## New Legal Frameworks towards Political and Institutional Reform under the New Constitution of Thailand

Faculty of Law Thammasat University Thailand

INSTITUTE OF DEVELOPING ECONOMIES (IDE-JETRO)

March 2002 JAPAN

## **CONTRIBUTORS**

**Dr. Banjerd Singkaneti** is a Lecturer in Law at the Faculty of Law of Thammasat University. He received the LL.B. from Ramkhamhaeng University and the LL.M. from Thammasat University. He served the Office of the Council of State for a few years before his pursuit of higher education in Germany. He graduated with a doctoral degree (Dr. jur.) from the University of Bochum. Upon his return to Thailand, he resumed his service at the Office of the Council of State, with large responsibilities focused on Administrative Law and Public Law. He regularly contributes to the Administrative Law Journal of the Office of the Council of State and Thammasat Law Journal. He has been teaching law as adjunct lecturer at various universities. He has been transferred to the Office of the Administrative Courts and takes charge of numerous research projects in the field of public law and administrative law. After leaving the Office of the Administrative Courts, he joins Thammasat University and teaches many subjects in the fields of Public Law, Administrative Law and Constitutional Law. He is a renowned textbook writer in these areas. Dr. Singkaneti contributes to this Final Report in the chapters related to public participation, human rights protection and judicial review.

**Dr. Pinai Nanakorn** is a Lecturer in Law at the Faculty of Law of Thammasat University where he teaches at both undergraduate and graduate levels. His subjects are Common Law, International Trade, Information Technology Law, Introduction to English and American Laws and the Law of Succession. He now assumes the post of Assistant Dean for International Affairs. He graduated with the LL.B. degree (2<sup>nd</sup> Class Hons.) from Thammasat University and has become a Barrister-at-Law since 1990. He went to the United Kingdom as a scholar of the Royal Thai Government. He received a Diploma in English Legal Studies (with Distinction) from the University of Bristol, after which he read law at the University of Cambridge (Trinity Hall) and was granted the LL.M. degree. He then went to the University of Bristol and received the Ph.D. degree in law. He had been serving the Office of the Council of State and was actively involved especially in law drafting and legislative interpretation before joining Thammasat University. He prepares the official translation of the Constitution of the Kingdom of Thailand of 1997 and voluminous legislation for the Office of the Council of State. He is the author of "History and Evolution of the Constitutions in Thailand: From the Abrogation of the Absolute Monarchy to the Political Reform", published in the Administrative Law Journal of the Office of the Council of State. He is well-known for his numerous articles contributed to various law journals including Thammasat Law Journal. Dr. Nanakorn is an editor of this Final Report and is the author of the introductory chapter as well as the chapter involving the reform of the electoral systems.

**Mr. Sura Pattanapratchaya** graduated with the first degree in Liberal Arts from the Prince of Songkhla University before he received an M.A. (Government) from the Faculty of Political Science of Thammasat University. He has been a reporter of the Nations Newspaper and a researcher of the Thailand Environment Institute. He also reads law at Thammasat. He is an author of several chapters of this Final Report.

## TABLE OF CONTENTS

Preface
Acknowledgement
<b>List of Contributors</b>
<b>Table of Contents</b>

CHAITER I.		L REFORM IN THAILAND	1
CHAPTER 2:		SPARENT AND ACCOUNTABLE RNMENT IN THAILAND	4
I. Background	and Intr	roduction	4
C		or Transparency and hailand	5
1. Tran	nsparenc	ey in the Thai Context	6
		e Official Information Act d the Public Access.	8
	1.2 Pu	blic Consultation	14
2. Acc	ountabil	lity under the New Constitution	15
	2.1 Ac	countability under the Constitutional Court	15
	2.2 Ac	countability under the Ombudsman	19
	2.3 Ac	countability under the Administrative Court	21
CHAPTER 3:	POPUI	AR PARTICIPATION UNDER THE CONSTITUTION	23
I. Introduction	• • • • • • • •		23
II. Popular Par	ticipatio	on in Respect of the Right Holders	26
1.	The Ri	ight of the Popular Participation	
	Exerci	sable by Private Individuals	26
	1.1	The Rights and Liberties to Participate in	
		Political Activities and in the Administration	26
	1.2	The Rights and Liberties to Participate in the	
		Inspection of the Exercise of State Powers	28

	2.	The R	ight of the Popular Participation				
		Exerci	isable by Groups of Persons	30			
	3.	Popula	ar Participation Exercisable by Local Communities	31			
	4.	The Po	opular Participation Exercisable				
		by Loc	cal Government Organisations	31			
III.	The E	xercise o	of the Right of the Popular Participation				
	Analy	sed by R	Reference to the Duty of the State	33			
	1.	The R	ight as the Individual Liberty				
		(status	s negativus)	33			
	2.	The R	ight Enjoyable Only Upon Creation by the State				
		(status	s positivus)	34			
	3.	The R	ight to Participate in the Exercise of State Powers				
		or to C	Create the Political Will (status activus)	34			
IV.	Measu	Measures and Mechanisms Facilitating Efficacy					
	of the	Right of	f Popular Participation	38			
	1.	Measu	ares and Mechanisms Facilitating				
		Popula	ar Participation	38			
		1.1	Political Measures and Mechanisms	38			
		1.2	Legal Measures and Mechanisms	39			
	2.	Measu	ures and Mechanisms Directing State Agencies				
		to Act	in accordance with the Constitution	40			
		2.1	Binding Effect of the Constitutional Rights and Liberties				
			on the National Assembly, Council of Ministers, Courts				
			and other State Organs	40			
		2.2	Recognition of the Right to Bring a Lawsuit				
			Challenging Violation of Constitutional Rights				
			and Liberties	40			

		2.3	The Establishment of the Organs with				
			Expertise to Guarantee the Rights and				
			Liberties of the People	42			
Снан	TER 4:	Prot	ECTION OF HUMAN RIGHTS UNDER				
		THE N	New Constitution	44			
I. Intr	oduction			44			
II. Hu	man Rig	thts und	er the Current Constitution	45			
	1.	Huma	nn Dignity	46			
	2.	Right	and Liberty to Act by Reference to				
		Religi	ious Principles and Personal Beliefs	47			
	3.	Right	of Children, Youth and Family Members	47			
	4.	Right	and Liberty in Life and Person	47			
		4.1	Rights and Liberties in Life and Person	48			
		4.2	The Right to Criminal Justice Administration	48			
III.	The P	roblem	Regarding Aliens as the Holders				
	of Rig	hts and	Liberties	51			
IV:		Measures and Mechanisms for Preventing Human Rights Violation					
	1.	U	Requirement That Legislation by the Legislative				
		Restri	cting Rights or Liberties Be under the Conditions				
		Provid	ded by the Constitution	54			
	2.	The P	Protection of Human Rights by the Judiciary	55			
	3.	Protec	ction of Human Rights and Examination of				
		Viola	tion of Human Rights under the Supervision				
		of the	National Human Rights Commission	55			
Снан	TER 5:	REFO	ORM OF THE ELECTORAL SYSTEM FOR MEMBERS				
		OF TH	IE HOUSE OF REPRESENTATIVES AND SENATORS				
		LINIDE	D THE CONSTITUTION	57			

I:	Introd	uction	57	
II:	Prologue to the Electoral System of Members			
	of the	House of Representatives and Senators	58	
III:	Reform of the Electoral System for Members			
	of the	House of Representatives and Senators	60	
	1.	The Basic Principles of an Election.	61	
	2.	The electoral system for Members of the		
		House of Representatives and Senators	64	
	3.	The Election Commission.	68	
	4.	Voters and Candidates	73	
IV. Co	onclusion	n	74	
Снар	TER 6:	LOCAL GOVERNMENT REFORM IN THAILAND		
		UNDER THE NEW CONSTITUTION	76	
I. Back	kground	and Introduction.	76	
II. Loc	al Gove	ernment in the New Constitution	79	
III. De	centralis	sation in Practice: Decentralisation to Local		
Go	vernme	nt Organisations Commission and Its Plan	86	
	1.	Structure of the Commission.	87	
	2.	Implications of the Decentralisation to Local		
		Government Organisations Plan 2000.	88	
	3.	The Action Plan and Tambon Administrative		
		Organisations in the Future	94	
IV. Co	ncludin	g Remarks	98	
Снар	TER <b>7:</b> A	ANTI-CORRUPTION REFORM IN THAILAND	101	
I. Background and Introduction.				
II. The	Nation	al Counter Corruption Commission	104	

III. Declaration of Accounts Showing Particulars of Assets	
and Liabilities as a Legal Framework	109
IV. Removal from Office	113
V. Criminal Proceedings Against Persons Holding Political Positions	115
VI. The State Audit	115
VII: Conclusion.	116
CHAPTER 8: JUDICIAL REVIEW UNDER THE NEW CONSTITUTION	118
I: Introduction	118
II. The Judicial System under the Current Constitution	119
1. The Constitutional Court	119
1.1 The Constitutionality Determination Role	120
1.2 Determining Powers and Duties of Constitutional Organs	121
2. The Courts of Justice.	122
3. The Administrative Courts	123
4. The Military Court	124
III. Relationship among Judicial Bodies	124
1. Relationships between the Constitutional Court and other Courts	125
1.1 Jurisdictional Relationship.	125
1.2 Binding Effect of the Constitutional Court's Decisions	125
2. The Relationships among the Court of Justice,	
the Administrative Court and the Military Court	126
IV. Problems Involving Relationships among the Judiciary	126
1. Jurisdiction of the Administrative Court over	
Independent Constitutional Organs	129
1.1 The Offices of the Courts and Offices	
of the Independent Agencies	129

1	.2	Agencies or Bodies Supervising the	
		Exercise of State Powers.	131
1	.3	The Organ Supervising Elections	133
1	.4	Other Constitutional Bodies.	134
2. Admir	nistrati	ve Disputes under Dual Jurisdiction: A Mistake?	136
CHAPTER 9: CO	NCLUS	ION	136

## List of IDE Asian Law Series

No.1	Proceedings of the Roundtable Meeting "Law, Development and
	Socio-Economic Changes in Asia"

- No.2 China's Judicial System and its Reform
- No.3 Judicial System and Reforms in Asian Countries: The Case of India
- No.4 The Malaysian Legal System, Legal Practice & Legal Education
- No.5 The Philippine Judicial System
- No.6 The Judicial System in Thailand: An Outlook for a New Century
- No.7 Legal and Judicial Reforms in Vietnam
- No.8 Law and Development in Changing Indonesia
- No.9 Modernization of Laws in the Philippines
- No.10 The Indonesian Law on Contracts
- No.11 Proceedings of the Roundtable Meeting "Law, Development and Socio-Economic Changes in Asia II"
- No.12 Political Change and Legal Reform towards Democracy and Supremacy of Law in Indonesia
- No.13 Law and Newly Restored Democracies: The Philippine Experience in Restoring Political Participation and Accountability
- No.14 New Legal Frameworks towards Political and Institutional Reform under the New Constitution of Thailand
- No.15 Dispute Resolution Process in China
- No.16 Dispute Resolution Process in India
- No.17 Dispute Resolution Process in Malaysia
- No.18 Dispute Resolution Mechanism in the Philippines
- No.19 Alternative Dispute Resolution in Thailand
- No.20 Alternative Dispute Resolution in Vietnam

Published by Institute of Developing Economies (IDE), JETRO 3-2-2 Wakaba, Mihama-ku, Chiba-shi

Chiba 261-8545, JAPAN

FAX +81-(0)43-2999731

Web Site: http://www.ide.go.jp

e-mail: laws@ide.go.jp