



THE 3rd INTERNATIONAL CONFERENCE AND CALL FOR PAPER

"Legal Development in Various Countries"



IMAM AS SYAFEI BUILDING
 Faculty of Law, Sultan Agung Islamic University
 Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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German-Southeast Asian Center of Excellence
for Public Policy and Good Governance
— CPG —

**INTERNATIONAL SEMINAR
“LEGAL DEVELOPMENT IN VARIOUS COUNTRIES”**

**5 SEPTEMBER 2017
UNIVERSITAS ISLAM SULTAN AGUNG, SEMARANG**

**“POWER AND PROCESSES UNDER THE THAI CONSTITUTION
2017”**

**Henning Glaser
Director**

German Southeast Center of Excellence for Public Policy and Good
Governance (CPG),
Faculty of Law, Thammasat University

Pierre Legrand

- „I argue that comparative legal studies must assume the duty to **acknowledge, appreciate and respect alterity. Without such recognizance, no ethics is possible.**”
- “I call for **comparison as *caress***, [...] as a gesture that, [...], remains open, never tightening into a grip, a gesture which is **tentative and exploratory [...] which reaches toward the other without any intention of possessing the other [...].**”

Legrand, The Same and The Different, in: Legrand/Munday, Comparative Legal Studies: Traditions and Transitions, Cambridge 2003, pp. 240, 285 and 311

Mohammad Qazvini (1877-1949)

Orientalists

“after one or two years of studies claim to know all the languages and sciences of the East - claiming not only to understand them but in fact venturing to come up with their own autonomous opinions and ideas and laughable conjectures, all against the common consensus of all Muslims, and the origin of which is nothing but the ignorance of Muslim habits, customs, sciences, and traditions - facts that the Muslim countries not just every simple student of religious seminaries but affect even pious old women know.”

Structure

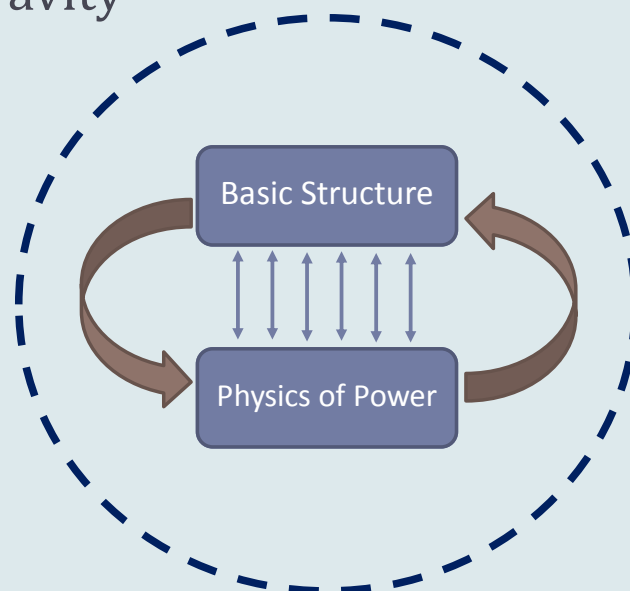
A. Volatility at Core: A Shifting Center of Gravity

B. The Institutional Set-up & Constitutional Process

C. Prospects

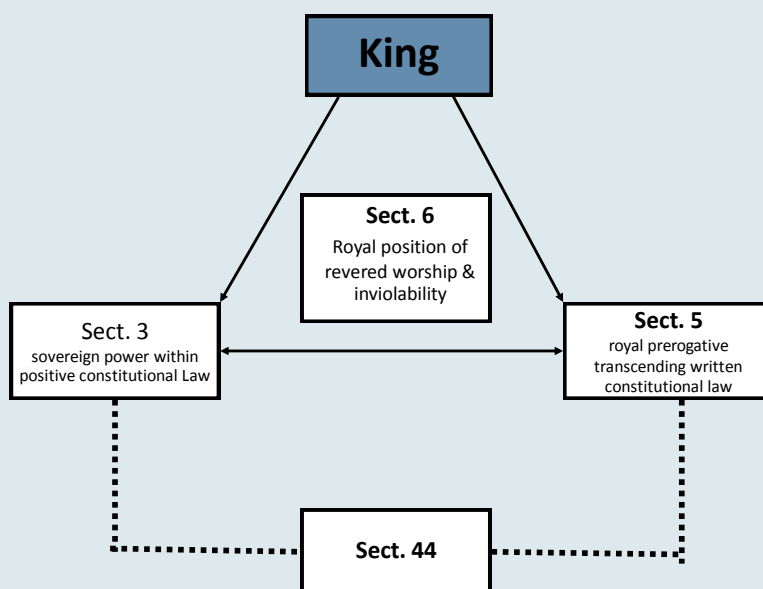
A. Volatility at Core: A Shifting Center of Gravity

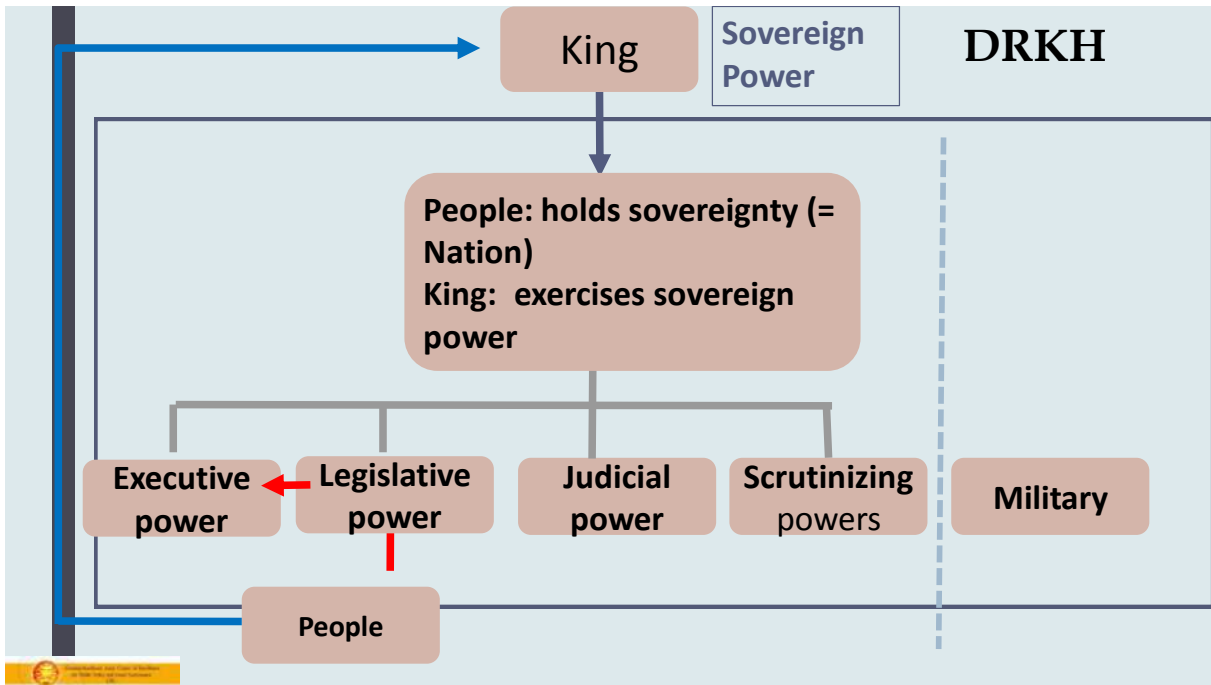
Center of Gravity



Constitutional Basic Structure:

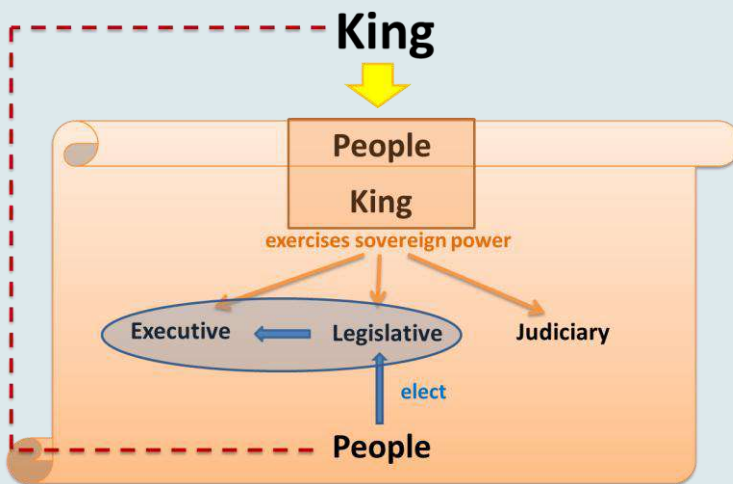
Democratic Regime with the King as Head of the State (DRKH)





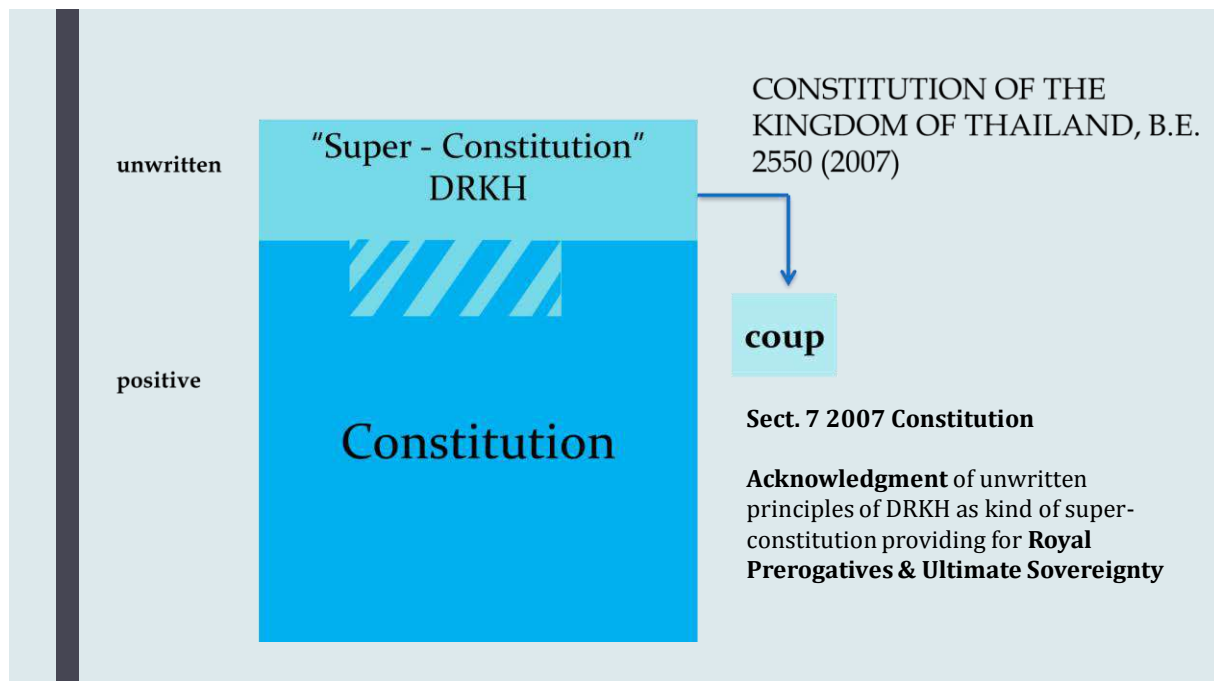
Sect. 3 TC 2017 *“The Sovereign power belongs to the Thai people. The King as Head of the State shall exercise such power through the National Assembly, Council of Ministers and the Courts [...]”*

Thailand:



Transformations of the DRKH - The unwritten principles of the DRKH

- **sect. 7 of the 2007 Constitution**
- sect. 5 of the 2014 Interim Constitution
- sect. 5 of the 2016 Constitution Bill
- **sect. 5 of the 2017 Constitution**



Constitution

Unwritten
constitutional
customary law

CONSTITUTION OF THE KINGDOM
OF THAILAND (INTERIM)
B.E. 2557 (2014)

DRKH acc. Sect. 5

Sect. 5 IC 2014 Interim Constitution

Eclipse of the super-constitution,
transformation of DRKH into
customary law.

➔ **Sect. 44**

Constitution bill

Unwritten
constitutional
customary law

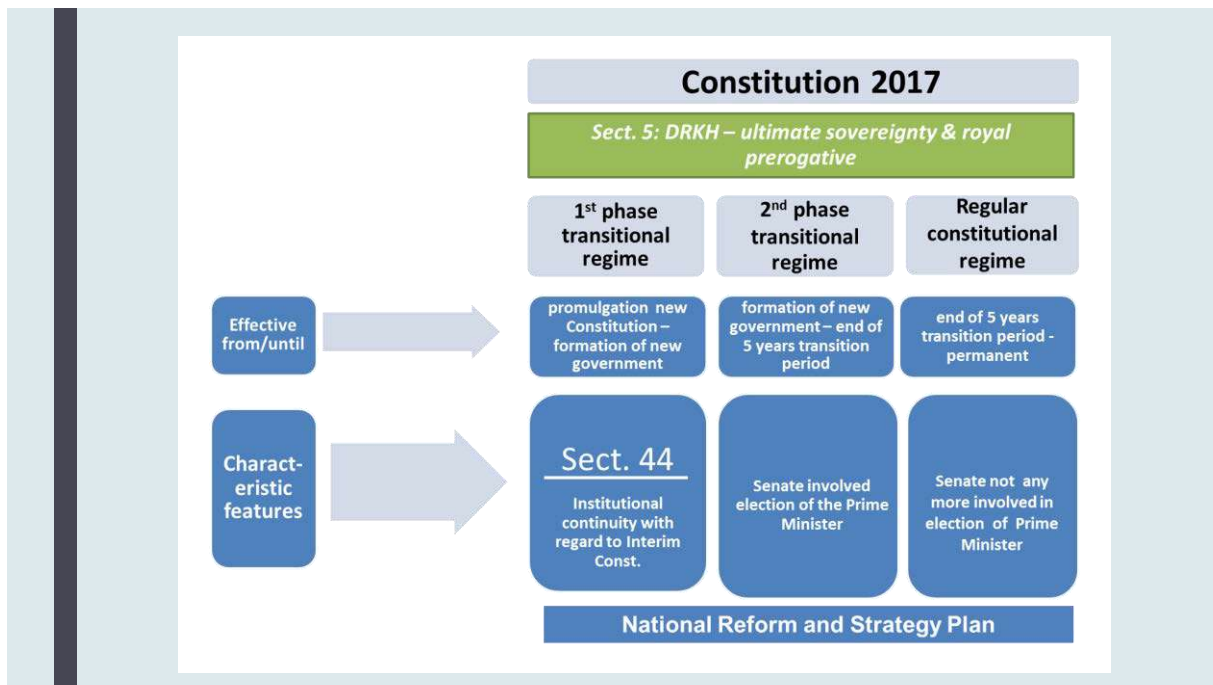
“Politbureau”

CONSTITUTION BILL 2016

DRKH acc. Sect. 5

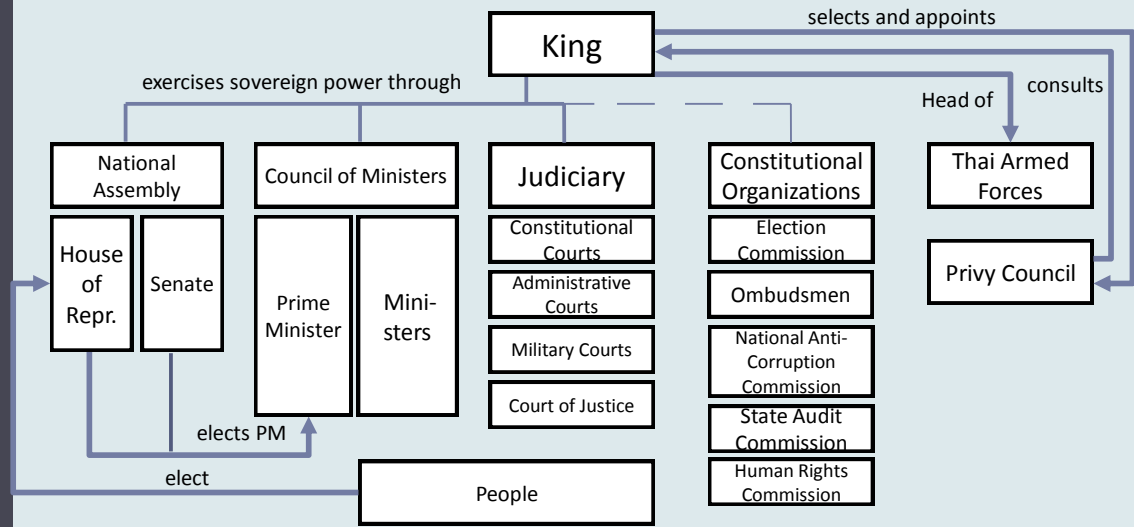
Sect. 5 2016 Constitution Bill

Introduction of ‘politbureau’-like
‘supreme leadership committee’

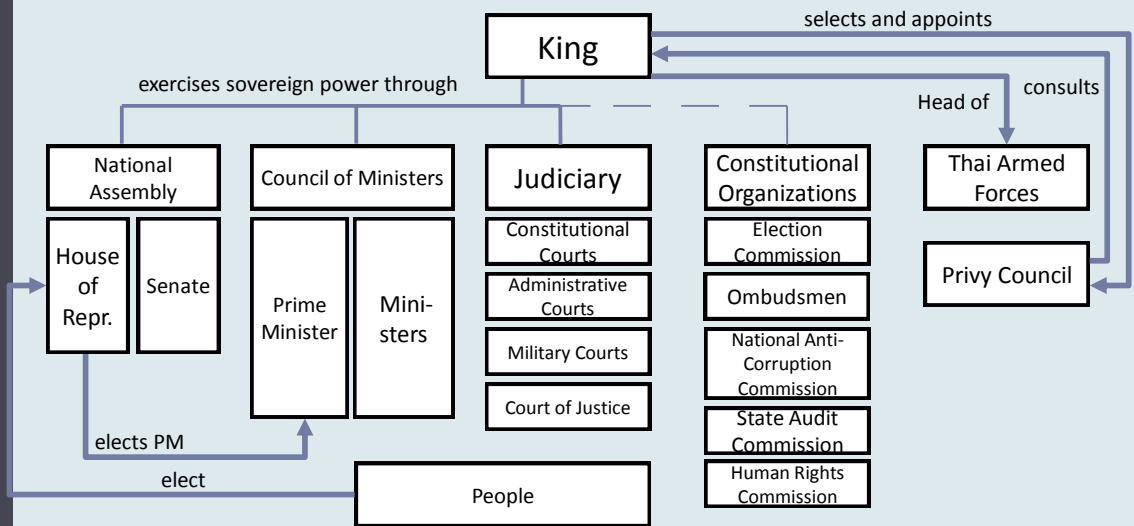


B. Institutional Set-up & Constitutional Process

Constitution 2017: Institutional setup transitional period



Constitution 2017: Institutional setup post-transitional period



Vectors of the Constitutional Process

- New form of Anti-electorism
- Less instrumentalization and thus less impact of Rights, Representative and Direct Democracy
- Less instrumentalization of a predominant legal form of Constitutionalism
- Further weakening of the Rule of Law

Election Commission of Thailand



Election Commission of Thailand



Boonsong Noisophon
Election Commissioner



Supachai Somcharoen
Chairman of Election
Commission of Thailand



Somchai Srisutthiyakorn
Election Commissioner



Pravich Rattanapian
Election Commissioner



Dhirawat Dhirarojvit
Election Commissioner

Scope of Intervention

- **Intervention in elections/selections on suspicion** (sect. 224 (3))
- **Elimination of candidates from elections/selections and suspension of parliamentary mandates on suspicion** (sect. 224 (5)).
- **Ban from politics for up to ten years by Supreme Court on request of EC**

Possible EC Interventions

1. Intervention in elections/selections on suspicion (sect. 224 (3))

- power to suspend, restrain, alter or cancel any national or local election or selection
- if there is a *reasonable doubt* that the election or selection in question was not honest or fairly or lawfully conducted.

2. Elimination of candidates from elections/selections and suspension of parliamentary mandates on suspicion EC (226 (1) and (2))

- power to suspend the right of a candidate to apply for candidacy in an election/selection for up to one year
- based on a reasonable suspicion that
- can cover the belief, “that such person has committed an act or known of an act committed by another person in a dishonest fashion or causing the election or selection to be dishonest or unfair”.

Possible EC Interventions (Con.)

3. Ban from politics for up to ten years by Supreme Court on request of EC (226 (1) and (2))

- EC is entitled to request the Supreme Court to revoke the right to candidacy and the right to vote of the „suspect“ of such a dishonest behavior in the context of election for up to 10 years.
- This doubles the established five-year ban and puts the sanction under a double discretion pertaining to the „whether“ and „how“ of sanctioning of any behavior in the context of election.

The National Anti-Corruption Commission



The National Anti-Corruption Commission



Watcharapol Prasarnrajkit
chairman of National Anti-Corruption Commission



Preecha Lertkamolmart
Commissioner



Narong Rathamarit
Commissioner



Vittaya Arkomjituk
Commissioner



Surasak Keereevichien
Commissioner



Sataphon Laothong
Commissioner



Supa Piyajitti
Commissioner



Suwana Suwanjuta
Commissioner



Boonyavat Kruahongs
Commissioner

Suspension of office holders & requesting their ban from politics by the Supreme Court for life (Sect. 234 (1))

- **inquire if persons** holding positions in one of the constitutional bodies might be **unusual wealthy**, having been **corrupt**, having unlawfully **over-exercised their powers**, having **seriously failed to comply with the ethical standard** or having **deliberately declared their assets wrongly**.
- If more than a half of the nine members of the commission is convinced that an alleged violation has occurred, the NCCC will **refer the case to the Supreme Court** with the consequence that the **accused person shall cease to perform duties until the judgment is made** (according to sect. 235 (5)).
- **If the Supreme Court finds the accused person guilty** of the offence it will **revoke the right** for candidacy in an election according to sect. 235 (5) and (6) **for life**.

Constitutional Court of Thailand



Constitutional Court of Thailand



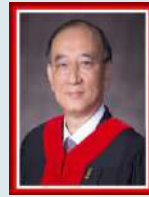
Nurak Mapranit
President of the Constitutional
Court of Thailand



Charan Phakdithanakun
Constitutional Court judge



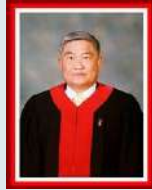
Chat Chonlawon
Constitutional Court judge



Thawikiat Minakanit
Constitutional Court judge



Nakarin Mektrairat
Constitutional Court judge



Bunsong Kunbuppha
Constitutional Court judge



Panya Utchachon
Constitutional Court judge



Worawit Kangsasiatiam
Constitutional Court judge



Udomsak Nitimontri
Constitutional Court judge

Constitutional Court of Thailand

Design: basically retained with a slightly different selection committee, slightly different composition and required qualifications

Jurisdiction: basically retained

Status: significantly altered



CC – Status

- Ranking by order
 - Separated from the other courts
 - From the bottom to the top

- Not any more entitled as a Court:
 - decision making in the name of the King
 - specific oath of allegiance to the King

- Not exempted from certain scrutinizing mechanisms under jurisdiction of the NCCC any more
 - They are subject to the same scrutiny as the other officeholders while the scope of inquiry pertaining to all other judges – those of the ordinary, administrative and military courts –, is much more narrowly defined
 - Only Constitutional Court justices are subject to inquiry by the NCCC concerning their compliance with the ethical standard which is not foreseen for the other judges.
 - Constitutional Court justices are the only ones who have to declare their assets and liabilities in the same way as those holding political positions.

Structure of Oaths

	Judges (Sect. 201)	Ministers (Sect. 175)	Parliamentarians (Sect. 123)
Representation of	The King		
Setting of oath taking	Before the King	Before the King	Before the House
Loyal to	The King	The King	Own conscience
Mission	Justice + people + public order	Country + people	People
Normative reference to	DRKS + constitution + law	Constitution	Constitution

Structure of Oaths

Judges before taking office:

“I, (name of the declarer) do solemnly declare that I will be loyal to His Majesty the King and will faithfully perform my duty in the name of the King without any partiality in the interest of justice, of the people and of the public order of the Kingdom. I will also uphold and observe the democratic regime of government with the King as Head of the State, the Constitution of the Kingdom of Thailand and the law in every respect.”

Structure of Oaths

Representatives:

“I, (name of the declarer), do solemnly declare that I shall perform my duties in accordance with the honest dictates of my conscience for the common interests of the Thai people. I shall also uphold and observe the Constitution of the Kingdom of Thailand in every respect.”

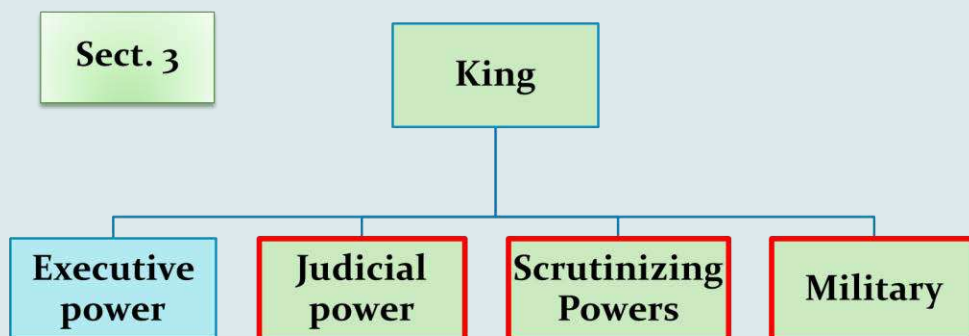
Structure of Oaths

Ministers:

“I, (name of the declarer), do solemnly declare that I will be loyal to the King and will faithfully perform my duty in the interests of the country and of the people. I will also uphold and observe the Constitution of the Kingdom of Thailand in every respect.”

Thai Constitutional Politics in Transition

Dichotomous Structure of Thai Constitutionalism



The National Human Rights Commission of Thailand



The National Human Rights Commission of Thailand



What Tingsamitr
chairman of National
Human Rights Commission



Chatsuda Chandeeying
Commissioner



Prakairatana Thontiravong
Commissioner



Surachet Satitramai
Commissioner
(resigned: 5th April 2017)



Angkhana Neelapajit
Commissioner



Tuenjai Deetes
Commissioner



Chartchai Suthiklom
Commissioner

National Human Rights Commission - NHCR -

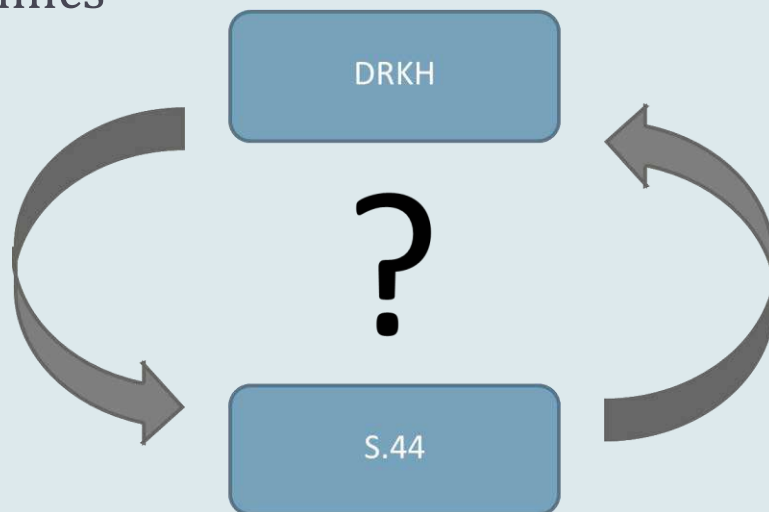
- Remains the most toothless and the one that has sustained the biggest loss of powers
- Commissioners have to meet the most unspecified qualification criteria of all organizations
- NHRC's duties in terms of right protection are rather limited to recommendations

NHRC: New duties setting the trend

- NHRC has to “clarify and report accurately with respect to incorrect or unfair reports on the human right situation in Thailand” (sect. 247 (1) Nr. 6)
- NHRC has to perform its duties with due regard to the well-being of the Thai people and the common interest of the country (247 (2))

C. Prospects

Dynamics



Vectors of the Constitutional Process

- **New form of Anti-electorism**
- **Less instrumentalization and thus less impact of Rights, Representative and Direct Democracy**
- **Less instrumentalization of a predominant legal form of Constitutionalism**
- **Further weakening of the Rule of Law**