Court of Justice or senior judges having held a position of not lower than judge of the Supreme Court of Justice whom elected at a general meeting of the Supreme Court of Justice by secret ballot and on a case-by-case basis.

The competence of the Supreme Court of Justices Criminal Division for Persons Holding Political Positions and the criminal procedure for such persons shall be as provided by this Constitution and the organic law on criminal procedure for persons holding political positions.

Section 220. The appointment and removal from office of a judge of a Court of Justice must be approved by the Judicial Commission of

the Courts of Justice before they are tendered to the King.

The promotion, increase salaries and punishment of judges of the Courts of Justice must be approved by the Judicial Commission of the Courts of Justice. In such case, the Judicial Commission of the Courts of Justice shall appoint a sub-committee in each level of Courts for rendering opinion thereon for its consideration.

In giving approval of the Judicial Commission of the Courts of Justice under paragraph one and paragraph two, regard shall be had to knowledge, competency and moral behaviour of such person.

Section 221. The Judicial Commission of the Courts of Justice consists of the following persons:

- (1) President of the Supreme Court of Justice as Chairperson;
- (2) qualified members of all levels of Courts, viz, six members from the Supreme Court of Justice, four members from the Courts of Appeal, and two members from the Courts of First Instance, who are judges of each level of Courts and elected by judicial officials of all levels of Courts;
- (3) two qualified members who are not judicial officials and elected by the Senate.

The qualifications, prohibitions and procedure for the election of the qualified members shall be in accordance with the provisions of law.

In the case where there is no qualified member under paragraph one (3) or the number of such members is less than two and if not

less than seven members of the Judicial Commission of the Courts of Justice are of the opinion that there is an urgent matter to be approved, the said number of the members of the Judicial Commission of the Courts of Justice shall constitute a quorum to consider such urgent matter.

Section 222. The Courts of Justice shall have an autonomous secretariat, with the Secretary-General of the Office of the Courts of Justice as the superintendent responsible directly to the President of the Supreme Court of Justice.

A person to be appointed as the Secretary-General of the Office of the Courts of Justice must be nominated by the President of the Supreme Court of Justice with approval of the Judicial Commission of the Courts of Justice as provided by law.

The Office of the Courts of Justice shall have autonomy in its personnel administration, budget and other activities, as provided by law.

Part 4

Administrative Courts

Section 223. Administrative Courts have the power to try and adjudicate cases of dispute between a government agency, State agency, State enterprise, local government organisation or Constitutional organisation, or between State officials and private individual, or between a government agency, State agency, State enterprise, local

government organisation or Constitutional organisation, or among State officials themselves, as a consequence of the exercise of an administrative power provided by law, or of the carrying out of an administrative act of a government agency, State agency, State enterprise, local government organisation, Constitutional organisation or State officials, as provided by law, as well as to try and adjudicate matters prescribed by the Constitution or the law to be under the jurisdiction of the Administrative Courts.

The jurisdiction of the Administrative Courts under paragraph one does not include the adjudication of disputes made by Constitutional organisation as the direct exercise of their powers under the Constitution.

There shall be the Supreme Administrative Court and Administrative Courts of First Instance, and there may also be the Appellate Administrative Court.

Section 224. The appointment and removal from office of an administrative judge must be approved by the Judicial Commission of the Administrative Courts as provided by law before they are tendered to the King.

Qualified persons in the field of law or the administration of State affairs may be appointed as judges of the Supreme Administrative Court. Such appointment shall be made in the number of not less than one-third of the total number of judges of the Supreme Administrative Court and must be approved by the Judicial Commission of the Administrative Courts as provided by law and by the Senate before it is tendered to the King.

The promotion, increase of salaries and punishment of administrative judges must be approved by the Judicial Commission of the Administrative Courts as provided by law.

The number of administrative judges in each level of the Courts shall be as prescribed by the Judicial Commission of the Administrative Courts.

Section 225. The appointment of an administrative judge as President of the Supreme Administrative Court, shall, when already approved by the Judicial Commission of the Administrative Courts and the Senate, be tendered by the Prime Minister to the King for appointment.

Section 226. The Judicial Commission of the Administrative Courts consists of the following persons:

- (1) President of the Supreme Administrative Court as Chairperson;
- (2) nine qualified members who are administrative judges and elected by administrative judges among themselves;
- (3) three qualified members, two of whom are elected by the Senate and the other by the Council of Ministers.

The qualifications, prohibitions and procedure for the election of the qualified members shall be in accordance with the provisions of law.

In the case where there is no qualified member under paragraph one (3) or the number of such members is less than three and if not

less than six members of the Judicial Commission of the Administrative Courts are of the opinion that there is an urgent matter to be approved, the said number of the members of the Judicial Commission of the Administrative Courts shall constitute a quorum to consider such urgent matter.

Section 227. The Administrative Courts shall have an autonomous secretariat, with the Secretary-General of the Office of the Administrative Courts as the superintendent responsible directly to the President of the Supreme Administrative Courts.

A person to be appointed as the Secretary-General of the Office of the Administrative Courts must be nominated by the President of the Supreme Administrative Courts with approval of the Judicial Commission of Administrative Courts as provided by law.

The Office of the Administrative Courts shall have autonomy in its personnel administration, budget and other activities as provided by law.

Part 5

Military Courts

Section 228. Military Courts have the power to try and adjudicate the cases which offenders are subjected to the jurisdiction of the Military Courts and other cases, as provided by law.

The appointment and removal from office of military judges shall be as provided by law.

CHAPTER XI

Constitutional Organisation

Part 1

Independent Organisations

1. The Election Commission

Section 229. The Election Commission consists of a Chairperson and other four Commissioners appointed, by the King with the advice of the Senate, from persons of apparent political impartiality and integrity.

The President of the Senate shall countersign the Royal Command appointing the Chairperson and Commissioners under paragraph one.

Section 230. An Election Commissioner shall have the qualifications and shall not be under any prohibition as follows:

- (1) being of not less than forty years of age;
- (2) having graduated with not lower than a Bachelor's degree or its equivalent;
- (3) having qualifications and not being under any of the prohibitions under section 205 or section 205 (1), (4), (5) and (6);
- (4) not being a judge of the Constitutional Court, an Ombudsman, a member of the National Counter Corruption Commission, a

member of the State Audit Commission or a member of the National Human Right Commission.

The provisions of section 207 shall also apply *mutatis mutandis* to the Election Commissioner.

Section 231. The selection and election of Chairperson and Election Commissioners shall be proceeded as follows:

- (1) there shall be a Selective Committee of seven members consisting of the President of the Supreme Court of Justice, the President of the Constitutional Court, the President of the Supreme Administrative Court, the President of the House of Representatives, the Leader of the Opposition in the House of Representatives, a person selected at a general meeting of the Supreme Court of Justice and a person selected at a general meeting of the Supreme Administrative Court as members to be in charge of the selection and nomination of three persons, who have the qualifications under section 230 and suitable to be Election Commissioners, to the President of the Senate upon their consents. The selection resolution shall be passed by the votes of not less than two-thirds of the total number of the existing members of the Selective Committee. In the case where there is no member in any position or a member is unable to perform his duty and the number of the remaining members is not less than one-half thereof, the Selective Committee shall consist of the remaining members; provided that the provisions

of section 113 paragraph two shall apply mutatis mutandis;

Persons selected by the Supreme Court of Justice and the Supreme Administrative Court at their general meeting under paragraph one shall not be judges and shall not be members of the Selective Committee for other Constitutional organisations simultaneously.

- (2) the Supreme Court of Justice shall, at its general meeting, consider and select two persons who have qualifications under section 230 and suitable to be Election Commissioners for making nomination to the President of the Senate upon their consents;
- (3) the selection under (1) and (2) shall be made within thirty days as from the date when a ground for the section of persons to be in such office occurs. In the case where it is unable to make nomination within specified period, or unable to make nomination in the complete number within the period specified in (1), the Supreme Court of Justice shall, at its general meeting, make selection to obtain the complete number within fifteen days as from the date of the expiration of the nomination time under (1);
- (4) the President of the Senate shall convoke the Senate for passing a resolution, by secret ballot, approving the nominated persons under (1), (2) and (3);
- (5) in the case where the Senate approves the nomination, the proceedings under (6) shall be proceeded, but in the case where the Senate disapproves the nomination, whether wholly or partly,

it shall be returned to the Selective Committee or the Supreme Court of Justice, at its general meeting, for reselection. In such case, if the Selective Committee or the Supreme Court of Justice, at its general meeting, disagrees with the Senate and reaffirms its resolution unanimously or by the votes of not less than two-thirds of the general meeting of the Supreme Court of Justice, as the case may be, the proceedings (6) shall be proceeded, but in the case where the reaffirmation is not passed unanimously or by the votes of less than the required number, the reselection shall be commenced and it shall complete within thirty days as from the date a ground for the selection occurs.

(6) the person approved under (4) or (5) shall meet and elect among themselves to be Chairperson of the Election Commission and, then, notify the President of the Senate of the result. The President of the Senate shall tender to the King for further appointment.

Section 232. Election Commissioners shall hold office for a term of seven years as from the date of their appointment by the King and shall serve for only one term.

The Election Commissioners who vacate office upon the expiration of the term shall remain in office to continue to perform their duties until the newly appointed Election Commissioners take office.

The provisions of section 209 (1), (2), (3), (5), (6), (7) and the disqualifications and the prohibitions under section 230 shall also apply *mutatis mutandis* to the vacation of office of Election Commissioners.

Section 233. Members of the House of Representatives, senators, or members of both Houses of not less than one-tenth of the total number of the existing members of the two Houses have the right to lodge with the President of the National Assembly a complaint that any Election Commissioner is disqualified or is under any of the prohibitions or has acted in contravention of any of the prohibitions under section 230 and the President shall refer that complaint, within three days as from the date of receipt of the complaint, to the Constitutional Court for its decision.

When the Constitutional Court has passed a decision, it shall notify the President of the National Assembly and the Chairperson of the Election Commission of such decision.

The provisions of section 92 shall also apply *mutatis mutandis* to the vacation of office of Election Commissioners.

Section 234. In the case where the Election Commissioners have vacated office *en masse* at the expiration of term, the selective process under section 231 shall be taken within ninety days as from the date of the vacation.

In the case where Election Commissioners vacate office for any reason other than the expiration of term, the selection process under section 231 shall be completed within sixty days as from the date in which the reason has occurred, and the approved person shall serve only for the remainder of the term of the replaced Commissioners.

Section 235. The Election Commission shall control and hold, or cause to be held, an election of members of the House of

Representatives, senators, members of a local assembly and local administrators, as the case may be, including the voting in a referendum for the purpose of rendering it to proceed in an honest and fair manner.

The Chairperson of the Election Commission shall have the charge and control of the execution of the organic law on election of members of the House of Representatives and acquisition of senators, the organic law on political parties, the organic law on Election Commission, the organic law on referendum and the law on election of members of local assemblies or local administrators and shall be the political-party registrar.

There shall be the Office of the Election Commission being an agency having autonomy in its personnel administration, budget and other activities as provided by law.

Section 236. The Election Commission shall have the following powers and duties:

- (1) to issue notifications or regulations determining all acts necessary for the execution of the laws referred to in section 235 paragraph two including regulations relating to a launching of election campaigns and any act of political parties, candidates and persons having the right to vote to proceed in an honest and fair manner and determining rules to be complied by State in giving support of fair election and equal opportunity in campaigning;

- (2) to lay down regulations determining prohibitions in performance of duties of the Council of Ministers and portfolio Minister under section 181 with due regard to the maintenance of interest of State and to honesty, fairness, equality and equal opportunity in an election;
- (3) to determine measures for controlling of a donation of money to political parties, rendering of financial support by State, spending of money of political parties and candidates and auditing publicly of accounts of political parties, and to control a disbursement and receipt of money for benefit in voting at an election;
- (4) to give orders instructing government officials, officials or employees of a State agency, State enterprise or local government organisation or other State officials to perform all necessary acts under the laws referred to in section 235 paragraph two;
- (5) to conduct investigations and inquiries and to make decisions on arising problems or disputes under the laws referred to in section 235 paragraph two;
- (6) to order a new election or a new voting at a referendum to be held in any or all polling stations when there occurs convincing evidence that the election or the voting at a referendum in that or those polling stations has not proceeded in an honest and fair manner;
- (7) to announce the result of an election and the voting in a referendum;

(8) to promote and support or co-ordinate with government agency, State agency, State enterprise or local government organisation or to support private organisations in giving education to the public on the democratic regime of government with the King as Head of State and the enhancement of public participation in politics;

(9) to perform other acts as provided by law.

In the performance of duties, the Election Commission has the power to summon any relevant document or evidence from any person, or summon any person to give statements as well as to request public prosecutors, inquiry officials, government agencies, State agencies, State enterprises or local government organisations to take action for the purpose of performing duties, investigating, conducting inquiries and passing decisions.

The Election Commission has the power to appoint persons, a group of persons or representatives of private organisations to perform such duties as entrusted.

Section 237. A candidate in an election who commits an act or causes or supports another person to act in violation of the organic law on election of members of the House of Representatives and acquisition of senators or regulations or notifications of the Election Commission which resulting in the election not to be honest and fair, his right to vote at an election shall be suspended under the organic law on election of members of the House of Representatives and acquisition of senators.

If it appears convincing evidence, through an act of the person under paragraph one, that the President or an executive board of director of a political party connives or neglects at such commission or such commission is known to him but he fails to deter or revise such commission for the maintenance of honest and fair election, it shall be deemed that such political party doing an act for the acquisition of the power to rule the country by means which is not in accordance with the provisions of this Constitution under section 68. In such case, if the Constitutional Court orders to dissolve such political party, the right to vote at an election of the President or the executive board of directors of a political party shall be suspended for the period of five years as from the date such order is made.

Section 238. The Election Commission shall conduct an investigation and inquiry forthwith upon the occurrence of any of the followings;

- (1) an objection is made by a voter, a candidate at an election or a political party having its members stand for at an election in any constituency that an election in that constituency is not appropriate or unlawful;
- (2) an objection is made by a candidate in the selection or a member of the organisation referred to in section 114 paragraph one that the selection of senators is not appropriate or unlawful;
- (3) it appears convincing evidence that, prior to being elected or selected, a member of the House of Representatives, senator, member of a local assembly or local administrator had committed

any dishonest act to enable him to be elected or selected or he has been elected or selected dishonestly as a result of any act committed by any person or political party in violation of the organic law on election of members of the House of Representatives and acquisition of senators, the organic law on political parties or the organic law on election of members of local assemblies and local administrators;

- (4) it appears convincing evidence that voting in a referendum is in violation of law or an objection is made by a person having the right to vote that voting in a referendum in any polling station is not appropriate or unlawful.

The Election Commission shall, at the completion of the conducts under paragraph one, pass forthwith a decision thereon.

Section 239. In the case where the Election Commission passes the decision to have re-election or suspend the right to vote at an election before the announcement of the result of the election of members of the House of Representatives and senators, such decision shall be final.

If the Election Commission is of the opinion, after the announcement of the result of election, that re-election must be held or the right to vote at an election of a member of the House or Representatives or a senator must be suspended, it shall submit a complaint to the Supreme Court of Justice for decision. When the Supreme Court of Justice receives the complaint of the Election Commission, such member of the House or Representatives or senator shall not be able

to perform his duty until the complaint is dismissed by the Supreme Court of Justice. In the case where the Supreme Court of Justice has an order for re-election in any constituency or for suspension of the right to vote at an election of any member of the House of Representatives or senator, the membership of the House of Representatives or the membership of the Senate in such constituency shall terminate.

In the case where the person under paragraph two is unable to perform his duty, he shall not be regarded as one of the existing members of the House of Representatives or the Senate, as the case may be.

The provisions of paragraph one, paragraph two and paragraph three shall apply *mutatis mutandis* to the election of members of local assemblies and local administrators and, in such case, a submission of a complaint under paragraph two shall be made to the Courts of Appeal and the order of the Courts of Appeal shall be final.

Section 240. If there is an objection that the selection of a senator is not appropriate or unlawful or there is convincing evidence that a senator committed an act under section 238 prior to be selected, the Election Commission shall conduct an investigation and inquiry forthwith.

Upon reaching any decision, the Election Commission shall forthwith submit its decision to the Supreme Court of Justice for decision and the provision of section 239 paragraph two and paragraph three shall apply *mutatis mutandis* to an inability of such senator.

In the case where the Supreme Court of Justice orders to revoke the selection or suspend the right to vote at an election of a senator, the membership of the Senate of such senator shall terminate as from the date such order is made, and the selection to fulfil the vacancy shall be taken.

The Chairperson of the Election Commission shall not participate in the proceeding or the giving of decision under paragraph one or paragraph two and, in this case, it shall be deemed that the Election Commission consisting of the remaining Commissioners.

The objection and consideration of the Election Commission shall be in accordance with the organic law on election of members of the House of Representatives and acquisition of senators.

Section 241. During the period in which a Royal Decree calling for an election of members of the House of Representatives or senators, a Notification calling for selection of senators or a Notification calling for the voting in a referendum is effective, no Election Commissioner shall be arrested, detained or summoned by a warrant for inquiry except in the case where permission of the Election Commission is obtained or where the arrest is made in flagrante delicto.

In the case where an Election Commissioner has been arrested in flagrante delicto, or where an Election Commissioner is arrested or detained in other cases, it shall be forthwith reported to the Chairperson of the Election Commission and the Chairperson may order a release of the person so arrested, but in the case where the Chairperson of the Election Commission is arrested or detained, the

remaining Election Commissioners shall have the power to order a release.

2. The Ombudsmen

Section 242. There shall be three Ombudsmen who shall be appointed by the King with the advice of the Senate from the persons recognised and respected by the public, with knowledge and experience in the administration of State affairs, enterprises or activities of common interests of the public and with apparent integrity.

The elected persons to be Ombudsmen shall hold a meeting and elect one among themselves to be the President of the Ombudsmen and notify the result to the President of the Senate accordingly.

The President of the Senate shall countersign the Royal Command appointing the Ombudsmen.

The qualifications and prohibitions of the Ombudsmen shall be in accordance with the organic law on Ombudsmen.

The Ombudsmen shall hold office for a term of six years as from the date of their appointment by the King and shall serve for only one term.

There shall be the Office of the Ombudsmen being an agency having autonomy in its personnel administration, budget and other activities as provided by law.

Section 243. The provisions of section 206 and 207 shall apply mutatis mutandis to the selection and election of the Ombudsmen. In such case, there shall be a Selective Committee of seven members consisting of the President of the Supreme Court of Justice, the President of the Constitutional Court, the President of the Supreme Administrative Court, the President of the House of Representatives, the Leader of the Opposition in the House of Representatives, a person selected at a general meeting of the Supreme Court of Justice and a person selected at a general meeting of the Supreme Administrative Court and the provisions of section 231 (1) paragraph two shall apply mutatis mutandis.

Section 244. The Ombudsmen have the powers and duties as follows:

- (1) to consider and inquire into the complaint for fact-findings in the following cases:
 - (a) failure to perform in compliance with the law or performance beyond powers and duties as provided by law of a government official, an official or employee of a government agency, State agency, State enterprise or local government organisation;
 - (b) performance of or omission to perform duties of a government official, an official or employee of a government agency, State agency, State enterprise or local government organisation, which unjustly causes injuries to the complainant or the public whether such act is lawful or not;
 - (c) investigation any omission to perform duties or unlawful performance of duties of the Constitutional organisation or

agencies in the administration of justice, except the trial and adjudication of the Courts;

(d) other cases as provided by law;

(2) to conduct the proceeding in relation to ethics of persons holding political positions and State officials under section 279 paragraph three and section 280;

(3) to monitor, evaluate and prepare recommendations on the compliance with the Constitution including considerations for amendment of the Constitution as deemed necessary;

(4) to report the result of its investigation and performance together with comments to the Council of Ministers, the House of Representatives and the Senate annually. Such report shall be published in the Government Gazette and disclosed to the public.

In exercising of powers and duties under (1) (a), (b) and (c), the Ombudsmen shall proceed where there is a complaint thereon, provided that the Ombudsmen is of the opinion that such act causes injuries to the public or it is necessary to protect public interests and, in such case, the Ombudsmen may consider and conduct investigation irrespective of a complaint.

Section 245. The Ombudsmen may submit a case to the Constitutional Court or Administrative Court in the following cases:

(1) if the provisions of any law begs the question of the constitutionality, the Ombudsmen shall submit the case and the

opinion to the Constitutional Court and the Constitutional Court shall decide without delay in accordance with the organic law on rules and procedure of the Constitutional Court;

- (2) if rules, orders or actions of any person under section 244 (1) (a) begs the question of the constitutionality or legality, the Ombudsmen shall submit the case and the opinion to the Administrative Court and the Administrative Court shall decide without delay in accordance with the Act on Establishment of the Administrative Courts and Administrative Courts Procedure.

3. The National Counter Corruption Commission

Section 246. The National Counter Corruption Commission consists of the President and eight members appointed by the King with the advice of the Senate.

Members of the National Counter Corruption Commission shall be persons of apparent integrity, with qualifications and without any of the prohibitions under section 205 and having been a Minister, an Election Commissioner, an Ombudsman, a member of the National Human Rights Commission or a member of the State Audit Commission, or having served in a position of not lower than a Director-General or a person holding an administrative position in a government agency having administrative powers equivalent to a Director-General or a person holding an academic position of not lower than Professor, or a representative of a private development organisation or a professional practitioner of a professional organisation established under the law

who practises such profession for not less than thirty years whom certified and nominated to the selection by such private development organisation or professional organisation.

The provisions of section 204 paragraph three and paragraph four, section 206 and section 207 shall apply *mutatis mutandis* to the selection and election of members of the National Counter Corruption Commission and, in such case, the Selective Committee shall consist of five members, viz, the President of the Supreme Court of Justice, the President of the Constitutional Court, the President of the Supreme Administrative Court, the President of the House of Representatives and the Leader of the Opposition in the House of Representatives.

The President of the Senate shall countersign the Royal Command appointing the President and members of the National Counter Corruption Commission.

There shall be a Counter Corruption Commissioner to each Changwat and its qualifications, selection and powers and duties shall be in accordance with the organic law on counter corruption.

Section 247. Members of the National Counter Corruption Commission shall hold office for a term of nine years as from the date of their appointment by the King and shall serve for only one term.

Members of the National Counter Corruption Commission who vacate office at the expiration of term shall remain in office to continue to perform their duties until the newly appointed members take office.

The provisions of section 209 and section 210 shall apply *mutatis mutandis* to the vacation from office, the selection and an election

for the fulfilment of the vacancy of members of the National Counter Corruption Commission.

Section 248. Members of the House of Representatives of not less than one-fourth of the total number of the existing members of the House or voters of not less than twenty-thousand in number have a right to lodge with the President of the Senate a complaint that any member of the National Counter Corruption Commission has acted unjustly, intentionally violated the Constitution or laws or has been under any circumstance which is seriously detrimental to the dignity of the holding of office, in order to request the Senate to pass a resolution removing him from office.

The resolution of the Senate removing the member of the National Counter Corruption Commission from office under paragraph one shall be passed by the votes of not less than three-fourths of the total number of the existing members of the Senate.

Section 249. Members of the House of Representatives, senators or members of both Houses of not less than one-fifth of the total number of the existing members of both Houses have a right to lodge with the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions an allegation that any member of the National Counter Corruption Commission has become unusually wealthy or has committed an offence of corruption or malfeasance in office.

The request under paragraph one shall clearly itemise the circumstance in which such person has allegedly committed the act under

paragraph one and shall be submitted to the President of the Senate. When the President of the Senate has received the said request, the President shall refer it to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions for trial and adjudication.

The alleged member of the National Counter Corruption Commission shall not perform his duty until the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions has dismissed the said request.

In the case where a member of the National Counter Corruption Commission is unable to perform his duty under paragraph three and the remaining members of the National Counter Corruption Commission are less than one-half of the total number thereof, the President of the Supreme Court of Justice and the President of Supreme Administrative Court shall jointly appoint a person having qualifications and is not under the same prohibitions of members of the National Counter Corruption Commission as acting member of the National Counter Corruption Commission pro tempore. The appointed person shall acting as a member of the National Counter Corruption Commission until a member of the National Counter Corruption Commission he acting for is able to perform his duty or until there is a decision of the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions that such person has committed an offence.

Section 250. The National Counter Corruption Commission shall have the following powers and duties:

- (1) to inquire into facts, summarise the case and prepare opinions in relation to the removal from office to be submitted to the Senate according to section 272 and section 279 paragraph three;
- (2) to inquire into facts, summarise the case and prepare opinions in relation to a criminal proceedings of the persons holding political positions to be submitted to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions in accordance with section 275;
- (3) to inquire and decide whether a State official of high administration level or a government official holding a position of a Divisional Director or its equivalent or higher level has become unusually wealthy or has committed an offence of corruption, malfeasance in office or malfeasance in judicial office, and to take such actions against a State official or a government official of lower level who participates in the commission of such offence with the person holding the said position or the person holding political position or who commits an offence in the manner deemed appropriate by the National Counter Corruption Commission in accordance with the organic law on counter corruption;
- (4) to inspect the accuracy, actual existence as well as change of assets and liabilities of the persons holding positions under section 259 and section 264 as stated in the account and supporting documents submitted in accordance with the rules and procedures prescribed by the National Counter Corruption

Commission;

- (5) to supervise and monitor moral and ethics of persons holding political positions;
- (6) to submit an inspection report and a report on the performance of duties together with recommendations to the Council of Ministers, the House of Representatives and the Senate annually. The report shall be published in the Government Gazette and disclosed to the public;
- (7) to carry on other acts as provided by law.

The provisions of section 213 shall apply *mutatis mutandis* to the performance of duties of the National Counter Corruption Commission.

The President of the National Counter Corruption Commission shall be judicial officials under the law.

Section 251. The National Counter Corruption Commission shall have an autonomous secretariat, with the Secretary-General of the National Counter Corruption Commission as the superintendent responsible directly to the President of the National Counter Corruption Commission.

A person to be appointed as the Secretary-General of the National Counter Corruption Commission must be nominated by the President of the National Counter Corruption Commission with approval of members of the National Counter Corruption Commission.

The Office of the National Counter Corruption Commission shall have autonomy in its personnel administration, budget and other activities as provided by law.

4. The State Audit Commission

Section 252. The State audit shall be carried out by the State Audit Commission that is independent and impartial.

The State Audit Commission consists of the Chairperson and six other members appointed by the King from persons with expertise and experience in state audit, accounting, internal audit, finance and other fields.

The provisions of section 204 paragraph three and paragraph four, section 206 and section 207 shall apply mutatis mutandis to the selection and election of members the State Audit Commission and the Auditor-General, provided that the composition of the Selective Committee shall be in accordance with section 243.

The President of the Senate shall countersign the Royal Command appointing the Chairperson and members of the State Audit Commission and the Auditor-General.

Members of the State Audit Commission shall hold office for a term of six years from the date of their appointment by the King and shall serve for only one term.

Qualifications, prohibitions and vacation of office of members of the State Audit Commission and the Auditor-General as well as powers and duties of the State Audit Commission, the Auditor-General and the Office of the State Audit Commission shall be in accordance with the organic law on State Audit.

The determination of qualifications and procedure for the selection of persons to be appointed as members of the State Audit Commission

and the Auditor-General shall be made in the manner which can secure persons of appropriate qualifications an integrity and which can provide for the guarantee of the independence in the performance of duties of such persons.

Section 253. The State Audit Commission has the powers and duties to determine standards relating to State audit, to provide opinions, suggestions and recommendations for the correction of faults in State audit and to appoint the independent Financial Disciplinary Committee to render decisions on actions relating to financial discipline, finance and budget and the cases of dispute in relation to the decisions of the Financial Disciplinary Committee shall be under the jurisdiction of the Administrative Courts.

The Auditor-General shall have the powers and duties in relation to State Audit and shall be independent and impartial.

Section 254. The State Audit Commission shall have an autonomous secretariat, with the Auditor-General as the superintendent responsible directly to the Chairperson of the State Audit Commission.

There shall be the Office of the State Audit Commission being an agency having autonomy in its personnel administration, budget and other activities as provided by law.

Part 2

Other Organisations

1. The Public Prosecutors

Section 255. Public prosecutors shall have the powers and duties as provided in this Constitution and the law on powers and duties of public prosecutors and other laws.

Public prosecutors are independent in considering and making orders to the cases and in the performance of duties for fairness.

The appointment and removal from office of the Prosecutor General shall be by the resolution of the Public Prosecutors Committee upon the approval of the Senate.

The President of the Senate shall countersign the Royal Command appointing the Prosecutor General.

The Public Prosecutors shall have its autonomous secretariat having autonomy in its personnel administration, budget and other activities, with the Prosecutor General as the superintendent as provided by law.

A public prosecutor shall neither being a member of the board of directors of a State enterprise or other enterprises of State having similar nature; provided that an approval is given by the Public Prosecutors Committee, nor engaging in any occupation or profession or in any enterprise that may affect the performance of his duties or may detriment the dignity of his office and shall not be a member of the board of directors, director, legal advisor or holding any other position having similar nature in any partnership or company.

The provisions of section 202 shall apply *mutatis mutandis*.

2. The National Human Rights Commission

Section 256. The National Human Rights Commission consists of a President and six other members appointed, by the King with the advice of the Senate, from the persons having apparent knowledge and experiences in the protection of rights and liberties of the people with due regard to the participation of representatives from private organisations in the field of human rights.

The President of the Senate shall countersign the Royal Command appointing the President and members of the National Human Rights Commission.

The qualifications, prohibitions, selection, election, removal and determination of the remuneration of members of the National Human Rights Commission shall be as provided by law.

The members of the National Human Rights Commission shall hold office for a term of six years as from the date of their appointment by the King and shall serve for only one term.

The provisions of section 204 paragraph three, section 206, section 207 and section 209 (2) shall apply mutatis mutandis, provided that the composition of the Selective Committee shall be in accordance with section 243.

There shall be the Office of the National Human Rights Commission being an agency having autonomy in its personnel administration, budget and other activities as provided by law.

Section 257. The National Human Rights Commission has the powers and duties as follows:

- (1) to examine and report the commission or omission of acts which violate human rights or which do not comply with obligations under international treaties to which Thailand is a party, and propose appropriate remedial measures to the person or agency committing or omitting such acts for taking action. In the case where it appears that no action has been taken as proposed, the Commission shall report to the National Assembly for further proceeding;
- (2) to submit the case together with opinions to the Constitutional Court in the case where the Commission agrees with the complainant that the provisions of any law are detrimental to human rights and beg the question of the constitutionality as provided by the organic law on rules and procedure of the Constitutional Court;
- (3) to submit the case together with opinions to the Administrative Courts in the case where the Commission agrees with the complainant that any rule, order or administrative act is detrimental to human rights and begs the question of the constitutionality and legality as provided by the law on establishment of Administrative Courts and Administrative Court Procedure;
- (4) to bring the case to the Courts of Justice for the injured person upon request of such person if it deems appropriate for the resolution of human rights violation problem as a whole as provided by law;

- (5) to propose to the National Assembly and the Council of Ministers policies and recommendations with regard to the revision of laws, rules or regulations for the promotion and protection of human rights;
- (6) to promote education, researches and the dissemination of knowledge on human rights;
- (7) to promote co-operation and co-ordination among government agencies, private organisations and other organisations in the field of human rights;
- (8) to prepare an annual report for the appraisal of situations in the sphere of human rights in the country and submit it to the National Assembly;
- (9) other powers and duties as provided by law.

In the performance of duties of the National Human Rights Commission, regard shall be had to interests of the country and the public.

The National Human Rights Commission has the power to demand relevant documents or evidence from any person or summon any person to give statements of fact including other powers for the purpose of performing its duties as provided by law.

3. The National Economic and Social Council

Section 258. The National Economic and Social Council has the duties to give advice and recommendations to the Council of Ministers on

economic and social problems as well as related laws.

A national economic and social development plan and other plans as provided by law shall obtain opinions of the National Economic and Social Council before they can be adopted and published.

The composition, sources, powers and duties and operation of the National Economic and Social Council shall be in accordance with the provisions of law.

There shall be the Office of the National Economic and Social Council being an agency having autonomy in its personnel administration, budget and other activities as provided by law.

CHAPTER XII

Inspection of the Exercise of State Power

Part 1

Inspection of Assets

Section 259. Persons holding the following political positions shall submit an account showing particulars of assets and liabilities of themselves, their spouses and children who have not yet become sui juris to the National Counter Corruption Commission on each occasion of taking or vacating office:

(1) Prime Minister;

(2) Ministers;

- (3) members of the House of Representatives;
- (4) senators;
- (5) other political officials;
- (6) local administrators and members of a local assembly as provided by law.

The account under paragraph one shall be submitted together with supporting documents evidencing the actual existence of such assets and liabilities as well as a copy of the personal income tax return of the previous fiscal year.

The account showing particulars of assets and liabilities under paragraph one and paragraph two shall include assets of the persons holding political positions under direct or indirect possession or care of other persons.

Section 260. The account showing particulars of assets and liabilities under section 259 shall disclose the particulars of assets and liabilities actually existing as of the date of taking or vacating office, as the case may be, and shall be submitted within the following period:

- (1) in the case of the taking of office, within thirty days as from the date of taking office;
- (2) in the case of the vacation of office, within thirty days as from the date of the vacation;
- (3) in the case where the person under section 259, who has already submitted the account, dies while being in office or

before submitting the same after the vacation of office, an heir or an administrator of an estate of such person shall submit an account showing the particulars of assets and liabilities existing on the date of such person's death within ninety days as from the date of the death.

In addition to the submission of the account under (2), the person holding a position of Prime Minister, Minister, local administrator, member of a local assembly or the person holding a political position but having vacated office shall also re-submit an account showing particulars of assets and liabilities within thirty days as from the date of the expiration of one year after the vacation of office.

Section 261. The account showing particulars of assets and liabilities and supporting documents submitted by the Prime Minister, Ministers, members of the House of Representatives and senators shall be disclosed to public without delay but not later than thirty days as from the date of the expiration of the time limit for the submission of such account. The account of the persons holding other positions shall be disclosed in the case where the disclosure thereof may be beneficial to the trial and adjudication of case or for the making of decision and a request is made by the Courts, an interest person or the State Audit Commission.

The President of the National Counter Corruption Commission shall convene a meeting of the Commission to inspect the accuracy and the actual existence of assets and liabilities without delay.

Section 262. In the case where the submission of the account is made by reason of the vacation of office or death of any person holding a political position, the National Counter Corruption Commission shall inspect the change of assets and liabilities of such person and prepare a report of the inspection. Such report shall be published in the Government Gazette.

In the case where it appears that the assets of the person under paragraph one have unusually increased, the President of the National Counter Corruption Commission shall send all documents together with the inspection report to the Prosecutor General to institute an action in the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions so that the unusually increasing assets shall vest in the State and the provisions of section 272 paragraph five shall apply *mutatis mutandis*.

Section 263. Any person holding a political position who intentionally fails to submit the account showing assets and liabilities and the supporting documents as provided in this Constitution or intentionally submits the same with false statements or conceals the facts which should be revealed, the National Counter Corruption Commission shall refer the matter to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions for further decision.

If the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions decides that any person holding a political position committed an offence under paragraph one, such person shall vacate office on the date such decision is made and the provision of

section 92 shall apply mutatis mutandis. In this case, such person is prohibited from holding any political position or any position of a political party for the period of five years as from the date the decision of the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions is made.

Section 264. The provisions of section 259, section 260, section 261 paragraph two and section 263 paragraph one shall apply mutatis mutandis to State officials as determined by the National Counter Corruption Commission.

The National Counter Corruption Commission may disclose the account showing particulars of assets and liabilities as submitted to interested parties if such disclosure is beneficial to the trial or decision of offences as provided by the organic law on counter corruption.

Part 2

Conflict of Interests

Section 265. Members of the House of Representatives and senators shall not:

- (1) hold any position or have any duty in a government agency, State agency or State enterprise, or hold a position of a member of a local assembly, local administrator or local government official;

- (2) receive or interfere or intervene in, whether directly or indirectly, any concession from State, a government agency, State agency or State enterprise, or become a party to a contract of the nature of economic monopoly with State, a government agency, State agency or State enterprise, or become a partner or shareholder in a partnership or company receiving such concession or becoming a party to the contract of that nature;
- (3) receive any special money or benefit from a government agency, State agency or State enterprise apart from that given by a government agency, State agency or State enterprise to other persons in the ordinary course of business.
- (4) act in violation of the prohibitions under section 48.

The provisions of this section shall not apply in the case where a member of the House of Representatives or a senator receives military pensions, gratuities, pensions, annuities for royalty or any other form of payment of the same nature, and shall not apply in the case where a member of the House of Representatives accepts or holds a position of committee member of the National Assembly, the House of Representatives or the Senate, or committee member appointed in the course of the administration of State affairs.

The provisions in (2), (3) and (4) shall apply to spouses and children of members of the House of Representatives or senators and to other persons other than spouses and children of such members of the House of Representatives or senators who act as agents or partners of, or who are entrusted by, members of the House of Representatives or senators to act under this section.

Section 266. A member of the House of Representatives and a senator shall not, through the status or position of member of the House of Representatives or senator, interfere or intervene the following matters, directly or indirectly, for the benefit of his own or other persons or of political party:

- (1) the performance of official duties or routine works of a government official, official or employee of a government agency, State agency, State agency, an enterprise in which the State is a major shareholders or a local government organisation;
- (2) the recruitment, appointment, reshuffle, transfer, promotion and elevation of the salary scale of a government official holding a permanent position or receiving salary and not being a political official, an official or employee of a government agency, State agency, State enterprise or local government organisation;
- (3) the removal from office of a government official holding a permanent position or receiving salary and not being a political official, an official or employee of a government agency, State agency, State enterprise or local government organisation.

Section 267. The provisions of section 265 shall apply to the Prime Minister and Ministers, except for the holding of position or an act to be done under the provisions of law. The Prime Minister and Ministers shall neither hold any position in a partnership, a company or an organisation carrying out business with a view to sharing profits or incomes nor being an employee of any person.

Section 268. The Prime Minister and a Minister shall not perform any act in violation of the provisions of section 266, except the performance of powers and duties for the administration of State affairs as stated to the National Assembly or as provided by law.

Section 269. The Prime Minister and a Minister shall not be a partner or shareholder of a partnership or a company or retain his being a partner or shareholder of a partnership or a company up to the limit as provided by law. In the case where the Prime Minister or any Minister intends to continue to receive benefits in such cases, the Prime Minister or such Minister shall inform the President of the National Counter Corruption Commission within thirty days as from the date of the appointment and shall transfer his shares in the partnership or company to a juristic person which manages assets for the benefit of other persons as provided by law.

The Prime Minister and a Minister shall not do any act which, by nature, amounts to the administration or management of shares or affairs of such partnership or company.

This section apply to the spouse and children who have not yet become sui juris of the Prime Minister and a Minister and section 259 paragraph three shall apply mutatis mutandis.

Part 3

Removal from Offices

Section 270. A person holding a position of Prime Minister, Minister, member of the House of Representatives, senator, President of the Supreme Court of Justice, President of the Constitutional Court, President of the Supreme Administrative Court or Prosecutor General, who is under the circumstance of unusual wealthiness indicative of the commission of corruption, malfeasance in office, malfeasance in judicial office or an intentional exercise of power contrary to the provisions of the Constitution or law or seriously violates or fails to comply with ethical standard, may be removed from office by the Senate.

The provisions of paragraph one shall also apply to the persons holding the following positions:

- (1) judge of the Constitutional Court, Election Commissioner, Ombudsman and member of the State Audit Commission;
- (2) judge, public prosecutor or high ranking official in accordance with the organic law on counter corruption.

Section 271. Members of the House of Representatives of not less than one-fourth of the total number of the existing members of the House have the right to lodge with the President of the Senate a complaint in order to request the Senate to pass a resolution under section 274 removing the persons under section 270 from office. The said request shall clearly itemise circumstances in which such persons have allegedly committed the act.

Senators of not less than one-fourth of the total number of the existing members of the Senate have the right to lodge with the

President of the Senate a complaint in order to request the Senate to pass a resolution under section 274 removing a senator from office.

Voters of not less than twenty-thousand in number have the right to lodge a complaint in order to request the Senate to pass a resolution under section 164 removing the persons under section 270 from office.

Section 272. Upon receipt of the request under section 271, the President of the Senate shall refer the matter to the National Counter Corruption Commission for inquisition without delay.

When the inquisition is complete, the National Counter Corruption Commission shall prepare a report thereon for submission to the Senate. The said report shall clearly state whether, and to what extent, the accusation put in the request is prima facie case together with convincing evidences and shall state the resolutions therefor.

In the case where the National Counter Corruption Commission is of the opinion that the accusation put in the request is an important matter, the National Counter Corruption Commission may make a separate report specifically on the said accusation and refer it to the Senate in advance.

If the National Counter Corruption Commission passes a resolution by the votes of not less than one-half of the total number of the existing members that the accusation has a prima facie case, the holder of the position against whom the accusation has been made shall not, as from the date of such resolution, perform his duties until the Senate has passed its resolution. The President of the National Counter Corruption Commission shall submit the report,

existing documents and its opinion to the President of the Senate for proceeding in accordance with section 273 and to the Prosecutor General for instituting prosecution in the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions. If the National Counter Corruption Commission is of the opinion that the accusation has no prima facie case, such accusation shall lapse.

In the case where the Prosecutor General is of the opinion that the report, documents and opinion submitted by the National Counter Corruption Commission under paragraph four are not so complete as to institute prosecution, the Prosecutor General shall notify the National Counter Corruption Commission for further proceedings and, for this purpose, the incomplete items shall be specified on the same occasion. In such case, the National Counter Corruption Commission and the Prosecutor General shall appoint a working committee, consisting of their representatives in an equal number, for collecting complete evidence and submit it to the Prosecutor General for further prosecution. In the case where the working committee is unable to reach a decision as to the prosecution, the National Counter Corruption Commission shall have the power to prosecute by itself or appoint a lawyer to prosecute on its behalf.

Section 273. Upon receipt of the report under section 272, the President of the Senate shall convoke a sitting of the Senate for considering the said matter without delay.

In the case where the National Counter Corruption Commission submits the report out of session of the Senate, the President of the Senate shall inform the President of the National Assembly in order

to tender a petition to the King for the issuance of a Royal Command convoking an extraordinary session of the National Assembly. The President of the Senate shall countersign the Royal Command.

Section 274. A senator shall have autonomy in casting a vote, which must be by secret ballot. A resolution for the removal of any person from office shall be passed by the votes of not less than three-fifths of the total number of the existing members of the Senate.

A person who is removed from office shall vacate office or be released from government service as from the date of the resolution of the Senate. Such person shall be deprived of the right to hold any political position or to serve in the government service for five years.

The resolution of the Senate under this section shall be final and no request for the removal of such person from office shall be made on the same ground, without, however, prejudice to the trial of the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions.

Part 4

Criminal Proceedings Against Persons Holding Political Positions

Section 275. In the case where the Prime Minister, a Minister, member of the House of Representatives, senator or other political official

has been accused of becoming unusually wealthy, or of the commission of malfeasance in office according to the Penal Code or a dishonest act in the performance of duties or corruption according to other laws, the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions shall have the competent jurisdiction to try and adjudicate the case.

The provisions of paragraph one shall also apply to the case where the said person or other person is a principal, an instigator or a supporter including a person who gives, asks to give or promises to give property or other benefits to the person under paragraph one with a view to induce him from acting or omitting or delaying an act resulting in a dishonest act in the performance of duties.

The submission of an accusation requesting the National Counter Corruption Commission to conduct the proceedings under section 250 (2) shall be in accordance with the organic law on counter corruption.

In the case where the accused under paragraph one is a person holding position of Prime Minister, Minister, President of the House of Representatives or President of the Senate, the person injured by such act may submit an accusation to the National Counter Corruption Commission to conduct the proceedings under section 250 (2) or to the Supreme Court of Justice to appoint, at its general meeting, an independent inquisitor under 276. If the injured person has submitted the said accusation to the National Counter Corruption Commission, he may submit the accusation to the Supreme Court of Justice only when the National Counter Corruption Commission refuses to accept the accusation for further inquisition, proceeds the

inquisition with materially delay or is of the opinion that the accusation has no prima facie case.

If the National Counter Corruption Commission is of the opinion that there is a ground under paragraph four and it has the resolution to conduct the proceedings under section 250 (2) by the votes of not less than one-half of the total number of its existing member, the National Counter Corruption Commission shall conduct the proceedings under section 250 (2) forthwith and, in such case, the injured person shall not submit an accusation to the Supreme Court of Justice under paragraph four.

The provisions of section 272 paragraph one, paragraph four and paragraph five shall apply mutatis mutandis.

Section 276. In the case where the Supreme Court of Justice, at its general meeting, is of the opinion that the submitted accusation should be proceeded under section 275 paragraph four, the Supreme Court of Justice, at its general meeting, may appoint an independent inquisitor from a person of apparent political impartiality and integrity or refer the matter to the National Counter Corruption Commission for inquisition under section 250 (2) in lieu of the appointment of an independent inquisitor.

Qualifications, powers and duties, inquisition and other necessary acts of an independent inquisitor shall be provided by law.

If the independent inquisitor, after inquiring into facts, summarising the case and preparing opinions, is of the opinion that accusation has prima facie case, he shall submit the report and existing documents together with its opinion to the President of the Senate for further

proceedings under section 273 and shall submit the inquisition file and opinion to the Prosecutor General to bring the case to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions. The provisions of section 272 paragraph five shall apply *mutatis mutandis*.

Section 277. In a trial, the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions shall rely on the file of the National Counter Corruption Commission or of the independent inquisitor, as the case may be, and may conduct an inquisition in order to obtain additional facts or evidence as it thinks fit.

The rules and procedure of the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions shall be as provided in the organic law on criminal proceedings against persons holding political positions, and the provisions of section 213 shall apply *mutatis mutandis* to the performance of duties of the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions.

The provisions on the immunity of members of the House of Representatives and senators under section 131 shall not apply to a trial of the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions.

Section 278. An adjudication of a case shall be made by a majority of votes; provided that every judge constituting the quorum shall prepare his written opinion and make oral statements to the meeting prior to the passing of a resolution.

Orders and decisions of the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions shall be disclosed and final, unless in case of paragraph three.

In the case where a person who has been sentenced by a judgement of the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions finds newly-discovered evidence which may alter the fact of the case materially, he may appeal to the general meeting of the Supreme Court of Justice within thirty days as from the date of rendering of a judgement of the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions.

An appeal and the consideration and adjudication of the general meeting of the Supreme Court of Justice shall be prescribed in the regulation laid down by the general meeting of the Supreme Court of Justice.

CHAPTER XIII

Ethics of Persons Holding Political Positions and State Officials

Section 279. Ethical standard of each kind of person holding political position, government official or State official shall be in accordance with the established Code of Ethics.

Ethical standard under paragraph one shall consist of mechanism and system that ensure its effective enforcement and shall have punishment procedure for each degree of violation.

Any violation or failure to comply with ethical standard under paragraph one is deemed to be in breach of discipline. In the case where a person holding political position violates or fails to comply therewith, the Ombudsmen shall report to the National Assembly, the Council of Ministers or related local assemblies, as the case may be, and shall refer the matter, in case of serious violation or failure, to the National Counter Corruption Commission for further proceedings and it is deemed the cause for removal from office under section 270.

The consideration, selection, scrutiny or appointment of any person to hold the position relating to the exercise of power of State power, including the transfer, promotion and elevation of the salary scale and punishment of such person shall be in accordance with merit system with due regard to ethical behaviour of that person.

Section 280. For the purpose of this Chapter, the Ombudsmen have the powers and duties in giving suggestion or recommendation in the making of or improving the Code of Ethics under section 279 paragraph one and enhances ethical consciousness of persons holding political positions, government officials and State officials, and have duties to report any violation of the Code of Ethics to the responsible person for the enforcement of the Code under section 279 paragraph three.

In the case where the violation or failure to comply with the ethical standard is made in a serious manner or there is a reasonable ground to believe that the responsible may act unfairly, the Ombudsmen may conduct inquisition and disclose the result thereof to the public.

CHAPTER XIV

Local Administration

Section 281. Subject to section 1, the State shall give autonomy to local government organisation with the principle of self-government according to the will of the people in a locality and shall encourage local government organisation to be the principal public services provider and to participate in rendering resolution to any problem occurs within its vicinity.

Any locality has a tendency to self-government shall have the right to be formed as a local government organisation as provided by law.

Section 282. The supervision of local government organisations shall be exercised in so far as it is necessary under the rules, procedure and conditions which are clear, expedient and appropriate for each type of local government organisation as provided by law but must be protecting local interest or the interests of the country as a whole, provided, at any rate, that it shall not substantially affect the principle of self-government according to the will of the people in the locality otherwise than as provided by law.

In the conduct of supervision under paragraph one, there shall be a supervision standard to be applied to local government organisations, upon their own selection, with regard to the appropriateness and difference of level of development and efficiency in the administration of each type of local government organisation without prejudice to capability of local government organisations in making

decision for the fulfillment of their requirements and there shall be a mechanism for the examination of performance thereof which is executed mainly by the people.

Section 283. Local government organisations have the powers and duties to maintain and provide, in general, public services for the benefit of the people in localities and enjoys autonomy in laying down policies, administration, provision of public services, personnel administration, finance and shall have powers and duties particularly on their own part with regard to the compliance with the development of Changwat and the country as a whole.

Local government organisations shall receive any promotion and support to strengthen their autonomous in administration and capability to response efficiently to requirements of the people in their localities, to develop locally financial system so as to provide all public services under their powers and duties and to establish or jointly establish organisations to provide public services under their powers and duties with a view to provide valuable and beneficial services to public thoroughly.

The shall be a law determining plans and process for decentralisation prescribing the delineation of powers and duties and the allocation of revenue between central and provincial administrations and local government organisation and between local government organisations themselves with due regard to an increasing of distributed powers along the capability of each type of local government organisation. In such case, an examination and evaluation system by the committee consisting of representatives of concerned government agencies,

representatives of local government organisations and qualified persons in an equal number shall be provided by law.

There shall be a law on local revenue prescribing powers and duties for the collection of taxes and other revenues of local government organisations and the provisions of which shall be in compliance with the nature of each type of taxes, the distribution of resources in public sector and the balance of revenue and expenditure of local government organisations. In such case, regard shall be had to level of economic development of localities, financial status of local government organisations and sustainability of State finance.

In the case where the delineation of powers and duties and the distribution of revenue to local government organisations has made, the committee under paragraph three shall review them every five years in order to consider the suitability of the delineation of powers and duties and the allocation of revenue previously made, having particular regard to the promotion of decentralisation.

The proceeding under paragraph five shall be effective when the approval of the Council of Ministers has been obtained and the National Assembly has been notified thereof.

Section 284. A local government organisation shall have a local assembly and local administrative committee or local administrators.

Members of a local assembly shall be elected.

A local administrative committee or local administrators shall be directly elected by the people or shall be from the approval of a local assembly.

An election of members of a local assembly and local administrative committee or local administrators who must be directly elected by the people shall be made by direct suffrage and secret ballot.

Members of a local assembly, local administrative committee or local administrators shall hold office for the period of four years.

A member of a local administrative committee or local administrator shall not be a government official holding a permanent position or receiving a salary or an official or employee of a government agency, State agency, State enterprise or local government organisation and shall not have any conflict of interest in the holding of position as provided by law.

The qualifications of the person having the right to vote and the person having the right to apply for candidacy in an election of members of a local assembly, members of a local administrative committee and local administrators and rules and procedure therefor shall be in accordance with the provisions of the law.

In the case where a local administrative committee has vacated office en masse or local administrators vacate office and a local administrative committee or local administrators must be temporarily appointed, the provisions of paragraph three and paragraph six shall not apply, as provided by law.

The establishment of the special local government organisation having different organisational structure from the provisions in this section shall be as provided by law, provided that a local administrative committee or local administrators thereof shall be elected.

The provisions of section 265, section 266, section 267 and section 268 shall apply mutatis mutandis to members of local assembly and

local administrative committee or local administrators.

Section 285. If persons having the right to vote in an election in any local government organisation consider that any member of the local assembly or any administrator of that local government organisation is not suitable to remain in office, such persons shall have the right to vote for removal of such member of the local assembly or any administrator from office. The number of persons having the right to lodge such request, rules and procedure for lodging a request, the examination of request and voting shall be provided by law.

Section 286. Persons having the right to vote in any local government organisation shall have the right to lodge with the President of the local assembly a request for the issuance by the local assembly of local ordinances.

The number of persons having the right to lodge such request, rules and procedure for lodging a request and the examination of request shall be provided by law.

Section 287. People in a locality have the right to participate in the administration of local government organisation and the local government organisation shall facilitate the people to have participation thereto.

In the case where any act of the local government organisation may be detrimental to way of life of the people within its locality materially, the local government organisation shall provide information

thereof to the people prior to the commencement of such act within a reasonable period. If it deems appropriate or upon the request of people having the rights to vote at an election in such locality, the local government organisation shall conduct public consultation on such matter before the commencement of such act or conduct the referendum for decision thereon as provided by law.

The local government organisation shall report to the public of its preparation of appropriation, expenditures and the result of the performance of its duties in each year with a view to enhance public examination and supervision of its administration.

The provisions of section 168 paragraph six shall apply mutatis mutandis to the preparation of appropriation of a local government organisation under paragraph three.

Section 288. The appointment and removal of officials and employees of a local government organisation shall be in accordance with the need of and suitability to each locality but personnel administration of local government organisations shall be based upon similar standard and it may be jointly developed or personnel transfer among local government organisations shall be made and it shall obtain prior approval from the Local Officials Committee, the central personnel administration of local government organisations, as provided by law.

There shall be the Local Officials Merit Protection Committee, in personnel administration of local government organisations, so as to establish and maintain merit and ethics protection system in personnel administration as provided by law.

The Local Officials Committee under paragraph one shall consist, in an equal number, of representatives of relevant government agencies, representatives of local government organisations and qualified persons possessing the qualifications as provided by law.

The transfer, promotion, increase of salaries and the punishment of the officials and employees of a local government organisation shall be in accordance with the provisions of law.

Section 289. A local government organisation has the duty to conserve local arts, custom, wisdom and good culture of locality.

A local government organisation has the right to provide education and professional training in accordance with the suitability to and the need of that locality and participate in the provision of education and training by State with regard to the compliance with the national education standard and system.

In providing education and training under paragraph two, the local government organisation shall also have regard to the conservation of local arts, custom, wisdom and good culture.

Section 290. A local government organisation has the powers and duties to promote and conserve the quality of the environment as provided by law.

The law under paragraph one shall at least contain the following matters as its substance:

- (1) the management, preservation and exploitation of the natural resources and environment in the area of the locality;

- (2) the participation in the preservation of natural resources and environment outside the area of the locality only in the case where the living of the inhabitants in the area may be affected;
- (3) the participation in considering the initiation of any project or activity outside the area of the locality which may affect the quality of the environment, health or sanitary conditions of the inhabitant in the area;
- (4) the participation of local community.

CHAPTER XV

Amendment of the Constitution

Section 291. An amendment of the Constitution may be made only under the rules and procedure as follows:

- (1) a motion for amendment must be proposed either by the Council of Ministers or members of the House of Representatives of not less than one-fifth of the total number of the existing members of the House of Representatives or members of both Houses of not less than one-fifth of the total number of the existing members thereof or persons having the right to votes of not less than fifty thousand in number under the law on the public submission of a bill;

A motion for amendment which has the effect of changing the democratic regime of government with the King as Head of State or changing the form of State shall be prohibited;

- (2) a motion for amendment must be proposed in the form of a draft Constitution Amendment and the National Assembly shall consider it in three readings;
- (3) the voting in the first reading for acceptance in principle shall be by roll call and open voting, and the amendment must be approved by votes of not less than one-half of the total number of the existing members of both Houses;
- (4) in the consideration section by section in the second reading, consultation with the people who submit a draft Constitution Amendment shall be held;

The voting in the second reading for consideration section by section shall be decided by a simple majority of votes;

- (5) at the conclusion of the second reading, there shall be an interval of fifteen days after which the National Assembly shall proceed with its third reading;
- (6) the voting in the third and final reading shall be by roll call and open voting, and its promulgation as the Constitution must be approved by votes of more than one-half of the total number of the existing members of both Houses;
- (7) after the resolution has been passed in accordance with the above rules and procedure, the draft Constitution Amendment shall be presented to the King, and the provisions of section 150 and section 151 shall apply *mutatis mutandis*.

Transitory Provisions

Section 292. The Privy Council holding office on the date of the promulgation of this Constitution shall be the Privy Council under the provisions of this Constitution.

Section 293. The National Legislative Assembly under the Constitution of the Kingdom of Thailand (Interim), B.E. 2549 shall act as the National Assembly, the House of Representatives and the Senate under the provisions of this Constitution until the first meeting of the National Assembly under section 127.

During the period under paragraph one, if the provisions of this Constitution or other laws prescribes that the President of the National Assembly, the President of the House of Representatives or the President of the Senate shall countersign the Royal Command, the President of the National Legislative Assembly shall countersign the Royal Command in lieu thereof.

At the initial period, if there is the first meeting of the National Assembly under section 127 but the Senate is unavailable, the National Legislative Assembly shall act as the Senate; except the consideration for appointment or removal any person from office under the provisions of this Constitution, until there is the Senate under this Constitution. In such case, any act done by the National Legislative Assembly during such period is deemed to be an act of the Senate and in the case where this Constitution or other laws prescribes that the President of the Senate shall countersign the Royal

Command, the President of the National Legislative Assembly shall countersign the Royal Command in lieu thereof.

The provisions of section 93, section 94, section 101, section 102, section 106, section 109, section 111, section 113, section 114, section 115, section 119, section 120, section 197 paragraph four and section 261 and the provisions of other laws which prohibit persons from holding political positions shall not apply to the holding of positions of members of the National Legislative Assembly.

The provisions of section 153 shall apply *mutatis mutandis* to the lapse of the National Legislative Assembly.

Section 294. The Constituent Assembly and the Constitution Drafting Commission under the Constitution of the Kingdom of Thailand (Interim), B.E. 2549 shall lapse on the date of the promulgation of this Constitution.

In order to deter conflict of interest, no member of the Constitution Drafting Commission shall apply for candidacy in an election of members of the House of Representatives or holding a position of senator within two years as from the date of vacation from office under paragraph one.

Section 295. The National Legislative Assembly shall complete the consideration of the organic law bill on election of members of the House of Representatives and acquisition of senators, the organic law bill on political parties and the organic law bill on Election Commission as submitted by the Constitution Drafting Commission within the period prescribed in the Constitution of the

Kingdom of Thailand (Interim), B.E. 2549.

In the case where the National Legislative Assembly is unable to finish the consideration of such organic law bills within the period under paragraph one, the President of the National Legislative Assembly shall present the organic law bills submitted by the Constitution Drafting Commission to the King for His signature within seven days as if the approval of the National Legislative Assembly is given thereto.

During the period the organic law on political parties and the organic law on Election Commission under paragraph one is not come into force, the Organic Law on Political Parties, B.E. 2541 and the Organic Law on Election Commission, B.E. 2541 shall still in force until the said organic laws come into force.

Section 296. The election of members of the House of Representatives under this Constitution shall be held within ninety days and the acquisition of senators under this Constitution shall be held within one hundred and fifty days as from the date the organic law under section 295 comes into force.

At the first general election of members of the House of Representatives after the promulgation of this Constitution, a person who is eligible to be a candidate in an election shall be member of only one political party for not less than thirty days up to the election day and, in such case, the period under section 101 (4) (a) shall be one year and the period under section 101 (4) (c) and (d) shall be two years.

At the initial period, the persons having been senators elected for

the first time under the Constitution of the Kingdom of Thailand, B.E. 2540 shall not hold positions of senators whom will be firstly acquired under this Constitution, and the provisions of section 115 (9) and section 116 paragraph two shall not apply to the persons whom elected for the last time under the Constitution of the Kingdom of Thailand, B.E. 2540.

Section 297. At the initial period, senators acquired upon the selection basis hold office for a term of three years as from the commencement of membership and the provisions prohibiting senators from holding office for more than one term shall not apply to such persons in the subsequence selection.

Section 298. The Council of Ministers carrying out the administration of State affairs on the date of promulgation of this Constitution shall be the Council of Ministers under this Constitution and shall vacate office en masse when the Council of Ministers appointed under this Constitution taking office.

The National Security Council under the Constitution of the Kingdom of Thailand (Interim), B.E. 2549 shall vacate office en masse at the time when the Council of Ministers carrying out the administration of State affairs on the date of promulgation of this Constitution vacate office.

The provisions of section 171 paragraph two, section 172, section 174 and section 182 (4), (7) and (8) shall not apply to the holding of office of the Prime Minister and Ministers carrying out the

administration of State affairs on the date of promulgation of this Constitution.

Section 299. The Ombudsmen holding positions on the date of promulgation of this Constitution shall be the Ombudsmen under this Constitution and shall be in offices until the expiration of the term of office. In such case, the term of office shall commence as from the date the appointment is made by the King and the Ombudsmen shall elect one among themselves to be the President of the Ombudsmen within sixty days as from the date of promulgation of this Constitution and the provisions of section 242 paragraph two and paragraph three shall apply *mutatis mutandis*.

Election Commissioners, members of the National Counter Corruption Commission and members of the National Economic and Social Council holding positions on the date of promulgation of this Constitution shall be in office until the expiration of the term of office and, in such case, the term of office shall commence as from the date of appointment.

Members of the National Human Rights Commission holding positions on the date of promulgation of this Constitution shall be in office until the appointment of the National Human Rights Commission under this Constitution. In the case where such persons hold office for not more than one year as from the date of promulgation of this Constitution, the provisions prohibiting members of the National Human Rights Commission from holding office for more than one term shall not apply to such persons in the first appointment of

members of the National Human Rights Commission under this Constitution.

The persons under this section shall continue the performance of duties under the organic laws or other relevant laws which are in force on the date of promulgation of this Constitution until the enactment of the organic laws or other laws for the compliance with this Constitution, unless the provisions thereof are contrary to or inconsistent with the provisions of this Constitution, the provisions of this Constitution shall replace.

Section 300. The Constitutional Tribunal under the Constitution of the Kingdom of Thailand (Interim), B.E. 2549 shall be the Constitutional Court under this Constitution and the person holding the position of President of the Supreme Court of Justice shall be the President of the Constitutional Court, the person holding the position of President of the Supreme Administrative Court shall be the Vice-President of the Constitutional Court and the judges of the Supreme Court of Justice and of the Supreme Administrative Court selected under section 35 of the Constitution of the Kingdom of Thailand (Interim), B.E. 2549 shall be judges of the Constitutional Court until the appointment of the Constitutional Court under this Constitution which shall finish within one hundred and fifty days as from the date of appointment of the President of the House of Representatives and the Leader of the Opposition in the House of Representatives after the first general election of members of the House of Representatives under this Constitution.

The provisions of section 205 (3), section 207 (1) and (2) and section 209 (5) shall not apply to the holding of position of the judges of the Constitutional Court under paragraph one.

The provisions of section 35 paragraph two, paragraph three and paragraph four of the Constitution of the Kingdom of Thailand (Interim), B.E. 2549 shall continue in force until the enactment of the organic law on rules and procedure of the Constitutional Court.

All cases or acts under the consideration of the Constitutional Tribunal under paragraph one shall be considered by the Constitutional Court under this section and when the Constitutional Court under this Constitution is appointed, all pending cases or acts shall be in the jurisdiction of the newly appointed Constitutional Court.

During the period the organic law on rules and procedure of the Constitutional Court is not yet enacted, the Constitutional Court has the powers to prescribe a determination related to its trial and rendering of decisions but such organic law shall be enacted within one year as from the date of promulgation of this Constitution.

Section 301. The selection for the State Audit Commission and the Auditor-General shall finish within one hundred and twenty days as from the date of appointment of the President of the House of Representatives and the Leader of the Opposition in the House of Representatives after the first general election of members of the House of Representatives under this Constitution and, if the President of the Constitutional Court from the selection proceedings under this Constitution does not exist, the Selective Committee shall consist of the existing members.

In the case where the State Audit Commission does not exist, the Auditor-General shall act as the President of the State Audit Commission and the State Audit Commission.

Section 302. The following organic laws shall continue in force under the conditions under this section:

- (1) Organic Law on Ombudsmen, B.E. 2542 and the President of the Ombudsmen shall have charge and control of the execution of this Organic Law;
- (2) Organic Law on Counter Corruption, B.E. 2542 and the Chairperson of the National Counter Corruption Commission shall have charge and control of the execution of this Organic Law;
- (3) Organic Law on State Audit, B.E. 2542 and the Chairperson of the State Audit Commission shall have charge and control of the execution of this Organic Law;
- (4) Organic Law on Criminal Proceeding Against Persons Holding Political Positions, B.E. 2542 and the President of the Supreme Court of Justice shall have charge and control of the execution of this Organic Law.

Amendment to the organic laws by the Acts promulgated during the period the Constitution of the Kingdom of Thailand (Interim), B.E. 2549 being in force is deemed to be made by the organic laws under this Constitution.

Persons having charge and control of the execution of the organic laws under paragraph one shall cause revision to the organic laws for the compliance with this Constitution within one year as from the date of promulgation of this Constitution or, in the case where the person having charge and control of the execution of such organic law does not exist, the period of one year shall commence as from the date of appointment of such person.

The House of Representatives shall complete the consideration of the organic law bills under this section within one hundred and twenty days as from the date of receipt of such organic law bills and the Senate shall finish its consideration thereon within ninety days as from the date of receipt of such organic law bills.

A resolution approves such amendment or disapproves the organic law bills under paragraph one shall be made by the votes of not less than one-half of the total members of each House.

The Election Commission shall prepare the organic law bill on referendum for the compliance with this Constitution and the provisions in paragraph three, paragraph four and paragraph five shall apply *mutatis mutandis*.

Section 303. At the initial period, the Council of Ministers taking office after the first general election under this Constitution shall cause a preparation or amendment to laws in the matters and within the specific period as follows:

- (1) laws related to the determination of measures for supporting and protecting rights and liberties under section 40, section 44,

Freedom of Expression of Individual and the Press in Part 7, Rights and Liberties in Education in Part 8, Rights to Public Health Services and Welfare in Part 9 and Rights to Information and Petition in Part 10 as well as laws on personal data under section 56, Community Rights in Part 12, law establishing autonomous consumer protection organisation under section 61 paragraph two, law on political development council under section 78 (7), law establishing organisation for reforming the judicial process under section 81 (4), law establishing farmer council under section 84 (8), law establishing civil politics development fund under section 87 (4) and law on National Human Rights Commission under section 256; within one year as from the date its policies is stated to the National Assembly under section 176;

- (2) law for the development of national education under section 80 which promotes formal education, non-formal education, education-at-will, self-learning, life-long learning, community college or other forms of education and causes amendment to law for determining agencies to be responsible for the provision of education appropriately and in conformity with all levels of all education systems of basic education; within one year as from the date its policies is stated to the National Assembly under section 176;
- (3) law under section 190 paragraph five which consists of, at least, detailed measure and procedure for the conclusion of treaty having system for the balancing of powers thereon

between the Council of Ministers and the National Assembly and securing transparency, efficiency and actual public participation, and details of studies or researches conducted independently before the commencement of negotiation in which there is no conflict of interests between interests of State and the of researchers through the binding period of the treaty; within one year as from the date its policies is stated to the National Assembly under section 176;

(4) law under section 86 (1) and section 167 paragraph three; within two years as from the date its policies is stated to the National Assembly under section 176;

(5) law determining plans and process for decentralisation, law on local revenue, law on establishment of local government organisation, law on local officials and other laws as referred to in Chapter XIV Local Administration for the compliance with this Constitution; within two years as from the date its policies is stated to the National Assembly under section 176. Such law may be complied in form of Local Administration Code.

In the case where the laws enacted before the date of promulgation of this Constitution have compatible substances with this Constitution, the execution of this section to such laws is exempted.

Section 304. The Code of Ethics under section 279 shall finish within one year as from the date of promulgation of the Constitution.

Section 305. At the initial period, the some provisions of this Constitution shall not apply to specific cases under specific conditions as follows:

- (1) the provisions of section 47 paragraph two shall not apply until the enactment of the law under section 47 to establish the regulatory body having duty to distribute the frequencies and supervise radio and television broadcasting and telecommunication businesses which shall not more than one hundred and eighty days as from the date the government policies is stated to the National Assembly. Such law shall, at least, establish specialised committees within such regulatory body whereby one of which for supervision of radio or television broadcasting and the other one for supervision of telecommunication businesses and they work apart, and shall have details on the supervision and protection of business, the establishment of telecommunication resources development fund and the promotion of public participation in running of public mass media, but the aforesaid shall not affect the permissions, concessions or legal contracts concluded before the date of promulgation of this Constitution until the termination of such permissions, concessions or contracts;
- (2) subject to section 296 paragraph three, the provisions of section 102 (10) particularly to the requirement on having been senator, section 115 (9) and section 116 paragraph two shall not apply to the first election of members of the House of Representatives and the holding of political positions at the first time under this

Constitution;

- (3) the provisions of section 141 shall not apply to the enactment of the organic law under section 295;
- (4) the provisions of section 167 paragraph one and paragraph two, section 168 paragraph nine, section 169 particularly to the requirement on the determination of sources of income for reimbursement of expenditures paid-up from the treasury balance, and section 170 shall not apply within one year as from the date of promulgation of this Constitution;
- (5) any act in relation to the conclusion or implementation of treaty which have been done prior to the date of promulgation of this Constitution shall be valid and the provisions of section 190 paragraph three shall not apply; provided, at any rate, that the provisions of section 190 paragraph three shall apply to the pending procedure that must be continued;
- (6) the provisions of section 209 (2) shall not apply to members of the National Human Rights Commission holding office on the date of promulgation of this Constitution;
- (7) the provisions of section 255 paragraph five and section 288 paragraph three shall not apply within one year as from the date of promulgation of this Constitution.

Section 306. At the initial period, judges of the Supreme Court of Justice having held positions of not lower than judges of the Supreme Court of Justice who turn to sixty years of age in the fiscal year

2550 shall perform the duties of senior judges in the Supreme Court of Justice under section 219 until the amendment of law prescribing rules for the performance of duties of senior judges.

Within one year as from the date of promulgation of this Constitution, there shall enact the law extending term of office of judges of the Courts of Justice to seventy years of age and a judge of the Courts of Justice who turns to sixty years of age or more in any fiscal year, performs of duties for not less than twenty years and passes the performance capability test may request to hold the office of senior judge in the Courts of not higher than the Court he held his last office.

The law to be enacted under paragraph one and paragraph two shall have the provisions that persons who turn to sixty years of age or more in any fiscal year, within the first ten years as from the date such law come into force, gradually and continually vacate their offices and enable such persons to make a request for holding the office of senior judge.

The provisions of paragraph two and paragraph three shall apply *mutatis mutandis* to public prosecutors.

Section 307. Qualified members of the Judicial Commission of the Courts of Justice holding office on the date of promulgation of this Constitution shall remain in office; except a qualified member who turns to sixty years of age in the fiscal year 2550 and a qualified member in any level of the Courts who transferred from the such level of the Court, but not more than one hundred and eighty days as from the date of promulgation of this Constitution.

Section 308. The Council of Ministers carrying out the administration of State affairs on the date of promulgation of this Constitution shall appoint the independent Law Reform Committee within ninety days as from the date of promulgation of this Constitution having duties to study and give recommendation on the preparation of laws to be enacted for the compliance with this Constitution and to prepare the law establishing the law reform organisation under section 81 (3) within one year as from the date of promulgation of this Constitution and such law shall have, at least, the provisions that entrusting to such organisation a duty to support the preparation of bills of persons having the right to vote in an election.

The execution under paragraph one is not prejudice to the powers and duties of other organisations in the preparation of bills under their responsibilities.

Section 309. Any act that its legality and constitutionality has been recognised by the Constitution of the Kingdom of Thailand (Interim), B.E. 2549, including all acts related therewith committed whether before or after the date of promulgation of this Constitution shall be deemed constitutionally under this Constitution.

Countersigned by:

Meechai Ruchuphan

President of the National Legislative Assembly