



**Human
Rights
Now**

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Thailand: Grave Concern over the Referendum Process and Draft Constitution in Thailand

1. Constitutional referendum in Thailand

On Sunday, 7 August 2016, Thailand will have a referendum on a new constitution following more than two years of military control after its 22 May 2014 coup.

On 29 March 2016, the Constitution Drafting Commission (CDC) finalized the draft constitution of Thailand as constituted by Section 279 and announced a National Referendum to be held on 7 August 2016 leading toward a general election in 2017.¹

Despite the strong concern raised by the local civil society as well as international community, including numerous recommendations made in the course of the Universal Periodic Review of the UN Human Rights Council, the Thai Government is heading into the process of the constitutional referendum.

Human Rights Now, a Tokyo based international human rights NGO, has been criticizing the sweeping military power and suppression of fundamental human rights of people in Thailand since the coup.

Having considered the text of the draft constitution as well as the process for referendum, we must express grave concern over the process and content of the proposed Thai constitutional reform in Thailand as a whole.

The military government has promised to bring democratic elections and government back to Thailand with a new constitution. However, the transitional process should be in conformity with Thailand's obligation under international human rights law and should reflect people's genuine voice without the suppression of critics.

2. Concerns over the Draft Constitution

(1) NCPO's Power is Maintained

We are concerned that the draft constitution gives the military significant control and influence in the new government.²

First, according to Section 265, the NCPO will continue to perform duties until new government is established following the first general election.

¹ <http://www.mfa.go.th/main/en/media-center/14/66031-The-Dissemination-of-the-Final-Constitution-Draft.html>

² Second Draft of Thai Constitution (2016)

Second, according to the Section 269 of the draft, the Senate will consist of 250 members appointed by the King upon the advice of NCPO for at least the first 5 years of the new government. Section 270 states that the Senate shall have the duty and powers to follow up on the entire transitional process of the country. This power structure enables the NCPO to control the new government through the Senate

With such powers in its hands, the military government is able to control much of the political process in line with its will.

(2) Human Rights Concerns

Chapter III of the draft constitution addresses “Rights and Liberties of the Thai People.” While its measures purport to protect rights, a major problem is that they and other measures contain language which allows the government to limit, restrict, and (in cases of emergency) suspend rights, which language is overbroad and vague, allowing the government to restrict rights in almost any situation in its discretion. For example, the protection of rights does not cover activities which “affect or harm the security of the State, public order or good morals of people, and also doesn’t violate the rights and liberties of other persons”,³ however, these conditions are within the discretion of the government.

As for the suspension of rights during emergencies, the constitution gives the King the power to issue an emergency decree which may suspend rights “merely when the Council of Ministers is of the opinion that it is the circumstance of unavoidable exigency.”⁴ While it may be rejected by the National Assembly, House of Representatives, or military-influenced Constitutional Court, “any act undertaken during the enforcement of such Emergency decree” shall not be affected by such disapproval.⁵ The constitution also does not give any guidance as to which rights may be suspended for what purposes, which opens a door to almost any right being suspended for any reason in the Council of Ministers’ discretion.⁶ Such overbroad and vague conditions, and placing their interpretation in officials’ discretion, goes against the norm in international human rights law.

Moreover, Section 279 prescribes that all announcements, orders and acts, including the NCPO’s order already in force prior to the date of promulgation of this Constitution shall continue to be in force under this Constitution. Since the NCPO came into power, significant numbers of orders have been promulgated and severely restricted the fundamental human rights of the activists, oppositions and general citizens in Thailand. This provision justifies serious human rights violations committed by the NCPO and continues severe restriction of human rights.

The draft constitution implements a National Human Rights Commission to oversee human rights abuses, with members appointed by the King with Senate advice.⁷ However, its powers are limited to issuing reports and proposing recommendations, and it does not have any power to mandate or prohibit government action nor the ability to initiate changes to the legal system, limiting its effectiveness.

(3) Suppression of Opinion over the Draft Constitution

³ Id., Section 25, Para. 1.

⁴ Id. Section 172.

⁵ However, “if the emergency decree has the effect of repealing or amending any Act, the provisions of the Act in force before the amendment or the repeal shall continue to be in force as from the date the disapproval of such emergency decree is effective.” Id., Section 172, Para. 4.

⁶ With the one exception of one measure explicitly allowing suspension in times of emergency, Section 30, the prohibition against forced labor, which is a serious human right.

⁷ Id., Section 246.

Although the draft constitution poses serious problem which would undermine human rights and democracy, the current military government suppresses any objection, criticism, or debate over the draft with criminal sanction, threats and intimidation.

Article 61 of the 2016 Referendum Act criminalizes acts of disseminating false information to influence voters or otherwise disrupt the referendum with 10 years of imprisonment and a loss of voting rights for 10 years.⁸ The military government has utilized this law to suppress any criticism, debate and other expressions and campaigns in relation to the constitutional referendum process, and it has completely cracked down on activists, critics and media.⁹ The military restricts political groups of more than five people to avoid open debates on the constitution, and TV stations were banned from broadcasting for 30 days.¹⁰ It was also reported that critics of the draft constitution are subjected to military detention by the NCPO.¹¹ Without any critical opinions in the public debate and only positive opinions being broadcast, the referendum cannot be an accurate reflection of Thai citizens' views. The government must ensure fundamental freedoms and human rights are met, especially freedom of opinion, expression, association and assembly, and ensure the genuine choice of the people are reflected in the referendum process.

3. Conclusion

Human Rights Now has been gravely concerned over the human rights situation in Thailand after the 2014 coup. The military government severely restricted the fundamental human rights of Thai people, in particular rights to freedom of expression, association, and assembly, and suppressed the legitimate activities of human rights defenders. The NCPO's order allows sweeping power of the government to conduct arbitrary arrests, detentions, and even torture. Many of these clearly constitute violations of the ICCPR, to which Thailand is a state party. Through the transition process, the Thai government is expected to end its oppressive policy and restore human rights, rule of law and democracy.

Given the potential for undue military influence and human rights abuses under the new constitution, and actual abuses in the lead up to the referendum, Human Rights Now makes the following recommendations to the Thailand government.

- Cease detentions of critics of the constitution and other actions which stifle open debate on the constitution for the referendum, including restricting critical broadcasts and disallowing political meetings, and ensure that the referendum process is a fair and open process.
- Ensure freedom of expression, opinion, association and assembly in relation to the constitutional reform process and transition process.
- Regardless of the result of the referendum, immediately restore rule of law, democracy, and human rights.
- Ensure that fundamental human rights are protected for people in Thailand in accordance with the ICCPR and other international human rights treaties to which Thailand is a state party.
- Regardless of the result of the referendum, interpret constitutional provisions relevant to human rights in accordance with Thailand's obligations under international human rights law so that the broad constitutional language cannot be used to unjustifiably limit the protection of rights.
- Repeal all laws and orders of the NCPO that are inconsistent with its international human rights obligations.

⁸ <http://aseanmp.org/2016/04/25/regional-mps-concerned-thailands-draft-constitution-planned-referendum/>;

<https://www.hrw.org/news/2016/06/21/thailand-junta-bans-referendum-monitoring>

⁹ <https://www.theguardian.com/world/2016/aug/03/thailand-referendum-fears-over-fair-vote-as-military-cracks-down-on-dissent>

¹⁰ Amnesty International, "Open Letter to Prime Minister Prayut Chan-Ocha", 25 July 2016, pp. 4. ff.,

<https://www.amnesty.org/en/documents/asa39/4548/2016/en/>; <https://www.theguardian.com/world/2016/aug/03/thailand-referendum-fears-over-fair-vote-as-military-cracks-down-on-dissent>

¹¹ <https://www.hrw.org/news/2016/07/29/thailand-army-detains-referendum-critics>