

The Draft Constitution of Thailand B.E. 2559 (as of Jan 29, 2016)	Constitution of Thailand B.E. 2550 (2007)	Constitution of Thailand B.E. 2540 (1997)	Observations and Analysis
<p>Part 3: Rights and Liberties of the Thai people</p> <p>Section 34 A person shall enjoy the liberty to express his or her opinion, make speeches, write, print, publicise and make expression by other means.</p>	<p>General Provisions Section 4 Human dignity, right and liberty of the people shall be protected.</p> <p>Chapter III: Rights and Liberties of the Thai people Part 7: Liberties of Expression of Individuals and Mass Media Section 45 A person shall enjoy liberties to express his or her opinion, make speeches, write, print, publicize, and make expression by other means.</p>	<p>Chapter I: General Provision Section 4 Human dignity, right and liberty of the people shall be protected.</p> <p>Chapter III: Rights and Liberties of the Thai People</p> <p>Section 39 A person shall enjoy the liberty to express his or her opinion, make speeches, write, print, publicise, and make expression by other means</p>	<p>Comment: This paragraph no longer exists in the draft although protection of each basic right is guaranteed under other sections.</p> <p>Analysis: Its absence may suggest a shift in the priority of the state in running the country during the transitional period — focus is to maintain peace and national security.</p> <p>The paragraph has been retained since the 1997 Constitution.</p>
<p>The imposition of restriction on this liberty is not permitted except by virtue of provisions of the law specifically enacted to maintain the security of state, protect individual right, maintain peace or public good morals, and protect the health of people or prevent rift or hate within the society.</p>	<p>The restriction on liberty under paragraph one shall not be imposed except by virtue of the law, specifically enacted for the purpose of maintaining the security of the State, protecting the rights, liberties, dignity, reputation, family or privacy rights of other person, maintaining public or good morals or preventing or halting the deterioration of mind or health of the public.</p>	<p>The restriction on liberty under paragraph one shall not be imposed except by virtue of the provisions of the law specifically enacted for the purpose of maintaining the security of the State, safeguarding the rights, liberties, dignity, reputation, family or privacy rights of other person, maintaining public order or good morals or preventing the deterioration of the mind or health of the public</p>	<p>Comment: The draft charter includes the phrase “prevent rift or hate within the society,” which is absent in the previous charters.</p> <p>Analysis: The words “rift” and “hate” are dangerously broad; while the word “prevent” may imply censorship.</p>
<p>Academic right is protected but exercising such right must not contravene the duties of Thai people or good morals.</p>	<p>Part 8: Rights and Liberties in Education Section 50 A person shall enjoy an academic freedom.</p> <p>Education, training, learning, teaching, researching and disseminating such research according to academic principles shall be protected; provided that it is not contrary to his civic duties or good morals.</p>	<p>Section 42 A person shall enjoy an academic freedom. Education, training, learning, teaching, researching and disseminating such research according to academic principles shall be protected; provided that it is not contrary to his civic duties or good morals.</p>	<p>Comment: The academic right in the current draft is under the part “Rights and Liberties of the Thai People.” It is no longer under a separate part on rights and liberties in education as in the 2007 charter. This suggests such right is subjected to the same restriction as that of the general public.</p> <p>The term “academic freedom” was replaced with “academic right,” which may indicate the right to</p>

			<p>education, but excludes the freedom to choose the subject matter.</p> <p>The term “enjoy” is also missing.</p> <p>Protection for academic activities were omitted, but only applies to academic right.</p> <p>“Duties to the Thai people and good morals” replaced “civil duties and good morals of the people.”</p> <p>Analysis: Overall, this could suggest more limitations for the academe.</p>
<p>Section 35</p> <p>A person who performs mass media career enjoys the liberty to publish news and information or express his or her opinion in accordance with professional ethics (paragraph 1).</p>			
<p>The closure of a pressing house or other mass media in deprivation of the liberty under this section is prohibited (paragraph 2).</p>	<p>Section 45</p> <p>The closure of a newspaper or other mass media business in deprivation of the liberty under this section shall not be made (paragraph 3).</p> <p>The prevention of a newspaper or other mass media from printing news or expressing their opinions, wholly or partly, or interference in any manner whatsoever in deprivation of the liberty under this section shall not be made except by the provisions of the law enacted in accordance with the provisions of paragraph two (paragraph 4).</p>	<p>Section 39</p> <p>The closure of a pressing house or a radio or television station in deprivation of the liberty under this section shall not be made (paragraph 3).</p>	<p>Comment: This paragraph under the current draft omits the prohibition of ban on newspapers or mass media from presenting news and information or expressing opinion in whole or in part, as it appeared in the 2007 charter.</p> <p>Analysis: State intervention/ban on information, news, and commentary by all media is possible without due process.</p>
<p>Prior censorship of news and contents produced by mass media practitioners by competent state officials before publication in the newspaper or any other mediums is prohibited except when the country is under the state of war (paragraph 3).</p>	<p>The censorship by a competent official of news or articles before their publication in a newspaper or other mass media shall not be made except during the time when the country is in a state of war; provided that it must be made by virtue of the law enacted</p>	<p>The censorship by a competent official of news or articles before their publication in a newspaper, printed matter or radio or television broadcasting shall not be made except during time when the country is in a state of war or armed conflict; provided that it</p>	<p>Comment: The word “articles” have been replaced with “contents.”</p> <p>The phrase “provided this act can only be done by virtue of the law enacted under the provisions of paragraph two” has been omitted.</p>

	under the provisions of paragraph two (paragraph 5).	must be made by virtue of the law enacted under the provisions of paragraph two (paragraph 4).	Analysis: The difference between the words “articles” and “content” may be significant as the latter covers more types of information in media than “articles.” For example this can include public commentary, photographs, cartoons, advertisements, posts and comments on social media (Facebook, Twitter, etc.). The omission of the qualifying phrase may imply that censorship becomes automatic during times of war.
The owner of any newspaper or other mass media shall be a Thai national (paragraph 4).	The owner of a newspaper or other mass media business shall be a Thai national (paragraph 6).	The owner of a newspaper or other mass media business shall be a Thai national as provided by law (paragraph 5).	This paragraph has been retained from the 2007 Constitution.
No grant of money or other properties shall be made by the State as subsidies to the activities of any private newspaper or other mass media. State agencies which grant money or any properties to mass media for advertisement and public relation or for other similar purposes must declare details of such support to the National Budget Inspection Commission within a designated timeframe and make public announcement (paragraph 5).	No grant of money or other properties shall be made by State as subsidies to private newspapers or other mass media (paragraph 7).	No grant of money or other properties shall be made by the State as subsidies to private newspapers or other mass media (paragraph 6).	Comment: The draft retains the prohibition of state subsidies to private media business and a sentence on declaration of state subsidies is added. Analysis: This revision can pave the way for further state control of private media, as the state seems to be the only entity mentioned which is allowed to give grants.
Public officials who perform media duties shall enjoy the liberty under paragraph one but such performance must be in line with objectives and mission of any agency he or she belongs to (paragraph 6).	Section 46 Officials or employees in a private sector undertaking newspaper, radio or television broadcasting businesses or other mass media business shall enjoy their liberties to present news and express their opinions under the constitutional restrictions without mandate of any government agency, State agency, State enterprise or the owner of such businesses; provided that it is not contrary to their	Section 41 Officials or employees in a private sector undertaking newspaper or radio or television broadcasting businesses shall enjoy their liberties to present news and express their opinions under the constitutional restrictions without the mandate of any State agency, State enterprise or the owner of such businesses; provided that it is not contrary to their professional ethics.	Comment: This paragraph adds the phrase “performance must be in line with objectives and mission of any agency he or she belongs to” to limit the liberties granted to persons in mass media unlike in the two previous charters. Furthermore, the right to organize has been omitted. Analysis: State-owned media are given greater editorial control of the news from their outlets. This reduces independence of journalists in state media to

	<p>professional ethics, and shall enjoy the right to form organisation with balancing mechanism among professional organisations so as to protect rights, liberties and fairness.</p> <p>Government officials, officials or employees of a government agency, State agency or State enterprise engaging in the radio or television broadcasting business or other mass media business enjoy the same liberties as those enjoyed by officials or employees under paragraph one.</p> <p>Any act done by a person holding political position, State official or the owner of business with a view to obstruct or interfere the presentation of news or an expression of opinions in public issue of the person under paragraph one or paragraph two, irrespective of whether such act has been done directly or indirectly, shall be deemed as willfully misuse of power and take no effect except where such act has been done through the enforcement of law or professional ethics.</p>	<p>Government officials, officials or employees of a State agency or State enterprise engaging in the radio or television broadcasting business enjoy the same liberties as those enjoyed by officials or employees under paragraph one</p>	<p>effectively become mere mouthpieces of their agencies.</p>
<p>Section 36 A person shall enjoy the liberty to communicate with each other by any means.</p> <p>The censorship, detention and disclosure of information shared between persons including any act to know or acquire such information is not permitted except by virtue of an order or a court order or by other causes provided by a law.</p>	<p>Section 36 A person shall enjoy the liberty of communication by lawful means.</p> <p>The censorship, detention or disclosure of communication between persons including any other act disclosing a statement in the communication between persons shall not be made except by virtue of the provisions of the law specifically enacted for security of the State or maintaining public order or good morals</p>	<p>Section 37 A person shall enjoy the liberty of communication by lawful means.</p> <p>The censorship, detention or disclosure of communication between persons including any other act disclosing a statement in the communication between persons shall not be made except by virtue of the provisions of the law specifically enacted for security of the State or maintaining public order or good morals.</p>	<p>Comment: The phrase "specifically enacted for security of the State or maintaining public order or good morals" has been omitted.</p> <p>Analysis: The omission of the phrase may open censorship for any reason, provided it is made by court order or by law.</p>

<p>Part 5: Responsibility of State</p> <p>Section 56</p> <p>State must safeguard transmission frequencies and satellite orbit rights, which are national communication resource for national and public interests.</p> <p>The utilization of such frequencies or satellite orbit rights under paragraph one either for broadcast transmission, radio and television and telecommunication or any other purposes must serve an utmost benefit of the public, the security of state and public interest including allowing people to benefit from such utilization as provided by the law</p> <p>State must enable a setting up of an independent body to take responsibility and regulate the operation of frequencies in under paragraph two.</p> <p>In carrying out the act under paragraph two, the body under paragraph 2 must put in place measures to prevent the exploitation and the overburdening of consumers, protect signal jamming including guarding against any act to obstruct the liberty of the public to receive or block their access to accurate information, and prevent anyone or a group from using frequencies in disregard of people's rights including determining minimal allocation of frequencies for public interest in accordance with the law enacted for that purpose.</p>	<p>Section 47</p> <p>Transmission frequencies for radio or television broadcasting and telecommunication are national communication resources for public interest.</p> <p>There shall be an independent regulatory body having the duty to distribute the frequencies under paragraph one and supervise radio or television broadcasting and telecommunication businesses as provided by the law.</p> <p>In carrying out the act under paragraph two, regard shall be had to utmost public benefit at national and local levels in education, culture, State security, other public interests and fair and free competition, including public participation in providing public mass media.</p> <p>There shall be an independent regulatory body having the duty to distribute the frequencies under paragraph one and supervise radio or television broadcasting and telecommunication businesses as provided by the law.</p> <p>In carrying out the act under paragraph two, regard shall be had to utmost public benefit at national and local levels in education, culture, State security, other public interests and fair and free competition, including public participation in providing public mass media. The supervision of the businesses under paragraph two shall constitute measures for the prevention of merger, acquisition or control among the mass media or by other persons which may deteriorate liberties to information of the public or may hinder the</p>	<p>Section 40</p> <p>Transmission frequencies for radio or television broadcasting and radio telecommunication are national communication resources for public interest.</p> <p>There shall be an independent regulatory body having the duty to distribute the frequencies under paragraph one and supervise radio or television broadcasting and telecommunication businesses as provided by law</p> <p>There shall be an independent regulatory body having the duty to distribute the frequencies under paragraph one and supervise radio or television broadcasting and telecommunication businesses as provided by the law.</p> <p>In carrying out the act under paragraph two, regard shall be had to utmost public benefit at national and local levels in education, culture, State security, other public interests and fair and free competition.</p>	<p>Comment: This Section is a major shift. The right to use transmission frequencies is removed from the part "Rights and Liberties of the Thai People" as has been the case in the previous two charters and included instead in the part "Responsibility of state."</p> <p>It has also been significantly expanded from previous charter versions to include:</p> <ul style="list-style-type: none"> * "national interest" as a motivation for safeguarding broadcast frequencies; * "security of state" as a purpose of regulation; * more specific functions of the independent regulator. <p>Analysis: This is a major step backward from the past efforts mandated by the two previous charters to democratize the allocation of frequencies for the public interest. It suggests that the state will have greater authority to regulate broadcast frequencies, as well as greater authority to interfere with the independent regulator.</p>
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<p>Provisional Section 262 Authorise the National Broadcasting and Telecommunication Commission (NBTC) set up under the Broadcasting and Telecommunication Business Act B.E.2010 to become a body under Section 56 and the cabinet to amend the act to be in line with the provisions under the new constitution and submit such amendment to National Legislative Assembly for review within 180 days from the day this constitution is proclaimed.</p>			<p>Comment: This provisional section mandates the current government to immediately amend the act establishing the NBTC in line with the draft constitution. It does not empower the incoming, elected legislature to draft this law.</p>