

# PERSPECTIVE

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## Thailand Approaches an Historic Turning Point Amid Political Uncertainties

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*The country's Constitutional Court will soon be asked to rule on when Prime Minister General Prayut Chan-ocha reaches the constitutional limit of eight years in the premiership. In this picture, Thailand's Prime Minister Prayut Chan-O-Cha meets with US Secretary of State Antony Blinken at the Government House in Bangkok. Photo: Stefani Reynolds on 10 July 2022, POOL/AFP.*

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## **EXECUTIVE SUMMARY**

- The Thai Constitutional Court will soon be requested to make a historic ruling on when Prime Minister General Prayut Chan-ocha’s premiership will reach the limit of eight years specified under the 2017 Constitution. There are three possible outcomes.
- One possible outcome is that the court decides that General Prayut shall reach the limit on 23 August, because he was first appointed prime minister on 24 August 2014, about three months after seizing power in a coup on 22 May 2014.
- Second, the court may decide that the constitutional limit on General Prayut’s tenure as prime minister began to apply only when he returned to the premiership on 9 June 2019, following elections the previous March.
- The third possible outcome is a ruling that the constitutional limit began to apply, not only to General Prayut but also to former Thai prime ministers who could potentially return to office, on the day that the current constitution entered into force, 6 April 2017.
- Despite uncertainty over the pending Constitutional Court decision, General Prayut seems confident that he will be able to stay on in the premiership beyond 23 August.
- His “Big Brother” and key supporter Deputy Prime Minister General Prawit Wongsuwan — leader of Phalang Pracharat, the largest government party — seems to believe that the third possible outcome is most likely, and that General Prayut is thus eligible to serve as premier for another two years.
- Whatever the outcome, the Constitutional Court’s decision will certainly lead to significant and far-reaching political changes in Thailand.

## INTRODUCTION

Thailand is approaching an historic turning point amid political uncertainties and heightened tensions. The country's Constitutional Court will soon be asked to rule on when Prime Minister General Prayut Chan-ocha reaches the constitutional limit of eight years in the premiership. Regardless of the outcome, the Constitutional Court's decision will have significant and far-reaching consequences.

Three possible outcomes have been widely discussed in the Thai media.

The first scenario would amount to a *coup de grâce* from the Constitutional Court: General Prayut's premiership shall reach the eight-year constitutional limit by midnight of 23 August. Thereafter, he must relinquish his premiership. And he shall also be henceforth disqualified from returning to the top government post.

The second scenario would be a political windfall for the prime minister: The constitutional limit would be seen to begin applying in the case of General Prayut, who first assume the premiership following the May 2014 coup, only when he re-assumed the premiership on 9 June 2019 under the current constitution. That constitution entered into force on 6 April 2017. This decision would mean that Prayut can stay in power until June 2027, or at least serve another four-year term after the next general election.

The third scenario would be a compromise: The court could find that the eight-year limit on tenure of the premiership began to apply in all cases, including those of General Prayut and of individuals who served as prime minister in the past and could potentially return to office,<sup>1</sup> when the 2017 Constitution first entered into force. Therefore, if he returns to head another government after the next general election, General Prayut's premiership shall reach the limit only in early April 2025, just about half-way through the next government's four-year term.

## PULLING THE TRIGGER

Phuea Thai (PT), the chief opposition party in the current Thai parliament, is determined to spearhead a new attack to remove General Prayut from power once and for all. It planned on 17 August to submit its request for a ruling by the Constitutional Court on when he will reach the eight-year limit on service as prime minister. The request will first go to the House Speaker, who is expected to quickly forward it to the Constitutional Court, after the House Secretariat has verified the signatures of all MPs endorsing the request.

The Constitutional Court is expected to reach its decision quite speedily, perhaps before 24 August. This is because the pertinent facts are undisputed. There is no need for any additional fact-finding probe or for calling witnesses to testify.

Three months after seizing power in a bloodless coup on 22 May 2014, coup leader General Prayut was appointed the prime minister on 24 August 2014 by King Bhumibol. After the

March 2019 general election, General Prayut was reappointed to the premiership by King Vajiralongkorn on 9 June 2019.

At issue is the purely legal or constitutional question concerning when the eight-year limit on service as prime minister began to apply in his case. Section 158, Paragraph 4, of the 2017 Constitution stipulates that “The Prime Minister shall not hold office for more than eight years in total, whether or not consecutively.” The drafters of the constitution recorded their rationale and objective for setting the eight-year limit to be guarding against the lengthy monopolisation of power, which could be the source of a political crisis.<sup>2</sup>

Opposition MPs began to raise the issue of this limit last year.<sup>3</sup> One can thus surmise that the nine justices of the Constitutional Court and their staff have already done extensive research in anticipation of a request for a judgement on this constitutional provision as it applies to General Prayut.

When the Constitutional Court receives the request to offer such a judgement, one crucial response to watch for is whether or not it first issues an injunction for General Prayut to cease functioning as the prime minister by 24 August.<sup>4</sup> If it does, this means the Constitutional Court has valid reasons to believe that General Prayut will have reached the eight-year limit.

A NIDA poll conducted during 2-4 August showed that 64.25 per cent of respondents believed that General Prayut’s premiership would reach the eight-year limit on 23 August.<sup>5</sup>

## **WHAT IF GENERAL PRAYUT GOES?**

If the Constitutional Court rules that General Prayut will reach the eight-year limit at the end of 23 August, then he must relinquish his premiership before 24 August. Immediately, (First) Deputy Prime Minister General Prawit Wongsuwan, shall become the acting prime minister. The 77-year-old former Army chief and current leader of the Phalang Pracharat Party (PPP), the largest party in the ruling coalition, shall then work with the House Speaker and the Senate President to organise a joint parliamentary session to select a new prime minister within 30 days.

Those who were nominated for the premiership by political parties prior to the 2019 general election shall be considered first. Three of the more prominent nominees who could be considered are (Third) Deputy Prime Minister and Public Health Minister Anutin Charnvirakul, leader of the Bhumjaithai Party, the second largest party in the ruling coalition; Abhisit Vejjajiva, a former prime minister, and the former leader of the Democrat Party, the third largest party in the ruling coalition; and Chaikasem Nitisiri, the chief legal advisor to the PT.

The PT actually had three nominees in 2019. But the other two have left the party. They are Sudarat Keyuraphan, who is now leader of the Thai Sang Thai Party, and Chadchart Sittipunt, who in May was elected Bangkok’s governor as an independent candidate. Both would most likely decline to enter the race for the premiership under the PT’s nomination now.

To win the premiership, a nominee must have the support of at least the minimum simple majority of a joint session of the House of Representatives (477 MPs) and Senate (250 senators); this means receiving at least 364 votes.

The PT has 132 MPs. When the party joins forces with seven other opposition parties with 93 MPs, the opposition side will have only 225 votes, still 139 votes short of the winning majority. In the no-confidence vote held in the House last month, the opposition could mobilise only 206 votes against the prime minister. And it is highly unlikely that any opposition nominee for prime minister will be able to attract significant support from senators.<sup>6</sup>

A nominee from the government side, notably Anutin, could receive sizeable support from senators and win the premiership – if most of the PPP’s 97 MPs join other colleagues in the ruling coalition to vote for him. However, most MPs and others in the PPP may not want to see Anutin rise to the premiership so soon; otherwise, he and his Bhumjaithai Party may overshadow General Prawit and the PPP in the next general election. The Bhumjaithai Party, now with 62 MPs, looks set to gain more House seats in that election, partly because it is attracting defectors from other parties, and partly because it has succeeded in decriminalising marijuana and hemp – a popular move which will win votes in rural Thailand, especially in the Northeast.

Nevertheless, should there be no winner in the premiership race, the votes of two-thirds of the parliamentarians (or 485 votes) in the joint sitting of the House and the Senate can decide to look for outsiders to take the premiership. One such possible outside nominee is General Prawit. The PPP leader is not an MP, but he knows how to control MPs, not only in his own party but also in the small parties and micro-parties in the ruling coalition.

Moreover, General Prawit appears to have good working relations with a large number of senators. This is due partly to the fact that he headed the secretive search committee of the National Council for Peace and Order (NCPO) junta set up to find appointees in 2018 to fill the 250-member Senate.

Another outsider who could be considered is former Prime Minister Anand Panyarachun. Even though he is now 90, he appears to be in good health and remains articulate about the Thai economy and world affairs. He can be the ideal Thai leader to host this year’s APEC Economic Leaders’ Meeting, scheduled in Bangkok from 18 to 19 November.

Moreover, former Prime Minister Anand is a non-partisan figure. No party will gain undue political advantage if he is in charge of supervising the next general election, to be held between 45 and 60 days after the current four-year term of the House of Representatives ends on 23 March 2023.

## **AND IF GENERAL PRAYUT STAYS?**

At least three arguments can be made in support of General Prayut's eligibility to remain in the premiership after 23 August. First, when he was originally appointed prime minister on 24 August 2014, he was neither nominated by any political party nor chosen by a majority of parliamentarians, unlike the requirements and procedures in the 2017 Constitution.

Second, in serving concurrently as the head of the NCPO junta, he was not in the 2014–2019 period an ordinary prime minister. Rather, he held absolute state power, which an ordinary prime minister does not have. And lastly, no constitutional provisions can have adverse retroactive effect.

For these reasons, supporters of General Prayut believe that the eight-year constitutional limit only began to apply to his premiership on 9 June 2019, when King Maha Vajiralong signed his royal proclamation appointing General Prayut to the premiership following the March 2019 general election.

If the Constitutional Court concurs on this crucial point, then General Prayut's eligibility to serve as prime minister will last until mid-2027. If his government completes its four-year term on 23 March 2023, and a general election is held in April or May 2023, General Prayut can still head a new government for another four-year term without exceeding the eight-year limit.

General Prawit has already stated that the PPP will renominate General Prayut to serve as prime minister following the country's next elections, as in the 2019 general election. But at what price this time?

Within the restless PPP, there has been talk of nominating not only General Prayut alone, but also General Prawit, because the 2017 Constitution allows each party to propose up to three nominees for the premiership in the run-up to an election.

Many in the PPP also want to see General Prawit assume the post of the minister of interior, in order to be in the position of supervising the next general election. The incumbent minister of interior, General Anupong Paochinda, could be moved to head the Energy Ministry and even given an additional title as one of General Prayut's deputy prime ministers as a consolation.

This move would, however, require edging out (Sixth) Deputy Prime Minister and Energy Minister Supattanapong Punmeechaow, a non-partisan technocrat who has been frequently blamed for failing to help needy Thais cope with the rising cost of fuel and electricity. There would be, in other words, no serious political cost to General Prayut if he let General Anupong replace Supattanapong.

On his part, General Prayut seems confident that he will be able to hold the premiership beyond 23 August. In fact, on 12 July he announced on his official Facebook page, three core development strategies to help Thailand and its people cope with economic problems and global disruptions.<sup>7</sup>

On the same day, he also announced the launching of the seven-year plan of action, covering 2021–2027, to drive the bio-circular-green national development.<sup>8</sup> Moreover, he has chaired substantive meetings to prepare for the approaching the APEC economic summit in Bangkok.

These activities indicate that General Prayut believes that he need not leave the premiership any time soon.

Undoubtedly, if General Prayut can stay on as prime minister beyond 23 August, protestors might return to Bangkok's streets to renew their longstanding demand for his immediate resignation. A rally inside Thammasat University's Rangsit campus on 10 August saw several speakers call on him to make a "sacrifice" for the sake of Thai democracy by stepping down immediately.<sup>9</sup>

## **A POSSIBLE COMPROMISE?**

One possible compromise solution to the question of when General Prayut will reach the eight-year limit to service as prime minister is to take the day on which the current constitution went into force, on 6 April 2017, as the date on which the clock on his premiership began to run. This would be consistent with the principle that new legal or constitutional provisions cannot have retroactive adverse effect.

General Pravit seems to believe the Constitutional Court could adopt this compromise in its pending decision. He has told the Thai media that the prime minister will stay on for two more years and that there is therefore no need for General Pravit himself to prepare to assume the premiership anytime soon.<sup>10</sup>

If the Constitutional Court does in fact decide the case in this manner, then General Prayut will confront a new political challenge. His eligibility to serve as prime minister will end in mid-2025, just about-half way through the four-year term of the new government that takes power after the next general election.

This circumstance will make it less likely that the PPP will renominate only General Prayut for the premiership. The party will have to include one or two other viable options.

In fact, General Prayut is no longer a political asset for the party. His popularity has been in decline, dropping from 17.54 per cent in September 2021 to 11.68 per cent in June 2022.<sup>11</sup> For the party to nominate only him as its candidate for the premiership will not boost PPP candidates' chances in the next general election.

Nevertheless, General Prayut is not completely helpless. At least two new parties have been set up recently to support him. The United Thai Nation Party was launched on 3 August, led by Pirapan Salirathavibhaga, a veteran politician and political advisor to the prime minister.<sup>12</sup>

The other party is called the Thoet Thai Party, registered on 5 August. It is led by Dr Seksakol Atthawong, a former political advisor to the prime minister. He is rallying former Red Shirts all over Thailand to oppose the PT (and exiled former Prime Minister Thaksin Shinawatra) and support General Prayut.<sup>13</sup>

If General Prayut does entertain the wish to continue in power after the next general election, he will face a serious dilemma: he can give his consent to being nominated by just one party. But which one?

Neither United Thai Nation nor Thoet Thai appears to have the capability to win up to 25 House seats (5 per cent of the total in the House) in order to qualify to propose its premiership nominee for consideration.

One possible solution is for General Prayut to assume leadership of the United Thai Nation Party, to accept the party's nomination for the premiership, and thus to contest the next general election as a full-fledged politician. This move might give the party a better chance of winning House seats, though whether the prime minister's "brand name" will, in the absence of strong local networks of professional politicians supporting the party, be sufficient to enable United Thai Nation to capture 25 seats is an open question.

If General Prayut does not opt to make that move, he will have to consider accepting renomination by the PPP, and prepare to pay quite dearly. Perhaps, a "down payment" in the form of a cabinet reshuffle and surrender to the PPP's demands, including especially giving the interior minister post to General Prawit, will in this case soon be required.

## **CONCLUSION**

Uncertainties in Thai politics will continue to trouble politicians and voters alike until the Constitutional Court settles the question of when General Prayut's premiership will reach its eight-year limit.

After that, it will be slightly clearer which direction Thailand is heading.

As far as General Prayut is concerned, he seems confident he will be able to stay on as prime minister to welcome APEC leaders in mid-November, and to lead a new government after the next general election.

Questions remain, however, on how far General Prayut is prepared to go, and how many political concessions he is willing to yield in order to remain in power.

## ENDNOTES

<sup>1</sup> This means, for example, that Anand Panyarachun, who served as prime minister twice (2 March 1991 – 7 April 1992 and 10 June – 23 September 1992) for altogether 1 year and 141 days in office, might legally serve in the premiership for another 6 years and 224 days. Current House Speaker Chuan Leekpai, who also served as prime minister twice (23 September 1992 – 13 July 1995 and 9 November 1997 – 9 February 2001) for altogether 6 years and 20 days in office, would in contrast have only 1 year and 345 days of premiership eligibility left. And former Democrat Party leader Abhisit Vejjajiva, who served as the prime minister from 17 December 2008 – 5 August 2011, might return to the premiership for 5 years and 343 days.

<sup>2</sup> “ความมุ่งหมาย และคำอธิบาย ประกอบประมวลราชธรรมนูญแห่งราชอาณาจักรไทย พุทธศักราช 2560” [Objectives and explanations of each section of the Constitution of the Kingdom of Thailand B.E. 2560], published by the Secretariat of the House of Representatives in May 2019 and revised in October 2019 ([www.parliament.go.th/ewtcommittee/ewt/draftconstitution2/download](http://www.parliament.go.th/ewtcommittee/ewt/draftconstitution2/download), accessed 12 August 2022). In Thai, the rationale for and objective of setting the eight-year limit for holding the premiership “เพื่อมิให้เกิดการผูกขาดอำนาจในทางการเมืองยาวเกินไป อันจะเป็นต้นเหตุเกิดวิกฤตทางการเมืองไทย”.

<sup>3</sup> See the author’s article, “How Much Longer Can Thailand’s Prime Minister Rule Before Reaching the Eight-year Limit?”, ISEAS Perspective No. 2021/139, October 2021 (<https://www.iseas.edu.sg/articles-commentaries/iseas-perspective/2021-139>, accessed 11 August 2022).

<sup>4</sup> In two earlier cases against General Prayut, the Constitutional Court did not order him to cease functioning as the prime minister during its deliberations. The court ruled in his favour in both cases. There was a July 2019 challenge from opposition parties on whether his having led a coup and serving as head of the NCPO junta made General Prayut a state authority and thus disqualified him from holding the premiership after that year’s election. The second case, which the court received on 17 June 2020, questioned whether General Prayut’s residence in a house provided by the Royal Thai Army on base in Bangkok, long after his retirement as Army chief at the end of September 2014, meant that he benefited from corruption, violated ethical standards, and lacked the honesty to lead a government.

<sup>5</sup> NIDA Poll, 7 August 2022 ([www.nidapoll.nida.ac.th/data/survey/uploads/FILE-1659690540614.pdf](http://www.nidapoll.nida.ac.th/data/survey/uploads/FILE-1659690540614.pdf), accessed 12 August 2022).

<sup>6</sup> In the contest for the premiership after the 2019 general election, 249 of the 250 senators voted for General Prayut, who won with 500 votes—251 from MPs in the 19 parties comprising the government coalition. Senate President Pornpetch Wichitcholachai registered a vote of “abstention” out of political correctness.

<sup>7</sup> “ตอกย้ำกลยุทธ์ภาพใหญ่ เดินหน้าสร้างอนาคต” [Stressing big picture strategies, moving forward to build the future], a video clip posted on General Prayut Chan-ocha’s official Facebook page on 12 July 2022 ([www.facebook.com/prayutofficial](http://www.facebook.com/prayutofficial), accessed 12 August 2022). The three core strategies involve completing major infrastructure projects, promoting investment in electric vehicles and supporting electronic and other modern industries, and reforming the banking sector to help needy Thais gain access to low-interest loans for household spending and ensuring bank credits to support SMEs.

<sup>8</sup> “นายกรัฐมนตรีประกาศเดินหน้าแผนปฏิบัติการด้านการขับเคลื่อนการพัฒนาประเทศไทย ด้วยโมเดลเศรษฐกิจ BCG ภายใน 7 ปี (พ.ศ. 2564 – 2570)” [The prime minister announces launch of plan of action to drive Thailand’s national development under the BCG economic model within seven years (B.E. 2564 – 2570)] ([www.nstda.or.th/home/news\\_post/bcg-model2/](http://www.nstda.or.th/home/news_post/bcg-model2/), accessed 12 August 2022).

<sup>9</sup> “สภานักศึกษา มธ. จัดชุมนุม ‘ม็อบ 10 สิงหาคม’ ประชาธิปไตยต้องไปต่อ” [Student Union of Thammasat University organises a ‘10 August Mob’ rally: Democracy must move ahead], Bangkok Business News, 10 August 2022 ([www.bangkokbiznews.com/politics/1020262](http://www.bangkokbiznews.com/politics/1020262), accessed 12 August 2022).

<sup>10</sup> “‘ประวิตร’ ลั่น ‘ประยุทธ์’ เป็นนายกฯ ต่ออีก 2 ปี” [‘Prawit’ declares that ‘Prayut’ will be prime minister for two more years], Thai PBS News, 10 August 2022 ([www.news.thaipbs.or.th/content/318288](http://www.news.thaipbs.or.th/content/318288), accessed 12 August 2022).

<sup>11</sup> See NIDA Poll survey in the second trimester of 2022 ([www.nidapoll.nida.ac.th/data/survey/uploads/FILE-1656155887431.pdf](http://www.nidapoll.nida.ac.th/data/survey/uploads/FILE-1656155887431.pdf), accessed 12 August 2022). In the survey conducted during 20-23 June 2022, topping the political popularity poll was Paethongtharn Shinawatra of the Phuea Thai Party, the younger daughter of exiled former Prime Minister Thaksin, with a 25.28 per cent rating; her rating doubled from 12.53 per cent in a similar survey in March 2022.

<sup>12</sup> “เปิดโฉม ‘รวมไทยสร้างชาติ’ เวอร์ชันแม่ทัพ ‘พีระพันธุ์’” [Unveiling ‘Ruam Thai Sang Chat’, the version with Pirapan as party leader], Thai Post, 3 August 2022 ([www.thaipost.net/dominate-the-situation-news/192502](http://www.thaipost.net/dominate-the-situation-news/192502), accessed 12 August 2022).

<sup>13</sup> “‘แรมโบ้’ เปิดหมดเปลือกเบื้องลึกตั้ง ‘พรรคเทิดไท’ ลั่นส่งครบทุกเขต ใช้ความจริงใจสู้กระสุน” [‘Rambo’ discloses the deep background of his ‘Thoet Thai Party’, saying that his party will contest in all constituencies, using sincerity to fight bullets], Thai Post, 6 August 2022 ([www.thaipost.net/hi-light/195150](http://www.thaipost.net/hi-light/195150), accessed 12 August 2022). ‘Rambo’ is the nickname of Dr Seksakol, who was a well-known Red Shirt leader before his defection to General Prayut’s camp.

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