

Ordering Peace: Thailand's 2016 Constitutional Referendum

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Thailand's August 2016 constitutional referendum marked the second occasion on which a military junta has sought popular endorsement to legitimize its efforts to reform the country's political system. As in the previous referendum of August 2007, Thai voters endorsed military plans to reduce levels of democracy. Draconian moves by the regime curtailed open debate about the content of the draft constitution, which virtually nobody had read. Partly as a result of the junta's suppression of dissent, "No" votes declined — but the draft charter was still opposed by almost 40 per cent of voters, testifying to continuing high levels of political polarization along regional lines. This article argues that the referendum process may have helped the military to impose order on

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Thai society during the difficult period of royal transition, but did not create any genuine peace between the country's fractious competing groups and interests.

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On 7 August 2016, Thais voted to endorse a new draft constitution that significantly curtailed the political power voters had enjoyed under both the 1997 and 2007 Constitutions. The constitutional referendum was called by the National Council for Peace and Order (NCPO), the military junta that seized power in the 22 May 2014 *coup d'état*.¹ Headed by Prime Minister and former army chief General Prayut Chan-ocha, the NCPO followed previous recent Thai juntas (including those responsible for the coups of 1977, 1991 and 2006) in abrogating the existing constitution and later forming a constitution-drafting committee tasked with preparing a new charter. The NCPO leadership was the most hardline group of coup-makers since 1976, and their seizure of power was accompanied by widespread and lengthy repression of political dissent. Why did the majority of the electorate endorse a document which was much more draconian than the 2007 charter, let alone the much praised 1997 “people’s constitution”?

This article argues that the military junta successfully used coercive measures to suppress participatory democracy, claiming that such draconian means were necessary to ensure peace and order. The referendum period from March to August 2016 was characterized by misinformation, direct repression and both implicit and explicit threats of violence. From the outset, voters lacked enthusiasm both for the draft charter and for the referendum itself. Because the NCPO actively curtailed critical discussion, voter understanding of the charter was at best inadequate, and at worst downright confused. The resulting referendum did not reflect a genuine public choice between two alternatives. Furthermore, it did nothing to reconcile the country’s fractious competing groups and interests, beyond imposing crude and superficial notions of order.

In contrast with earlier juntas, the NCPO was little concerned about legal niceties. In the wake of the 2014 coup, Thailand lacked even an interim constitution for two months, and had no prime minister or cabinet for three months. When an interim constitution was promulgated on 22 July 2014, it included a notorious catch-all clause, Article 44, which gave General Prayut absolute power to

override bureaucratic and budgetary processes as he saw fit. Whereas the 1991 and 2007 juntas had sought to reassure the public and the international community that fresh elections would be held within a year or so, the NCPO was very reluctant to commit to any such timetable. However, in late 2014, under pressure from civilian elites, the NCPO began the process of drafting a new constitution.²

While it has become fashionable to see conservative forces in Thailand as a part of a highly unified state apparatus, the reality is much more messy and ambiguous. Between September 2014 and September 2015, the NCPO engaged in a protracted dance with its own thirty-six-member Constitutional Drafting Committee (CDC), chaired by a distinguished legal academic, Professor Borwornsak Uwanno, whom Duncan McCargo has elsewhere termed “the chief legal ideologue of the monarchical network”.³ Borwornsak and his colleagues expended considerable professional and social capital to promote their vision of a legally codified moral order, in which citizens would be empowered to blow the whistle on corrupt politicians. Many of their proposals — including the idea of a National Morality Assembly — met with widespread scepticism and were criticized for giving too much power to the military and the establishment. But the resulting 2015 draft constitution, with its emphasis on empowering the citizenry to monitor abuses by elected politicians, was still not sufficiently authoritarian for the generals.⁴ In September 2015, the charter was voted down by the NCPO's National Reform Council.⁵

After the NCPO had rejected its own 2015 draft charter, then seventy-seven-year-old veteran constitution-drafter Meechai Ruchuphan — a serial pragmatist who had long pandered to the preferences of whoever held power — was recruited to head a new CDC.⁶ Meechai proved far more willing to accommodate the junta. When Deputy Prime Minister Prawit Wongsuwan requested a number of key changes, Meechai accepted most of them, including: a 250-member Senate appointed by the NCPO; reserved seats in the Senate for top security commanders; and the option of an unelected prime minister.⁷ One key Borwornsak legacy survived, however: the principle that the new draft charter, like that of 2007, be ratified by a popular referendum. Dwindling economic performance, scandal-suffused mega projects and Prayut's often ham-fisted leadership style undermined the NCPO's rhetoric of restoring national happiness. A constitution approved in a popular vote could provide the junta a much-needed veneer of legitimacy, while refusing to hold a referendum would make the NCPO look dictatorial. But while a date was eventually set for 7 August 2016, the country's military rulers never really warmed to the prospect.

Fearing that the referendum could become a lightning rod for political dissent, the NCPO was intent upon keeping the polling as perfunctory as possible.

The 2016 Draft Constitution: What's Not to Like?

Thai constitutions since the 1990s have alternated between two modes: the 1991, 2007 and 2016 “conservative” constitutions, and the more “liberal” ones of 1997 and 2015. Directly or indirectly, conservative constitutions sought to curtail the power of elected politicians; and to create opportunities for the military and the network monarchy to exercise veto power over the direction of Thai politics. While the 2007 Constitution established a hybrid semi-appointed Senate and boosted the political role of senior judges, the 2016 draft placed the country's fate firmly in the hands of the military. In many respects, the final draft resembled the 1991 Constitution; both sought to institutionalize military control over Thai politics through a wholly appointed Senate and provisions for a non-elected prime minister. The 2016 draft also restricted or removed various political and civil rights formerly enjoyed under previous constitutions, such as freedom of expression, academic freedom and environmental rights.⁸ All three conservative constitutions were crafted under the direct authority of Meechai Ruchuphan. The somewhat more “liberal” 1997 and 2015 Constitutions, overseen by Borwornsak Uwanno, sought to empower “the people” (variously understood) to check and monitor elected politicians. Whereas the 1991–92 and 2006–7 military juntas gave relatively free rein to the professional constitution-drafters, the post-2014 junta was considerably more hands-on, showing little deference to the distinguished jurists whom it conscripted into service. The NCPO did not hesitate to reject the Borwornsak draft completely, and to demand important changes to the Meechai draft.⁹

The 2016 draft reflected the NCPO's desire to prevent any party aligned with controversial former Prime Minister Thaksin Shinawatra — the *bête noire* of Thailand's conservative establishment who was ousted in a military coup in September 2006 — from returning to power. The draft proposed a rarely-used multi-member apportionment (MMA) system, according to which votes cast for 350 individual constituency members of parliament (MPs) would be re-apportioned to determine the make-up of 150 party-list MPs.¹⁰ The MMA would likely reduce the number of MPs from any large pro-Thaksin party and increase the number from medium-sized parties.¹¹ Under the

MMA system, forming a single party government would be difficult. The pro-establishment Democrat Party stood to benefit: it would be well-placed to join any governing coalition.¹² However, a return to multi-party coalitions would also be a throwback to the weak and unstable party politics of the 1980s and 1990s. While the Election Commission of Thailand (ECT) argued that the switch to a single ballot paper (instead of the separate constituency and party list ballot papers used under the 1997 and 2007 Constitutions) would prove simpler, the workings of MMA were arcane and difficult for ordinary voters to follow.

In a significant rollback of democracy, the new 250-member Senate would be wholly appointed, effectively under NCPO auspices. This was a reversion to pre-1997 mechanisms, which had seen the Senate dominated by the military and the bureaucracy; it marked a decisive break with post-1997 liberal ideals that senators should be independent, directly elected and non-partisan figures. The 2016 draft also enabled the NCPO to retain its authoritarian powers (including those under Article 44) until the new cabinet was formed. This provision would allow the generals to intervene in the election process should they wish to do so. Another controversial provision allowed for a non-elected prime minister, which could allow the junta to retain control over post-election politics.

Although Borwornsak's controversial National Morality Assembly (NMA) did not re-appear in the Meechai draft, the 2016 text granted broad powers to independent organizations — such as the National Counter Corruption Commission and the Election Commission — to monitor moral standards across the executive and legislature and to petition the Constitutional Court to remove a minister or a prime minister on the vague and ambiguous grounds of lacking “apparent honesty”.¹³ Such provisions were wide open to political abuse. Other provisions required a new government to follow a twenty-year national reform strategy plan drafted by the NCPO.¹⁴ This would effectively divest any elected administration — not just a pro-Thaksin one — of the ability to set its own policy agenda, placing the country under *de facto* military tutelage for another two decades. To make matters worse, the Meechai draft made the constitutional amendment process extremely difficult: with a Senate hand-picked by the NCPO, the junta would be able to exercise veto power over constitutional amendments for at least five years.

While several major features of the 2016 draft charter were highly contentious, public awareness of these issues was low. As one polling station official explained,¹⁵ most voters were only familiar

with the key issues highlighted in an official leaflet bizarrely subtitled “7 August Harmonious Referendum for Meaningful Democracy”, which was distributed nationwide by the ECT. In effect, the explanatory leaflet contained the selling points for the draft, summarized in two lists: eight things “the people and society would get” from the draft constitution; and twenty-one further important issues in the draft.¹⁶ The language of the leaflet was very abstract, and largely devoid of detailed facts, figures or dates. Unlike in 2007, the ECT decided against sending the full charter text to all voters.¹⁷

What would people get? According to the leaflet: rights and freedoms from the cradle to the grave; free education to junior high school level; free health care; support for the disadvantaged; support for over-sixties; urgent reform of the police and the entire justice system; the right to access state information; and greater public participation in the oversight of state agencies. However, with many of these provisions, the devil lay in the details that the leaflet glossed over. For example, under Article 47 the right to free health care was confined to those designated as “destitute”. Issues highlighted by opposition groups and political analysts which were ignored in the leaflet included the future form of the new legislature, institutionalization of the military’s political power and the general rollback on human rights, political and civil liberties.¹⁸

To be fair, the ECT leaflet also included a link to the CDC website, where those interested could find the full text of the draft constitution — hard copies of which were in very short supply during the run-up to polling. However, the leaflet’s six page, twenty-nine-point summary failed to explain the draft in several key respects: Why was a new constitution needed at this stage? What were the aims and objectives of the drafters? In which important ways did the 2016 draft differ from the 2007 Constitution? What were the contentious issues at stake in the referendum? How would members of the Senate be selected? Perhaps most importantly, what would the new electoral system actually look like? On all these crucial matters, the leaflet was devoid of information. It was written in marketing mode, and carefully worded to occlude, rather than to elucidate, the draft’s contents. The leaflet never directly referenced any articles in the draft charter; comparing the twenty-nine points mentioned in the leaflet with the provisions of the draft constitution would entail reading 105 pages of legalese, containing a total of 279 articles, just in order to join up the dots. Tellingly, the ECT was acting as a promotional agency for the draft charter, rather than a neutral overseer.

Despite the ECT's claim to have distributed around a million copies of the draft constitution to voters, villagers in Surin province complained that they had not seen any information distributed about the new constitution. Officials claimed none of the residents — most of whom were elderly — had expressed any interest even in reading the basic information they had been sent.¹⁹ Some elderly villagers clearly had no idea what was happening; they were heard asking their younger relatives what this election was all about, and which candidate they should vote for. Villagers in different villages in Ubon Ratchathani province also reported receiving only the ECT leaflet, but claimed not to understand the contents.²⁰

Issues in the Referendum

During the run-up to the polls, the NCPO had little time or patience for constitutions, lawyers, referendums or elections. The junta was ready to go through the motions of holding a referendum, simply as a legal and political necessity; but was wholly unwilling to invest this process of public consultation with any substantive meaning. Opposition politicians who raised critical questions about the draft, including outspoken ex-minister Watana Muangsook, were visited by soldiers, or summoned to military bases for “attitude adjustment”. Article 61 of the 2016 Referendum Act made it illegal to “sow confusion” about the referendum that could undermine public order; in practice this extremely vaguely-written law became the basis for preventing public discussions, blocking opposition politicians from speaking out against the draft charter, and harassing civil society groups that supported a “No” vote. Politicians complained that it was illegal for them to criticize the draft or campaign for a “No” vote, even by distributing leaflets.²¹ Raising questions such as whether the draft was compatible with the popular 30 baht universal health care scheme was not permitted; nor were critics allowed to discuss whether the draft implied that high school education would no longer be free.²² While “Vote No” posters and even T-shirts were produced by some groups, they became a form of contraband. Thirty-six people in seven separate incidents were arrested for violations of the Referendum Act. Prominent critics of the draft included the New Democracy Movement (NDM), an alliance of student groups that included the Khon Kaen-based Dao Din group, the most vocal critics of the junta, as well as organizations based at Bangkok universities.²³ One man was indicted in a military court

apparently for simply observing NDM anti-charter activities in Samut Prakan. He was not charged under the Referendum Act, but under NCPO Order 3/2014, an edict issued in the immediate aftermath of the coup, banning political gatherings of five or more people.²⁴ This concerted crackdown dampened appetites for candid discussions of the draft charter.²⁵ Some media organizations were reluctant to run stories on the issues pertaining to the draft charter for fear of legal repercussions. At times, the way “violators” of the Referendum Act were treated bordered on farce: a local police chief was removed from his post after failing to take action against two eight-year-old girls who had torn down voter registration lists in Kamphaeng Phet province because they liked the pink paper.²⁶ In another bizarre episode, around 100 monkeys tore up voter registration lists in Phichit province, leading prominent legal scholar Worajet Pakeerat to quip publicly that he was worried about what might happen to the monkeys.²⁷ In short, suppression rather than open debate defined the run-up to the referendum.

While the ECT was charged with holding public forums to debate the draft constitution in every province, in practice many provinces held just one such event, normally in the final days before the vote. Even then, critical commentators, including pro-Thaksin politicians, were often excluded from the speaker line-up.²⁸ Moreover, the Interior Ministry recruited tame or paid audiences for many of these events. One local journalist boycotted the 2 August public referendum forum in Ubon province after the ECT announced that recording the proceedings was forbidden. The ensuing event was “like a war zone” crawling with uniformed soldiers,²⁹ because the Ubon ECT had ceded control of the event to a deputy provincial governor who worked closely with the military. By contrast, speakers at the ECT forum in Pattani province included a critical academic and an outspoken former senator. Much depended on the approaches taken by local ECT officials, which varied from liberal to authoritarian.

In June, the ECT issued a music video which was supposed to encourage people to take part in the referendum; but the lyrics were widely criticized for suggesting that voters from the populous northeast region (known as Isan) were susceptible to vote-buying and manipulation by unscrupulous politicians. In the end, the ECT was forced to withdraw the original video and produce a new one with amended lyrics. The original lyrics revealed deep-rooted Bangkok assumptions that people from the northeast were backward and gullible:

My Isan brothers and sisters, do not let anybody tell you to go left or right. Use your mind to think hard about the contents and key principles. Cast your votes and share your responsibility for our country. See through people's tricks. We Isan people don't let anybody fool us!³⁰

The ECT chose the popular *luk thung* folk or country style of music apparently to appeal to ordinary voters in the provinces. The song lyrics were divided into four parts, each sung by a singer representing Thailand's four main regions in local languages. Despite the upbeat, catchy tune, the message in the lyrics suggested that voters in the northeast had demonstrated poor judgement in previous polls.³¹ Isan people had voted consistently for pro-Thaksin parties in the 2001, 2005, 2007 and 2011 elections, while the northeast had strongly rejected the 2007 draft constitution in the only previous such referendum. Worse still, the lyrics praised southerners as "lovers of democracy" and "lovers of freedom" in contrast to the derogatory depictions of Isan voters. By issuing this partisan song, the ECT was explicitly endorsing the draft constitution.

Two months before the polls, the pro-Thaksin United Front for Democracy Against Dictatorship (UDD) red shirt movement announced plans to set up a monitoring operation to ensure the integrity of the voting process. UDD Monitoring Centres were set to open in Chiang Mai, Lampang, Surin, Khon Kaen, Phuket, Satun, Chiang Rai, Petchabun and Bangkok. However, the NCPO ordered their immediate closure, again not for violating the Referendum Act, but rather on the basis of NCPO Order 3/2014 banning gatherings of five or more people. The UDD's plan to open a Monitoring Centre in Ubon Ratchathani province was foiled by the security forces for the same reason, although an ostensibly "merit-making" ceremony in place of the opening was permitted, albeit heavily monitored by armed security officers.³² This crude invocation of a widely-ignored two-year-old provision illustrated just how anxious the junta had become both about the outcome of the referendum, and about the opportunity the polling could present for pro-Thaksin political forces to regroup.

In order to shape public understandings of the referendum, the Interior Ministry created a system of volunteers at the provincial, district and village levels, known as *Khru Ko*, *Khru Kho* and *Khru Kho*, respectively.³³ Many of these so-called "volunteers" were actually reluctant recruits from official ranks, including village headmen. They were then trained to "explain" the draft constitution to local voters.³⁴ Three *Khru Kho* (village-level volunteers) explained

that they feared repercussions from the authorities, should they give voters the wrong information by mistake. They admitted to encouraging people to cast their ballots, without really “educating” voters in their community about the draft.³⁵ The Ministry also established a network of “Peace and Order Centres” in all districts of each province that were intended to monitor campaigning and prevent threats to public order.³⁶ In practice, the Peace and Order Centres were yet another measure to reinforce the many NCPO orders and post-coup laws limiting people’s freedoms to organize against the draft. The military junta went to great lengths to impose notions of order on a deeply divided society. The only difference between these Peace and Order Centres and other similar military operations was that these centres were temporary and chaired by civilian provincial governors, which made them look less threatening.

Opposition to the 2016 draft constitution was only to be expected from pro-Thaksin politicians and the red shirt movement, as well as from critical academics and human rights advocates. For instance, Chulalongkorn University political scientist Puangthong Pawakapan saw the drafting process as an exclusion of stakeholders outside the elite establishment. The draft itself was designed to facilitate easy intervention by the establishment.³⁷ Worajet Pakeerat charged that the draft charter was not derived from the will of the people and so this alone was a strong reason to reject it.³⁸ On 24 July 2016, a network of academics, students, intellectuals and NGOs hosted an event at Thammasat University to outline problems with the draft and campaign against it. At least 500 people attended the event, which featured various activities including lectures, speeches and forums both inside and outside Thammasat’s main auditorium. A large display featuring a printout of the draft was placed outside the auditorium, with participants invited to write their opinions about the problematic articles onto the draft itself. Many attendees openly identified themselves as members of the “red shirt” movement, sporting pro-Thaksin UDD paraphernalia. This was a rare opportunity to display such views, given the junta’s heavy crackdown on the red shirts after the 2014 coup. The event was clearly an anti-junta protest in disguise — so partly confirming NCPO’s fears that allowing open public debate about the draft constitution could encourage public criticism of the regime.³⁹ Nevertheless, the event was small, peaceful and had little wider political impact beyond the Thammasat campus.

Rather more surprising was the strong opposition to the draft expressed by Democrat Party leader and former Prime Minister Abhisit Vejjajiva, who viewed the charter as a throwback to earlier decades of semi-democracy. For the first time in years, the leadership of the Democrats was in agreement with that of the Pheu Thai Party — a remarkable development. But the Democrat Party was split between the anti-charter Abhisit wing, and the pro-charter wing led by former party Secretary-General Suthep Thaugsuban. Suthep, the *de facto* leader of the People's Democratic Reform Committee (PDRC) protest movement which had helped topple the government of Yingluck Shinawatra (Thaksin's sister) in 2013–14, was now a staunch supporter of the NCPO. Although he had officially left the party, Suthep continued to exercise great influence over Democrat supporters. The Democrat Party has two core voting blocs (*than siang*): Bangkok voters, and voters in the upper south.⁴⁰ As an adoptive Bangkokian, British-born Abhisit had limited appeal to southerners. But two-time ex-premier Chuan Leekpai, Abhisit's patron and mentor, still held extraordinary sway over Democrat voters in the south. At a gathering to celebrate Abhisit's birthday at the party headquarters, Chuan called on everyone in the party to give Abhisit moral support in his rejection of the constitution even though it was not the party's consensus.⁴¹ However, Chuan stopped short of calling for Democrat supporters to vote against the draft charter.

Included on the 2016 referendum ballot was a second question, worded as follows:

Do you or do you not agree that in the interests of reforming the country expeditiously according to the national strategic plan, it should be stipulated in the Transitional Provisions of the Constitution of the Kingdom of Thailand that for five years from the first convening of the National Assembly under this constitution, a joint session of the National Assembly shall convene to approve the person to be appointed as the Prime Minister?⁴²

The real point here was that the Senate — whose members would be appointed by the NCPO — could effectively determine the choice of prime minister, who would almost certainly therefore be a non-politician. Question 2 thus invited voters to endorse the prospect of a non-elected prime minister, but without making this explicit. It was an open secret that General Prayut might well be nominated to continue in the premiership.⁴³ Voting “Yes” to Question 2 meant permitting the NCPO to perpetuate its power for five years beyond the election. What was misleadingly presented as an essentially technical issue had enormous political implications.

The Polling Process

Following the May 2014 coup, all local and national elections had been suspended. As such, the 2016 constitutional referendum was the first opportunity for Thai citizens to cast their ballots since the extremely fraught general election of 2 February 2014, and the subsequent 29 March 2014 Senate elections. The 2 February poll was boycotted by the opposition Democrat Party; voting was prevented by anti-government protestors in some Bangkok districts and in parts of the upper south; and the entire election was eventually annulled by the courts.⁴⁴ Despite military jitters, there was no reason to expect major disruption to the 7 August 2016 referendum vote.

The authors of this article observed polling in Bangkok, Nonthaburi, Pattani, Surin, Si Saket and Ubon Ratchathani.⁴⁵ Voting was generally quiet and proceeded without incident. There was some queuing at the larger polling stations in Bangkok, but the relatively low turnout meant that few people waited long to cast their ballots. According to the Pattani ECT, each polling station was supposed to have ten staff: five officials to manage the polling and counting, one director to oversee their work and four security officials.⁴⁶ As well as the team of officials, most polling stations also employed a couple of volunteers, whose job was to check voter names on the registers. In the far south,⁴⁷ the volunteers were often uniformed boy or girl scouts, while elsewhere they were typically students from the Reserve Officers Training Corps (ROTC).

In the Thai context, security officials include village headmen and *kamnan* (subdistrict chiefs who function as “super-headmen”), as well as Ministry of Interior paramilitary security personnel (known as *O So*) and police officers: regular members of the armed forces were not usually assigned to guard polling stations. At the Isan polling stations that the authors observed, the only armed security officials were police officers. One policeman was assigned to guard the polling station while the village headman or another official oversaw voting. At one polling station in Surin, there were no security officials as authorities did not bother assigning any security personnel where voter numbers were small and there was no likelihood of any trouble.⁴⁸ The presence of armed security officials was a mixed blessing. In theory they provided protection both to voters and staff, in a country where previous elections had been adversely affected by violence. But in the southern border region, Malay Muslim villagers were reluctant to share space with M-16-wielding *Or Sor* and police “commandos”, who were barely

distinguishable outwardly from combat soldiers, and were regular targets of insurgent attacks. The presence of these security officers visually militarized the polling process — an unfortunate outcome, given that this was a referendum on a military-ordered constitution. At a Bangkok polling station, the authors came across a small group of young soldiers, all wearing green “King’s Guard” T-shirts but playing no obvious security role.⁴⁹ Practices varied quite widely, even within the same area. At one polling station in Yaring, Pattani, uniformed security personnel stationed themselves discreetly at some distance behind the voting area; but in another nearby polling station, an armed guard took ballots straight from voters’ hands and deposited them into the ballot box; while in a third adjoining location, security officers played central roles in the actual counting process.

The role of headmen and *kamnan* on polling day was also ambiguous: were they acting in their capacity as security officials, or as ex-officio members of local election committees, or both? When the ECT was created in 1997, this newly independent agency was supposed to remove jurisdiction over elections from the Ministry of Interior, which oversaw village headmen; in practice, however, headmen had retained a significant role in proceedings. At one polling station, we observed an official from a local Interior Ministry office halt the counting and instruct polling staff on how to conduct the process. While his instructions were entirely correct, and indeed helped to ensure the counting went smoothly, he had no legal authority to instruct the counting officers. His intervention arguably illustrated the resurgence of Thailand’s “bureaucratic polity” following the 2014 coup.

Counting the votes in the 2016 referendum proved tricky, even for experienced polling officers who had worked on many previous elections. Unlike in recent general elections, where votes for constituency candidates and party list selections were recorded on two separate ballots, this time a single ballot paper contained two distinct questions. The first question asked whether the voter approved or did not approve of the draft constitution, while the second question asked (in a very convoluted way) whether the voter approved of allowing a joint session of the lower house and the Senate to appoint the prime minister. If a voter answered only one of the two questions, the ballot was “partly spoiled”, but these semi-spoiled ballots were treated differently in different counts. The correct procedure was to say something like “Valid ballot. Question 1, Yes. Question 2, Spoilt ballot”, so that both outcomes

were separately recorded on the tally sheet. But in one Pattani case, we observed an official repeatedly use formulations like “Partly valid ballot. Question 2, Yes”, and omitting all reference to the question that had not been answered. As a result, the final tallies of “spoiled” ballots were clearly incorrect, even if the “Yes” and “No” votes had been properly recorded.

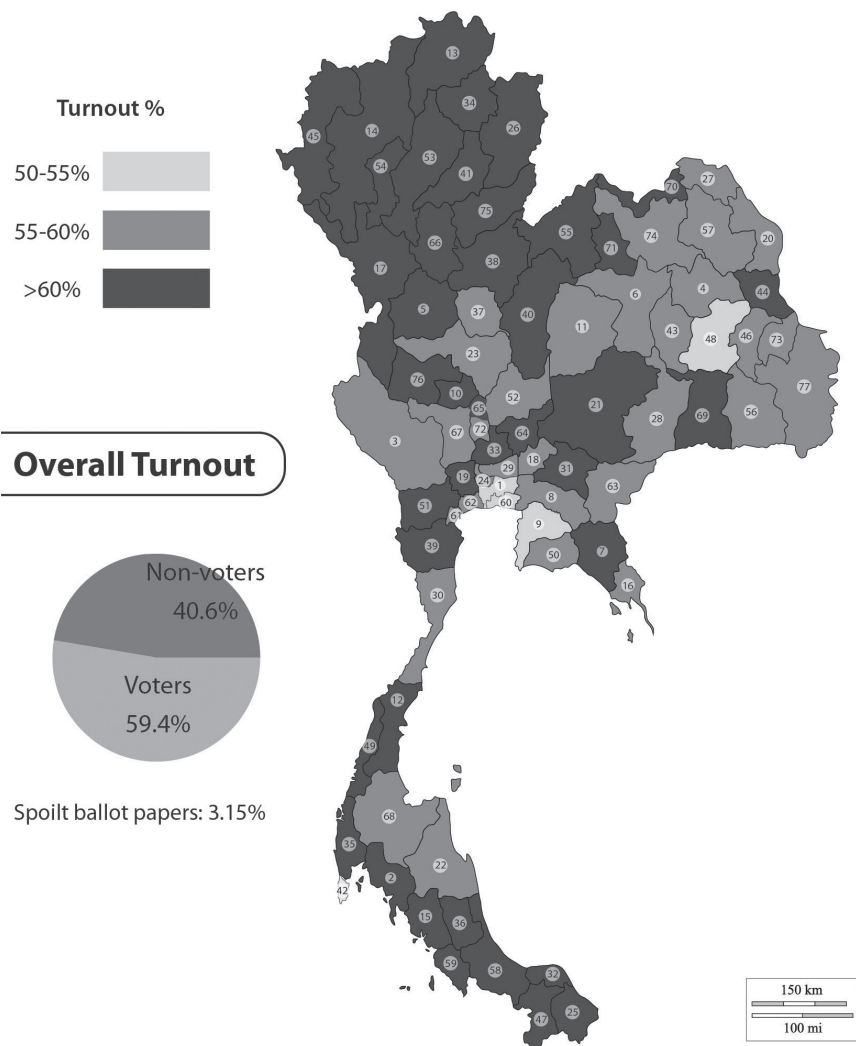
In another case in Bangkok, a vote-tallying official seemed to have become confused where ballots contained divergent votes (Yes/No or No/Yes) for the two questions; he was eventually replaced by a colleague. Misreading or mistallying the confusing ballots may have had a marginal effect on the outcomes at some individual polling stations. In principle, counting officials were supposed to ensure that each ballot could be clearly seen by observers during the process, but this was not always done. In any case, unlike during general or local elections, there were no candidates or party representatives observing. None of the polling stations had more than a handful of people watching the count; in fact, at some polling stations we visited, nobody at all was present, therefore reducing pressure on the officials to get the process right. In many ways, the 7 August referendum felt just like another ordinary day, rather than a momentous juncture in Thai political history. Through its concerted crackdown on the opposition and misrepresentation of the charter’s contents, the military junta was able to enforce a superficial electoral peace.

Turnout

Turnout for the 2016 referendum was 59.40 per cent (see Figure 1), only slightly higher than the 57.61 per cent achieved for the 2007 constitutional referendum, despite considerable pressures placed on village heads and other local government officials to maximize participation. The ECT and the Interior Ministry had set an extremely optimistic turnout target of 80 per cent, premised on rising turnouts of 72.56 per cent, 74.52 per cent and 75.03 per cent in the 2005, 2007 and 2011 general elections respectively. In Pattani, a village head on polling day showed us a message he had received from the District Office via the popular instant messaging app LINE, imploring him to boost turnout to “save the face” of the District and in so doing, help out his superiors. In Ubon, village heads had been rewarded in advance of the polls with new uniforms and extra development funds for their communities.⁵⁰ At the same time, headmen were told in closed-door meetings that their five-year terms of office might not

Figure 1

Thai 2016 Referendum Results by Province
Overall Voter Turnout



be renewed if they failed to meet turnout targets. When interviewed by the authors, the Pattani ECT office explained that realistically they would settle for 60 per cent.⁵¹ In fact, the authors did not meet anyone who expected an 80 per cent turnout.

Thai referendums operate very differently from general elections, which are characterized by direct and indirect vote-buying, and during which polling on Sunday becomes an opportunity for a family gathering. While voting is compulsory in general elections, and those who do not take part lose certain rights (including the right to run for elected office), this was not the case for the 2016 referendum. Candidates and their parties also put considerable efforts into mobilizing general election voters. In much of the populous north and northeast, many legal residents are actually “urbanized villagers” who typically live and work away from their home areas, mostly in and around Bangkok.⁵² In one Surin village, community leaders predicted on the morning of 7 August that only around 140 of the 277 registered voters would turn out.⁵³ By the end of the day, exactly 142 people had cast their votes, so demonstrating that in a small Isan locality, turnout could be extremely predictable. Unlike in general or local elections where voting was incentivized in various ways, virtually nobody bothered making an 880-kilometre round trip from the capital city to cast their ballots in the 2016 referendum. Thai general elections normally allow advance voting for those unable to travel back to their home areas, with the great majority of advance votes being cast in Bangkok by voters who are legal residents of the north and northeast. However, in the 2016 referendum, advance voting was not permitted. The disappointing turnout showed that despite their disdain for elected politicians, the military generals could not match the popular appeal of either the pro-Thaksin parties or the Democrat Party. On this basis, it was hard for the NCPO to claim that it had successfully restored Thailand’s national happiness.

Ironically, the relatively low turnout may have been advantageous for the junta. Had more pro-Thaksin voters travelled back to the north and northeast to cast their ballots, the referendum might well have passed by a lower margin. Turnout ranged from 52.02 per cent in the industrial port province of Samut Prakan to over 70 per cent in four northern provinces, including Chiang Mai. Eight of the twenty provinces with the highest turnouts voted “No”, as did eight of the twenty provinces with the lowest turnouts, illustrating that there was no simple correlation between turnout and outcome. Most

provinces that rejected the draft had either high or low turnouts, while average turnouts (close to 60 per cent) typically equated with “Yes” votes. Although Bangkokians typically see themselves as the most educated, engaged and politically sophisticated element of the electorate, their participation in the referendum poll was only 53.27 per cent, the second lowest of any province.

Results and Voting Behaviour

Overall, the majority of Thai voters favoured “Yes” (see Figure 2): Question 1 (the draft constitution) was approved by 61.35 per cent to 38.65 per cent, while Question 2 (on the method of prime ministerial appointment) was approved by a lower majority, 58.07 per cent to 41.93 per cent (see Figure 3). The most useful comparison was with the 2007 constitutional referendum, conducted under rather similar circumstances. Whereas in 2016 the constitution itself gained a higher approval rate than in 2007, the 2016 percentages for Question 2 corresponded almost exactly to the 2007 poll (which went 56.69 in favour, 41.37 against).

How to account for the “missing” 3.28 per cent, the discrepancy between Questions 1 and 2? Question 2 arguably gave a better indication of the underlying degree of political polarization: opting for “No” allowed voters to signal their displeasure with the NCPO, without the attendant risks of rejecting the constitution — which might in turn prolong fully-fledged military rule. In the absence of a free public debate on the charter in the run-up to the 2016 referendum, voters’ preferences were not directly related to the charter’s contents, and the resulting “Yes” vote was not an unequivocal sign of national reconciliation. Some “Yes” voters believed the junta would deliver on promises outlined in the ECT booklet, while those who voted against the charter were sceptical about the junta’s promises and feared the “reformed” system would grant the military continuing *carte blanche* to interfere in political life. Broadly speaking, voting behaviour correlated with existing party preferences: supporters of the Democrats and pragmatic smaller parties voted “Yes”, while supporters of pro-Thaksin parties voted “No”. But while relatively few Democrat supporters followed Abhisit’s lead and voted “No” for reasons of political principle, a significant proportion of pro-Thaksin voters decided to vote “Yes” tactically, in the hope of earlier elections and a quicker return to civilian rule.

Figure 2

Thai 2016 Referendum Results by Province
Question 1: 2016 Draft constitution

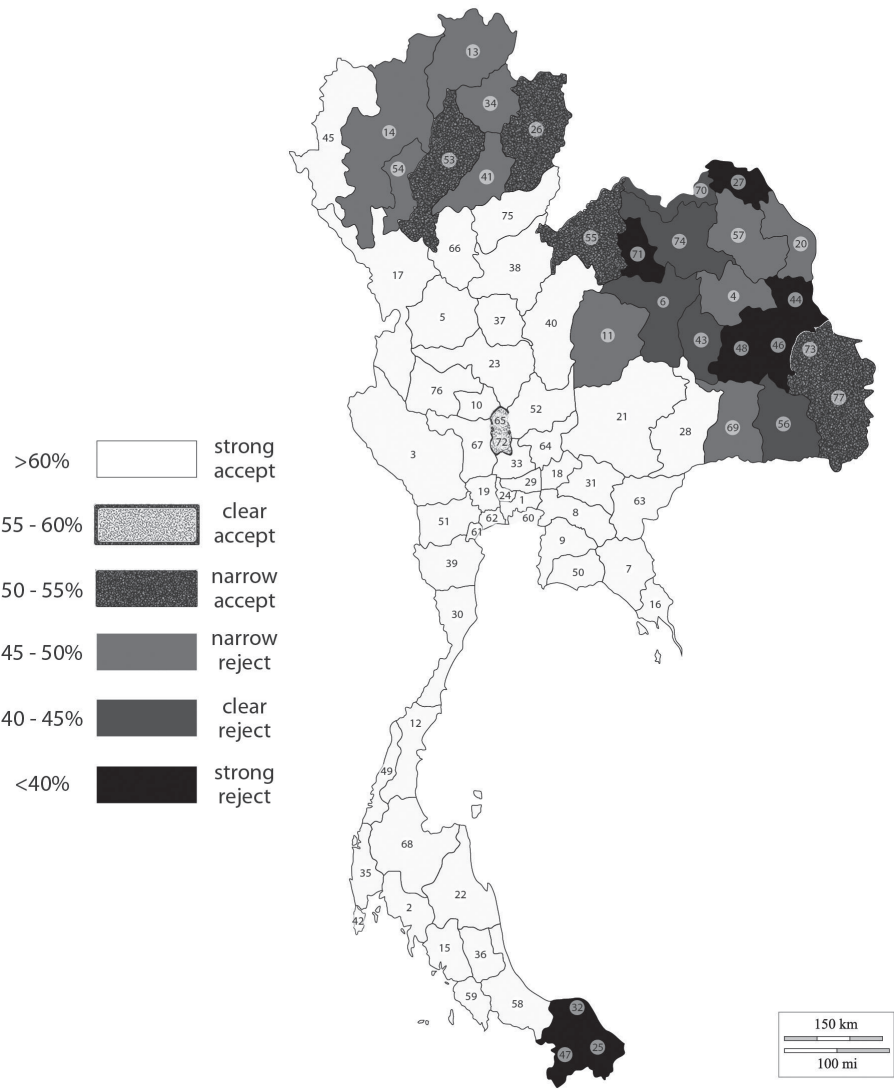
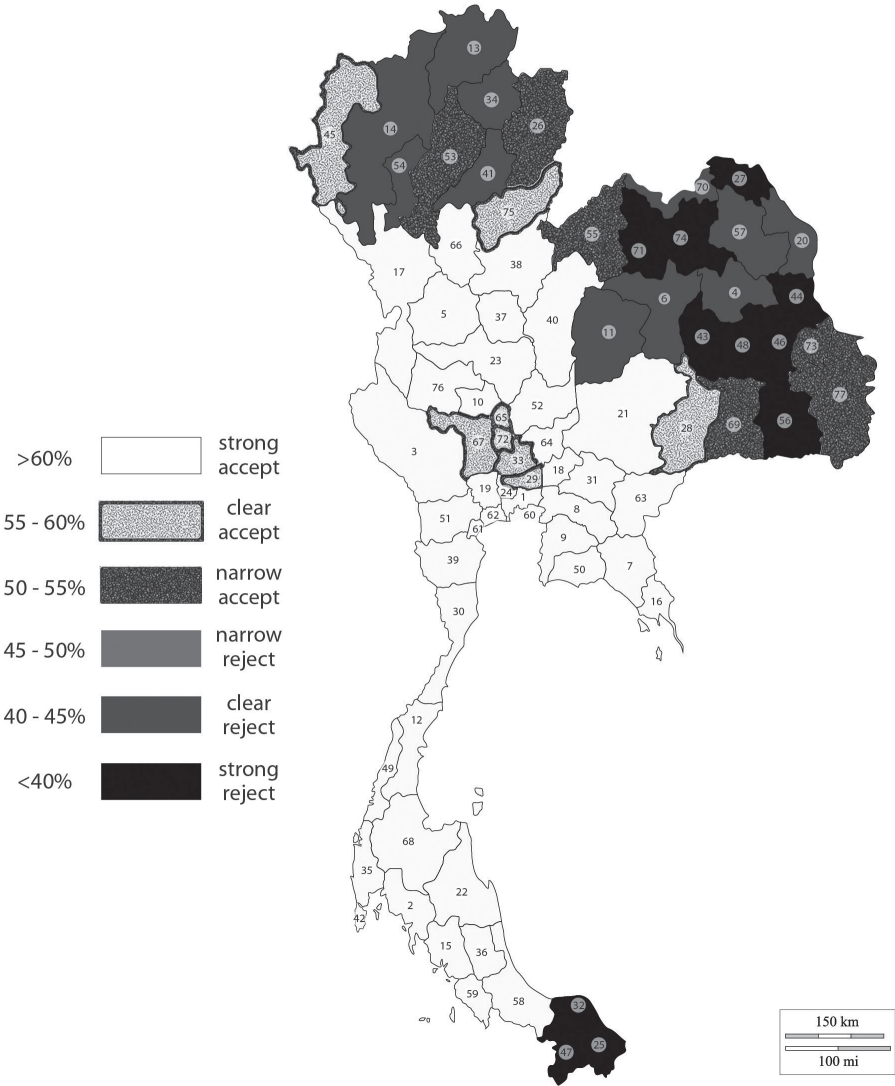


Figure 3

Thai 2016 Referendum Results by Province
Question 2: Prime Ministerial Selection



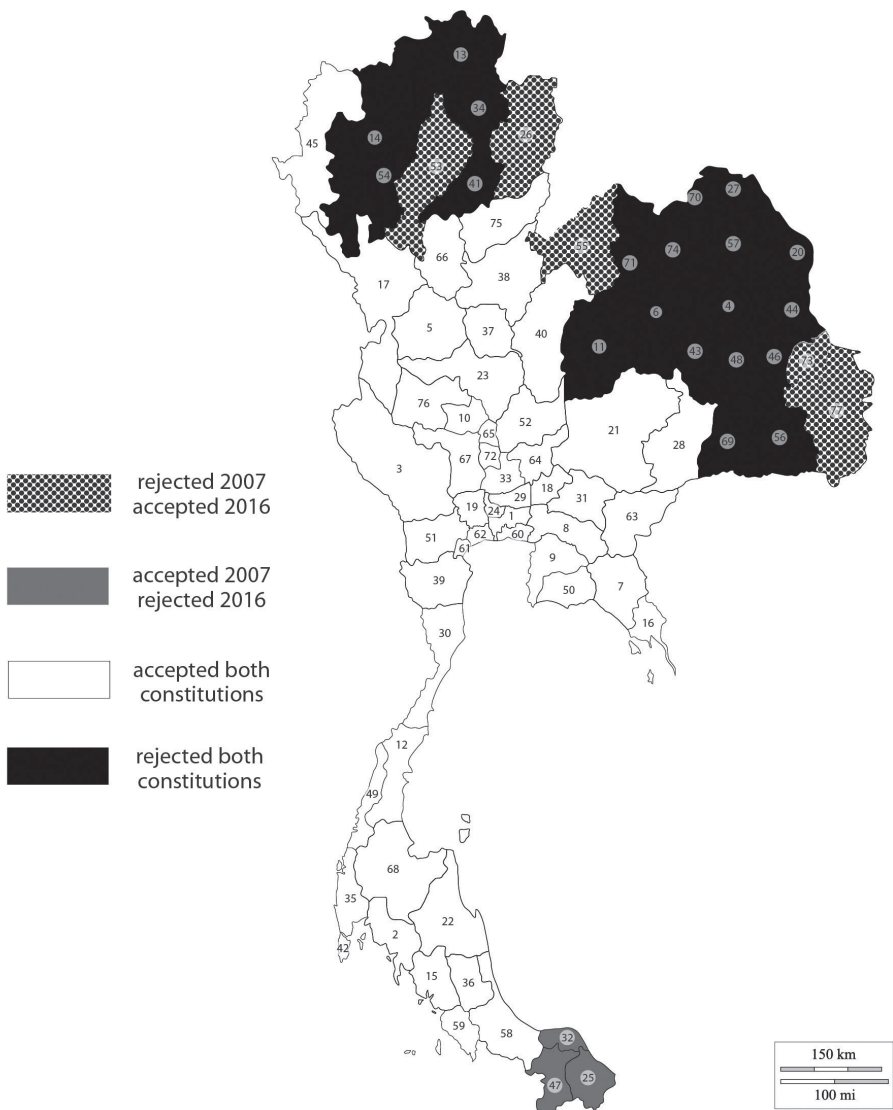
In 2007, 24 of Thailand's 76 provinces rejected the draft constitution, compared with only 22 of 77 provinces in 2016 (see Figure 4). Twenty-seven provinces voted against Question 2, which could suggest a slightly higher degree of polarization than in 2007. But at the same time, the percentages of "No" votes on the 2016 Constitution were markedly lower than in 2007. In 2007, six provinces rejected the charter by more than 70 per cent,⁵⁴ and another six (Kalasin, Khon Kaen, Chaiyaphum, Maha Sarakham, Yasothorn, Si Saket and Surin) rejected it by more than 60 per cent. In 2016, apart from Pattani, Yala and Narathiwat, only Mukdahan, Yasothorn, Roi Et and (by a whisker) Nong Bua Lamphu mustered a "No" vote of over 60 per cent, and even Pattani fell just short of 65 per cent. Three categories of swing or pivotal provinces are worth particular scrutiny here: provinces that rejected the 2016 constitution; provinces that reversed their constitutional votes compared with 2007; and provinces that passed the constitution but voted "No" on Question 2.

Provinces rejecting the 2016 constitution were: Chaiyaphum, Kalasin, Khon Kaen, Maha Sarakham, Mukdahan, Nakhon Phanom, Nong Bua Lamphu, Nong Khai, Buengkan (a newly created province since 2007), Roi Et, Sakon Nakhon, Si Saket, Surin, Udon Thani and Yasothorn (Isan); Chiang Mai, Chiang Rai, Lamphun, Phayao and Phrae (north); and Narathiwat, Pattani and Yala (far south). "No" votes from nineteen Isan and northern provinces were entirely predictable, but the wholesale rejection of the draft in three southern border provinces came as a complete shock to the Thai elite. Five provinces that had opposed the 2007 charter approved the 2016 charter: in the north, Nan and Lampang; and in Isan, Loei, Amnat Charoen and Ubon Ratchathani. With the exception of Amnat Charoen, which witnessed a small shift of around 4 per cent, these provinces experienced substantial changes of between 9 and 12 per cent. In exactly the same five provinces, although voters approved the draft constitution, they rejected Question 2. This might indicate that voters supported holding elections, rather than the junta or its charter.

Provinces that reversed their overall verdicts on military-drafted constitutions between 2007 and 2016 fell into two categories: those that switched from "Yes" to "No", and those that switched from "No" to "Yes". Pattani, Yala and Narathiwat, all provinces close to Thailand's southern border with Malaysia, saw extraordinary swings against the 2016 draft. In 2007, Pattani had voted 71.79 per cent "Yes"; but in 2016 the vote was a resounding 64.98 per cent "No" — the "Yes vote dropped by almost 37 per cent. In Narathiwat, the

Figure 4

**Thailand's 2007 and 2016
Constitutional Referendums Compared**



result was almost identical: a 73.61 per cent “Yes” vote in 2007 dropped to a mere 35.38 per cent “Yes” in 2016, a change approaching 40 per cent. Yala (which has a larger Buddhist population) had voted 69.83 per cent “Yes” in 2007, while in 2016 the “Yes” vote dropped to 39.23 per cent. The remainder of the south, by contrast, remained a stronghold of “Yes” voting. However, the “Yes” vote did decline across the board in the region, and in the other Malaysian border provinces of Satun and Songkhla, there was roughly a 10 per cent drop in the “Yes” vote compared with 2007. Pattani, Narathiwat and Yala had the highest percentages of spoilt ballots nationally.⁵⁵ Insurgent groups were allegedly encouraging locals to deface their ballots; but all the “spoilt” ballots the authors witnessed in Pattani were simply incorrectly marked (often with crosses in both “Yes” and “No” boxes) and none had been written upon.

In theory, voters in the far south — weary of the militarization of their region since the onset of a renewed insurgency that had claimed more than 6,500 lives since 2004 — might have been alarmed about a new charter that would allow the armed forces to enjoy continuing veto powers over Thailand’s political direction. The voting behaviour could also have reflected public dissatisfaction with the progress of Malaysian-brokered peace talks first begun in 2013, but which had stalled since the 2014 coup.⁵⁶ However, key informants interviewed in Pattani and Narathiwat on referendum weekend — including two ex-senators and a former MP — concurred that the outcome in the three provinces hinged on questions of religion.⁵⁷ The core explanation for the striking vote swings lay firmly in the text of the draft constitution itself. Across the three border provinces, voters turned out to object to two specific passages. The first was Article 31, which for the first time made freedom of religion conditional on adherents not undermining “state integrity”, “public order” or “public morality” — phrases many Malay Muslims construed as a slur on their loyalty.⁵⁸ The second was Article 67, which after paying lip-service to the place of other religions, went on to depict Buddhism as the religion of “the majority of the Thai people”:

The state shall foster and protect Buddhism and other religions. In order to foster and protect Buddhism, which has long been professed by the majority of the Thai people, the state shall promote and support the study and dissemination of Theravada Buddhist principles for the purpose of developing spiritual wisdom, and shall establish measures and mechanisms to protect Buddhism from all forms of harm, and promote the participation of all Buddhists in implementing these measures and mechanisms.⁵⁹

While Buddhist symbols, rituals, and rhetoric are everywhere in public life, Buddhism has never been Thailand's official religion. In recent years hardline groups, incensed by the growing visibility of Islam — and to a lesser extent Christianity — have been pressing for Buddhism's special status to be legally recognized. Pressures have been fuelled both by the ongoing insurgency in the far south, and by a series of scandals within the *sangha*, Thailand's Buddhist order. During the 2007 charter drafting process, only a palace intervention halted demands for Buddhism to be made a national religion.⁶⁰ In 2015–16, the team of constitution drafters fudged the issue with a compromise that inflamed minority sentiments without actually granting Buddhism national religion status. Article 67 was a direct result of lobbying by Buddhist nationalist groups, who claimed that such provisions would help the constitution to gain public approval, but the opposite turned out to be true.⁶¹ The reference to Theravada Buddhism in the 2016 draft was a coded dig at the growing influence of the Thammakaya sect, a wealthy new religious movement which promoted unorthodox (and supposedly Mahayana-derived) meditation techniques, and which was linked to Thaksin's networks.⁶² Underground campaigns against the draft constitution were widespread in the far south, fuelled partly by groundless rumours that the new charter would directly restrict religious freedoms. A letter criticizing the draft had been read at Friday prayers at some mosques across the region, apparently at the instigation of local politicians. Despite this strong Muslim opposition, the wording of Article 67 remained unchanged in the amended draft, following Constitutional Court rulings in September and October 2016.⁶³

Electoral Violence and Peace Messaging

Compared with the thirty people who were killed and hundreds injured in the 2014 election, levels of physical violence associated with the 2016 referendum were relatively low. Nevertheless, five people were killed and dozens were injured, largely in the far south. Just prior to the referendum, various road signs, school signs and bridges were defaced in Pattani, Narathiwat, and the Malay-majority districts of Songkhla: usually “Thai referendum”, “referendum” or “constitution” was first written in red, then crossed out. There were twenty incidents on 1 August alone, including the first small bomb explosion.⁶⁴ On 2 August, explosive devices in Saba Yoi (Songkhla), Yala and Pattani injured ten people.

The following day, a district officer and seven others were injured when a motorcycle bomb targeted a convoy of official vehicles in Narathiwat's Sisakhon District. The officials had just been meeting local villagers, urging them to vote in favour of the draft constitution. The night before the election, nineteen small bombs were detonated across Narathiwat, all damaging telegraph poles. Another motorcycle bomb exploded in Yi-ngo, Narathiwat on the morning of the referendum. The most serious attack in the far south was a roadside bomb that destroyed a pickup truck carrying ballot boxes from a polling station in Saiburi after counting had finished; the polling station director was killed and two security officers were injured. An insurgent source claimed that such attacks demonstrated their rejection of Thai sovereignty over the region.⁶⁵

Worse was to come. On the evening of 10 August, General Prayut gave a televised speech calling for reconciliation:

So let us set aside our differences for now and move forward together to confront the complex challenges that lie ahead of us, in making progress, reforming our country, doing away with our conflicts, and reconciling with each other under a new set of rules and regulations.⁶⁶

The Prime Minister had spoken too soon. The next day, four bombs went off in the southern town of Trang and in Hua Hin, a popular tourist resort in the upper south, killing at least two people and injuring twenty-seven.⁶⁷ On the morning of 12 August, a public holiday and the Queen's birthday, seven more bombs exploded in Phuket, Hua Hin, Surat Thani, and Phang Nga, killing two more people and injuring four others. Two of the four fatalities in this series of bombings occurred in Hua Hin, which contains an important royal palace. The style of the bombs resembled those used in the far south, prompting speculation that the attacks comprised a rare out-of-area operation.⁶⁸ Whoever carried out these unprecedented bombings, they testified to intense frustration with Thailand's political direction and suggested a strong rejection both of the draft constitution and of Prayut's call for post-referendum reconciliation.

A growing body of literature argues that peace messaging can be an important tool to reduce electoral violence.⁶⁹ Active campaigns to ensure peaceful elections by state or civil society groups can have a significant impact. At the time of the 2016 referendum, Thailand was under the control of the NCPO: the rhetoric of "peace" was integral to the identity of the regime, as reflected in the military's frequent use of the phrase *khwaam sa-ngop riaproi* [peace and order]

whenever it intervenes in politics. But the pairing of “peace” with “order” in the junta’s name implied a military-imposed form of peace and the attendant pacification of the Thai population. Similar rhetoric emerged when the junta announced the creation of “Peace and Order Centres” across the country, run by the Ministry of Interior. The regime persistently conflated “peace” with a de-politicized and empty referendum process, while ironically seeking to maximize participation in this charade. The military’s “peace and order” mantra and its repressive policies were the main reasons for the lack of civil society-initiated peace messaging activities that might have encouraged lower levels of violence.

Conclusion

Thailand’s latest constitutional referendum was among a series of troubling 2016 plebiscites that revealed high levels of political polarization and distrust, alongside, for example, the 23 June referendum on the United Kingdom’s membership of the European Union, and the Colombian peace agreement and Hungarian immigration quota referendums, both of which took place on 2 October. The outcome came as a surprise to many critical commentators and political insiders, who had expected the draft constitution to be narrowly rejected.⁷⁰ On one level, popular approval of Thailand’s draft constitution by just over 60 per cent of those who voted marked a significant political victory for the junta. Yet despite the crude suppression of debate by the junta and the blatant misrepresentation of the charter’s contents by the ECT, almost 40 per cent of the population still rejected the draft. The strongest rejections came from the north and northeast, regions the junta viewed as sites of opposition. NCPO’s hope that 80 per cent of voters would take part proved to be wildly optimistic. On the face of it, the NCPO was given a mandate to establish a new political system in which elections and parties would play a lesser role than in recent decades. However, in reality, many of those who voted to approve the draft either supported it from a sense of civic duty, or in the hope of restoring some form of political normalcy. The consequences of voting “No” were never made clear. General Prayut had even threatened that even if the charter was rejected, he would simply remain in power⁷¹ — implying an indefinite continuation of military rule.

The most interesting trends at work were in the eight “swing” provinces — those that voted differently in 2016 than they had in 2007. The three that switched from “Yes” to “No” were all from the

far south; these were essentially single-issue protest votes against attempts to institutionalize the place of Buddhism in the Thai political order. All five provinces that switched from “No” to “Yes” still rejected Question 2, and therefore opposed an unelected prime minister. This rejection testified to a continuing scepticism about the intentions behind the charter.⁷² But the “Yes” results in five provinces in largely “red” areas that had not been expected to back the draft arguably signalled a softening of pro-Thaksin support, especially since even in more strongly red shirt provinces such as Chiang Mai and Udon Thani, the strength of “No” voting was significantly reduced in comparison with 2007. Some commentators have also argued that the poll results signified a vote for reconciliation and compromise, or even “the Thaksin camp’s first-ever electoral defeat”.⁷³

However, to a large extent, the results of the 2016 referendum mimicked those of the 2007 referendum. It should be recalled that in 2007 voters approved an implicitly anti-Thaksin military-drafted constitution, but proceeded to elect pro-Thaksin administrations in the subsequent 2007 and 2011 general elections. The non-participation of millions of absentee voters, many of them urbanized villagers with red sympathies, meant that referendum votes were not necessarily a good indicator of future election results. To see the referendum in terms of either victory or defeat blurs the fact that no side convincingly won. The 2016 Thai referendum did little to draw a line under the turbulent and highly polarized politics that had prevailed between 2005 and 2014, and which formed the justification for the NCPO’s seizure of power. The appearance of “peace and order” achieved during the run-up to the referendum came at a high price: the fatal explosions in the far south during and immediately after the polling illustrated the fragility of the NCPO’s claims to be setting aside differences.

Soon after the 2016 referendum, on 13 October, King Bhumibol Adulyadej, who had reigned the country since 1946, passed away, heralding a further sea-change in the country. Despite government assurances that planned elections would proceed on schedule, it was difficult to see how political campaigning could proceed normally during a time of extended public mourning. In January 2017 important provisions of the draft constitution dealing with the monarchy were hastily amended, apparently at the request of King Vajiralongkorn, Thailand’s new monarch. But the King had yet to ratify the 2016 constitution, and senior NLA members now declared that a general election was unlikely before mid-2018.⁷⁴ Conducted under military auspices, Thailand’s 2016 constitutional referendum did not help promote genuine political consensus. Peace cannot simply be ordered.

NOTES

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- ¹ For background on the 2014 coup, see Duncan McCargo, "Thailand in 2014: The Trouble with Magic Swords", in *Southeast Asian Affairs 2015*, edited by Daljit Singh (Singapore: Institute of Southeast Asian Studies, 2015), pp. 336–58.
- ² See “รู้สึกอึดอัด! “อานันท์” เตือน “ประยุทธ์” ย้ำ สังคมสงบแค่ผิวเผิน แต่ไร้อนาคต” [Feeling Uneasy! Anand's Warning to Prayut: Peace on the Surface Is Not Sustainable], *Matichon*, 17 June 2015, available at <http://www.matichon.co.th/news_detail.php?newsid=1434511033>.
- ³ Duncan McCargo, "Peopling Thailand's 2015 Draft Constitution", *Contemporary Southeast Asia*, 37, no. 3 (December 2015): 333.
- ⁴ McCargo, "Peopling Thailand's", op. cit., pp. 345–48; Khemthong Tonsakulrungruang, "Life Under Thailand's 2016 Constitution", *Prachatai*, 8 February 2016, available at <<http://www.prachatai.org/english/node/5836>>.
- ⁵ The rejection delayed the first post-coup election and allowed the NCPO to stay in power beyond its original timeframe, an additional reason for the junta to sabotage the 2015 draft. See "Rebooting Charter Process Enables Longest Military Rule Since 1969", *Khaosod English*, 8 September 2015, available at <<http://www.khaosodenglish.com/politics/2015/09/08/1441711517/>>.
- ⁶ For a discussion of Meechai's role, see Khemthong, "Life Under", op. cit.
- ⁷ See "Charter Drafters Guarantee Seats for Military Chiefs in Senate", *Prachatai*, 23 March 2016, available at <<http://www.prachatai.org/english/node/5961>>; "CDC Approves Junta Request for Selected Senate", *The Nation*, 23 March 2016, available at <<http://www.nationmultimedia.com/news/national/aec/30282239>>.
- ⁸ See Khemthong, "Life Under", op. cit.
- ⁹ Thomas Fuller, "Thailand's Military Junta Rejects Draft Constitution", *New York Times*, 7 September 2015, available at <http://www.nytimes.com/2015/09/07/world/asia/thai-draft-constitution-rejected-by-junta-backed-council.html?_r=0>.
- ¹⁰ The draft is available at <<http://www.ect.go.th/th/wp-content/uploads/2016/04/cons2016.pdf>>. A somewhat unsatisfactory English translation is available at <http://www.constitutionnet.org/files/thailand-draft-constitution_englishtranslation_june_2016.pdf>.
- ¹¹ See Allen Hicken and Bangkok Pundit, "The Effects of Thailand's Proposed Electoral System", *Asian Correspondent*, 10 February 2016, available at <<https://asiancorrespondent.com/2016/02/the-effects-of-thailands-proposed-electoral-system/>>.
- ¹² In late 2008, the Democrats were able to assume power when the pro-Thaksin People Power Party, which had won the 2007 election, split in two.
- ¹³ "Declaration of the Khana Nitirat: The Draft Constitution and the Referendum", *Prachatai*, 10 June 2016, available at <<http://prachatai.org/english/node/6251>>.

- 14 For details see “ยุทธศาสตร์ชาติ 20 ปี อนาคตประเทศไทยเพื่อความมั่นคง มั่งคั่ง ยั่งยืน” [20 Year National Strategy Plan: Thailand’s Future of Security, Wealth and Sustainability], available at <<http://plan.vru.ac.th/wp-content/uploads/2016/11/แผนชาติ-20-ปี-1.pdf>>.
- 15 Authors’ fieldnotes, Pattani, 7 August 2016.
- 16 See an English version of the Election Commission booklet, *The Voting in Referendum [sic]*, Bangkok 2016, available at <<http://anfrel.org/wp-content/uploads/2016/06/The-voting-in-Referendum-booklet2016.pdf>>. The original Thai version is available at <http://www.ect.go.th/th/wp-content/uploads/2016/06/referendum_booklet.pdf>.
- 17 “กกต.แจ้ง กม. ไม่ได้กำหนดให้ส่งร่าง รธน.ทุกครัวเรือนแต่มีจุลสารแจกเข้าบ้าน” [ECT: No Legal Obligation to Send Copies of Charter Draft to All Voters, Leaflets to be Sent to Heads of Household], *Manager Online*, 15 July 2016, available at <<http://www.manager.co.th/qol/ViewNews.aspx?NewsID=9590000070760>>.
- 18 For further details, see “Declaration of the Khana Nitirat: The Draft Constitution and the Referendum”, *Prachatai*, 10 June 2016, available at <<http://prachatai.org/english/node/6251>>.
- 19 Authors’ polling observation notes, Surin, 7 August 2016.
- 20 Authors’ polling observation notes and interviews, Ubon Ratchathani, 7 August 2016.
- 21 Author interview with former Pheu Thai MP in the northeast, 4 August 2016.
- 22 Article 54 of the draft pledged twelve years of free education, but since many children attended nursery school from the age of three, critics argued that parents would have to pay for their education after the age of fifteen.
- 23 “New Democracy Movement: Achievements and Future”, *Prachatai*, 9 June 2016, available at <<http://prachatai.org/english/node/6244>>.
- 24 “Man Prosecuted for Merely Observing Anti-Constitution Campaign”, *Prachatai*, 2 November 2016, available at <<http://prachatai.org/english/node/6689>>.
- 25 For details of these cases see the iLaw database, available at <https://freedom.ilaw.or.th/case?k&p&d_from&d_to&Offense=28>.
- 26 “Thailand: Police Charge Eight-year-olds with Obstruction in Run-up to Referendum”, *The Guardian*, 23 July 2016, available at <<https://www.theguardian.com/world/2016/jul/24/thailand-police-charge-eight-year-olds-with-obstruction-in-run-up-to-referendum>>.
- 27 Authors’ fieldnotes, 24 July 2016.
- 28 Author interview with a former MP in the far south, 6 August 2016.
- 29 Author interview, 4 August 2016.
- 30 Lyrics in Thai: พี่น้องอีสานบ้านเฮาอย่าให้ใครเขารื้อชัยชีงัว ใช้สติพิจารณา เนื้อหาถ้อยความ หลักการสำคัญออกไปใช้เสียงใช้สิทธิ์ร่วมรับผิดชอบบ้านเมืองน่านักให้สู้เขาสู้เฮาเท่าทันเขาคณอีสานอย่าให้เฝ้ามาได้.
- 31 For further comments and original lyrics, see <<https://www.youtube.com/watch?v=ob3B153QWx8>>.
- 32 See “นปช.อุบลฯ เลี้ยงพระแทนเปิดศูนย์จับโกงฯ หวั่นขัด กม.จัดชุมนุมการเมือง” [Ubon UDD Gives Food to Monks Instead of Opening Monitoring Centre: Fear Breaking Public Assembly Law], *Manager Online*, 19 June 2016, available at <<http://www.manager.co.th/QOL/ViewNews.aspx?NewsID=9590000061196>>; Author interview with UDD member, Ubon Ratchathani, 27 July 2016.

- ³³ ครุ ก, ครุ ข, ครุ ค. The last two share the same English transliteration.
- ³⁴ “สวัสดีครุ ก” [Hello, Khru Ko], *Thai Rath*, 18 May 2016, available at <<http://www.thairath.co.th/content/621440>>.
- ³⁵ Author interviews with Khru Kho, 28 July and 7 August 2016.
- ³⁶ The phrase ความสงบเรียบร้อย [peace-order] as constantly used and understood by the military is problematic, conflating tight political control with the benign-sounding rhetoric of peace.
- ³⁷ “Thailand Counting Down to Controversial Referendum”, *BenarNews*, 21 July 2016, available at <<http://www.benarnews.org/english/news/thai/referendum-analysis-07212016164116.html>>.
- ³⁸ Authors’ fieldnotes, 24 July 2016.
- ³⁹ Author interviews and observation notes, Bangkok, 24 July 2016.
- ⁴⁰ “Upper south” here refers to Chumphon, Krabi, Nakhon Si Thammarat, Phang Nga, Phatthalung, Phuket, Ranong, Satun, Songkhla, Surat Thani and Trang — as opposed to the three Malay-majority provinces of the “far south”.
- ⁴¹ “มาร์ค” ลั่นยังมีไฟ ถูกพรรคทั้งรับ-ไม่รับ รธน.รธน.แท้เบิร์ชเคย์ “ชวน” ชมจุดยืนหัวใจ ปชต” [Mark (Abhisit’s Nickname) Still Going Strong as Party Members from Yes and No Camps Join Birthday Party; Chuan Praises His Heartfelt Democratic Stance], *Manager Online*, 3 August 2016, available at <<http://www.manager.co.th/QOL/ViewNews.aspx?NewsID=9590000077032>>.
- ⁴² The original Thai version does not specify the number of chambers: ท่านเห็นชอบหรือไม่ว่า เพื่อให้การปฏิรูปประเทศเกิดความต่อเนื่องตามแผนยุทธศาสตร์แห่งชาติ สมควรกำหนดไว้ในบทเฉพาะกาลว่า ในระหว่าง 5 ปีแรกนับแต่วันที่มีรัฐสภาชุดแรกตามรัฐธรรมนูญนี้ ให้ที่ประชุมร่วมกันของรัฐสภาเป็นผู้พิจารณาให้ความเห็นชอบบุคคลซึ่งสมควรได้รับแต่งตั้งเป็นนายกรัฐมนตรี. This linguistic obscurity may have been deliberately misleading.
- ⁴³ “เชียร์บ๊ักคู่-ชู “ป๋าโมเดล” นายก 8 ปี” [Cheering On Prayut, Calling for an 8-Year Term ‘Prem Model’ for PM], *Khao Sod*, 28 August 2016, available at <http://daily.khaosod.co.th/view_news.php?newsid=TUOd01ERXdOREk0TURnMU9RPT0=§ionid=TURNd01RPT0=&day=TWpBeE5pMHDpQzB5T0E9PQ==>.
- ⁴⁴ For a detailed discussion of the 2014 election, see Duncan McCargo and Petra Desatova, “Thailand: Electoral Intimidation”, in *Electing Peace: Violence Prevention and Impact at the Polls*, edited by Jonas Claes (Washington, D.C.: USIP Press, 2016), pp. 63–96.
- ⁴⁵ Although the authors covered polling stations from villages to major cities, across various provinces and regions, our team of ten observers was small and we visited only nineteen stations in all.
- ⁴⁶ Author interview, Election Commission Office, Pattani, 6 August 2016. In other regions of the country, fewer security officials were deployed.
- ⁴⁷ “Far south” here refers to the Malay-majority border provinces of Pattani, Yala and Narathiwat.
- ⁴⁸ Authors’ fieldnotes, Surin, 7 August 2016.
- ⁴⁹ Authors’ fieldnotes, Ratchathewi District Office out-of-province polling station, Bangkok, 7 August 2016.
- ⁵⁰ Author interview with former MP, 4 August 2016.

- 51 Author interview, 6 August 2016.
- 52 See Naruemon Thabchumpon and Duncan McCargo, “Urbanized Villagers in the 2010 Thai Redshirt Protests: Not Just Poor Farmers?”, *Asian Survey* 51 no. 6 (November/December 2011): 993–1018.
- 53 Authors’ fieldnotes, 7 August 2016.
- 54 These were Nakhon Phanom, Mukdahan, Roi Et, Sakon Nakhon, Nong Khai and Nong Bua Lamphu.
- 55 Pattani recorded 7.43 per cent spoilt ballots, Narathiwat 7.11 per cent and Yala 6.54 per cent, compared with just 1.53 per cent in Bangkok, 3 per cent in Ubon and 4.09 per cent in Chiang Mai.
- 56 For an unpersuasive argument along these lines, see Haro Shintaro, “Referendum, Bombings and Peace Process”, *Prachatai English*, 11 September 2016, available at <<http://www.prachatai.com/english/node/6550>>.
- 57 This section draws on interviews conducted by the authors in Pattani and Narathiwat, 5–7 August 2016.
- 58 Article 31 in Thai reads: มาตรา ๓๑ บุคคลย่อมมีเสรีภาพบริบูรณ์ในการถือศาสนาและย่อมมีเสรีภาพในการปฏิบัติหรือประกอบพิธีกรรมตามหลักศาสนาของตนแต่ต้องไม่เป็นปฏิปักษ์ต่อหน้าที่ของปวงชนชาวไทย ไม่เป็นอันตรายต่อความปลอดภัยของรัฐ และไม่ขัดต่อความสงบเรียบร้อยหรือ ศีลธรรมอันดีของประชาชน.
- 59 Authors’ translation. The widely-cited, UN-supported English translation of the 2016 draft completely mistranslates Article 67. Original reads: มาตรา ๖๗ รัฐพึงอุปถัมภ์และคุ้มครองพระพุทธศาสนาและศาสนาอื่น ในการอุปถัมภ์และคุ้มครอง พระพุทธศาสนาอันเป็นศาสนาที่ประชาชนชาวไทยส่วนใหญ่นับถือมาช้านาน รัฐพึงส่งเสริมและสนับสนุนการศึกษาและการเผยแผ่หลักธรรมของพระพุทธศาสนาเถรวาทเพื่อให้เกิดการพัฒนาจิตใจและปัญญาและต้องมีมาตรการและกลไกในการป้องกันมิให้มีการ บ่อนทำลายพระพุทธศาสนาไม่ว่าในรูปแบบใด และพึงส่งเสริมให้พุทธศาสนิกชน มีส่วนร่วมในการดำเนินมาตรการหรือกลไกดังกล่าวด้วย.
- 60 See Duncan McCargo, “The Changing Politics of Thailand’s Buddhist Order”, *Critical Asian Studies* 44, no. 4 (November 2012): 635–36.
- 61 “Making Buddhism State Religion in Draft Charter Will Help It Pass Referendum: Buddhist Group”, *Prachatai*, 23 March 2016, available at <<http://prachatai.org/english/node/5964>>.
- 62 See for example “ลัทธิธรรมกายกับระบอบทักษิณ” [The Thammakaya Sect and the Thaksin Regime], *Manager Online*, 2 June 2016, available at <<http://www.manager.co.th/Daily/ViewNews.aspx?NewsID=9590000055486>>.
- 63 See <http://cdc.parliament.go.th/draftconstitution2/ewt_dl_link.php?nid=803&filename=index>.
- 64 These incidents are summarized in “สถานการณ์ชายแดนใต้ 7 วันก่อนลงประชามติ” [Situation in the Deep South 7 Days Before the Referendum], undated memo received 5 August 2016, Pattani, Deep South Watch.
- 65 See Don Pathan, “Thai Military and Insurgents Change Tack in Southern Provinces”, *Nikkei Asian Review*, 15 August 2016, available at <<http://asia.nikkei.com/Politics-Economy/Policy-Politics/Thai-military-and-insurgents-change-tack-in-southern-provinces?page=2>>.
- 66 “Prayut Calls for Acceptance of Referendum Results”, *The Nation*, 10 August 2016, available at <<http://www.nationmultimedia.com/news/breakingnews/30292644>>.

- 67 “รวมเหตุการณ์ บึ้ม 5 หัวเมืองใต้ 10–12 ส.ค. วางระเบิด 13 ลูก ดับ 4 เจ็บเพียบ คม 2 ผู้ต้องสงสัย!” [10–12 August Explosions in 5 Southern Towns: 13 Bombs Kill 4, Injure Many, 2 Suspects in Custody], *Matichon Online*, 12 August 2016, available at <<http://www.matichon.co.th/news/247607>>.
- 68 “Wave of Thai Bombings ‘Bears Hallmarks’ of Muslim Separatists”, *Time*, 15 August 2016, available at <<http://time.com/4452074/thailand-bombings-hua-hin-phuket-muslim-separatists/>>; “บ็อรร์เอ็นรับอยู่เบื้องหลังระเบิด 7 จังหวัดได้ เหตุเจรจาไม่คืบ ชี้ รบ.ไทยไม่จริงใจ” [BRN Admits to Bombing in 7 Provinces, Upset Over Thailand’s Insincerity], *Matichon Online*, 8 September 2016, available at <<http://www.matichon.co.th/news/277827>>.
- 69 See Lawrence Woocher, “Field Guide: Helping Prevent Mass Atrocities”, US Agency for International Development Field Guide (Washington, D.C.: USAID, 2015), p. A-15.
- 70 For a detailed discussion, see Michael H. Nelson, “Authoritarian Constitution-Making in Thailand, 2015–16: Elite (Aphichon) Capture Turns a ‘Dual Polity’ into a ‘System of Elite Rule with Elections’, or a ‘Thai-style Authoritarianism’”, Working Paper No. 188 (Hong Kong: Southeast Asia Research Centre, City University of Hong Kong, 2016), pp. 3–5, available at <<http://www.cityu.edu.hk/SEARC/Resources/Paper/188%20-%20WP%20-%20Dr%20Nelson.pdf>>.
- 71 “บิ๊กตู่-เสียงแข็ง ประชามติ ไม่ผ่านก็ไม้ออก” [Prayut Vows to Stay in Power Should Be Rejected], *Thai Rath*, 28 June 2016, available at <<http://www.thairath.co.th/content/649007>>.
- 72 On the Ubon case, see Saowanee T. Alexander, “Dazed and Confused with Mixed Results in Ubon Ratchathani’s Referendum Vote”, *Isaan Record*, 10 September 2016, available at <<http://isaanrecord.com/2016/09/10/dazed-and-confused-with-mixed-results-in-ubon-ratchathanis-referendum-vote/>>.
- 73 See Thitinan Pongsudhirak, “After a Decade of Polarization, A New Balance in Thailand”, *Straits Times*, 30 August 2016, available at <<http://www.straitstimes.com/opinion/after-a-decade-of-polarisation-a-new-balance-in-thailand>>.
- 74 See “สนช.รับเดือนเลือกตั้งเป็นปี 61 โต้ รบ.-คสช.ไม่มีเจตนาคุกคึก” [NLA Admits Postponement of Election Until 2018; Claims Government and NCPO Not Intentionally Sneaky], *Thai Rath*, 1 January 2017, available at <<http://www>>.

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