

PERSPECTIVE

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Singapore | 26 July 2016

Thailand’s Political Future Remains Uncertain

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EXECUTIVE SUMMARY

- Thailand’s 7 August referendum will not only decide the fate of the draft constitution but also be a critical test of the junta’s legitimacy.
- The draft constitution aims to entrench the power of the military and traditional elite, and if it passes the referendum, Thailand will move toward semi-authoritarianism guided by the military.
- With the army’s power embedded in the constitution, backed by the Constitutional Court’s “state of exception” powers, the traditional elites would in effect have designed new mechanisms to seize power without resorting to a military coup.
- The poll remains too close to call, but if the Democrat Party announces unequivocally and publicly that it rejects the draft, it is likely that the draft constitution will fail to pass.

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INTRODUCTION

On 7 August 2016, Thais will vote on the draft of their country's twentieth constitution. The referendum will be a critical test of the junta's legitimacy after two years in power. The constitution was drafted by a junta-appointed committee and aims to entrench the power of the military and unelected elites at the expense of political parties and the electoral majority electorate.

If the draft constitution passes the referendum, Thailand will move towards semi-authoritarianism guided by the military. Such a result will also shore up the ruling junta's legitimacy to rule. If it is rejected, there are several possible consequences.

According to the interim constitution written by the coup leaders, the military government will remain in power regardless of the referendum result. However, an overwhelming "no" vote would diminish the legitimacy of the junta and the traditional elites who have backed the regime. The anti-coup coalition may also be resuscitated if the draft constitution is resoundingly rejected. The stakes are thus high for Prime Minister Prayuth Chan-o-cha.

In the run-up to the referendum, the junta imposed suppressive measures to silence dissidents. Public debates and seminars were banned, campaigning against the draft charter was strictly prohibited, and campaigners were arrested and detained. In resorting to such measures, Thailand's military rulers were in fact undermining the referendum's legitimacy and their own draft constitution. The new constitution that emerges from this referendum may be a potential source of conflict exacerbation rather than of conflict resolution. This will plunge Thailand into a state of uncertainty once again.

FROM COUP TO CONSTITUTION

The National Council for Peace and Order (NCPO) junta led by General Prayuth came to power in May 2014 after it toppled the elected government of Yingluck Shinawatra, sister of former Prime Minister Thaksin. This coup returned to Thailand military authoritarian rule similar to that of strongman Field Marshall Sarit Thanarat's in the late 1950s and early 1960s. Prayuth's premiership brought back the old model of "bureaucratic polity" in which the bureaucracy and military cooperate to dominate politics under the auspices of the monarchy. The military has established itself as the new ruling elite by enhancing its scope of power, budget and size. It has also sought to maintain its dominance by weakening majoritarian democracy and undermining the influence of political parties and civil society.²

To understand the motives of the military, it is important to understand the socio-political context that Thailand has been in since 2006. The military has been seeking to protect its own interests in the face of three perceived threats believed to have the potential to destabilize established political structures. The first is the delicate matter of royal succession, which could affect the privilege and power of the royalist elites, including the

² "Interview with Prajak Kongkirati," *Prachatai English*, 10 May 2016
<http://www.google.com.sg/url?url=http://www.prachatai.com/english/node/6137&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKEwjly8DMvPzNAhWHvo8KHTObCTgQFggTMAA&usg=AFQjCNF601CWIFVJ5N6wDbnVZVA-n42Q5g> (accessed 1 July 2016).

military. The second is the emergence since the 2001 elections of strong political parties that enjoy mass support from rural and less affluent urban voters. Last but not least is the birth of mass politics premised on ideological interests and marked by violent extra-parliamentary activism and colour-coded movements. Collectively, these three factors have compelled the military to reassert its position and influence.

Against this background, the junta's coup in 2014 sought to smoothen the succession process, to weaken political parties, to suppress mass movements and to stop street politics. Elected politicians and mass movements needed to be subdued to quell their threat to the old establishment. As such, the draft constitution is one of the National Council for Peace and Order's most important mechanisms for keeping the power and status of traditional elites intact while, at the same time, maintaining a façade of democracy domestically and internationally.

MILITARY-GUIDED SEMI-AUTHORITARIANISM

The draft constitution, written by the Constitution Drafting Commission (CDC), is the junta's second attempt to rewrite the rules of the game after it dismantled the 2007 constitution. The previous draft was rejected by the junta-appointed National Reform Council in September 2015, and it is suspected that the junta leaders aborted their own draft in order to prolong their stay in power.³ The NCPO then appointed another 21-member commission led by ultraconservative lawyer Meechai Ruchupan. The drafting process under Meechai lacked public involvement, while reportedly accommodating advice from the NCPO. On 29 March 2016, Meechai's commission released the draft to the public.⁴

Some observers opine that this draft constitution will return Thailand to the 1980-88 regime of "semi-democracy" of General Prem Tinsulanond, the current chairman of the Privy Council.⁵ However, this view does not help us understand the political vision of the current junta. The so-called "semi-democratic system" was a product of the 1978 constitution in which elected and unelected power holders co-existed side by side in the assembly and government. It allowed for an unelected prime minister and an appointed senate so that the military and traditional elites to retain power within the parliamentary system. These two mechanisms may be revived in the 2016 draft charter, but the 1978 constitution reflected the willingness of the army to compromise and adapt to the changing political environment, which saw the rise of a business class demanding participation in state affairs. The 2016 draft charter, on the contrary, demonstrates the refusal of the army to adapt to the new political landscape that had developed since the early 2000s.

The current draft constitution also aims to re-centralize state power by increasing the duties and power of the bureaucracy at the expense of civil society and the elected local administration. Besides the junta-appointed senate, independent organizations such as the election commission, the Constitutional Court, and the anti-corruption commission will function as checks on elected governments. Such organizations did not exist in the Prem

³ *Kom Chad Luek*, 6 September 2015.

⁴ *Matichon*, 29 January 2016.

⁵ See, for example, Thitinan Pongsudhirak, "Can we have 'Premocracy 2.0' in the 2010s?" *Bangkok Post*, 1 April 2016; *Thai Rath*, 30 March 2016.

era, and have been powerful actors that can paralyze or even bring down popularly elected administrations, as has been witnessed since 2006.

WHAT IS THE 2016 DRAFT CONSTITUTION LIKE?

The 2016 draft constitution has 16 chapters and 279 articles.⁶ To understand the political structure that it will create, a number of issues should be highlighted.

1. The Executive and the Legislative: The 2016 constitution will establish a bicameral National Assembly consisting of an elected House of Representatives (500 members) and an appointed Senate (250 members). The lower house's term is four years, while the Senate's is five years. The NCPO has the authority to handpick the first Senate in which six seats are reserved for heads of the security forces.⁷ NCPO leaders claim that the incorporation of the security forces into the Senate will prevent another military coup.⁸ In the first draft, there was no provision for the Senate to select the prime minister. However, for this referendum, a second question was inserted at the last minute regarding the Senate's right to choose the prime minister in joint session with the lower house. Section 272 of the draft constitution does in fact allow for a non-elected prime minister.
2. A new electoral system and a fragmented party system: Meechai's commission has changed the electoral system to a so-called mixed member apportionment system (MMA). Under the MMA system, there are 350 constituency seats and 150 party list seats. Instead of casting two separate votes, voters will now cast only one vote and that vote will count as both a vote for the chosen candidate and for that candidate's party for the party list seats. The total share of seats of any party is determined by the total number of votes that the party receives nationwide via the constituency vote. This electoral system will potentially fragment the party system and make it difficult for any party to win a clear majority. Weak coalition governments will thus be the likely outcome. The system will help medium-sized parties at the cost of large and small ones. Some scholars running a simulation using the 2011 election results to test the new system found Phuea Thai to be the biggest loser, with its number of seats reduced from 265 to only 225. Meanwhile, the Democrats received roughly the same number of seats, while the biggest winners were medium-sized parties like Bhum Jai Thai, Chart Pattana Phuea Phaendin and Chart Thai Pattana.⁹ There is a widely shared belief that the junta plans to co-opt these medium-sized parties in the

⁶ See the unofficial translation of the draft at http://www.un.or.th/wp-content/uploads/2016/06/2016_Thailand-Draft-Constitution_EnglishTranslation_Full_Formatted_vFina....pdf (accessed 3 July 2016).

⁷ After 5 years, the senate will be appointed by a selection committee comprised of nominated professional groups.

⁸ *Khaosod*, 17 March 2016.

⁹ Allen Hicken and Bangkok Pundit, "The Effects of Thailand's Proposed Electoral System," 9 February 2016, <http://www.thaidatapoints.com/project-updates/theeffectsofthailandsproposedelectoralsystembyallenhickenandbangkokpundit> (accessed 1 July 2016).

next elections. With this co-optation and the 250 votes from the Senate, the junta should be able to decide on the next prime minister.

3. **Weak parliament and government:** Government and executive leaders may be easily disqualified. The government's budget will be monitored and may be constrained by the independent organizations. The implementation of policies may also be constrained by various unelected institutions. Moreover, the government will not be able to implement any policy that contradicts the twenty-year national reform strategic plan laid out by the NCPO.

Empowered independent organizations: Unelected independent organizations, in particular the Constitutional Court, are granted wide-ranging powers to control the government and political parties. **Constitutional court:** According to Section 5, if the constitution and the government are compromised during a crisis, the Constitutional Court can convene a special joint meeting. This meeting will comprise the president of the House of Representatives, the opposition leader in the House of Representatives, the president of the Senate, the prime minister, the president of the Supreme Court, the president of the Supreme Administrative Court, the president of the Constitutional Court, and the presidents of independent organizations. It will be empowered to make decisions on behalf of the government, and this may include temporarily abrogating constitutional rule. In practical terms, the Constitutional Court will act as a sovereign that can determine the nature of the crisis by calling a "state of exception" and make decisions that are binding on all state actors.

4. **Amendments:** Section 255 of the draft constitution will make amendments a difficult process. Any small party can block such attempts. Furthermore, the Constitutional Court has the authority to decide which section may or may not be amended. Furthermore, several chapters may not be amended without a referendum.
5. **The NCPO's Power:** After the constitution is promulgated, the NCPO will remain in power under the interim constitution's controversial Article 44 until the new cabinet assumes power. This allows the NCPO to postpone or cancel the next elections.

If the draft constitution is approved and the second referendum question is answered positively, it is highly likely that Thailand will have an unelected prime minister chosen by the NCPO. However, if the draft constitution passes but voters reject giving the Senate power to vote for the prime minister, Thailand will have an unstable coalition government and an elected but weak prime minister. Any elected government formed by any party will come under the control of unelected minority elites, with the military at the top of the power structure. With the power of the military embedded in the constitution along with the "state of exception" option given to the Constitutional Court, traditional elites would in effect have thus designed a mechanism to remain power without resorting to a coup.

RESPONSES FROM POLITICAL PARTIES AND CIVIC GROUPS

The Phuea Thai Party and the Red Shirts have rejected the draft as undemocratic. The Democrat Party opposes the idea of having the appointed Senate select the prime minister. Abhisit Vejjajiva, the Democrat party leader, said the draft is a step backward in terms of civil liberties and democracy. A network of 70 civil society groups publicly oppose the draft as it restricts the rights of citizens while giving too much power to the bureaucracy.¹⁰ The only two groups to express support for the draft constitution are the medium-sized parties that will gain from the new electoral system and the Yellow Shirts—the People’s Committee for Complete Democracy under the Constitutional Monarchy (PDRC) led by Suthep Thaugsuban.

The polls remain too close to call, but if the Democrat Party announces unequivocally and publicly that it rejects the draft, it is likely that the draft constitution will fail to pass. High voter turnout in the northeastern regions, the stronghold of Phuea Thai and the Red Shirts, will likely see the draft charter being rejected.¹¹

CONCLUSION

Prime Minister Prayuth has vowed that his government will hold general elections by late 2017 regardless of the referendum’s outcome. He explained that if the draft charter is voted down in the referendum, the NCPO will come up with a new draft and enact it without a referendum. Meechai has told Thais to accept this draft because rejection may result in a worse charter.¹²

Despite the junta’s promises, Thailand’s political future remains uncertain. The process towards elections has been delayed several times since the NCPO took power in 2014, and it may be delayed yet again, depending on the political atmosphere and the timing of the royal succession. The 2014 coup was fundamentally a coup by the army, for military-royal dominance, and the junta is thus determined to remain in power until it can be certain that this dominance is ensured. The referendum’s outcome will not significantly change the direction and structure of Thai politics as the country will remain under military control. Nevertheless, it will affect the legitimacy and popularity of the junta. An overwhelming vote against the draft constitution will greatly diminish the legitimacy of the NCPO and the Prayuth government. It will also send a strong signal to the junta that it cannot unilaterally impose a new political regime on Thailand without a genuinely participatory process.

The broader question for Thailand is how to move beyond military authoritarianism and get back on the track towards democratic development. However, until a new consensus is

¹⁰ *Matichon*, 7 April 2016.

¹¹ In the 2007 constitutional referendum, in which the constitution was approved with 56.69 percent, 61.67 percent of northeast voters rejected the constitution, but the voter turnout is only 54.39, lowest in the country. See

http://www.thprc.org/files/summary_of_referendum_thaicn50.pdf (accessed 4 July 2016).

¹² *Thai Rath*, 10 July 2016.

forged among opposing political parties and civil society groups, the prospect for a return to civilian rule remains dim.

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