

**The Final Preparatory Committee Meeting on the launching of the Association of
Asian Constitutional Courts and Equivalent Institutions
and the 7th Conference of Asian Constitutional Court Judges**

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From 12–15 July 2010 a Delegation of the Constitutional Court of Thailand, led by the Rt. Hon. Chut Chonlavorn, President of the Constitutional Court, attended two meetings in Jakarta, Republic of Indonesia.

The first meeting - the Final Preparatory Committee Meeting on the launching of the Association of Asian Constitutional Courts and Equivalent Institutions - which took place on 12 July 2010 was organized by the Constitutional Court of the Republic of Indonesia. The second meeting – the 7th Conference of Asian Constitutional Court Judges – which took place from 13-15 July 2010 was organized by the Constitutional Court of the Republic of Indonesia in cooperation with the Konrad Adenauer Stiftung.

The first meeting, as its name suggested, is a sequel of the 3rd Preparatory Committee Meeting held in Seoul, the Republic of Korea, during 6–8 April 2010. At that meeting, the participants from the Constitutional Court of the Republic of Indonesia, the Constitutional Court of the Republic of Korea, the Constitutional Court of the Kyrgyz Republic, the Federal Court of Malaysia, the Constitutional Court of Mongolia, the Supreme Court of the Philippines, the Constitutional Court of Thailand and the Constitutional Court of the Republic of Uzbekistan could finally agree on the text of the Statute of the Association of Asian Constitutional Courts and Equivalent Institutions. The Association would serve as an independent and non-political forum for the constitutional courts and equivalent institutions, members of the Association, to exchange experiences and information on constitutional cases and jurisprudence with a view to promoting the rule of law, democracy and human rights.

The Delegation of the Constitutional Court of Thailand played a key role in the 3rd Preparatory Committee Meeting in bringing about the final agreement on the text of the Statute. It was decided at the Meeting that the Presidents or Heads or their designated representatives of members of the Preparatory Committee would meet on the sidelines one day before the beginning of the 7th Conference of Asian Constitutional Court Judges to be organized by the Constitutional Court of the Republic of Indonesia in Jakarta in July 2010 specifically for adoption of the finalized Statute.

At the Final Preparatory Committee Meeting in Jakarta on 12 July 2010, the Presidents or Heads or their designated representatives of members of the Preparatory Committee (except the Constitutional Court of the Kyrgyz Republic) did adopt the finalized text of the Statute of the Association of Asian Constitutional Courts and Equivalent Institutions. They also adopted and signed the Jakarta Declaration on the Establishment of the Association of Asian Constitutional Courts and Equivalent Institutions, signifying the

adoption of the Statute, the official launching of the Association and the decision to convene the inaugural congress of the Association in the Republic of Korea within the next two years. In this connection, the representative of the President of the Constitutional Court of the Republic of Korea announced that the preparatory meeting of the Board of Members of the Association would be held in May 2011.

As regards the preparation of the Jakarta Declaration, it should be mentioned that the Delegation of the Constitutional Court of Thailand was instrumental in making major amendments to the draft Jakarta Declaration, introduced by the Delegation of the Constitutional Court of the Republic of Indonesia, culminating in the agreed text of the Declaration.

The second meeting – the 7th Conference of Asian Constitutional Court Judges – was attended by delegates from 27 countries, both in and outside Asia, and a few delegates from international organizations.

This Conference was opened by His Excellency Susilo Bambang Yudhoyono, President of the Republic of Indonesia. In his speech, the Indonesia President expressed his hope that the Conference would further promote cooperation and partnership of the Constitutional Courts and Equivalent Institutions. He further said that the topic was appropriate, forward-looking and relevant to the dynamics of democracy. In this Conference, the participants would share ideas and experiences on the system, the Constitution, the conduct of general elections, in accordance with the systems in their respective countries.

The theme of the Conference was “General Election Law” and the conference was divided into three sessions.

In the first session dealing with concepts of electoral systems in comparison, there were presentations from delegates of the Republic of Korea, Malaysia, Thailand, Chile, Timor Leste, Sri Lanka, Mongolia, the Philippines, Azerbaijan, Brunei Darussalam and Singapore. The speakers in this session discussed different concepts of election systems. Focus was on the legal framework and whether the principles are laid down in the constitution, in ordinary statutes or in case-law respectively.

Justice Chalermpon Ake-uru made presentation on behalf of the Constitutional Court of Thailand. He stated that just as a soccer game needs rules as well as a referee and linesmen, so an election requires a system of electoral rules as well as an election management body. In Thailand, the most important election is the general election of members of the House of Representatives. So he would give an overview of the electoral system in Thailand as applied in the general election of members of the House of Representatives. Rules regarding the election of members of the House of Representatives are stipulated in the Constitution of the Kingdom of Thailand B.E. 2550 (2007) section 93 to 98 and the Organic Act on Election of Members of the House of Representatives and the Installation of Senators B.E. 2550 (2007). Thailand adopted a direct universal suffrage. Every citizen, except those who are excluded by law, can directly participate in the vote and elect

his or her representatives without the involvement of intermediaries. The election is by secret ballot and the forms of ballot paper used are exclusive to each election basis.

The House of Representatives of Thailand consists of 480 members, 400 of whom are from the constituency based election and 80 of whom are from the proportional based election. In Thai general election, the voters have two ballots: one to select their MPs for their constituency and the other one to choose whichever political party they prefer most.

With regard to a constituency based election, a province will be divided according to the population census and provincial division into constituencies by which each constituency will have not more than 3 MPs. In fact, this is a case of the multi-member constituency. An eligible voter will have the right to cast the number of votes corresponding to the number of MPs in such constituency. The first 3 or 2 candidates, as the case may be, that obtain the most votes are declared elected.

As for a proportional based election, the whole country will be divided into 8 clusters of provinces. Each cluster will be regarded as one constituency and will have 10 MPs. A voter can choose only one list of a political party. The number of MPs for each political party will then be calculated on the proportional basis.

He then talked about the Election Commission which could be viewed as a referee and linesmen in elections. The Election Commission is an independent constitutional organ that organizes, supervises elections and regulates other activities connected with elections such as election campaigns and activities of political parties, candidates and persons having the right to vote so as to ensure that the elections proceed in an honest and fair manner.

One distinctive feature is the power of the Election Commission to conduct an investigation and inquiry in the case of complaints that an election has been carried out improperly or unlawfully. This has to be done forthwith and at the completion of the proceeding the Election Commission must pass a decision. If the Election Commission passes a decision to hold a re-election or suspends the right to vote before the announcement of the result of the election such decision will be final. If, after the announcement of the result of the election, the Election Commission is of the opinion that a re-election must be held or the right to vote of the member of the House of the Representatives must be suspended, a complaint will be submitted to the Supreme Court of Justice for decision. Like the referee in the soccer game, the Election Commission has two effective measures at its disposal to deal with cases of electoral frauds, namely: yellow cards and red cards.

Adjudication of criminal offences connected with elections, however, remain within the jurisdiction of the Court of Justice.

In the second session, dealing with typical problems and shortcomings in law and practice, delegates from the following countries made presentations: Pakistan, Morocco, Germany, Colombia, Uzbekistan, Cambodia, Mexico and Venezuela. They elaborated on legal regulations and practices related to apportionment of electoral districts, registration of voters and voters' lists, dealing with voting by mail and overseas voting, fair competition

between candidates, transparency in vote counting, financing election campaigns, allocation to elected members of Parliament, etc.

The third or last session “Dealing with Election Complaints” focussed on the relevant provisions and existing practices in dealing with election complaints either by Supreme Courts or Constitutional Courts, by Ombudsmen, Election Commissions or Parliamentary Committees. Lessons learnt and best practices were also discussed. The delegates from the following countries made presentations in this session: Nepal, Kazakhstan, Lao People’s Democratic Republic, Austria, Indonesia, Turkey, Egypt, and Tajikistan.

The two meetings in Jakarta are both important. But they are important in a different way. While the second meeting – the 7th Conference of Asian Constitutional Court Judges – provides a good forum for exchanges of views, ideas, experiences, information as well as best practices regarding constitutional case-law and jurisprudence, the first meeting is important in the sense that an association, a regional grouping for Asia, is established in a permanent fashion for cooperation among Constitutional Courts and Equivalent Institutions. It is hoped that in the future, cooperation among members of the Association will be enhanced for the promotion of the rule of law, democracy and human rights.

The Constitutional Court of Thailand looks forward to participating actively in the activities of the newly established Association of Asian Constitutional Courts and Equivalent Institutions.