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The Thai Junta's Interim Constitution: Towards an Anti-Electoral Democracy

*By Puangthong Pawakapan**

EXECUTIVE SUMMARY

- Two months after the coup d'état, the military junta in Thailand has promulgated an interim constitution that promises to bring reform and genuine democracy to Thai society. It also provides sweeping powers to the military leader General Prayuth Chan-Ocha.
- The interim constitution is generally perceived as being unfavourable towards politicians and electoral politics, and being biased towards rural-based voters.
- Negativity towards politicians, electoral politics and rural-based voters is widespread among the urban middle class and the mainstream media, the bulk of which are supporters of royalist anti-Thaksin movements.
- The objectives of the interim charter will almost certainly be carried into the new permanent constitution.
- The political system the military junta wishes to create will not only strengthen check-and-balance mechanisms on politicians, but also

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attempt to reduce the electoral power of majority voters. The principle of one-man-one-vote will be in question.

- Meanwhile mechanisms to curb rights and freedoms are likely to continue to ensure stability for the new authoritarian political system.

INTRODUCTION

On 22 July 2014, two months after a military coup d'etat, the Thai military promulgated an interim constitution signed by King Bhumibol Adulyadej. With sweeping powers in the hand of General Prayuth Chan-Ocha, the leader of the National Council for Peace and Order (NCPO), the interim constitution's preamble promises to eradicate corruption and bring "reform" and subsequently "genuine democracy" to Thai society. The interim constitution itself may be perceived to be opposed to populist politicians and electoral politics, something that also provoked the military coup in 2006. While that coup failed to eliminate the Thaksinite faction from Thai politics once and for all, the NCPO promises its mostly urban middle-class supporters that it would put an end to corrupt politics in all forms. However, with a narrow focus on the corruption of politicians, the question remains whether the interim charter is able to bring genuine democracy, stability, and "happiness" to the deeply polarized Thai society.

CONCENTRATION OF POWER

The interim constitution has a total of 48 Sections but, arguably, only 46 of them are in effect. While Section 3 states that sovereign powers belong to the Thai people and Section 4 recognizes the human rights, liberties, and equality of Thai people arising from Thailand's democratic government and international obligations, other sections in the constitution effectively render these null and void.

Section 44 for example provides junta leader General Prayuth with sweeping powers to issue orders and undertake whatever the NCPO deems necessary regardless of the legislative, executive or judicial orders, "for the benefit of reform in any field and to strengthen public unity and harmony, or for the prevention, disruption or suppression of any act which undermines public peace and order or national security, the Monarchy, national economics or administration of State affairs, whether that act emerges inside or outside the kingdom". The constitution guarantees that General Prayuth's orders are absolutely "legal, constitutional and conclusive", thus rendering check-and-balance mechanisms unnecessary. Since the constitution does not specify whether the NCPO will cease to exist after a new permanent constitution is promulgated, reportedly by the end of 2015, the junta leader's sweeping powers may continue to be guaranteed in the new constitution in one form or another.

Since the coup on 22 May, the NCPO has enjoyed far-reaching power, which has led to violations of human rights. By the end of July, the NCPO had summoned 565 individuals and arrested 233.¹ These include human rights defenders, academics,

¹ "Statistics of the Summoned, the Arrested, and the Released as of July 2014" Ilaw. <<http://ilaw.or.th/node/319>> (accessed on 29 July 2014).

activists, journalists, students, writers and protesters. Meanwhile the NCPO banned public gatherings, enforced stringent censorship on individuals, groups, and the mass media, issued repressive orders, revoked the passports of those who refused to report to the junta and who have fled abroad instead. Those who face charges will be tried in the military court. The interim constitution also declares the NCPO's use of power to be within the law and at the same time renders coup opponents' activities illegal.

When General Prayuth announced martial law two days before the coup, he insisted that he would be accountable for the military's actions. This accountability came in a form of an amnesty for all the coup leaders for the seizing of power from the elected Yingluck government on 22 May 2014 (see Section 48). The irony, of course, is that the earlier amnesty bill to pardon Thaksin had outraged the anti-Thaksin movements for violating the rule of law and for discounting principles of accountability, sparking prolonged mass protest. After removing Prime Minister Yingluck and Thaksin's immediate influence from Thai politics, the anti-Thaksin movement now fails to apply the same standards to the junta's self amnesty.

TOWARDS AN ANTI-ELECTORAL DEMOCRACY

The interim constitution also signals resistance to politicians and electoral politics. It bars individuals who have been members of political parties within three years prior to the date of appointment from becoming cabinet members of the coming coup-installed government (Section 20), members of National Legislative Assembly (Section 8) and members of the Constitution Drafting Committee (Section 33). Meanwhile, it channels political power to NCPO members, military personnel and government officials. Thailand may be argued to have returned to a bureaucratic polity, where the military, bureaucrats and business interests gain control over elected representatives.²

This negativity towards politicians and electoral politics is not unexpected since it is also broadly found among the urban middle class. Distrust of politicians has grown steadily since the early 1980s when participatory politics and electoral government began to entrench itself in the political system. When General Prem Tinnasulanond, the current president of the King's privy council, stepped down from the premiership after the 1988 election, the role of Thai military and civil servants in politics gradually subsided. General Chatichai Choonhavan was then the first elected MP to serve as a prime minister since 1976. During his two-and-a-half-year term, however, the Chatichai government was ridiculed by the mass media as a highly corrupt "buffet cabinet". As a result, when his government was toppled by a military coup in 1991, the Thai public showed little opposition to the military takeover. Elected government after 1992 hastened to end before serving out a full term because of corruption

² Fred W. Riggs, *Thailand: the Modernization of a Bureaucratic Polity*, Honolulu: East-West Center Press, 1966.

scandals. Thaksin was in fact the only elected MP to serve his full term as premier since Thailand made the move from an absolute monarchy to a constitutional monarchy in 1932. Corrupt politicians and widespread vote buying, especially in the rural regions of northern and northeastern Thailand, are perceived as a consequence of money politics in general while calls to end money politics and to build up “clean” politics by influential public figures and civic groups have been dominant in the people-participatory democracy since the 1980s.³ Military intervention has thus been seen as an effective way for ending corrupt government. Meanwhile, judicial and independent bodies,⁴ which are supposed to act as check-and-balance mechanisms for all state agencies, have been politically applied against elected government since the late 1990s.

SOCIO-POLITICAL FORCES: THE RURAL- URBAN DIVIDE

The successive electoral victories of the Thaksinite parties and the defeats suffered by the military-backed Democrat Party galvanized the perception of the urban elite that electoral politics was a gateway for corrupt politicians to control the country. The popular support Thaksinite parties receive from the rural-based voters, however, would not allow Thaksin's critics to remove the former prime minister's influence from Thai politics. According to these critics, the “red water buffalo”, a derogatory term for the red-shirt supporters of Thaksin, should not be entitled to the same rights as the educated middle-class. As a consequence, the principle of one-man-one-vote should not apply. Such ideas were loudly echoed by the anti-Thaksin movements that began after the amnesty bill was passed in November 2013. Politicians, academics and celebrities publicly insulted rural-based voters on the stages of the People's Democratic Reform Committee (PDRC) led by the Democrat leader Suthep Thaugsuban, the Network of Students and People for Reform of Thailand (NPRST) and the PAD (rebranded as the People's Movement to Overthrow the Thaksin Regime) and the Dharma Army. They reiterated the under-qualified status of the uneducated poor and rural voters and the harmful effects of the one-man-one-vote principle. Such accusations were therefore the rationale for them to obstruct the election process scheduled on 2 February 2014.

The idea that rural-based voters who form the majority of Thaksin's mass support are unqualified to vote stems from the belief that poor and rural people will sell their votes in exchange for short-term personal benefit or petty cash. Members of the urban educated middle-class tended to blame rural voters' lack of good education

³ Thongchai Winichakul, “Toppling Democracy”, *Journal of Contemporary Asia*, 38:1, 11-37.

⁴ The judicial and independent organizations in Thailand include the Constitutional Court, the Administrative Court, the Criminal Court for People Holding Political Positions, the Election Commission, Office of Ombudsman, the National Anti-Corruption Commission, the National Human Rights Commission and the State Audit Commission.

and 'proper' understanding of democracy as at least partial reasons for the failure of Thai democracy. Many intellectuals and civic groups repeatedly argue that holding elections does not necessarily mean adhering to democratic principles, and thus seek to undermine the legitimacy of electoral politics and the principle of one-man-one-vote. Recent research confirms that vote-buying is no longer a decisive factor in determining election outcome. The behaviour of the poor and rural-based voters is increasingly motivated by community development projects,⁵ but they continue to be seen as being easily bribed by unsustainable populist policies. The idea of "vote buying" became a simplistic cliché but an emotive political weapon against rural-based voters. In addition, the urban middle-class believe the populist policies will cause long-term damage to the Thai economy. However, they fail to see how multi-million baht projects catering to the interest of urbanites and industrialists have been contributing to uneven development and constitute exploitation of taxpayers. For many of these urbanites, a desirable political system does not necessary have to be the same as a western-style democracy with respect to freedom, liberties and equality of every citizen, but it must be clean from corrupt politicians and, hence, be ruled by moral people.⁶

As a result, antipathy for Thaksin and corrupt politicians, a bias against electoral politics and rural development policies are explicitly registered in the interim charter's section 35, which dictates the scope of the new constitution that the Constitution Drafting Committee must include:

- An efficient mechanism for the prevention, examination and suppression of corruption in both the public and private sectors, including a mechanism to guarantee that State powers are exercised only for the national interest and for public benefit;
- An efficient mechanism for stringently preventing anyone deemed by a judgment or any legal order to have committed any act of corruption or to have undermined the trustworthiness or fairness of an election from holding any political position;
- An efficient mechanism to enable state officials especially those holding political positions and political parties to perform their duties or activities independently and without illegal manipulation by any person or group of persons;

⁵ For examples, Andrew Walker, *Thailand's Political Peasants: Power in the Modern Rural Economy*, Wisconsin-Madison: University of Wisconsin Press, 2012; Charles Keyes, *Finding Their Voices: Northeastern Villagers and the Thai State*, Chiangmai: Silkworm Book, 2014; Aphichat Satiniramai, Yukti Mukdawichitr and Niti Pawakapan, *Tobtuan phumithad kanmuang thai* [Re-examining the Political Landscape of Thailand], Bangkok: Thai Health Promotion Foundation, 2013.

⁶ Thongchai Winichakul, *Ibid*, 26.

- An efficient mechanism for strengthening the Rule of Law and enhancing good moral, ethics and governance in all sectors and levels;
- An efficient mechanism for restructuring and driving an economic and social system for inclusive and sustainable growth and preventing any populist administration that may damage the national economy and the public in the long run;
- An efficient mechanism for accountable spending of State funds which shall be in response to public needs and in compliance with the financial status of the country, as well as an efficient mechanism for audit and disclosure of the spending of state fund.

The NCPO's distrust of electoral politics is clear. On 3 July, the junta gave "prescriptions" to its legal arms to include in the new permanent constitution measures preventing populist policies that can endanger Thai economy.⁷ On 15 July 2014, the NCPO issued an order to suspend local administrative elections nationwide, including the Provincial Administrative Organizations, the Sub-district Administrative Organizations and Bangkok's district council. Instead, current members of these agencies will be replaced by appointed government officials once their terms expire.⁸

The system of local administrative governments was established through the 1997 Constitution and the 1999 Decentralization Act. Since 2001, the revenue for local administrative bodies rapidly increased. As of 2014, it was allocated 622 billion baht or accounted for 27.37 per cent of central government revenue.⁹

Furthermore, on 29 July 2014, the NCPO put a stop to a number of local empowering projects initiated by Yingluck's government because these were deemed populist. They include the Village/Community Development Fund or the Small and Medium Enterprise Development Fund, the Local Entrepreneur Assistance Fund and the Regional Town Development Fund. The NCPO also transferred the Women Development Fund to be under the Ministry of Interior and the Farmer Council to be under the Ministry of Agriculture and Cooperation. Both of these will be evaluated further to see they should be terminated permanently.¹⁰

Though a number of studies confirm the improvement of local services and the quality of living as well as the awareness of local people in engaging with local agen-

⁷ "NCPO eyes populist policy ban", *Bangkok Post*. 4 July 2012. <<http://www.bangkokpost.com/news/politics/418810/ncpo-eyes-populist-policy-ban>> (accessed on 30 July 2014).

⁸ "Military Leader Further Centralise Power by Suspending Local Elections", *Khaosod English*. 17 July 2014.

⁹ Department of Local Administration. <<http://www.ppb.moi.go.th/midev02/upload/9.%20Policy%20-%206%20Sep%202013.pdf>> (accessed on 29 July 2014).

¹⁰ "NCPO suspends SML fund and two populist schemes", *ASTV Manager Online*. 29 July 2014, <<http://www.manager.co.th/Politics/ViewNews.aspx?NewsID=9570000085985>> (accessed on 30 July 2014).

cies the mainstream media, anti-democracy academics and the anti-graft agency have focused mainly on the widespread corruption and nepotism within the local administrative agencies and community-based projects. The NCPO has not indicated how long the suspension of local administration elections will last. However, it would not be surprising to see them being scrapped or replaced by appointment under the new constitution.

Although the NCPO's constitution is an interim one, its objectives are likely to be carried over to the new permanent constitution. The NCPO's power will, no doubt, overshadow the work of the National Legislative Assembly (NLA). After all, sections 6 and 30 allow the NCPO to appoint all members of the NLA and of the National Reform Council (NRC); and these three—the NCPO, NLA and NRC—will in turn appoint the Constitution Drafting Committee, strongly suggesting that the objectives of the interim constitution will prevail in the new constitution.¹¹

The 200 members of the NLA comprise 105 retired and service military generals, nine police officers, top bureaucrats, former royalist senators, NGO workers¹² and royalist university presidents and academics. The NCPO's move to control politicians and electoral politics by empowering the military and top civil servants is based on the perception that the latter are clean and honest. In fact, corruption is routine and widespread in the state bureaucracy.

Furthermore, the junta must convince Thai voters that the armed forces and the state bureaucracy possess the necessary vision and capacity to run the country as a globalized economy. Take for example the NCPO's happiness programmes. A few days after the coup, the NCPO issued two orders to deal with illegal unskilled foreign workers. The orders prompted around 40,000 Cambodian workers to flee the country and many were forcefully repatriated by army officers. The Cambodian Human Rights and Development Association issued a statement condemning the treatment after it received witness accounts that up to nine Cambodian workers were killed during the deportations and that beatings occurred at the hands of the Thai armed forces.¹³ The junta later denied the report. The ill treatment of foreign workers stems partly from the military's narrow perception of them as a national threat and not as a crucial contribution to the country's various labour-intensive industries.

Another example is the NCPO's order to the Ministry of Education to promote patriotism and national interest, love for the monarchy, pride in Thai history and ancestors as well as instill in the people a sense of gratitude to the nation.¹⁴ In fact, this

¹¹ The interim constitution stipulates that members of the NLA and NRC will not exceed 220 and 250 respectively.

¹² In Thailand, the ideology of NGOs is largely one of anti-politics and globalization. They have been actively promoting the royal idea of subsistence economy.

¹³ "Rights Groups Slam Thai Junta Deportation of Cambodian Workers", *Radio Free Asia*, 13 June 2014 <<http://www.rfa.org/english/news/cambodia/workers-06132014145627.html>> (accessed on 1 August 2014).

¹⁴ "Fall into Line Youngster", *Bangkok Post*, 20 July 2014, <<http://www.bangkokpost.com/print/421370/>> (accessed on 1 August 2014).

has been an essential part of Thai education since the Thai State started to provide universal education. It has not only resulted in generations of Thai students losing interest in education but also dampened students' ability to be critical and creative thinkers. For the Thai conservatives, however, the most efficient way towards a happy and peaceful society is to programme the youth with similar beliefs, and to view diverse opinions, demands and values as subversive and harmful to society.

CONCLUSION: HAPPINESS FOR WHOM?

While the military junta claims to be independent, it is perceived as prejudiced against the red shirts since the majority of those summoned, detained and charged have been red-leaning either in ideology or political affiliation. Even if the electoral system the military junta wishes to create does strengthen check-and-balance mechanisms as promised, it will also certainly reduce the electoral power of voters. It does not wish for the rural-based majority voters to have the final say on who should run the country.

Since the 2006 coup, the perceived double standards of the judiciary and independent organizations against Thaksinite parties have provoked outrage among pro-democracy voters. There have been louder calls for true reform of these organizations in order to make them more accountable to the people. However, these organizations may never be reformed as long as they remain tools for the old elites to counteract democratic movements. The happiness the junta is creating will be for some—but certainly not for all.

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