Constitutional Amendments Stalled: Thailand’s New Normal Politics Deadlocked

Termsak Chalermpalanupap*

EXECUTIVE SUMMARY

• To buy time in the face of criticism of the 2017 Constitution, the Thai government has formed an ad hoc parliamentary committee to study six proposed bills concerning constitutional change for a period of thirty days.

• Most of the 250 senators are against replacing the 2017 Constitution. The upper house has the ability to block a new constitution and amendments to the current one.

• Leaders of the recent protests are upset with the deadlock over the constitutional and are calling for a week-long rally in Bangkok and a general strike, starting on 14 October. The rally is likely to showcase criticisms of the 2017 Constitution and of uncooperative senators, and to press for reform of the monarchy.

• General Prayut’s passive strategy of avoiding the political fray and leaving the ruling coalition to contend with the parliamentary opposition and the senators appears ineffective. The Prime Minister’s inability to silence mounting calls for reform of the monarchy inadvertently makes him appear a disloyal failure to royalists.

• General Prayut can save his premiership by re-exerting leadership to reduce political tension by breaking the deadlock with a bill sponsored by Cabinet on amending some of the more obviously flawed sections of the 2017 Constitution.

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INTRODUCTION

Serious disagreements in the Thai parliament on how to deal with the problematic 2017 Constitution led to the chaotic end on 24 September of a two-day parliamentary debate on the matter.

This deadlock has raised the political temperature in Thailand. The leaders of recent protests are intensifying their calls for a week-long rally in Bangkok and a nation-wide general strike starting on 14 October to put new pressure on Prime Minister General Prayut Chan-ocha. Their demands include his immediate resignation, a new and truly democratic constitution, and reform of the monarchy.

As the debate unfolded, it emerged that both the opposition and the 19-party ruling coalition supported setting up an assembly to draft a new constitution.¹

The opposition-leading Phuea Thai Party agreed with the ruling coalition on Thailand being one indivisible kingdom; the political system of constitutional monarchy with a king as the head of state; and all the customary constitutional provisions concerning the kingship, including the one stipulating that a king “shall be enthroned in a position of revered worship and shall not be violated”, were sacrosanct.²

However, most of the 250 senators do not want any tinkering with the 2017 Constitution, let alone its replacement with a new charter. They believe that Thai voters must be consulted first, because the draft of the current charter was endorsed by 16.82 million voters, or 61.35 per cent of the total, in a national referendum held on 7 August 2016.³

Any bill concerning the 2017 Constitution requires support of at least one-third of the senators, or 84 of them, for the parliament to accept it in principle for further consideration. No such crucial support was forthcoming as the end of the two-day parliamentary debate on the two proposed bills — one from the opposition and the other from the ruling coalition — approached. Nor was there senatorial support for four other bills proposed by the opposition.⁴ These bills concerned amendment of specific sections of the current constitution.

To avoid an embarrassing defeat of its bill, the Phalang Pracharat Party, the leading party in the ruling coalition, suddenly proposed delaying the vote on all six bills. It proposed setting up an ad hoc parliamentary committee to study these bills over a period of 30 days. Most of the senators liked the idea and joined a majority of government members of the lower house in voting for this unexpected proposal.

However, all seven opposition parties considered the proposal a delay tactic and voted against it, but to no avail. They therefore staged a walkout in protest. And their leaders quickly announced a boycott of the new ad hoc committee, saying that it would be a betrayal of the people’s trust in the parliament.

How much the majority of Thais know or care about the 2017 Constitution is debatable.
A poll conducted between 21-26 September reportedly found that nearly 72 per cent of those surveyed had never read the 2017 Constitution, which is 208 pages in length. And 85.3 per cent of respondents said that the charter should be amended because they had heard others say so.\(^5\)

Indeed the Thai social media is full of clamouring for attention from the two extremes in the debate on the issue of constitutional change.

A group led by iLaw\(^6\) gathered 100,732 signatures — double the 50,000 signatures needed — in less than a month in support of a petition calling for a new constitution. The petition, together with a new draft “constitution of the people”,\(^7\) was submitted to the House Speaker on 22 September.

Unfortunately, it came too late to be included in the agenda of the debate. The draft people’s constitution will thus be considered in early November, when the parliament reconvenes and considers the ad hoc committee’s report before voting on the pending six bills.

Also petitioning the House Speaker was a new group of conservatives calling themselves thai phakdi or Loyal Thais. The group submitted a list of over 170,000 signatures in support of keeping the 2017 Constitution intact.

**FRAYED NERVES AND TURMOIL**

Against this backdrop concerning Thailand’s constitutional future, the Phuea Thai Party is frustrated and in turmoil. In the aftermath of the parliamentary chaos, Sudarat Keyuraphan resigned her post as the party’s chief strategist. Her close associate Wattana Muangsook followed suit by quitting as the head of the party’s working group on constitutional amendment. These two abrupt resignations prompted party leader Sompong Amornvivat to step down to open the way for an overhaul of the party leadership.

The Phuea Thai Party also upset its major ally in the opposition, the Move Forward Party, with its promise not to introduce any changes to the sacrosanct notion of Thailand being one indivisible kingdom and to the traditional prerogatives of kingship. The Move Forward Party is of the view that there should be no preconditions in the process of drafting a new constitution.

Some Move Forward MPs openly voiced support for reform of the monarchy during the parliamentary debate on the fate of 2017 Constitution. The party, a successor to the dissolved Future Forward Party led by Thanathorn Juangroongruangkit, maintains that reform of the monarchy will strengthen the institution and keep it in step with the evolving Thai democracy.

**DISCORD AND DISSENT**

Coinciding with this disarray is an unsettled situation in the ruling coalition. The Democrat Party, the third largest on the government’s side, is especially resentful of the decision to
form an *ad hoc* committee. Amending the 2017 Constitution was one of the main selling points of this oldest of Thai political parties during the general election campaign in early 2019.

Forty-eight of its 52 MPs voted against the Phalang Pracharat Party’s proposal to form the committee. Angry Democrats complained that they were not consulted in advance, and therefore had to stick to their original party’s line on speeding up constitutional amendment.

Bhumjai Thai, the second largest government party, was also unhappy. Party leader Deputy Prime Minister and Health Minister Anutin Charnvirakul complained that he had not been consulted on the matter, and yet he was abruptly asked to tell his MPs to support the one-month delay in the amendment process.

In fact, the Phalang Pracharat Party found it hard to justify its sudden gambit to delay voting on the bills without consulting leaders of other government parties. Its excuse was that it sought more time to build a common understanding among parliamentarians on how to deal with problem of the 2017 Constitution. But this alleged good intention was immediately spoiled by the opposition parties’ decision to boycott the new *ad hoc* committee.

Without the participation of opposition MPs, senators on the committee will not learn much from simply talking to government MPs about what the opposition parties want to see in an amendment. The best that they can now do is to wade through the 614-page report of the House extraordinary *ad hoc* committee for the study of the 2017 Constitution, which includes the testimonies of several proponents of a new constitution, and the 258-page critical analysis of the *ad hoc* committee’s two sub-committees, and on public opinion concerning that charter.

These reports were submitted to the House Speaker on 28 August after six months of comprehensive discussion and testimony. Both opposition parties and the Democrat Party consider the study exhaustive. Several senators claimed during the parliamentary debate that they had not read the reports.

**SENATORS EXERTING INDEPENDENCE**

The crux of the problem is that most senators remain unconvinced that a new constitution is urgently needed. They question the wisdom of wasting scarce resources on drafting a new constitution when Thailand is still reeling from economic and health crises.

They also believe that the 2017 Constitution does not allow for the formation of any group to draft a new constitution, and that in fact, Chapter 15, on constitutional amendment, says nothing about any such thing.

Both the opposition and the ruling coalition recognize this problem and have proposed solving it by inserting into the charter a new “Chapter 15/1”, on the formation of a constitution drafting assembly. But such a substantive amendment to Chapter 15 requires endorsement by at least one-third of the 250 senators.
It is indeed puzzling to see the ruling coalition’s unexpected failure to secure senatorial support for its bill. Phalang Pracharat party leader Deputy Prime Minister General Prawit Wongsuwan was in charge of recruiting most of the senators when he was the No. 2 figure in the junta that took power after the 2014 coup. And in the parliamentary selection of a new prime minister on 5 June 2019, 249 senators voted for General Prayut; and only the Senate President abstained.

The sudden unwillingness in the Senate to support the ruling coalition’s bill has created new doubts over how much influence General Prawit and General Prayut still have over the senators.

Coincidentally, commanders of the Royal Thai Armed Forces Headquarters, the Army, the Air Force, the Navy, and the Police had to retire at the mandatory retirement age of 60 at the end of September. How much political support their successors will give to General Prayut, who is concurrently the defence minister and the supervisor of the National Police Office, remains to be seen.

The new Army commander, General Narongpan Jitkaewthae, is known as an ardent royalist, like his predecessor General Sunthorn Kongsompong. The latter has been appointed a deputy chief of the Royal Household following his retirement. And the new Army chief has asserted that “senators are not robots” that will think similarly 100 per cent of the time.

The new commanders will join the Senate as ex officio members. If most of the senators are indeed taking their “independence” seriously, they could collectively constitute the fictional mighty genie who enjoys his new-found freedom too much and refuses to return to the bottle of servitude. Such a thing would amount to a very interesting new phenomenon in Thailand’s “new normal” politics.

ANOTHER 14 OCTOBER UPRISING?

Amid this political commotion, General Prayut insists that he need not intervene in the ongoing debate on the 2017 Constitution. His main preoccupation for now, he has said, continues to be tackling the COVID-19 pandemic and reviving the shattered Thai economy, which the World Bank has just forecast will suffer a GDP contraction of between 8.3 per cent and 10.4 per cent this year.

General Prayut has been trying to ride out the political storm by staying above the fray. But his seizure of government power in the coup on 22 May 2014 was actually one of the original sources of the ongoing political conflict. The current constitution was drafted on his watch, when he was heading both the National Council for Peace and Order junta and the military-backed government.

Moreover, one of the twelve “urgent issues” in his policy platform, announced in parliament on 25 July 2019, concerns undertaking studies, listening to the people and taking measures to amend the 2017 Constitution, especially Chapter 15 concerning constitutional amendment.
General Prayut cannot wish away the deadlock in parliament, the noisy dissonance in social media over the 2017 Constitution, and the upcoming 14 October rally. His passive stance is proving counter-productive; without his lobbying, the Senate will most likely reject all six pending bills on the charter. This will further delay any improvement to the charter. It will also raise serious doubts about the prime minister’s professed commitment to listen to the people, and to amend the current constitution.

In fact, General Prayut’s aloofness can be perilous for him, because angry protest leaders are agitating for a larger and longer rally to drive him out of power. They want to imitate the student-led uprising of 14 October 1973 through which the dictatorship of Field Marshal Thanom Kittikachorn was toppled in an episode that saw both bloodshed and the intervention of King Bhumibol.

That historic event 47 years ago is known as the “Day of Great Tragedy” because at least 72 protesters were killed, mostly by Army troops. Most of the current crop of protest leaders were not even born when the 14 October uprising took place, but they are certainly inspired by the historic event.

Those protesters under the group called the “Free People” want to see an end to all harassment by law enforcement authorities, the immediate resignation of General Prayut, and a new and truly democratic constitution. They do not want Thailand to suffer any more coups, and they reject formation of a grand coalition government involving all major political parties. They have also put forth a collective “dream” of seeing a truly democratic constitutional monarchy, in which the monarch reigns within rule of law, under the new constitution. They hope to settle this “unfinished business” addressed within this generation.

Another group, comprised mostly of university student leaders, wants concrete changes to the Thai monarchy. It unveiled its ten-point manifesto during a protest rally at Thammasat University’s Rangsit campus on 10 August.18

The same group, under the new name “United Front of Thammasat and Demonstration”, reiterated the ten-point proposal on reform of the monarchy at a protest rally on Sanam Luang near the Grand Palace on 19-20 September. At its peak on 19 September evening, the crowd was estimated to have exceeded 50,000 – the largest gathering since the May 2014 coup.

**PHUEA THAI IN THE SPOTLIGHT**

A large number of Red Shirts, grassroots supporters of the Phuea Thai Party, showed up at the Sanam Luang rally. So did several senior Phuea Thai figures, who congregated under a big tent. Their conspicuous presence revived old suspicions about the true feelings in Thailand’s largest party vis-à-vis the monarchy.

The party is believed to have maintained close connections with exiled former Prime Minister Thaksin Shinawatra, and in the days following the rally, Thaksin’s ex-wife Potjaman Damapong dramatically stepped in to quash any lingering doubt about the Phuea
Thai Party’s loyalty to the monarchy. On 24 September, she donated a medical bus to King Vajiralongkorn, and was seen on television prostrated in front of the king during the donation ceremony.

Thaksin and Potjaman officially divorced in late 2008, soon after Thaksin fled the country to avoid imprisonment, to live in exile in Dubai. However, the couple still undoubtedly have a great deal of influence in the party.

On 1 October, without much fanfare, Sompong was re-elected unopposed as Phuea Thai’s leader. The number of deputy leaders was reduced from 15 to 10. One of the new deputy party leaders is Group Captain Anudith Nakornthap, previously the party secretary-general. Replacing him in this key post is Prasert Chantrongthong, a veteran MP from Nakhon Ratchasima.19

The partial change of the Phuea Thai Party leadership could be taken as a tacit acquiescence to Khunying Potjaman’s wish for the party to respect and support the king. This has given rise to speculation that Phuea Thai is preparing to switch sides and to join the ruling coalition in a new grand coalition government — or, more dramatic still, to replace the Phalang Pracharat Party in leading a new coalition government with Thaksin as prime minister following a royal pardon and his return to Thailand.20

**BREAKING THE DEADLOCK**

If General Prayut remains passive, he might before long find himself dispensable. On the other hand, the prime minister can seize the opportunity to re-exert his leadership to put an end to political turmoil and speculation about his imminent downfall by trying to break the constitutional deadlock.

For starters, his cabinet can sponsor a bill on amending specific controversial sections in the 2017 Constitution, particularly those concerning the excessively complicated electoral system.

A bill on constitutional change sponsored by the cabinet will be a feasible option for senators to consider, as long as it does not propose the drafting of a new constitution. It will also be a crucial test of the relationship between General Prayut and the Senate. If the Senate is no longer supportive of the prime minister and his cabinet’s bill, then it is time for General Prayut to call it quits.

Furthermore, if the parliament can start amending some sections of the 2017 Constitution, there will be one less grievance for protest leaders to capitalise on. The government and the Thai nation can then concentrate on coping with the economic and health crises. And, more importantly, violence and bloodshed can perhaps be avoided, if Potjaman’s recent intervention means that the Phuea Thai Party and its Red Shirts will stay away from future protest rallies.
CONCLUSION

Most Thai politicians know they can score significant points if they are seen leading the charge to tackle the problematic 2017 Constitution.

The Phalang Pracharat Party, however, recently missed a golden opportunity when it failed to secure enough senatorial support for the ruling coalition’s bill on amendment and possible replacement of the current constitution.

Most senators do not want a new constitution because they know that their role and authority will be severely curtailed. In fact, they will be kicked out before the end of their five-year term in May 2024 as, most probably, a new constitution will revert to direct election of senators.

In addition to the unusual “independence” of the senators in blocking charter change, another unprecedented development in Thailand’s “new normal” politics is the protest leaders’ open discussion of reform of the monarchy. This used to be a highly sensitive taboo, of which violators risk imprisonment of up to 15 years under the lèse majesté law.

Despite this development, few mainstream political parties wish to discuss the issue.

General Prayut’s passive strategy of avoiding the political fray is not working. His last chance of staying in power is to be proactive and to lead the Cabinet in proposing a bill on constitutional amendment — without calling for the drafting of a new constitution.

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1 The bill on the constitution submitted by six of the seven opposition parties—all except the Move Forward Party—and the bill from the ruling coalition contained similar proposals to set up a new constitution drafting committee. But their details differ as follows.

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<th>Opposition’s Bill No. 1</th>
<th>Ruling Coalition’s Bill No. 2</th>
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<td>Direct election of 200 members of a new constitution drafting assembly at provincial level, based on population.</td>
<td>200 members of a new constitution drafting assembly consisting of 150 members directly elected at provincial level, based on population; 20 selected by the parliament; 20 experts in public law, political science or public administration selected by the Council of University Presidents of Thailand; and 10 students selected by the Election Commission.</td>
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Drafting of a new constitution shall be done in 120 days after the first meeting of the drafting assembly.

**No requirement to send the new draft constitution to the parliament.**

The draft constitution shall be submitted directly to a national referendum.

- Only if the draft constitution fails to get majority support in the parliament shall it be sent to a national referendum.

If a national referendum rejects the draft, then the process of setting up a new constitution drafting assembly re-starts, but without those who had served in the previous drafting assembly.

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3 "กกต. แถลงผลประชามติเป็นทางการ คนเห็นชอบร่างรธน. 61.35%" [The Election Commission announces official outcome of the national referendum: 61.35% approved the draft constitution], Post Today, 10 August 2016 (www.posttoday.com/politic/news/447841, accessed 27 September 2020). The national referendum attracted a voter turnout of only 59.40 per cent or about 29.74 million voters. Many voters boycotted the referendum because critics of the draft constitution were not allowed to campaign openly to voice their objections.

4 The opposition’s four other bills were as follows.

- In what is known as Bill No. 3 concerning the 2017 Constitution, the opposition wants to delete Sections 270 and 271. Section 270 concerns the Senate’s duty to monitor, recommend and accelerate national reform. The opposition contends that such crucial duty should be carried out by the elected members of the House of Representatives (MPs). And Section 271 concerns the Senate’s participation in a joint sitting with the MPs to consider amendment of penalties for officials; such an amendment may sometimes exonerate the officials.

- Bill No. 4 seeks an amendment to Section 159 concerning the selection of the prime minister. The opposition wants only the House of Representatives (excluding the Senate) to consider only nominated MPs for the premiership rather that non-MP outsiders like General Prayut, who does not belong to any political party. Therefore, the bill also seeks deletion of Section 272 concerning senators’ participation in the selection of a prime minister during their current five-year term.

- Bill No. 5 proposes the deletion of Section 279 concerning the legality and constitutionality of all orders and actions undertaken by the National Council for Peace...
and Order and by its leader General Prayut. Currently, these orders can be repealed or amended only through legislation.

- Bill No. 6 concerns changes to the electoral system, including reverting to the use of two ballots — for voters to indicate their preferences of candidate and of party — and simplifying allocation of party-list seats based clearly on the votes that each party receives from the second ballot. (At present, voters cast only one ballot for their candidate in a constituency. The Election Commission allocates party-list seats to each party based partly on the total number of votes that all the candidates of a party have received. In a highly complicated formula, the Phuea Thai Party, which won 136 of the 350 constituency seats, with altogether 7.881 million votes or about 22.16 per cent in the March 2019 general election, was given no party-list seat at all. On the other hand, the Phalang Pracharat Party, which won 97 constituency seats, with altogether 8.441 million votes or about 23.74 per cent, was given 19 party-list seats. More surprisingly, the Future Forward Party, which won only 31 constituency seats, with altogether 6.33 million votes or about 17.80 per cent, was given as many as 50 party-list seats.)

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6 iLaw is a non-profit academic organisation dedicated to promoting freedom of expression in Thailand and public debate on legal and constitutional issues.

7 iLaw is also calling for the election of 200 members to a new constitution drafting assembly. Key points in iLaw's draft constitution include the prime minister being a member of the House of Representatives; senators being directly elected by voters; constitutional amendment requiring merely a majority vote in a joint sitting of the House and the Senate.


9 For a news report on the Bhumjai Thai Party leader’s reaction, see “จะไม่ถอยออกมาแล้ว! ’อนุติน’ บอก กทม. ออกมาด้วยความไม่สบายใจ ที่ 30 วันจะส่งเรื่องให้สภา constitutional amendment after 30 days], Thai Post, 25 September 2020 (www.thaipost.net/main/detail/78577, accessed 28 September 2020).


12 Thai military and police officers, like their civilian counterparts in the government, retire at the end of the September following their sixtieth birthday. The new Army commander, General Narongpan Jitkaewthae is also an ardent royalist, like his predecessor General Sunthorn Kongsompong.

13 "भ ผบ.ท ยันเป็น สา ไมใช่หุ้นเสือ ยกมือเพียงอย่างเดียว“ [Army chief asserts that senators are not robots to raise their arms to vote only] New TV Online, 6 October 2020 (https://www.newtv.co.th/news/66478, accessed 8 October 2020).

14 "นายกจะไม่ไป สา โหวตแก้รธน.โยนมั4นคงคุมม์อบหน้าสภา“ [Prime Minister will not interfere with the senators on their voting on proposed constitutional amendments, and will leave it to security authorities to deal

15 “วิจารณ์เกี่ยวกับการพิทักษ์ไว้-19 ท่า GDP โตย่อมลดลง -8.3% กลับสู่ภาวะ 4.9% ปี64” [World Bank expects the COVID-19 will make the Thai GDP contract by -8.3% before recovering with a growth of 4.9% in 2021], *Manager Online*, 29 September 2020 (www.mgronline.com/stockmarket/detail/9630000099467, accessed 29 September 2020).

16 The 2017 Constitution was drafted when General Prayut headed the NCPO junta and the military-backed government. The NCPO actually engineered the scuttling of an earlier and more democratic draft constitution, produced by a drafting group led by Dr Borwornsak Uwanno, a constitutional law expert from King Prajadhipok’s Institute. The NCPO appointed one of its own men, Professor Meechai Ruchuphan — a renowned jurist and the only civilian on the NCPO — to produce a new draft constitution, which was eventually adopted. The NCPO was also in charge of selecting most of the 250 senators and empowering them to take part in the selection of prime minister during their initial five-year term. On 5 June 2019, General Prayut received 251 votes from government MPs and 249 votes from the senators; only the Senate President abstained. His opponent Thanathorn Jungruangkit, leader of the Future Forward Party, received only 244 votes, all from opposition MPs. Thanathorn’s supporters in the Move Forward Party want to see the election of senators, but not to allow them to take part in the selection of the prime minister.


18 Demands for reform include scrapping the *lèse majesté* law, abolishing the Privy Council, and disbanding the Royal Security Command, which has recently incorporated the two most powerful Bangkok-based infantry regiments into its command structure; “ก่อนนี้มีอยู่ ท่าจะติดปีเต็ด! ข้อ10 ข้อถึงที่ร้อง ยกเลิกพระรัชธรรม ยกเลิกพิธีมาตรฐาน เลิกม.112” [Arrogant Thammasat University protest leaders unveiled 10-point demand to remove the king’s prerogatives, to end worship of the monarchy, and to abrogate Section 112 (*lèse majesté* law)], *Thai Post*, 11 August 2020 (www.thaipost.net/main/detail/74057, accessed 28 September 2020).


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