

## Thailand's Constitutional Merry-Go-Round

The country's 18<sup>th</sup> charter exposes Thailand's deep political divides

Tuesday 21 August 2007, by [TEN KATE Daniel](#) (Date first published: 20 August 2007).

Thailand's vote Sunday to accept the junta's constitution highlights the country's deep regional divide instead of serving as a ringing endorsement of a new dawn for the country's immature democracy.

The country's 18<sup>th</sup> constitution, spawned in the wake of last September's military coup that ousted prime minister Thaksin Shinawatra, clears the way for an election at the end of the year that will likely see a party of ex-generals led by retiring coup leader Sonthi Boonyaratglin attempt to cling to power.

Every region except the country's poor northeast, which formed Thaksin's base, voted to approve the constitution. With 95 percent of the votes counted, the Election Commission said 14.3 million people, or 56.7 percent, voted Yes while 41.4 percent voted No. Turnout was about 57 percent of about 45 million voters, in line with expectations.

Northeastern voters roundly rejected the charter, with 63 percent voting No and only 36 percent voting Yes. The results indicate that poor rural voters are likely to vote in Thaksin loyalists in the general election scheduled for December, setting the stage for more political fighting going forward.

The new constitution was supposed to rectify the misdeeds of the Thaksin years and restore true democracy to Thailand. In a white paper penned a month after the coup, the junta stated plainly: "The coup took place because the principles and the spirit of the 1997 constitution were destroyed. The [coup leaders] are committed to swiftly restoring democracy."

But while Thaksin unquestionably sought to undermine the old constitution through co-opting independent bodies during his tenure, the junta is guilty of the same sins since it took power. The new constitution empowers the same anti-Thaksin bureaucrats, judges, soldiers and royalists that tinkered with and rewrote the law for political gain, leading many voters to tire of an elitist power struggle that is heavy on buzz words like "democracy" and "human rights" but light on any tangible steps to make them a reality.

Even a cursory glance at the state of independent bodies now should give anti-Thaksin zealots who claim to love democracy cause for concern. The Election Commission just oversaw a referendum on a constitution that two of its five members helped to write and that allows them to maintain their jobs for the next six years. The National Counter Corruption Commission has taken a back seat to the Assets Examination Committee, a junta creation that froze Thaksin's money on dubious legal grounds. A seven-member committee comprised mostly of judges will now appoint nearly half of the new 150-member Senate, which is tasked with overseeing independent agencies.

Indeed, most worrying is the judiciary itself. The troubles began in April 2006, when King Bhumibol Adulyadej made a speech telling judges "to solve the problem" stemming the political stalemate that had gripped the country since Thaksin initially dissolved Parliament in February 2006.

Since then, nearly every major court decision has been laced with political overtones, infuriating

legal experts who fear the judiciary's independence has been compromised. Moreover, the new constitution grants new powers to judges to appoint members to key independent bodies, giving them more powers outside the courtroom that threaten to undermine their objectivity.

The recent disclosure of taped conversations held last year between two judges and an unidentified bureaucrat reveals the extent to which Thailand's judiciary skirted the law to void the boycotted April 2006 election and toss the previous election commissioners in jail. The Asian Legal Resource Centre (ALRC), in conjunction with the Asian Human Rights Commission, has posted a transcript of the conversations on its website with the following caveat: "Although the authenticity of the recording had not been confirmed at time of going to print, it has not been denied."

Jakrapob Penkair, a former Thaksin government spokesman now leading anti-coup demonstrations, aired the taped conversation at a public rally in May. Police are now seeking to bring charges against him under a coup group order that bans the airing of wiretapped conversations without authorization.

The most damning part of the conversation quotes Supreme Court Secretary Virat Chinvinijkul revealing that the courts had already agreed on a verdict before the cases ever went to trial, according to the ALRC transcript.

"We ourselves when making announcements don't dare to mention the Royal Address because it would be like we just followed what [the king] instructed," Virat says. "The foreigners won't accept it."

All of the major court decisions over the past year put political expediency ahead of justice. As if playing by a script, the courts nullified the April 2006 election, tossed the election commissioners in jail, dissolved the Thai Rak Thai party and banned its executives for five years.

Now the generals have issued arrest warrants for Thaksin and his wife Pojaman for conflict of interest for the 2003 purchase of a prime land plot. More warrants are expected in the coming weeks.

Thaksin is sitting comfortably in England at the moment, watching happily as his newest investment, Manchester City football club, sits atop the Premier League with three straight wins. He also has his lawyers working overtime to prepare to fight an extradition request from Thailand.

That certainly won't be easy, no matter how confident Thai leaders appear in public. A British court previously threw out a Thai government extradition request for Pin Chakkaphak, the former head of a finance company that went under in the 1997 financial crisis, because Thailand doesn't offer trials by jury.

Given the many other dubious legal decisions over the past year, it's even more unlikely that Britain will determine that Thaksin could get a fair trial in Thailand. By the time the lengthy process goes through, the CNS should be out of power. And, by that time, politicians will again have some power, but how much remains to be seen. Already a day after the referendum, Democrat party leader Abhisit Vejjajiva called for political parties to join together to amend the new constitution—a call taken up by former members of Thaksin's Thai Rak Thai party.

Politicians of all stripes have an interest in changing the new charter, which cuts the legs off political parties in favor of non-elected bureaucrats, soldiers, and judges. Just how much the politicians will be able to stand up to the formidable group of coup supporters remains to be seen.

One thing seems clear. Instead of "restoring democracy," the coup leaders have simply rewritten the

rules to favor themselves—an abuse of power akin to that for which they tossed out Thaksin. Now the conflict looks set to continue as various groups struggle for power, and only a few continue to fight for a real democracy.

---

**P.S.**

\* From Asia Sentinel:

[http://www.asiasentinel.com/index.php?option=com\\_content&task=view&id=650&Itemid=31](http://www.asiasentinel.com/index.php?option=com_content&task=view&id=650&Itemid=31)