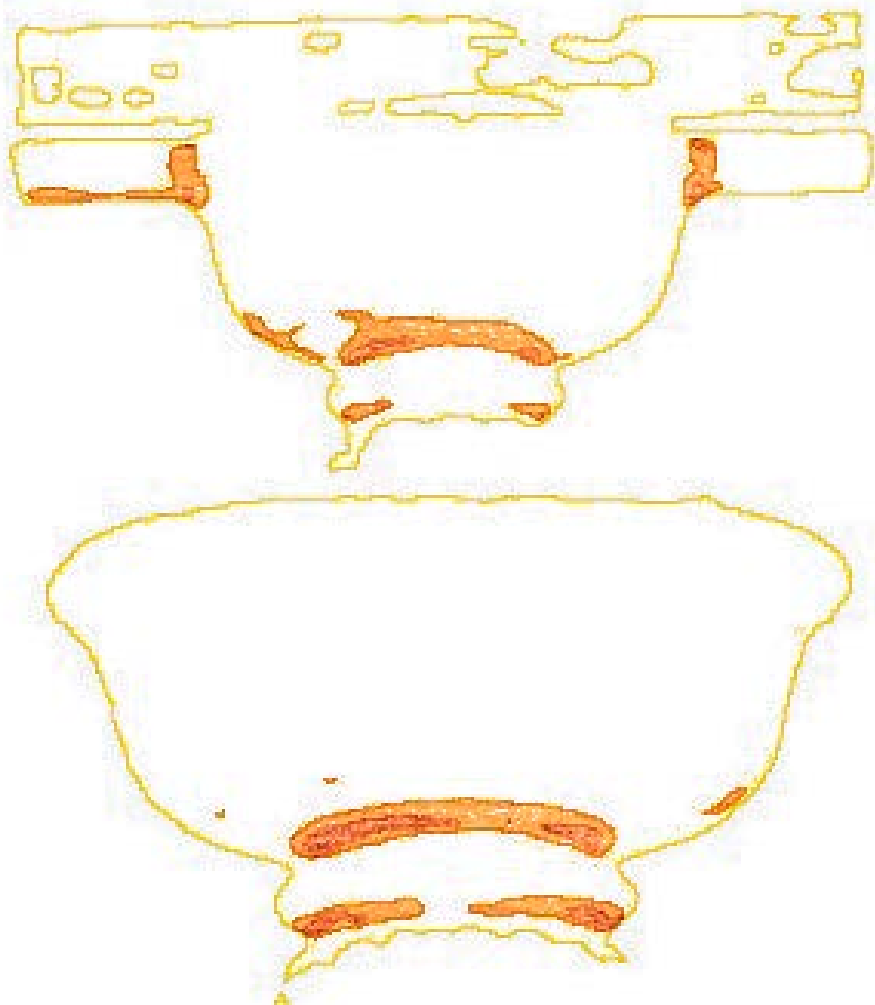

Summary of the Standing Provisions of the Draft Constitution of the Kingdom of Thailand



Pakorn Nilrapunt

Deputy Secretary-General of the Council of State
Member and 1st Secretary of the Constitution Drafting
Committee

© 2016

Printed by
Publishing Section
Office of the Council of State
1 Phanon Phra Atit,
Phranakhon,
Bangkok 10200
Thailand.
©2016

Summary of the Standing Provisions of the Draft Constitution of the Kingdom of Thailand¹

By Pakorn Nilprapunt
Deputy Secretary-General of the Council of State
Member and 1st Secretary of the
Constitution Drafting Committee

Form of State:

Thailand is one and indivisible Kingdom.

Form of Administration:

Thailand adopt the democratic regime of government with the King as Head of State.

Sovereign Power:

Sovereign power belongs to Thai people and the King exercises such power through the National Assembly, the Council of Ministers and the Courts in accordance with the provisions of the Constitution.

Exercising of Sovereign Power:

All State's organs as mentioned above as well as independence organization and State's agencies shall act in compliance with the provisions of the Constitution, law and the Rule of Law for the benefit of the nation and well-being of Thai people. This

¹In this article, singular includes plural, and masculine includes feminine

provision is therefore not prejudice to the power of all State's organs to perform any matter which is not prohibited by the Constitution and law if such performance is beneficial to public.

Human Dignity and Equality:

1. Human dignity, right, liberty and equality of the people shall be protected.
2. All Thai people shall be protected under the Constitution equally.

Supremacy of the Constitution:

1. The Constitution is the supreme law of the State. Any provision of law, rule or regulation or any act which is contrary to, or inconsistent with, the provision of the Constitution is unenforceable.
2. If there is no provision of this Constitution to apply with any matter, the President of the Constitutional Court shall organize joint meeting of the President of the House of Representatives, the President of the Senate, the Prime Minister, the President of the Supreme Court of Justice, the President of the Supreme Administrative Court, the President of the Constitutional Court and the Presidents of all independence organizations to consider such matter along with the Constitutional Convention of the Kingdom of Thailand. The decision of the joint sitting shall be final and binding the National Legislative Assembly, the Council of Ministers, the Courts and all independence organizations and State agencies.

The King:

1. The King shall be enthroned in a position of revered worship and shall not be violated.
2. No person shall expose the King to any sort of accusation or action.
3. The King is a Buddhist and Upholder of religions.
4. The King holds the position of Head of the Thai Armed Forces.

Right and Liberty of the Thai People:

1. Right and liberty of Thai people and community right under the 1997 and 2007 Constitutions such as right in person, freedom of religions, freedom of expression, freedom of speech, freedom of the press, academic freedom, family right, property right, privacy right, right to public information, right to petition, freedom of association, freedom of peaceful assembly, consumer right, right to conserve and protect local wisdom, art and culture, natural resources and environment, political right, right to public service etc. are relatively guaranteed by this Constitution. It is for the first time in Thai Constitution that accord special protection and assistance to mother during a reasonable period before and after child birth.
2. Additionally, this Constitution guarantees right and liberty of Thai people to the greatest extent by imposing that in addition to the significant right and liberty as specifically prescribed by the Constitution, the people has the right to freedom to do any act he desires if it is not prohibited or restricted by the Constitution or law.

3. The exercising of right and liberty by individual or community under the Constitution shall, however, be accountable to public. No one shall exercise his right or liberty in the manner that may affect public security or safety, public order or good moral and right and liberty of others. A person whose right or liberty is violated shall have the right to bring the case against the violator to the court directly.

4. To secure right and liberty of individual from abusiveness, any law to prohibit or restrict right and liberty of people and community shall:

- be in accordance with the provision of the Constitution;
- not be contrary to, or inconsistent with, the Rule of Law;
- not causing harm to human dignity;
- restrict right or liberty of individual necessarily and proportionately;
- clarify justification and necessity for the restriction of such right and liberty;
- be applied indiscriminately.

5. The Constitutional Court shall have the duty to examine the constitutionality of law.

Duty of Thai People:

All Thai shall:

- protect the country, religions and the Monarchy;
- uphold democratic regime of government with the King as the Head of State;
- comply with law;
- attend compulsory education;

- serve military service;
- respect right and liberty of others and do not advocate any hatred in the society;
- exercise voting right independently with free will;
- provide corporation for the conservation and protection of environment, natural resources, biological diversity and cultural heritage;
- pay taxes as provided by law;
- counter corruption in all forms.

Duty of State:

1. The past Constitutions contained only the provisions on the fundamental policy of the State as a very broad guideline for State administration and left each government the discretion to do what it thought appropriate. In practice, such important elements for national development as education and public health and for strengthening democracy as public participation, openness and transparency had always been set at low priority however. The result thereof produces negative impact for the country as a whole.

2. This Constitution for the first time then adds the urgent priorities that the government “must do” for long term development of the country in the Duty of State Chapter so as to ensure that all these fundamental matters for national development shall have to be implemented continually by the governments.

3. The important State Duties are: *viz.*

- maintaining national security and public safety;
- maintaining law and order;

- providing special care for the best development of 1-3 years kids and shall provide free education for all children from kindergarten through secondary school or Grade 9 (Totally 12 years). All sorts of education after compulsory education shall be equally assessable to all upon voluntary basis. Education fund for supporting the taking care of 1-3 years kids and for the provision of after compulsory education shall be established so as to reduce inequality in education between who have and who have not. There is no provision of the Constitution that prevent the State from providing free education or any other assistance for people who eagers to learn after compulsory education if the government thinks it is appropriate. All education shall be directed to the full development of personality of each learner and shall aspire all learners to have civic consciousness, to be proud of being Thai and to be responsible to family, community, society and the nation.
- providing quality public health service thoroughly, and free public health service shall be provided for the people who have not as provided by law. Thai traditional medicine shall be promoted;
- providing necessary public utility in accordance with the principle of sustainable development, and fee to be collected therefrom shall be at reasonable rate;
- conserving and preserving natural resources and environment as well as biological diversity. The utilization of natural resources shall produce the least impact to the people, community and biological diversity;

- conducting public consultation with related stakeholders and the public if any act or project or the granting of any permission may produce serious adverse impact to environment, health, quality of life of the people or community. ERIA is mandatory required prior to the beginning of the project or the granting of permission and fair and appropriate remedies shall be provided to the interested stakeholders without delay;
- conserving and preserving local and national arts and cultures, and public space for the performance of arts and cultures shall be arranged. The State shall enhance participation of individual, local community and local administration on this matter;
- facilitating the public to access information in possession of the State other than confidential information as prescribed by law so as to enhance transparency and accountability in public sector;
- protecting consumer rights and strengthen consumer network for the purpose of consumer protection;
- maintaining public finance discipline;
- counter corruption in all forms and provide efficient protection to whistle blowers.

Policy of the State:

1. Policy of the State under this Constitution is different from that of the forerunners. It is not a set of broad guidelines for State administration as ever, but it becomes the commitment by which all governments have to comply with.

2. The important State policies are: *viz.*

- causing to have, with public consultation, the National Strategic Plan for sustainable development of the country in the long run;
- strengthening international relation with other States and international organizations upon the basis of reciprocity and non-interference of internal affairs;
- causing to reorganize justice administration with a view to provide justice without delay and at reasonable cost. The poor shall obtain legal aids and remedy as provided by law. All officers through the judicial process shall be guaranteed of their impartiality in the performance of duty;
- strengthening protection of Buddhism which is the religion upheld by most of Thai for very long time;
- encouraging research and development as well as innovation;
- promoting all Thai ethnic groups to live their lives in accordance with their conventional custom and culture;
- strengthening the family which is the natural and fundamental group unit of the society, cause to have affordable and appropriate housing for the people, enhance quality of lives of the people and encourage the development of quality of human resource;
- promoting minor, youth, women, elderly, disable and the poor to live their lives appropriately and protect them from all sorts of violence or unfair treatment. The injured person shall be rehabilitated and compensated;
- preparing government budget fairly with due regard to the difference of gender, age and conditions of person;

- causing to reform economic structure of the country upon the concept of fair, inclusive and sustainable growth and the philosophy of sufficient economy;
- causing to have better legislation for better lives through the *ex ante* assessment (Regulatory Impact Assessment: RIA) of all draft legislations and *ex post* evaluation of all existing legislations.

etc.

The Legislatives:

1. The parliamentary system of Thailand under the Constitution bases upon bicameral basis, the House of Representatives and the Senate. All bill shall be introduced to the House of Representatives and then forward to, upon the approval of the House of Representatives, the Senate for consideration. The bill approved by the both Houses shall be submitted to the King for His resignation and it shall come into force upon its publication in the Government Gazette.

2. The House of Representatives consists of 500 members (MP) by which 350 MP are the persons winning direct vote in each constituency upon the basis of first past the post while the remaining come from party list basis. In calculation of the number of MP from party list basis in which each political party should have, popularity of each political party shall be the ground for calculation. In this case, all votes that each political party obtained in the general election shall be brought into calculation. A political party which occupies the seats of MP upon the basis of first past the post more than the number of MP that such political party should have from the calculation shall not be entitled to additional party list MP, but the party obtaining seats of MP upon the basis of first past the post less

than the number of MP that such political party should have from the calculation shall be entitled to additional party list MP to fulfil the deficit for fair. The House of Representatives has a term of 4 years. The House may be dissolved for re-election by the Royal Command upon the recommendation of the Prime Minister.

3. The members of at least 1/5 of the House of Representatives may file the motion of no confidence once a year, but the members of at least 1/10 of the House of Representatives may file a motion for general debate as appropriate. If the leader of the opposition in the House of Representatives is of opinion that there is a problem concerning with public security or safety, he may file a motion for general debate between the National Assembly and the government. In this case, the Council of Ministers shall have the duty to attend the meeting.

4. The Senate composes of 200 members in which the qualified candidates from all walks of life nationwide elected among themselves (indirect election) from district level, provincial level until national level. The term of office of the Senate is 5 years. The Senator who vacates office shall not be re-elected.

5. Any person having been sentenced by judgement of the court on such ground as acting official service in bad faith, fraud, narcotics drug, gambling, money laundering, human trafficking or violating the law on election as well as a person who having been fired or dismissed on the ground of corruption shall not be eligible as candidate in an election to be a member of the both Houses.

The Executives:

The Council of Ministers composing of a Prime Minister and not more than 35 Ministers. The Prime Minister shall be voted by the House of Representatives. All candidates for the office of the Prime Minister shall however be named in public by the resolution of the political parties and with consent of those persons. Each political party may nominate not more than 3 eligible nominees. The political party shall therefore be accountable to public directly for its nomination.

The Courts:

The Court shall be established by law. The Constitutional Court's jurisdiction is constitutionality of law and the violation of right and liberty as guaranteed by the Constitution. The jurisdiction of the Administrative Court is the administrative case as provided by law, while the Military Court deals with the matter relating to military case as provided by law. The Court of Justice's jurisdiction covers all cases which is not in the arms' length of the aforesaid Courts.

Independence organizations:

1. There are 5 independence organizations; viz. the Election Commission, the Ombudsmen, the Human Rights Commission, the National Counter Corruption Commission and the State Audit Commission. Each independence organization shall have the duty and power as provided by the Organic Law related thereto.

2. All independence organizations, like such organizations abroad, have been established since the 1997 Constitution so as to enhance accountability and transparency of State administration. The referendum of 2007 Constitution confirmed that the provisions related to all independence organizations had to be an integral part of Thai Constitution.

Conflicts of Interest:

The Constitution specifies acts of conflicts of interest clearly. Any person who violates or fails to comply with these provisions shall be brought to judicial process in accordance with the rule and procedure provided by law.

Local administration:

Local administration shall be provided upon self-administration of the people in each locality. The establishment of each form of local administration shall be in accordance with the law.

Constitution Amendment:

1. An amendment of the Constitution shall be made if it is not an amendment on the form of State and the form of administration.
2. The motion for Constitution amendment shall be introduced by the Council of Ministers or 1/5 of the members of the House of Representatives or 1/5 of the members of the National Assembly or not less than 50 000 people having the right to vote.

National Reform:

1. The Constitution lay downs a mandatory reform on the following priority matters with a view to maintain public security and safety and national harmony, to strengthen inclusive and sustainable growth in compliance with the philosophy of sufficient economy, to create well-being, fairness and equality atmosphere, to enhance better lives of the people and public participation State administration:

- Politics;
- State administration;
- Law;
- Judicial process (including police);
- Education;
- Economics;
- Other.

2. There shall be the law on national reform, and the reform of the aforesaid matters shall begin within one year as from the date the Constitution comes into force and outcomes thereof shall be measured within five years.
