

Chapter 5: Reform of the Electoral System for Members of the House of Representatives and Senators Under the Constitution

著者	Faculty of Law Thammasat University Thailand
権利	Copyrights 日本貿易振興機構 (ジェトロ) アジア 経済研究所 / Institute of Developing Economies, Japan External Trade Organization (IDE-JETRO) http://www.ide.go.jp
journal or publication title	New Legal Frameworks towards Political and Institutional Reform under the New Constitution of Thailand
volume	14
page range	57-75
year	2002
URL	http://hdl.handle.net/2344/00015082

CHAPTER 5

REFORM OF THE ELECTORAL SYSTEM FOR MEMBERS OF THE HOUSE OF REPRESENTATIVES AND SENATORS UNDER THE CONSTITUTION

I: Introduction

The underlying theme in the present Constitution is based on the subject of political reform prompted by past failures in the development of Thai politics. The preceding Constitution of 1991 was unable to prevent the use of dishonest devices for the attainment of political power, and a common occurrence in the political setting during an election, at both national and local levels, was the sale and purchase of votes¹ which undermined democratic principles in the election of representatives. Such problems gave rise to a political reform by a revision of the democratic regime by means of representatives or the system of representation. Various electoral systems for members of the House of Representatives were proposed and widely debated upon on their pros and cons and their suitability for implementation to Thai political and domestic cultures. In the end, the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided for an electoral system on a **proportional representation** basis, rather than on a **relative majority** basis, even though in the initial period all had spoken in one voice of the difficulties and inappropriateness of proportional representation in Thailand². There are, in fact, difficulties in the implementation of all novel and unaccustomed electoral systems,

¹ Thippaporn Tantisunthorn, “Introduction to the Institute of Educational Policies”, in *A New Electoral System: Why Thais Should Vote*, Chaowana Traimas, 2nd edn., Bangkok: Institute of Educational Policies, 1999, p. i. and Pinai Nanakorn, “History and Evolution of the Constitutions in Thailand: From the Abrogation of the Absolute Monarchy to the Political Reform”, *Administrative Law Journal*, Vol. 16 (Special Issue), 1997, p. 212 at 242.

² Thippaporn Tantisunthorn, “Introduction to the Institute of Educational Policies,” in *How to Vote Without the Loss of Opportunity by Thais or Thailand*, Chaowana Traimas, 2nd edn., Bangkok: Institute of Educational Policies, 2000, page iii.

but if a thorough study is undertaken, any electoral system would not be rendered beyond the capabilities of the Thai people³.

II: PROLOGUE TO THE ELECTORAL SYSTEM OF MEMBERS OF THE HOUSE OF REPRESENTATIVES AND SENATORS

The first election law in Thailand was enacted on 16th December 1932 in an Act called the Election Act, B.E. 2475 (1932)⁴. Section 3 of the Act provided for an election procedure whereby the people in each *Tambon* voted for one representative who would in turn vote for one representative for each *Changwat*, i.e. a system of indirect elections was established. Section 31 of the Act provided for an electoral system by **absolute majority**, or in other words, a person would only be elected if the number of votes received exceeded half the total number of voters. This law was, however, never applied to any election due to the National Assembly being in recess, during which the Act was amended twice. The amended law was subsequently applied to its first real election on 15th November 1933, which was still by way of an indirect election, but in certain places, the election was on a basis of combined constituencies where a *Changwat* was prescribed as one constituency. Section 30 paragraph one of the Act amended the electoral system, or count of votes, from that based upon absolute majority to that of **relative majority**, where a person was considered elected when he received the greatest number of votes of all candidates without having to obtain the votes of more than half the total number of voters.

The 2nd election was subsequently held on 7th November 1937 under the Election Act, B.E. 2475 (1932) as amended by the Election Act (No. 3), B.E. 2479 (1936), which was the first of its kind to employ the direct election of representatives and single member constituencies. Nevertheless, the electoral system was still by relative majority and no further changes from the 2nd election

³ Boonsri Meewongse-Ukos, *Texts on Comparative Constitutional Law: the German Constitution*, Bangkok: Textbooks and Supplementary Teaching Materials Project, Faculty of Law, Thammasat University, 1992, p. 110.

⁴ Somyos Cheuthai, *Texts on General Constitutional Principles*, 2nd edn., Bangkok: Textbooks and Supplementary Teaching Materials Project, Faculty of Law, Thammasat University, 1992, pp. 122-126.

were made for the 3rd election on 12th November 1938 and the 4th election on 6th January 1946)⁵.

The 5th election on 29th January 1948 to the 9th election on 10th February 1969 reverted to the use of combined constituencies⁶. Subsequently, however, the Constitution of the Kingdom of Thailand, B.E. 2517 (1974) adopted the rule of divided constituencies where a *Changwat* was divided into many constituencies, while retaining the electoral system of relative majority in the order of the number of votes cast for each number. Further changes were made by the Constitution of the Kingdom of Thailand, B.E. 2521 (1978) where combined constituencies were once again adopted with the exception of Bangkok, which was divided into 3 constituencies. The Constitution retained the electoral system of relative majority, but the rule of election on an individual or a numerical basis was amended to an election of a team or political party, called a combined number.

In 1985, the Constitution of the Kingdom of Thailand, B.E. 2521 (1978) was further amended to allow elections by both multiple and single member constituencies depending on the number of members of the House of Representatives that could be elected in each *Changwat*. In other words, the rule of combined constituency applied to any *Changwat* where no more than 3 members could be elected, and the boundaries of such *Changwat* were considered as a constituency. Whereas in a *Changwat* where more than 3 members of the House of Representatives could be elected, the *Changwat* boundaries were further divided on the basis that a *Changwat* with 4 Members of House of Representatives would be divided into 2 areas of 2 Members each, and a *Changwat* with more than 4 Members would be equally divided into areas of 3 Members each, but where this was not possible, the areas would initially be divided into areas of 3 Members while the remaining areas could not have less than 2 Members each, e.g. a *Changwat* with 7 Members was divided into 3 constituencies of one constituency with 3 Members while the two remaining constituencies had 2 Members each. Meanwhile, the

⁵ Kramol Thongthamachati, Somboon Suksamran and Preecha Hongskrailes, *The Election of Political Parties and Governmental Stability*, Bangkok: Research Section, Faculty of Political Science, Chulalongkorn University, 1988, pp. 35-36.

⁶ *Ibid.* p. 37.

electoral system remained by relative majority but in the order of the number of votes cast for each number.

The subsequent constitution was the Constitution of the Kingdom of Thailand, B.E. 2534 (1991), in which the electoral process of combined and divided constituencies were still employed, along with the electoral system of relative majority in the order of votes cast for each number, no different from the Constitution of the Kingdom of Thailand, B.E. 2521 (1978) as amended, B.E. 2528 (1985).

It may be concluded that in the past, Thailand has held direct elections of representatives only for members of the House of Representatives. The elections were by relative majority and alternated between the use of single numbers and combined numbers, as well as between the use of multiple and single member constituencies. In the end, however, a mixture of both multiple and single member constituencies were concurrently employed. On the other hand, it never appeared that the people could directly vote for Senators.

III: REFORM OF THE ELECTORAL SYSTEM FOR MEMBERS OF THE HOUSE OF REPRESENTATIVES AND SENATORS

The reformation of the Thai political system in 1996 included the electoral system as one of its agendas. It was hoped that a new electoral system would provide for elections which are fair and honest, reduce the opportunities for the sale and purchase of votes, eliminate corruption by influential political groups and open up the opportunity for more virtuous and able candidates⁷. Thus, the present Constitution prescribed a number of essential qualities for the electoral system, namely⁸, by prescribing a duty to vote on the Thai people; providing for Senators to be directly elected by the people; allowing for eligible voters overseas or residing outside their constituency based on their original domicile to exercise the right to vote; establishing an Election Commission as an independent unit in charge of the

⁷ Chaowana Traimas, A New Electoral System: Why Thais Should Vote, *op. cit.*, note 1 *supra*, pp. ix-x.

⁸ *ibid.* p. ix.

elections free from any governmental intervention and placing it at the heart of the process of political reformation under the new Constitution⁹ and at the same time giving elections the character of being under the control of the Election Commission¹⁰; prescribing election procedures and those elected on a single member constituency basis, derogating political rights under the law from those who fail to exercise their right to vote without reasonable grounds; and finally, providing for proportional representation in sections 98-104 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in lieu of relative majority. The present Constitution therefore calls for a consideration of the following matters:

1. The Basic Principles of an Election

The majority of experts in public law consider these basic election principles to be rights which are the entitlements of eligible voters and candidates under public law. These legal entitlements are equal in status to constitutional rights or basic political rights and are universally applicable to all stages of elections of all level and in all electoral system¹¹. The principles are as follows:

(1) **Universal Suffrage**¹². A person should be given the right to be a candidate and the right to vote without being excluded by reason of sex, social and economic status, religion, race, education, occupation, political views or membership of a political party. These principles are enacted in both section 105(1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and section 103(1) of the Constitution of the Kingdom of Thailand, B.E. 2534 (1991). Anything done in contravention of these general principles will violate the rule of equality in section 30 of the B.E. 2540 (1997) Constitution unless exempted by the general exclusions, being, the restriction of rights in children, the mentally disabled or lunatics, prisoners or those whose right to be a candidate have been derogated.

⁹ Surapon Nitikraipot, “*The Legal Implications of the Transitory Provisions upon the Promulgation of the New Constitution*”, *Jurisprudence Review*, Vol. 3, 27th Year, September, 1997, p. 778 at 787.

¹⁰ *Ibid.* p. 783.

¹¹ *Op. cit.*, note 3 *supra*, pp. 91-92.

¹² *Op. cit.*, note. 3 *supra*, p. 92 and *op. cit.*, note 4 *supra*, p. 111.

These exceptions appear in both sections 105 and 106 of the 1997 Constitution and section 103 and 104 of the 1991 Constitution.

(2) **The principle of direct elections**¹³. This principle provides for representatives to be directly elected by the people. The prohibition of intermediaries applies not only to the election of electoral colleges, but also to organisations wishing to act as an agent of the voters and exercising the votes at its discretion. These principles appear in both section 104 paragraph 3 of the 1997 Constitution and section 102 paragraph 2 of the 1991 Constitution. Any election involving a person or organisation acting as an intermediary is an indirect election.

(3) **Liberty and independence of votes**¹⁴. Under this principle, votes should be made freely, without any undue influence, psychological pressure, economic duress or other influences. Hence, this principle is an essential condition for any election, and is at the same time at the heart of the reform of the electoral system. This principle appears in both sections 44-48 of the Organic Act on Elections of Members of the House of Representatives and Senators, B.E. 2541 (1998) and sections 35 and 37 of the Act on Elections of Members of the House of Representatives, B.E. 2522 (1979). The 1998 Act protects the electorate from foreigners¹⁵ and State officials¹⁶ as well as penalising an eligible voter who sells his vote¹⁷. Any election not conducted in accordance with this principle will in effect render other basic election principles meaningless and the election may not be labeled as one conducted in a democratic administrative system. On the contrary, a fair and honest election would result in the selection of representatives which truly reflects the intentions of the people. Thence, the people's power will manifest itself and the word sovereignty will be made meaningful¹⁸. Any act which violates this

¹³ *Op. cit.*, note 3 *supra*, p. 93 and *op. cit.*, note 4 *supra*, p. 114.

¹⁴ *Op. cit.*, note. 3 *supra*, p. 93 and *op. cit.*, note. 4 *supra*, p. 111.

¹⁵ Organic Act on the Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), section 46 and section 106.

¹⁶ Organic Act on the Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), section 47 and section 101.

¹⁷ Organic Act on the Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), section 63 and section 111.

¹⁸ *Op. cit.*, note. 7 *supra*, p. v.

principle of liberty of votes will be in contravention of the principle of equality and liberty under sections 30 and 28 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

(4) **Equal suffrage**¹⁹. Under this principle, the votes of all eligible voters shall have equal weighting. This principle appears in both section 102 paragraph 1 and section 104 paragraph 1 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and in section 102 paragraph 1 of the Constitution of the Kingdom of Thailand, B.E. 2534 (1991).

(5) **Secret vote**²⁰. Under this principle, a person cannot discover how other voters cast their votes. Even if such voter does not intend for his vote to be kept secret, compliance with the principle is still mandatory. This principle appears in both section 104 paragraph 3 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and in section 102 paragraph 2 of the Constitution of the Kingdom of Thailand, B.E. 2534 (1991). This principle is an essential characteristics of a democratic system and acts as a safeguard for liberal election. Unless elections are conducted secretly, not only will protections for individual voters be disabled, but the common interests will also be left unguarded. Such elections cannot be conducted liberally under the principle of liberty of votes. This principle is applied in practice by sealing a ballot paper in an envelope or depositing it in a ballot box. The polling place must also be discreet.

Therefore, the reform of the electoral system under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) retains all the basic principles of an election that were provided for in the Constitution of the Kingdom of Thailand, B.E. 2534 (1991), its purpose being to guarantee basic political rights for the people.

¹⁹ *Op. cit.*, note. 3 *supra*, p. 95.

²⁰ *Ibid.*, p. 97 and *op. cit.*, note. 4 *supra*, p. 112.

2. The electoral system for Members of the House of Representatives and Senators

The electoral system of members of the House of Representatives and Senators under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) is different from that under the B.E. 2534 (1991) Constitution in a number of ways, namely:

(1) The B.E. 2534 (1991) Constitution provided that²¹ only members of the House of Representatives came from elections. There were a total of 360 members with each *Changwat* having the number of members calculated by the proportion of people per member published by the Ministry of the Interior²². If a *Changwat*'s population is less than the published proportion of people per member, such *Changwat* would be given 1 member of the House of Representatives. Whereas if a *Changwat*'s population exceeded the published proportion of people per member, such *Changwat* shall have an additional member of the House of Representatives for every multiple of the proportion of people per member reached. Yet, if there were still less than 360 members from every *Changwat*, an additional member was allocated to the *Changwat* with the highest remaining fraction of the proportion until 360 members could be obtained.

In an election in each *Changwat*, if less than 3 members of the House of Representatives could be elected, such *Changwat* would be considered to be a constituency. If more than 3 members could be elected in the *Changwat*, the *Changwat* boundaries would be divided into several constituencies. A *Changwat* where 4 members could be elected would be divided into 2 constituencies of 2 members each, while a *Changwat* of more than 4 members would be divided into constituencies of 3 members each, but if this was not possible, the *Changwat* would initially be divided into constituencies of 3 members each and the remaining constituencies could not have less than 2 members each and the constituencies determined in this way had to be adjoining areas and there could only be slight differences in the proportions of people to the total number of members allocated to

²¹ Constitution of the Kingdom of Thailand, B.E. 2534 (1991), sections 99 - 102 and section 94.

each of the constituencies. Thus, a voter had the right to vote for as many candidates as the number of members of the House of Representatives allowed in that constituency. The candidate obtaining the greatest number of votes would be the elected member while a draw would be determined by lots. In a constituency where more than one member could be elected, the elected member was determined by the order of the number votes obtained by each candidate and a draw was also determined by lots²³. However, if the number of candidates in a constituency did not exceed the number of members that could be elected for that constituency, the candidates were deemed as elected without the need to cast votes²⁴.

Therefore, the electoral system under the 1991 Constitution was by relative majority where direct elections of representatives were only held for members of the House of Representatives. The successful candidate was determined by the order of votes and the electoral process involved the use of both combined and single member constituencies.

(2) The Constitution of the Kingdom of Thailand, B.E. 2540 (1997)²⁵ provided for an electoral system where both members of the House of Representatives and senators acquired office from elections. There are a total of 500 members of the House of Representatives, consisting of 100 members elected on a party-list basis whilst the remaining 400 members are elected on a constituency basis. At the same time there are altogether 200 Senators.

2.1 In an election of members of the House of Representatives on a party-list basis, the country's boundaries constitutes a constituency. Each political party prepares one party-list and the voters may only cast a vote for one list. Thereafter, the proportion of Members of House of Representatives allocated to each party would be calculated, subject to the rule that no member would be allocated to the

²² Act on the Election of Members of the House of Representatives, B.E. 2522, section 6.

²³ Act on the Election of Members of the House of Representatives, B.E. 2522 (1979), section 77.

²⁴ Act on the Election of Members of the House of Representatives, B.E. 2522 (1979), section 7.

²⁵ Constitution of the Kingdom of Thailand, B.E. 2540 (1997), sections 98-104 and sections 121-123.

party-list of a political party receiving less than 5 per cent of the total number of votes cast in the country. Thus, a party-list receiving more than 5 percent of the total number of votes cast would be included in the allocation of Members of House of Representatives on the following basis²⁶:

2.1.1 The total number of votes cast is calculated from the sum of votes received by each party-list, and thereafter the 5 per cent mark shall be calculated.

2.1.2 Any party-list failing to achieve the 5 per cent mark shall be eliminated and a sum of the votes for the remaining party-lists shall be calculated. That sum shall be divided by 100 and the quotient obtained shall be deemed as the average number of votes for the allocation of one member of the House of Representatives.

2.1.3 The number of votes received by the party-list of each political party passing the 5 per cent mark shall be divided by the average number of votes per member of the House of Representatives (calculated in 2.1.2 above) and the quotient obtained shall be deemed as the number of members of the House of Representatives allocated to such political party with the candidates elected in the order in which their names appear on the party-list.

2.1.4 In the case where the number of Members of House of Representatives allocated to each political party do not add up to 100, the political party whose quotient calculated in 2.1.3 above has the greatest remaining decimal fraction shall receive an additional member, and so will the party with the next greatest decimal fraction and so forth until 100 Members of House of Representatives are obtained. In any case, the number of members allocated to each political party shall not exceed the number of names appearing in the party-list of such party.

2.1.5 Once the proportion of members for each political party has been obtained, the successful candidates for each political party would be those whose names appear in the top order of the party-list by the number of members allocated to such party.

²⁶ Organic Act on the Election of Members of House of Representatives and Senators, B.E. 2541, section 76.

2.2 As for the election of members of the House of Representatives on a constituency basis, the proportion of people per member shall first of all be calculated from the total number of people in the country divided by the 400 members that could be elected. The number of members for each *Changwat* shall thereafter be calculated based on the proportion people per member. Any *Changwat* with less people than the proportion of people per member would be given 1 member. Whereas, a *Changwat* whose population exceeded the proportion for one member would be given an additional member for every multiple of the proportion reached. If such allocations of members still did not yield 400 Members of House of Representatives, the *Changwat*'s with the greatest remaining fractions of proportions would be given an additional member until 400 members are obtained.

A *Changwat* where not more than one member of the House of Representatives could be elected would be considered a constituency. A *Changwat* with more than one member would, however, be further divided into several single member constituencies, in the number of members for that *Changwat*. The division of constituencies shall result in adjoining constituencies, each with a similar number of inhabitants.

2.3 In an election of senators, the boundaries of a *Changwat* shall be a constituency. The calculation of the number of senators for each *Changwat* shall be calculated from the proportion of people per member as in the election of members of the House of Representatives on a constituency basis. Each voter shall cast a vote for only 1 candidate.

Hence, the following amendments to the electoral system were made under the new Constitution:

(1) Proportional representation was employed for the first time. Voters may now cast votes for candidates on both constituency and party-list bases. The election on a party-list basis gives rise to representation at a national level, while the election on a constituency basis enables local representation.

(2) The amalgamation of the country into one constituency under the party-list basis for an election of members of the House of Representatives and the

division into single member constituencies under the constituency basis were the first of their kind and never appeared in previous Constitutions.

(3) The successful candidate is elected either from the order in which his name appears in the party-list for an election of members of the House of Representatives on a party-list basis, or from single member constituencies, in an election on a constituency basis. The single member constituency was previously employed in the 2nd election on 7th November 1937 under the Election Act, B.E. 2475 (1932) as amended by the Election Act (No. 3), B.E. 2479 (1936).

(4) The National Assembly is created by the direct election of representatives by the people, viz, members of the House of Representatives and senators must be directly elected by the people.

3. The Election Commission

The Election Commission under the Constitution of the Kingdom of Thailand, B.E. 2540, (1997) was placed at the heart of the political reformation process. An election therefore bears the characteristics of one being conducted under the charge and control of the Election Commission, whose status is that of an independent organisation free from any government intervention. Essentially stated²⁷:

1. The Election Commission consists of a Chairman and other four Commissioners from persons of apparent political impartiality and integrity, and who are not members of the House of Representatives or the Senate, a political official or a member of a local assembly or a local administration. An Election Commissioner shall not be a member or holder of any other position in a political party throughout the period of five years preceding the holding of office, an Ombudsman, a member of the National Human Right Commission, a judge of the Constitutional Court, a judge of the Administrative Court, a member of the National Counter Corruption Commission or a member of the State Audit Commission. An Election Commissioner shall also not be a Government official holding a permanent position or receiving salary, an official or employee of a State agency, State enterprise or local government organization, and he or she shall not hold any

²⁷ Constitution of the Kingdom of Thailand, B.E. 2540, (1997), sections 136-148.

position in a partnership, a company or an organization carrying out businesses for sharing profits or incomes, or be an employee of any person or engage in any other independent profession. When the Senate elects any person as an Election Commissioner, such elected person can only commence the performance of duties when he or she has resigned from the above mentioned positions or has satisfied that his or her engagement in such independent profession ceased to exist, this being done within fifteen days as from the date of the election. If that person has not resigned or ceased to engage in the independent profession within the specified time, it shall be deemed that such person has never been elected to be an Election Commissioner in order to ensure that all Election Commissioners are genuinely politically impartial.

2. The selection of a Chairman and Election Commissioners shall proceed in the following manner:

2.1 There shall be a Selective Committee of ten members consisting of the President of the Constitutional Court as Chairman, President of the Supreme Administrative Court, Rectors of all State higher education institutions which are juristic persons, being elected among themselves to be four in number, and representatives of all political parties having a member who is a member of the House of Representatives, provided that each party shall have one representative and all such representatives shall elect among themselves to be four in number, to be in charge of the consideration and selection of five suitable Election Commissioners. The names of those selected shall, with the consent of the nominated persons, be nominated to the President of the Senate, by a resolution of not less than three-fourths of the number of all existing members of the Selective Committee. The Supreme Court of Justice shall thereafter at its general meeting consider and select five suitable persons for such positions, whose names will be nominated to the President of the Senate within thirty days as from the date when a ground for the selection of persons to be in such office occurs.

2.2 In the case where the Selective Committee is unable to make a nomination or all nominations in the complete number within the prescribed time, the Supreme Court of Justice shall, at its general meeting, make all the necessary

nominations to fill the offices within fifteen days as from the date of expiration of the Selective Committee's nomination time.

2.3 The President of the Senate shall convoke the Senate for passing, by secret ballot, a resolution electing the nominated persons. The first five persons who receive the highest votes which are more than one half of the total number of the existing senators shall be elected as Election Commissioners, but if the number of the said elected persons is less than five, the name-list of those elected in that first occasion shall be submitted to the senators for another consecutive round of voting. In such case, persons receiving the five highest numbers of votes shall be deemed to be elected. On this occasion, if there are persons receiving equal votes in any order causing more than five persons to be elected, the President of the Senate shall draw lots to determine the elected person.

2.4 The elected Election Commissioners shall meet and elect among themselves a Chairman of the Election Commission, the result of which shall thereafter be reported to the President of the Senate who shall subsequently report to the King for further appointment.

3. Election Commissioners hold office for a term of seven years as from the date of their appointment by the King and shall serve for only one term as a guarantee of their independence from politics and their being free from any political suppression.

4. The control and supervision of Election Commissioners is made possible by a procedure conferring a right on members of the House of Representatives and the Senate or members of both Houses of not less than one-tenth of the total number of the existing members of the two Houses to lodge with the President of the National Assembly a complaint that any Election Commissioner is disqualified or is under any of the prohibitions under the Constitution or has acted in contravention of any of the Constitutional prohibitions, and the President of the Senate shall refer that complaint to the Constitutional Court who shall decide whether that Election Commissioner should vacate his or her office.

When the Constitutional Court has passed a decision, it shall notify the President of the National Assembly and the Chairman of the Election Commission of such decision.

5. The Election Commission shall have the following powers and duties:

5.1 To control and hold, or cause to be held, an election of members of the House of Representatives, senators, members of a local assembly and local administrators including the voting in a referendum in order that they be proceeded in an honest and fair manner.

5.2 The Chairman of the Election Commission shall have the charge and control of the execution of the organic law on the election of members of the House of Representatives and senators, the organic law on political parties, the organic law on the voting in a referendum and the law on the election of members of local assemblies or local administrators and he shall also be the political-party registrar.

5.3 To issue such Notifications as are necessary for the control, holding or causing to be held of an election of members of the House of Representatives, senators, members of a local assembly and local administrators including the voting in a referendum for the purpose of rendering it to proceed in an honest and fair manner.

5.4 To give orders instructing Government officials, officials or employees of a State agency, State enterprise or local government organisation or other State officials to perform all necessary acts for the control, holding or causing to be held of an election of members of the House of Representatives, senators, members of a local assembly and local administrators including the voting in a referendum in order that it be proceeded in an honest and fair manner.

Government officials, officials or employees of a State agency, State enterprise or local enterprise or local government organisation or other State officials shall have the duty to comply such orders given by the Election Commission.

5.5 To conduct investigations and inquiries in order to find facts or reach a decision on problems or disputes arising under the organic law on political parties,

organic law on the voting in a referendum and the law on the election of members of local assemblies or local administrators.

Such investigation and inquiry shall forthwith be conducted in the following cases:

5.5.1 A voter, a candidate in an election or a political party whose member stood for the election in any constituency raises an objection that the election in such constituency has proceeded wrongfully or unlawfully.

5.5.2 There appears to be convincing evidence that, before being elected, any member of the House of Representatives, senator, member of a local assembly or local administrator had committed any dishonest act to enable him or her to be elected, or has dishonestly been elected as a result of an act committed by any person or political party in violation of the organic law on the election of members of the House of Representatives and senators, the organic law on political parties or the law on the election of members of local assemblies and local administrators.

5.5.3 There appears to be convincing evidence that the voting in a referendum did not proceed lawfully or an objection has been raised by a voter that the voting in a referendum in any polling station proceeded inappropriately or unlawfully.

Upon the completion of such investigations and inquiries, the Election Commission shall pass a decision forthwith.

5.6 To order a new election or a new voting at a referendum to be held in any or all polling stations when there is convincing evidence that the election or the voting at a referendum in that or those polling stations has not proceeded in an honest and fair manner.

5.7 To announce the result of elections and referendums.

5.8 To summon any relevant document or evidence from any person or summon any person to give statements as well as to request the Courts, public prosecutors, inquiry officials, State agencies, State enterprises or local government organisations to take action to assist the Election Commission in their performance of duties, conduct of investigations and inquiries or passing of a decision.

5.9 To appoint persons, groups of persons or representatives of private organisations to perform such duties as entrusted.

Hence, the role, power and duties of the Election Commission encompasses both elections at a national level, being the election of members of the House of Representatives and Senators, and those held locally.

4. Voters and Candidates

The new Constitution has implemented a change in its method for compelling voters to cast votes. The change was from a duty to vote in good faith²⁸, without any penalty for a failure to exercise the right to vote, to a duty to exercise such rights. Thus, a person who fails to exercise his or her right to vote at an election without notifying an appropriate cause will lose such rights as provided by law²⁹. It is hoped that by stimulating the majority of dormant voters, corruption will be more effectively suppressed, as it is contemplated that the cost and difficulties of vote-buying would increase with the overall rise in the number of votes.

Changes were also made to certain aspects of candidate qualifications, such as the requirement of a Bachelor's degree or its equivalent for candidates of members of the House of Representatives, with an exception for previous members of the House of Representatives or the Senate who do not have to meet this requirement. Candidate senators are, however, not entitled to this exemption³⁰. Other changes include the repeal of prohibitions on the deaf and mute from exercising the right to be a candidate in an election of members of the House of Representatives and the Senate in order that political rights of participation can be conferred on the disabled; the prohibition on Election Commissioners, Ombudsmen, members of the National Human Right Commission, judges of the Constitutional Court, judges of an Administrative Court, members of the National Counter Corruption Commission or members of the State Audit Commission or any other person under a prohibition from holding a political position from exercising the right

²⁸ Constitution of the Kingdom of Thailand, B.E. 2534 (1991), section 26 and section 51.

²⁹ Constitution of the Kingdom of Thailand, B.E. 2540 (1997), section 68.

³⁰ Constitution of the Kingdom of Thailand, B.E. 2540 (1997), section 107 and section 125.

to be a candidate in an election of members of the House of Representatives³¹; and a prohibition on members of a local assembly or local administrators, members of the House of Representatives, Election Commissioners, Ombudsmen, members of the National Human Right Commission, judges of the Constitutional Court, judges of an Administrative Court, members of the National Counter Corruption Commission or members of the State Audit Commission or any other person under a prohibition from holding a political position from exercising the right to be a candidate in an election of senators³².

IV. Conclusion

The following provisions have been enacted in the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) as a basis for the reform of the electoral system with a view to the suppression of corrupt practices³³:

1. The implementation of proportional representation which opens up the opportunity for candidates approved by a majority of the population to be elected as members of the House of Representatives and to prevent the use of local influences. Contrary to past practices, these members represent the Thai population as a whole, and not just an particular locality.

2. The establishment of an Election Commission, an independent organisation with apparent political impartiality, to control and supervise elections at both national and local levels such that they be conducted in an honest and fair manner.

3. The imposition of a duty to vote and penalties by means of the derogation of political rights for a voter who fails to exercise his or her right to vote without any prior notification of an appropriate cause for such failure. Such measures are intended to stimulate dormant voters, who form a majority of the voters, to exercise their right to vote. It is hoped that this group of voters will change the election setting to one where corrupt practices are difficult to achieve as a direct result of the

³¹ Constitution of the Kingdom of Thailand, B.E. 2540 (1997), section 109.

³² Constitution of the Kingdom of Thailand, B.E. 2540 (1997), section 126.

³³ Pinai Nanakorn, *op. cit.*, note 1 *supra*, pp. 246-247.

increase in the costs and difficulties of vote-buying from the rise in overall number of votes.
