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Public Participation in Constitution Making for the Democratic Transition in Thailand

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Abstract

This research aims to study the patterns and levels of Thai public participation in the drafting of the three most recent constitutions of Thailand through qualitative research and by collecting data from secondary documents. The research then employs the International Association of Participation's five-level criteria to analyze and compare patterns and levels of public participation. Research has found that the constitution-making process in Thailand is in a transition period from representative democracy to participatory democracy, and people must participate in the constitution-making process to express their will under self-government. In the constitution-making of the state Constitution 1997, the Constitution 2007 and the 2017 Constitution of Thailand, public participation in drafting the constitution was low. Only the 1997 Constitution was initiated by the political elite with the support of the civil society sector. The 2007 and 2017 constitutions were clearly influenced by the coup d'état. The communication process in drafting the constitution, although all three processes of drafting the constitution used two-way communication, did not bring the results of public communication to the drafting of the constitution. The public's participation in the content of the constitution was limited by the organization that drafted the constitution, which was under the control of military and political elites. The referendum, which was the final decision-making power of the public, indicated the highest level of participation in drafting the constitution but was an incomplete referendum. The study concluded that participation in drafting all constitutions was a form of limited participation, while the public's participation in drafting the 2007 and 2017 constitutions was only symbolic. Despite attempts to improve the form and level of public participation in drafting the Constitution, Thailand's constitution-making process still faced problems related to constitutional legitimacy.

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Keywords: Constitution-making, Public participation, Thailand

泰国民主转型中制宪的公众参与

摘要:

本研究旨在通过定性研究和收集二手文献数据,研究泰国公众参与泰国最近三部宪法起草的模式和水平。研究随后采用国际参与协会的五级标准来分析和比较公众参与的模式和水平。研究发现,泰国的制宪过程正处于从代议制民主向参与式民主的过渡时期,人民必须参与制宪过程才能表达自治下人民的意愿。在泰国 1997 年国家宪法、2007 年宪法和 2017 年宪法的制宪过程中,公众参与起草的水平都很低。只有 1997 年宪法是在民间社会部门的支持下由政治精英发起的。与此同时,2007 年和 2017 年宪法明显受到政变的影响。宪法起草中的沟通过程,虽然三次起草过程都采用了双向沟通,但并未将公众沟通的成果带到宪法起草中。公众对宪法内容的参与受到起草宪法的机构的限制,而该机构又被军事精英和政治精英所控制。而作为公众最终决策权的全民公投,虽然代表了公众对宪法起草的最高程度的参与,但却是不完全的全民公投。研究认为,所有宪法的起草都是一种有限参与的形式,而公众在 2007 年和 2017 年宪法的起草中参与只是象征性的。尽管泰国的制宪过程试图改善公众参与起草宪法的形式和水平,但仍然面临着与宪法合法性相关的问题。

关键词: 制宪、公众参与、泰国

1. Introduction

What constitutes the Constitution? Why has Thai society been forced to frequently change its constitution? Has Thai society created a constitution that did not meet people's needs? These problems are interesting because there is no clear answer as to which causes the problem to still exist and have a significant impact on Thai society in the future. An important problem in creating a constitution is that it was a society that created the constitution. Or was the constitution created primarily in the interest of seizing state power?

Kaew-Ngam (2024:13) investigates the basic problems and finds that Thailand has 20 constitutions and 21 coups. Almost every Thai constitution has been repealed, and a new constitution has been enacted by the coup d'état or the government seizing power. According to political and legal theories, people do not have the opportunity to participate in determining the highest law used in governing the country. Political power is used to seek legitimate benefit. Refers to being representatives of the people in the constitution-making process and the process of forcing a referendum to create the Thai constitution may therefore not be suitable for the people. However, it is appropriate for the interest group to create the constitution, which causes the need to change the constitution at any time.

Constitution-making is a political process. In particular, in democratic regimes, one must answer important questions from the past to the present: what is the best form of government? People's politics will lead

to the creation of the state and the constitution under modern state philosophy that relies on the constitution as a tool for building the state and controlling the use of state power. This concept demonstrates that a legitimate constitution must come from the people because they have the right to govern themselves by enacting laws to govern themselves, which are not ruled by others. Transitional democracy is an important time for each society to move beyond authoritarian democracy to liberal democracy, and using the Constitution as a tool, if done correctly and appropriately, will make the transition smooth and rapid.

The process of creating a constitution does not lack the participation of people. People will create an appropriate constitution that can be used for self-government. Constitution-making does not merely mean drafting the Constitution; it also includes laying the foundations for politics, government, and the economy and society of the country. While creating the Thai Constitution, representatives of the monarchy played an important role, which was considered to be the Thai constitutional culture (Mérieau, 2022).

Designing a constitution-making process that is appropriate for the country is therefore an extremely important matter that requires acceptance by all parts of civil society for it to be a true constitution. Creating a constitution that lacks a genuine participation process will result in a constitutional product that is not the will of the people to govern themselves in a democracy and is the starting point for endless changes in governance.

This has caused political parties and activists to campaign to amend the constitution (Tuansiri & Koma, 2023: 112). The process of creating the Thai Constitution may have had problems due to a lack of citizen participation. If the study finds such problems are identified in the constitution-making process, it may help solve the problem of preparing a constitution suitable for democracy in the transitional period.

2. Literature Review

In this research, the researcher reviews documents on two important topics: the concept of the constitution-making process and problems related to the creation of Thailand's past constitution.

2.1. Constitution-Making Process

The creation of a liberal constitution was born from a struggle against an absolutist state and church independence. The result is that the ruler and governed must conduct their relationships in accordance with duties and obligations under a valid agreement. It is called a constitution, and the process of making a constitution usually comes from the people. This is because drafting the constitution is a political activity. This political activity is consistent with democracy. Democracy refers to a government in which people are leaders. The power of a democratic state comes from its people. As a result, the use of power by various state organizations must have a link with the people for the use of state power to be legitimate and rooted in the will of the people.

The aim of people in creating the constitution is to create will that helps bind communities in society together for peace and order so that the lives of various communities can proceed according to their wishes by defining the state-community relationship. This shall be carried out through political institutions in the state in accordance with such intentions (Bulmer, 2017: 6; Lutz, 2008:16). Therefore, it can be seen that the Constitution is not a matter of law alone but rather an intersection of legal, social, and political. As a legal, political, and social document, the constitution is the intersection of legal, political, and social systems. This will help you understand the true meaning of the constitution more clearly than simply one aspect of the law.

However, much of the life of the Thai constitution has been spent on intervention under a military dictatorship or a pseudo-democracy dominated by non-elected institutions, accounting for approximately half of the total period of government. It cannot be the definition of true liberal democracy (Ferrara, 2015), which causes Thailand's electoral democracy flaw. Wealth inequality is increasing, and the middle class has chosen undemocratic options to protect its interests. The problem of power struggles using constitution-making as a tool is reflected in (Mietzner, 2021; Kenny, 2018).

Political participation in constitution-making can be

defined in two ways: 1) direct participation and 2) indirect participation. Both formats were used to prepare the constitution. Such a pattern appears in the principles of "participatory" constitution-making, with participation, especially by political elites, playing a key role in decisions about inevitable reorganization. The principles of inclusiveness include gender equity and representation (Brandt et al., 2011). The type of public participation that yields important results is a constitution-drafting organization. There are many forms that reflect people's participation in the preparation of the constitution. In addition, throughout the constitution-making process, the government must rely on legitimacy from the participation of the people until the end of constitution-making.

2.2. Problems with the Thai Constitution Creation Process

The Thai constitution lacks a process for stakeholder participation. Therefore, it is impossible to create a balance accepted by all parties. The constitution is inconsistent with the real needs of the interest groups. Conflicts among interest groups, especially the former elite group, and groups that gained new political legitimacy, led to coups. Later, a new constitution was designed to protect the country's new interests (McCargo 2005).

Hewison (2007:930) believes that the Thai Constitution is both a social and political conflict and a tool for structuring and limiting political participation. Therefore, the drafting of the Thai Constitution is a battleground for political participation. After the September 2006 coup, the abolition of the 1997 Constitution and the establishment of a process for developing a new constitution limited participation to elites and selected civil society representatives from the middle class.

Preparing the constitution after the military coup has given hope for people's participation in the political and legal systems in a new light. However, this is an old pattern (Munger, 2007), with the main powers being the monarchy and the army (Rajasingham, 2024) which uses power through political institutions, especially the judiciary, which uses legal processes from the constitution and causes political problems (Duncan, 2020). Participation in creating the constitution according to the post-coup constitution is, therefore, not real participation and causes problems in the constitution as a result.

Two recent coups occurred, in September 2006 and May 2014. However, the role of Thai civil society and political institutions remains unclear. In particular, the civil society sector is constitution-making. What is evident in this case is that civil society and constitutional actors are driven more by partizan interests than by democratic values. In drafting the 2007 Constitution, he made a clear attempt to weaken political parties

(Kuhonta and Sinpeng 2014:335).

The constitution-making process did not recognize the importance of public participation. This became clear after the coup destroyed the Constitution. They often attempt to build their own ruling power and political immunity. Through its specifically designed constitutional political institutions (Ginsburg and Simpser, 2014; Larsson, 2022). Military leaders often support the adoption of a constitution after a coup, followed by drafting a constitution, which is a common method for seizing and consolidating power. When in power, new power holders seek to preserve their preferences and interests under the new constitution (Mérieau, 2016).

A true public participation process will result in Thai society receiving a constitution that is balanced between political philosophy, the government, and law. The key problem is two conflicting sources of legitimacy: constitutionalism and the local alternative: What is the solution to Thainess? (Harding and Leelapatana, 2019). Therefore, studying a constitution-making process that is consistent with political, administrative, and legal philosophies is important. All interest groups in society must be involved in the design and establishment of a constitution that is correct and legitimate from the beginning to highlight the wisdom and solutions for the future.

3. Methodology

3.1 Research Design

A study of public participation in the process of creating a Thai constitution, using a descriptive research model, by collecting data to study the behavior, patterns, and relationships between the public and the constitution-making process at various stages, using criteria from the International Association of Participation in the four stages of constitution-making: initiation, communication in the constitution-making process, level of participation, and final decision-making power in the constitution-making process, and summarizing public participation in the constitution-making process.

3.2 Data Collection

Data compilation from secondary data, especially meeting reports of the Constitution Drafting Organization and various committees involved in the entire constitution drafting process, will show the forms and characteristics of public political participation throughout the process.

3.3. Hypothesis

The hypothesis of this study is that in the process of drafting the constitution of Thailand, especially the design and establishment of the constitution, people do

not participate in the process of designing and drafting the constitution. To answer this hypothesis, this study used qualitative research methods from Data Analysis.

3.4. Data Analysis Method

Data analysis was conducted using the collected data to analyze the process of public participation in designing and establishing the Thai constitution using a comparative method to determine whether it was consistent with the theoretical concepts collected. The criteria were obtained from the International Association for Participation, and the research was presented in a descriptive format.

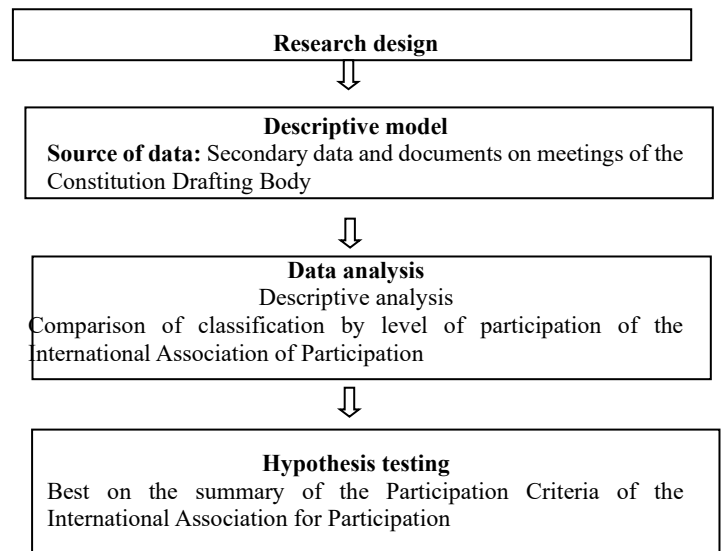


Figure 1. Research methodology flowchart

4. Results and Discussion

In this study, we considered the level of political participation. The criteria of the International Association of Participation as an indicator in the process of building the constitution of Thailand.

There are many levels of participation and people can access information about policy and justice processes. The International Association for Participation (IAP2) divides the levels of public participation into five levels according to the International Association for Public Participation:

Level 1: Providing information.

Level 2: Listening to opinions or consulting, organizing a public forum, and expressing opinions on the website.

Level 3: Involvement: This gives people the opportunity to participate in the work or join in suggesting guidelines that lead to decision making.

Level 4: Cooperation involves the participation of groups of people and public sector representatives by partnering with the government at every decision-making step.

Level 5: Empowering people gives people the highest level of role by allowing them to be decision-makers.

The above criteria were applied to the process of drafting the Thai Constitution. The three most recent versions were the 1997, 2007, and 2017 constitutions during the democratic transition. The results are as follows:

4.1 Intent and Initiative to Prepare Constitution

The important goals of the new Thai constitution are political reforms toward an established democracy. This began with the spirit of the 1997 Constitution, a political reform aimed at solving the entire Thai political problem through three mechanisms: expanding rights and freedoms, increasing citizens' political participation, and increasing scrutiny of the use of state power by the people. The result was a strong administration that led to the coup on September 19, 2006, and the creation of the 2007 Constitution to continue political reform and address flaws in the old constitution. However, it became the preparation of a constitution primarily for the ruling class, and the constitution had many blemishes in the matter of righteousness. This led to a coup on May 22, 2014, and the drafting of the 2017 Constitution with the goal of reforming the country. This is not just political reform. However, this was called the Constitution of the Succession of Power.

The process of initiating the creation of the 1997 Constitution was primarily facilitated by public support. Through political elites who came to support and a group of academics who came to prepare, the people participated in drafting the Constitution in the Constitutional Drafting Assembly, which consisted of 99 members. There were 76 people in each province who were elected, with 23 other academic representatives drafting the constitution. Through the Constitution Drafting Committee of 29 people, the weight was given to academics, former politicians, and the committee to consider the draft constitution. There were 33 members were appointed by the Constitutional Drafting Assembly.

While the 2007 Constitution Drafting Assembly came from 1982 members of the 2006 National Assembly, they voted to select from among themselves, leaving 200 people dead and the coup d'état. The selection was conducted for 100 people. The constitution will be drafted through the Constitution Drafting Committee, which will come from 25 members of the Constitution Drafting Council, and the coup d'état will select another 10 experts, for a total of 35, led by senior civil servants.

The 2017 Constitution was drafted by the National Reform Council and National Reform Steering Assembly. According to the National Reform Council, 250 people were selected from one person per province, for a total of 77 people. Another 173 people came from the Prime Minister's authority. General Prayut Chan-o-

cha drafted the Constitution Drafting Committee, which was part of the National Reform Council. Before the draft constitution was dropped, the National Reform Steering Assembly, with 200 members appointed by the Prime Minister, continued to draft the constitution through a Constitution Drafting Committee composed of 21 people appointed by the Prime Minister.

4.2. Communication in the Public Participation Process

In the preparation of the constitution, it will be one thing that helps provide a preliminary indicator of the level and form of participation of the people in the preparation of the constitution or the restriction of participation. In drafting the 1997 Constitution, five special committees were established to conduct various activities. Later, the Constitution Drafting Council set up a committee to consider the draft Constitution of the Kingdom of Thailand Buddhist Era and set up a special committee to listen to opinions; provincial public relations increased to 72 committees. All operations involved two-way communication. In participating in the preparation of the Constitution, proactive communication is essential, with an important role being played by the Commission; it listens to opinions and public hearings, and the Public Relations Commission is the main. Meanwhile, the Special Commission, acting at the provincial level, played a minor role in connecting people.

In preparing the 2007 Constitution, there were 13 standing committees of the Constitutional Drafting Assembly and seven subcommittees to study various matters. This indicates that there is a need for two-way and proactive communication for people to participate in the preparation of the constitution. However, there was no result of bringing the will to participate in the Constitution.

As for the preparation of the 2017 Constitution, the Constitution Drafting Committee appointed as many as 24 subcommittees in various areas to listen to opinions from the public to compile and present them to the Constitution Drafting Committee by requiring the public to submit their opinions and suggestions in seven communication channels. However, the results of public opinion classified according to the channels through which people's opinions and suggestions were sent in drafting the constitution were very few, or participation was very low.

4.3 Participation in Constitutional Content and Final Decision

In the preparation of the 1997 Constitution, the role of the public sector lies in two committees involved in listening to public opinion: the Public Hearing Commission and the Public Relations Commission Data. The Constitutional Intent Book indicates that the report of all public hearings by 843,556 people,

accounting for less than 2% of the total population, and participation at the corporate level, business groups, public sector groups, and Democratic Organization Group with more than 300 political parties, participation is very low in quantitative terms.

Regarding Constitution Drafting 2007, we collected opinions from organizations and citizens and organized a brainstorming seminar with 13 different organizations; however, the Constitution Drafting Committee made no changes to the draft constitution. Participation from the public, probably only when listening to opinions before drafting a constitution through a referendum that had problems in the referendum process.

Preparation of the 2017 Constitution, public participation through the Constitution Drafting Commission, and the Constitution Drafting Committee Information from the public is available at the subcommittee, which listens to and summarizes the suggested opinions. They collected, whose duty is only to listen to and summarize opinions from the people.

Table 1 The participation of the Thai people in the preparation of the three constitutions

Public participation	Constitution 1997	Constitution 2007	Constitution 2017
Process initiator	Elite	CNS	NCPO
Communication	Two-Way	Two-Way	Two-Way
Level	Open + party + elite	Open + elite (select)	Open + elite (select)
Final authority	People indirectly	People directly	People directly

The number of people or organizations that participated in proposing or expressing opinions in the constitution-making process was very low, and the collection of information had already passed the stage of drafting the constitution. Therefore, the drafting of the Constitution was left to the Constitution Drafting Committee, which consisted of 21 members. The public was absolutely not involved in the content of the document or drafting a constitution through a referendum that had problems with the referendum process.

Table 2 The types and forms of participation in constitution-making (developed by the author)

Public participation	False	Symbolic	Limited	Consultative
Process initiator		B, C		A

Note: Constitution 1997 =A, Constitution 2007 = B, Constitution 2017 =C

5. Conclusion

People need to participate in the constitution-making process because the constitution is the embodiment of the will of the people in society, and it organizes the relationship between the state structure and political institutions in relation to the people. The process of creating or constructing a constitution is also a desirable political activity. The participation of the people under the liberal democratic ideology that the people are the ones who determine their own will or destiny under self-government by creating laws for self-government and under the concept of constitutionalism that created a constitution to protect rights and freedoms and to control the use of state power. Each society has its own constitution-making processes in different social contexts. Participation differs according to the form and level. The political environment affects the constitution-making process and legitimizes the constitution, which is partly a product of the political participation process of the people. Therefore, the process of public participation in preparation of constitutions may differ across countries.

While public participation in drafting the Thai constitution, when comparing the drafting of the 1997 Constitution, the 2007 Constitution, and the 2017 Constitution from secondary documents, the characteristics and forms of participation were classified according to the criteria of the International Association on Participation. The process of participation in the initiation of the drafting of the Constitution was at a low level, with only the drafting of the 1997 Constitution allowing the public to participate in the initiative. The level of public participation was mainly in the form of providing information. Although there was a form of participation in two-way communication, the results of the communication were not carried over to the process of drafting the constitution. While all three processes of drafting the constitution gave the highest decision-making power to the public using the referendum method, which showed the highest level of participation, the referendum process was incomplete and could not be used to indicate that the public participated in drafting the constitution at the highest level, even though there was a referendum. Overall, it can be concluded that public participation in drafting the Thai constitution was in accordance with the following hypothesis: public participation in drafting the Thai constitution was limited, and symbolic participation only.

Data Availability Statement

The data presented in this study are available on request from the corresponding author.

Conflicts of Interest

The author declares that there are no conflicts of interest regarding the publication of this manuscript. In addition, ethical issues, including plagiarism, informed

consent, misconduct, data fabrication and/or falsification, double publication and/or submission, and redundancies, have been completely observed by the authors.

Author Contributions

TL contributed to the design and implementation of the study, analysis of the results, and writing of the manuscript.

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