

Interview with Dr. Weng Tojirakarn: Path to Constitutional Amendment, but for what and for whom?

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The Democratic Alliance against Dictatorship (DAAD), an anti-coup organization which later transformed itself into United for Democracy against Dictatorship (UDD) has been campaigning for wholesale changes to the 2007 Constitution. They have recently formed the People's Committee for Reforming the 2007 Constitution, which continues to expand. Currently there are 35 organizations involved including former constitutional drafters and senators.

On 4 April 2008, they held their first gathering as a show of strength to declare their plans to amend the 2007 Constitution by using the 1997 Constitution as a model.

Dr. Weng Tojirakarn is still the key person. In the political polarization that is beginning to create more confusion in the discussion of constitutional amendments, we asked Dr. Weng what he thinks about this, why is he proposing to amend the constitution, and how will it be done.

What is the goal of this gathering?

We want to get rid of the 2007 Constitution and bring the 1997 Constitution back. We will also amend the parts of the constitution which are undemocratic.

Can you give examples what needs to be amended?

One example is that it is hard to scrutinize the government. We want to make it easy to raise motions to question the government, perhaps 40 Members of Parliament (MPs) to file a motion on the Prime Minister, and 20 MPs for ministers. The exact numbers are unimportant, but they should be in that range. The Prime Minister and ministers must also give immediate answers.

The independent agencies must be scrutinized by the people or must derived directly from the parliament. Under the 1997 Constitution, the independent agencies are complicated and power of the selection is given to the elite. Since there were issues about the selection committees and how political parties could influence them, members of independent agencies should be selected by parliament. If the parliament, which consists of government and the opposition, selects the independent agencies, this will create some linkage with the power and sovereignty of Thai citizens.

You agree that 1997 Constitution has weak points?

Yes, it has weak points, but it is legitimate in its process. It was used for 10 years and has been proved to be righteous. If there are weak points and flaws, it must be amended. The important point that society agrees upon is that it makes the government too strong. We have to weaken the

government and make scrutiny easier. If the government and ministers are honest and administer the country based on the people's interests, they should not fear motions and questions put to them. One more thing is if the 1997 Constitution is brought back, all senators will be elected.

If 1997 Constitution is brought back, it will reinforce the failure of the past coup d'état.

That is correct. The coup d'état will not happen again.

Therefore, those staging the coup d'état might be afraid of revenge?

This will not happen. The coup plotters were the ones that destroyed the principle of the rule of law. Under the non-retroactive principle, a law that brings negative effects cannot apply. However, if it has positive effects, it can. This is the principle of the rule of law.

Therefore the group is not looking for revenge?

No, no, no! We only want democracy to be restored. If those who committed wrongdoings feel bad about doing so and later stick to democratic principles, we will definitely welcome them. But today, you have to fight the entire system since the way you think is wrong. There is no personal hatred. I do not hate Mr. Sonthi Lim(thongkul) or Mr. Sonti Boon(yaratklin) personally. We want a democratic system, not to seek revenge on anyone. Although they did not stick to the principle of the rule of law, the law cannot punish them retroactively. We use this principle strictly. If we can get the 1997 Constitution back on 1 June, we cannot punish the people for what they did in the past because we respect the principle of the rule of law.

There was a huge division in Thai society in the past, especially concerning the 'Thaksin Regime' and the way the economy was being managed in an extremely capitalistic way. Now it is true that you talk about principles, but this can be used by Thaksin's group. What do you see in that? Do you care about that?

If Mr. Thaksin is evil, he should be punished. I am not protecting Mr. Thaksin. But if he did not commit any crime, his rights should be respected. You should never blame the fate of a country on one man, on Mr. Thaksin. Thaksin cannot dictate the fate of the whole country. It is incorrect to allege that everything was done for Thaksin.

Article 309 makes me feel embarrassed in front of the whole world. It says that any act under the 2006 Interim Constitution is constitutional. It says that any action done before and after the 2006 Interim Constitution will be made constitutional under the 2007 Constitution.

Our motive is not related to party dissolution or the case of the 111 politicians. The article contradicts all articles in the 2007 Constitution since the Constitution states that Thailand is governed by a democratic system with the Monarchy as head of state. It is not possible to accept power from sources that are not stated in the constitution. The freedoms and rights in the constitution cannot be used to overthrow the democratic system. Therefore article 309 is going against all articles.

Article 309 is just an example, but it is the clearest example that makes this constitution repulsive since it protects the coup d'état and makes the coup a legitimate act although it is not acceptable in this world.

The 2007 Constitution still has many structural problems. Regarding the selection of senators, how could you give the sovereignty of the Thai people to 7 people to do the selection? I am not criticizing the seven members of the selection committee but I am criticizing the system. The election of one

Senator per one province is the principle used in a federal political system. Bangkok has 10 million residents while Ranong Province has 150,000 residents, but each elects one person. This goes against Articles 1 and 3.

Constitutional amendment has focussed on the issue of party dissolution. Do you see the party dissolution as a problem and do you propose to make changes to the ruling as well?

It is a separate issue. I still do not know where it will end regarding the constitutional amendment, but the issue of party dissolution might be clearer in the coming two or three months. We are not related to any party. It should be dissolved if it is guilty of the charges.

However the perspective of the People's Power Party is that the process should be impartial and just. This also includes the case of the politicians and the proposal to amend the constitution as well. They explain that it is incorrect for the whole party to be punished because of one guilty man. If I have a big family of 200 people and one member is a criminal who commits a murder, will the whole family be decapitated? We just want the 1997 Constitution back; where there is a problem we need to make changes.

The issue of rejecting the 2007 Constitution and bringing 1997 Constitution back was discussed before the 2007 Constitution was drafted. Since a monkey will breed a baby monkey, giants breed baby giants, similarly dictators will produce a dictatorial constitution. We saw this coming since the start. From before the charter was drafted until the referendum on 19 August 2007, we were campaigning to "vote no", not "no vote". This had been discussed all along.

But now when you discuss constitutional amendments, it is seen as for Thaksin or Thai Rak Thai Party.

Our purpose is quite clear. If it is being communicated, the people will know. We call for the abolishment of the 2007 Constitution and return to the 1997 Constitution. Therefore, it is not related to Thaksin or Thai Rak Thai.

How do you see party dissolution? Do you think that justice is being given to the People's Power Party?

The country needs rules and procedures. We have to follow the procedures, whether right or wrong we must follow them and later change them. But we must follow them. We cannot decide not to follow them. When the People's Power Party campaigned in the election, they call for the abolition of the 2007 Constitution and return of the 1997 Constitution. If they do not focus on this from the start, it means they are not keeping their promise to the people.

It looks as if PM Samak is faithful to these promises since he said that there will be changes made in all parts of the 2007 Constitution apart from the provisions on the monarchy. He said the 1997 version will be used as a model. This is similar to our demand. However members of the People's Power Party and Ministers are creating misunderstandings among the public. The five issues raised are a way to create massive loopholes for anti-democracy groups as they are experienced in picking small issues and raising them into big issues. The whole constitution must be changed, not specific articles, as the 2007 Constitution is a bureaucratic and dictatorial document.

My question is whether it is pro-democracy, pro-coup d'état, or pro-bureaucracy, I urge that the struggle be made in the political field. There should be no reference to the monarchy, since some have said that constitutional amendments will change the monarchy into a presidential system. This is not proper. We should focus only on democracy.

Should we have a referendum whether to amend the constitution since many groups including academics are coming out criticizing the move?

The reason it is like that is because it is restricted to 3-4 issues. If the 2007 version is replaced by 1997 version, I believe no one will object because there was widespread participation in drafting the 1997 version. Chirmsak was also involved in drafting the 1997 Constitution. If you focus on specific articles you will be trapped, it will be easy to legitimize the coup d'état.

What should be the procedure? Should the procedure used in drafting the 1997 Constitution be brought back?

It would be simple. This has happened in Thai history before. In 1952, the government of Field Marshal Phibunsongkhram wanted to bring 1932 Constitution back into use. The 1949 Constitutional Amendment Act was proposed. The Act has three articles. Article 1 explains the name of the Act. Article 2 revokes the 1949 Constitution. Article 3 brings back the 1932 Constitution with amendments to specific articles and provisions. The parliament then agreed to this so the 1932 Constitution became the 1952 Constitution.

In our case, we can put forward three important principles which are 1) it must be easy to bring motions against the government, 2) Independent Agencies must be connected directly to the power and sovereignty of the Thai people, 3) there must be no improper intervention in the work of the independent agencies by the government.

How can the people be involved?

We have to bring together comments just like in 1997 and we will also mobilize 50,000 signatures to bring the 1997 constitution back.

If the 1997 Constitution is brought back, would it make the current situation difficult (such as the elected/appointed Senators case)?

We can write a specific provision that the elected senators can continue their mandate for half of the total time or whatever. This is to give justice to them as well, but the problem is first to get rid of what destroyed democracy.

Where does the People's Committee to Reform the 2007 Constitution come from?

It is a gathering of 35 organizations. We consist of independent academics, former 1997 constitution drafters, former senators from the 2000 election, and others. It was established on 31 March 2008. We will be campaigning about this all over the country while collecting 50,000 signatures to push for this. Now we have been campaigning for 2-3 months.

P.S.

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