

CHAPTER 1

OVERVIEW OF POLITICAL AND LEGAL REFORM IN THAILAND

In Thailand, apparent political and legal reform concretely transpired in the wake of the “Bloody May” event of 1992 which led to an overthrow of the short-lived military autocratic government and the subsequent promulgation of the new Constitution which is, in deed, claimed to be the “Popular Constitution”. As a major legal foundation, the Constitution makes numerous improvements in such areas as the transparency and accountability, popular participation, protection of the human rights, election systems, local government, anti-corruption and judicial review. This work seeks to explore each of these aspects at certain length.

We will, first, revisit the reform made towards the improvement of transparency and accountability on the part of the government. Legal frameworks for transparency and accountability in public-sector administration are brought to light.¹ In this regard, prior to the current Constitution, the Official Information Act, B.E. 2540 (1997) has, for the first time, been enacted to recognise the right of the people to know and inspect official information. This legislation guarantees public access to government-held information or documents.

Another momentous development in the sphere of transparency and accountability has been reflected in the requirement of public consultation, of which the main form is the public hearing, in the decision-making process. The development in this direction was, in fact, initiated by the Banharn Silpa-acha government and was subsequently supported through the issuance of the Rule of the Office of the Prime Minister on Hearing Public Opinions by Means of a Public Hearing Process B.E. 2539 (1996). The establishment by the new Constitution of several principal supervisory (judicial and non-judicial) organs, such as the

¹ See Chapter 2, *infra*.

Constitutional Court, the Administrative Court and the Parliamentary Ombudsman, will contribute to enhanced accountability in the government service as well.

A separate chapter of this work is dedicated to discussing popular participation under the new Constitution. It intends to shed light on how the new Constitution recognises and endeavours to put into real effect the right of the people to participate in state activities. Indeed, the rights of popular participation as embodied in the current national charter reflect the individualism ideology. We will see that, according to the Constitution, the holders of the rights of popular participation range from the private individual, groups of persons, traditional communities to local government organisations. Moreover, the Constitution spells out duties of the state in various respects in order to encourage and facilitate appropriate participation by the people in the tasks of the state.²

Another novelty that forms part of the reform after the democratic movement of Thailand is the protection of human rights. The new Constitution, unlike previous ones, places particular emphasis on measures and mechanisms dedicated to the protection of human rights. The importance attached to human rights protection is such that the so-called Human Rights Protection Commission is constitutionally set up for, primarily, investigating human rights violations. This area deserves further exploration in this work.³

One of the most substantially reformed creatures is the election systems. It has long been felt that the success of legislative and executive roles is much dependent on fairness in a general election as well as other elections. The Constitution sets up the Election Commission to take charge of supervision of elections and ensure their fairness. The Constitution imposes on Thai citizens a duty to voter and it also introduces some new electoral systems. For example, it accommodates proportional representation which opens up the opportunity for widely acceptable candidates to be elected as members of the House of Representatives and it introduces the Party List system whereby members of the

² See Chapter 3, *infra*.

³ See Chapter 4, *infra*.

House of Representatives can be elected from a Party List prepared by a political party. We will consider the reform in this area at full length.⁴

The Constitution strives to shove necessary reform of local government as well. Indeed, 10 sections of the new Constitution are devoted to local government. All these provisions result in many changes to local government, be its internal structure, responsibility, finance, personnel administration or popular participation. In addition, several organic laws are enacted in this connection, especially, the Act Determining Plans and Processes of Decentralisation, B.E. 2541 (1998). For the sake of completion, this work spares some room for discussions of all these changes.⁵

Further, there has been reform surrounding anti-corruption measures. The Constitution establishes the National Counter Corruption Commission, developing it from the former 'Commission of Counter Corruption', as an efficient body in charge of fighting corruption. A number of novel measures have been introduced in this instance, including the requirement that holders of political positions declare accounts showing particulars of assets and liabilities.⁶

Reform in respect of judicial review systems has remarkably been in place under the framework of the new Constitution. The Constitution sets up the Constitutional Court for making the determination of constitutionality issues. Most notably, Administrative Courts have been founded to review administrative actions by State agencies or State officials, with the result that State agencies and State officials will have to be more prudent in the exercise of their powers, as will be explained in the penultimate chapter.⁷

⁴ See Chapter 5, *infra*.

⁵ See Chapter 6, *infra*.

⁶ See Chapter 7, *infra*.

⁷ See Chapter 8, *infra*.