

Democratisation of Lawmaking Process in Thailand

The present Constitution of the Kingdom of Thailand 2007 provides that the Thai National Assembly comprises the House of Representatives and the Senate which may hold joint or separate sittings in accordance with the Constitution.

One of the main duties of the National Assembly is to enact the laws of the land.

The process of lawmaking begins with the House of Representatives, i.e., a bill shall be first submitted to the House of Representatives. In general, a bill may be introduced by the Council of Ministers, Members of the House of Representatives of not less than twenty in number, the Courts or independent constitutional organizations whereby the Presidents of such Courts or of such organizations are in charge of the act; or by not less than ten thousand eligible voters. In introducing a bill, it shall be submitted together with an explanatory memorandum which shall be open for easy access to the public.

When the House of Representatives has considered a bill and passed a resolution of approval, the House of Representatives shall submit such bill to the Senate. The Senate must, in general, finish the consideration of such bill within sixty days otherwise it shall be taken that the Senate has approved it.

In case the Senate agrees with the House of Representatives, the Prime Minister shall present the bill approved by the National Assembly to the King for His signature within twenty days as from the date of receiving such bill from the National Assembly and the bill shall come into force as an Act upon its publication in the Government Gazette.

If the bill approved by the National Assembly has not received the royal assent and the King returns it to the National Assembly or does not return it within ninety days, the National Assembly must reconsider such bill. If the National Assembly resolves to reaffirm the bill with the votes of not less than two-thirds of the total number of existing members of both Houses, the Prime Minister shall present such bill to the King for signing once again. If the King does not sign and return the bill within thirty days, the Prime Minister shall cause the bill to be promulgated as an Act in the Government Gazette as if the King had signed it.

If the Senate disagrees with the House of Representatives, such bill shall be withheld and returned to the House of Representatives. If there is an amendment and the House of Representatives disagrees with it, each House shall appoint persons, being or not being its members, in such equal number as may be fixed by the House of Representatives

to constitute a joint committee for considering the bill. If both Houses approve the bill considered by the joint Commission, the bill will be signed into law. If either House disapproves it, the bill shall be withheld.

In case of enactment of organic of fundamental. Acts as specified in Section 138 of the Constitution totaling nine Acts of this kind altogether, such organic law bills are to be introduced only by the Council of Ministers, members of the House of Representatives of not less than one tenth of total number of the existing members of the House of Representatives or members of the House of Representatives and Senators of not less than one tenth of members of both Houses; or by the Constitutional Court, the Supreme Court or other independent constitutional organizations whereby the President of such Court or of such organization is in charge of the organic act.

The consideration of an organic law bill in the House of Representatives and the Senate shall be done in here readings as follows:

- 1) Voting for adoption of the principle of a bill in the first reading and section by section scrutiny of a bill in the second reading shall be made by a majority of votes of each House;
- 2) Voting in the third reading shall require affirmative votes of more than one-half of the existing members of each House. Other provisions concerning the enactment of an Act shall apply mutatis mutandis to the consideration of an organic law bill.

With a view to enhancing the democratization of law making process, Section 165 of the Thai Constitution provides that a person having the right to vote in an election shall have the right to vote in a referendum which may be held on the following grounds:

- (1) The Council of Ministers is of the opinion that any issue may affect national or public interests, the Prime Minister, with the approval of the Council of Ministers may consult the President of the House of Representatives and the President of the Senate for the purpose of calling a referendum by publication in Government Gazette.
- (2) In case where a referendum is required by law.

Before the referendum, the State shall provide sufficient information for the public and provide equal opportunities for the people to make their own decisions

The rules and procedures for voting in a referendum shall be in accordance with the Organic Act on Referendum which was enacted in 2009 containing the details of procedures for voting, referendum period and the number of votes required for the final decision.

On the question of constitutionality control on the enactment of law, the present Thai Constitution delegates the authority in this respect to the Constitutional Court. Section 154 of the Constitution provides that after the approval of any bill by the National Assembly before the Prime Minister presents it to the King for His signature:

- (1) if members of the House of Representatives, senators or members of both Houses of not less than one-tenth of the total number of the existing members of both Houses are of the opinion that any provisions of the said bill are contrary to or inconsistent with this Constitution or such bill is enacted contrary to the provisions of this Constitution, they shall submit their opinion to the President of the National Assembly as the case may be, and the President of the House receiving such opinion shall then refer it to the Constitutional Court for decision and, without delay, inform the Prime Minister thereof;
- (2) if the Prime Minister is of the opinion that the provisions of the said bill are contrary to or inconsistent with this Constitution, the Prime Minister shall refer such opinion to the Constitutional Court for decision and, without delay, inform the President of the House of Representatives and President of the Senate thereof.

During consideration of the Constitutional Court, the Prime Minister shall suspend the proceedings in respect of the promulgation of the bill until the Constitutional Court gives a decision thereon.

If the Constitutional Court decides that the provisions of such bill are contrary to or inconsistent with this Constitution and that such provisions of the bill constitute the essential element thereof, such bill shall lapse.

If the Constitutional Court decides that the provisions of such bill are contrary to or inconsistent with this Constitution other than in the case specified in paragraph three, such conflicting or inconsistent provisions shall lapse.

The provisions of Section 154 shall apply mutatis mutandis to draft rules of procedure of the House of Representatives, draft rules of procedure of the Senate and draft rules of procedure of the National Assembly which have already been approved by the House of Representatives, the Senate or the National Assembly, as the case may be.

Furthermore, as far as the organic law bill is concerned, after its adoption by the House of Representatives and the Senate it has to be submitted to the Constitutional Court of review of its constitutionality.

In view of the above, there are instances in which the public has played a role in democratisation of lawmaking process either directly or indirectly through their representatives in the National Assembly. In case of the present Thai Constitution in particular, a referendum was held for its adoption. In conclusion, public awareness and participation in democratisation of lawmaking process have been encouraged.