

Legal measures concerning the rights of persons with disabilities to participate in the election under the Organic Act on the Election of Members of Parliament B.E. 2561 (2018)

Abstract

The election is one of the most critical procedures that undergird the foundation of liberal democracy as it enables citizens to express their collective political wills by electing their representatives according to the rules laid out in the Constitution and other relevant laws. However, the election must be held under certain core principles; for instance, the State must ensure that every citizen can exercise their right to participate in the election on an equal footing. Furthermore, the State needs to undertake all the necessary legal measures to support the rights of persons with disabilities to participate in the election and eliminate limitations posed by their citizens' disabilities that may prevent them from the full enjoyment of this right.

This research finds that the existing legal framework under the Organic Act on the Election of Members of Parliament B.E. 2561 (2018) already, to a certain extent, guarantee the State's obligation to ensure accommodation and assistance for persons with disabilities to vote. However, to ensure the full realization of their right, the State must undertake additional measures as per international human rights standards laid out in the Convention on the Rights of Persons with Disabilities which Thailand has ratified. That is to say, Thailand must protect and fulfill their rights of persons with disabilities to participate in the election at all stages including before, during, and after the election. However, this research shows that the Organic Act on the Election of Members of Parliament B.E. 2561 (2018) does not contain any provisions that extend the protection of the rights of persons with disabilities during the pre-election and post-election period; it only focuses on their voting rights on the election date. Moreover, the existing provisions also encounter several problems and challenges in its implementation in the form of direct and indirect discrimination which prevents persons with disabilities from enjoying their rights. Therefore, this research aims to explore possible solutions that may help Thailand achieve the full realization of the rights of persons with disabilities to participate in the election as per international standards laid out in the Convention on the Rights of Persons with Disabilities.

Keywords: Persons with Disabilities, Right to Participate in the Election, Voting

Executive summary

This research is a comprehensive study of existing legal frameworks in Thailand regarding the participation of persons with disabilities in the election under the Organic Act on the Election of Members of Parliament B.E. 2561 (2018). It aims at exploring alternative legal measures that can effectively guarantee the persons with disabilities' full enjoyment of the same rights to engage in electoral processes as able-bodied Thai citizens. The finding of this research will, in due course, be presented to all key stakeholders including the Election Commission of Thailand, the National Human Rights Commission of Thailand, the Ministry of Social Development and Human Security's Department of Empowerment of Persons with Disabilities, and other organizations working for persons with disabilities. Ultimately, it is hoped that the new body of knowledge produced under this research project will be instrumental in the implementation of the ASEAN Enabling Masterplan 2025 on Mainstreaming the Rights of Person with Disabilities in Thailand. This study can be divided into three main sections as follows:

Section I: Theoretical foundation of the rights of persons with disabilities to participate in the election. This section explores the theoretical basis undergirding the concepts of human rights, human dignity, equality, human rights for persons with disabilities, promotion, and development of welfare for persons with disabilities, and fundamental theories about the election. This conceptual analysis will help readers better understand what are the essential requirements needed to guarantee the rights of persons with disabilities to participate in the election.

Section II: Comparative analysis of international, foreign, and domestic laws related to the rights of persons with disabilities to participate in the election.

The first part of this section examines key principles of human rights protection for persons with disabilities under international laws with a particular emphasis on legal provisions in the Convention on the Rights of Persons with Disabilities which extend the rights to vote to persons with disabilities. The second part surveys laws and policy directions in foreign countries that consider the rights of persons with disabilities to participate in the election as their national priority; such countries include the United States, Canada, and Australia. This research attempts to compare their legal and policy frameworks with those available in Thailand. The third part looks into critical issues stemming from national laws in Thailand related to the rights of persons with disabilities to participate in the election from the past to the present.

Section III: Challenges resulted from the legal provisions in the Organic Act on the Election of Members of Parliament B.E. 2561 (2018). This part analyzes different legal provisions laid out in this Organic Act and points to the challenges they have posed in terms of providing persons with disabilities with the right to participate in the election during the General Election that recently took place in Thailand on 24 March 2019. Such an analysis is followed by a set of recommendations for policymakers and legislators to create policies and amend laws that enable persons with disabilities to truly enjoy the rights to participate in the election as per international standards guaranteed and protected under the Convention on the Rights of Persons with Disabilities and the ASEAN Enabling Masterplan 2025 on Mainstreaming the Rights of Person with Disabilities.

Documents used in this report as research materials have been compiled from both Thai and foreign sources by using the Documentary Research method. In short, the research finding shows that the term “person with disabilities” is defined as someone with a physical or mental impairment that poses certain limitations on his or her ability to carry out normal day-to-day activities including participation in social and political activities, especially the election. However, should such limitations or obstacles be overcome, the person with disabilities will be able to live a normal life and enjoy the same right to participate in the election like an able-bodied person. At present, the right of persons with disabilities to participate in the election is guaranteed and protected under Article 29 of the Convention on the Rights of Persons with Disabilities. This international treaty protects and guarantees the right of persons with disabilities to participate in political and public life as per basic human rights standards laid out in the Universal Declaration of Human Rights and Article 25 of the International Covenant on Civil and Political Rights. However, to ensure the full realization of this right for persons with disabilities, the State must always adhere to core principles that undergird the spirit of this Convention. For instance, the State must follow the principle of equality which is one of the core values grounded in the Convention in its treatment of persons with disabilities. In other words, it must treat likes alike and unlikes unlike. Treating individuals who are essentially alike differently or treating individuals who are essentially unlike the same will constitute a violation of this principle of equality. Therefore, whenever a person is treated differently because of his or her disabilities, such treatment shall be considered unjust discrimination and violates the principle of equality. Should there be any discriminatory action against someone on the grounds of his or her disabilities, such action shall

be considered unjust and must be proscribed. There are three main types of discrimination as follows: (1.) Distinction, (2.) Exclusion, and (3.) Restriction. However, the State may take special measures to eliminate limitations or promote the capacity of persons with disabilities to exercise their rights and liberties in the same way as able-bodied citizens or to protect and facilitate the access to these rights and liberties for persons with disabilities. Notably, such measures will not count as unjust discrimination. On the contrary, it will be regarded as “just discrimination” that does not violate the principle of equality. Under this theoretical foundation, the State may legitimately create special measures to rid persons with disabilities of the limitations that prevent them from accessing their right to participate in the election. These special measures must be based on the accessibility principle and other fundamental human rights enshrined in the Convention on the Rights of Persons with Disabilities. Moreover, the State must take into account the fact that different types of disabilities that require different forms of accommodation and support. In the context of this research, it must be noted that persons with disabilities shall enjoy their rights to engage in every electoral process before, during, and after the election. This research also looks into examples of good practices from the United States, Canada, and Australia where effective laws and policies have been put in place to ensure these rights for persons with disabilities per such international human rights standards.

During the pre-election period, persons with disabilities are entitled to receiving and accessing adequate information, whether it be information regarding voting procedures, policy proposals from each political party and their candidate profiles, and other relevant information that may allow them to make an informed decision when voting. Government officials and volunteers based at polling stations (referred to as “polling station committee members” in official vocabulary) must also undergo a capacity-building training that will equip them with the knowledge about the rights of persons with disabilities to participate in all electoral processes and train their technical skills in providing accommodations or assistance for voters with disabilities at the polling station. Nevertheless, this research observes the absence of a clear provision regarding this matter in the Organic Act on the Election of Members of Parliament B.E. 2561 (2018), which had left some groups of persons with disabilities lacking adequate information that will help them fully exercise their rights. Generally, the poll committee members are only required to undergo basic training on how to organize the election for able-bodied citizens. This shortcoming of the Organic Act, therefore, results in the widespread lack of knowledge and sensitivity in

the matters related to the rights of voters with disabilities among personnel assigned to polling stations across the country.

Article 92 of the Organic Act on the Election of Members of Parliament B.E. 2561 (2018) stipulates that persons with disabilities shall receive reasonable accommodation and assistance to vote. Complementary to the Election Commission Regulation on the Election of Members of Parliament B.E. 2561 (2018), this Article indicates that each polling station must provide special accommodations for persons with disabilities. Moreover, the Election Commission of Thailand may host special voting channels specifically tailored to the needs of persons with disabilities. Therefore, the Election Commission had set up 14 polling stations for persons with disabilities and senior citizens across the country to ensure their full realization of rights to participate in the election. Nonetheless, it later announced that four stations will be shut down due to financial constraints and logistical challenges, thereby leaving only ten stations operating for voters with disabilities. Among these ten stations, seven are located inside nursing homes for elderly people, two inside nursing homes for persons with disabilities, and one inside a hospital. The locations of these stations demonstrate that they had been set up with a clear intention to mainly accommodate those who reside inside these care facilities in exercising their voting rights. This research finds that such a measure was highly ineffective and problematic. According to the official statistics of voter registration, only 846 individuals signed up for voting at the ten polling stations for persons with disabilities and senior citizens across Thailand; the number represented merely a tiny fraction of the populations living with disabilities in the country. In normal polling stations, little attention has been paid on how to accommodate persons with disabilities who were registered to vote there.

During the election day, the Election Commission had equipped normal polling stations with tools that are necessary to accommodate persons with disabilities to vote. For instance, braille ballot papers, magnifying glasses, and lamps are available to assist visually impaired persons with voting and wheelchairs, canes, and struts for physically disabled persons. Moreover, the polling stations were designed to have an appropriate size and width to make it more easily accessible for persons with disabilities. However, this research finds that some polling station committee members still lacked proper knowledge about how to use these tools and how to provide assistance for voters with disabilities. Moreover, it is found that no facilities surrounding these polling stations had been specially prepared to accommodate voters with disabilities. For example, there is no bathroom or parking lot for persons with disabilities near some

polling stations. This research has established that these factors contribute to further limiting the capacity of persons with disabilities to exercise their voting rights.

Although Article 92 of the Organic Act on the Election of Members of Parliament B.E. 2561 (2018) has a specific provision allowing voters with disabilities to appoint a person of their choice or a polling station committee member to cast a vote on their behalf in the case that the voters' physical conditions make them unable to cast the vote on their own. The ballot cast in this manner will still be considered a direct and secret exercise of their voting right. However, this provision creates a large margin of discretion for polling station committee members to determine whether a person needs their assistance. According to the information received, some polling station committee members explicitly asked or volunteered to cast the ballots on behalf of the voters with disabilities even though they had not requested such assistance. This manner of assistance will hinder the rights of persons with disabilities to participate in the election directly and in secret and contradicts the spirit of the law.

This Organic Act also does not specify any measures that shall be taken to ensure that persons with disabilities can access all the information regarding the election in the post-election period. After the election that recently took place, the election results were accessible only for persons with certain types of disabilities, making it impossible for many others to access any information. Sometimes, in several cases, persons with disabilities have also experienced undue delays of their access to information related to the election, unlike their able-bodied counterparts. Moreover, there is no official statistics on the voter turnout of persons with disabilities.

Recommendations on how to improve legal measures related to the rights of persons with disabilities to participate in the election

Given that the Organic Act on the Election of Members of Parliament B.E. 2561 (2018) does not contain adequate legal safeguards to guarantee the full realization of the rights of persons with disabilities to participate in the election, the government should issue supplementary regulations on the accommodation of persons with disabilities to effectively access their rights to participate in the election. The regulation shall cover the protection and promotion of their rights throughout every process of the election, be it before, during, and after the election, as follows:

- 1). During the pre-election period, measures must be taken to raise public awareness of important information regarding the election via

various media. The persons in charge of publicity must take into consideration the fact that there are several types of persons with disabilities that require specific modes of communication to receive information. The Election Commission shall be vested with the power to require political parties to produce public information about their campaigns, policies, and candidates that is accessible for all including persons with disabilities. Moreover, all media agencies that report news on the election should also be subject to the same requirements. The Election Commission must act as a coordinator that connects with different groups of persons with disabilities and ensure that they receive appropriate accommodations that allow them to access adequate information about the election. The Commission must also be responsible for all the costs related to this matter, using the budget from the Fund for Development of Political Parties.

Relevant government authorities must provide training for polling station officers and produced a manual that established a standard way of accommodating persons with disabilities during the voting procedure. Both the training and manual must contain knowledge about policies and laws regarding the assistance and accommodation that persons with disabilities are entitled to when they wish to exercise their right to vote. There should also be guidelines and demonstrations on how to use all assistance tools that are available in polling stations to help all persons with disabilities to vote. Furthermore, polling station officers shall be trained to communicate and interact with persons with disabilities appropriately. Moreover, a hotline or other means of communication should be set up to respond to additional requests and answer questions that persons with disabilities or polling station officers may have about the election.

2). During the election day, all the polling stations and their surrounding areas must be designed as per international standards regarding the accommodation of persons with disabilities to participate in public and political life. A special emphasis should be placed on the accessibility principle for persons with disabilities and senior citizens. All stations must prepare appropriate tools that will accommodate persons with disabilities to vote.

The persons with disabilities who cannot cast the vote on their own should have the right to request a relative, spouse, trusted person, or a polling station officer as a proxy to cast the vote on their behalf. Importantly, the appointed proxy must take an oath under their religious faith, swearing that they will not persuade the persons with disabilities whom they are representing to vote for any particular political party or

candidate and will strictly commit to keeping the voting decision of their appointer a secret.

The Election Commission may set up one central polling station or special polling station for eligible voters with disabilities or senior citizens in each constituency as an experiment to test the new procedure and readiness of its polling station staffs. There must be multiple channels of publicity and means of registrations for persons with disabilities to vote these stations, such as in-person registration, registration through care homes, registration by post, and online registration (which must comply with the WCAG standards.). Relatives or caretakers of persons with disabilities should also be able to vote at these special stations. Moreover, the State may also provide official transportations that take persons with disabilities to the polling stations and back to their residents on the election date. It could also create a system of voting outside the polling station; for example, the persons with disabilities may be allowed to vote by post or cast their vote inside a moving vehicle for persons with disabilities

3) . In the post-election period, persons with disabilities and organizations for persons with disabilities should be given an opportunity to assess their satisfaction with their experience of exercising their rights to participate in the election and provide suggestions for improving the next election. Persons with disabilities should be able to access accurate election results without any undue delay. The government must compile statistical data regarding the voter turnout of voters with disabilities in each polling station.

These recommendations will lead to full execution of the key objectives of the ASEAN Enabling Masterplan 2025 on Mainstreaming the Rights of Persons with Disabilities. Such objectives include advocating for regional accession of the Convention on the Rights of Persons with Disabilities, building a people-centered ASEAN community where persons with disabilities can enjoy their freedom to participate in all aspects of political life in an effective and sustainable manner, and most importantly, achieving equality and better welfare for persons with disabilities, their families, and their caretakers. These objectives are also shown in the table below:

Table mapping out the correspondences between recommendations from this research and key action plans in the ASEAN Enabling Masterplan 2025 on Mainstreaming the Rights of Persons with Disabilities

ASEAN Blueprint 2025	Key action plans	Key measures	Recommendations
ASEAN Political and Security Community (APSC)	A. Law-based, People-Oriented, People-Centered Community	APSC 1: Encourage taking all appropriate legislative and administrative measures to promote and protect the rights of persons with disabilities to fully and meaningfully participate in public and political life to vote, to be elected and to access to justice on an equal basis with those without disabilities;	- General measures 1) Amend the law to make it inclusive of the rights of persons with disabilities to participate in the election at all stages, be it before, during, and after the election.
		APSC 2: Encourage access to information from public and private sector websites on reasonable accommodation for court services, elections,	-Pre-election measures 1) Publicize accessible information about the election including political parties' policies and their candidates in various media, such as braille

	<p>accessible election and universal design polling stations, and other political processes by developing a disability-inclusive system with the use of new technologies and alternative formats such as braille, audio, closed-captioned and/or audiodescribed videos, and universally designed electronic formats, making available subtitles in the videos and television, assistance of professional sign language interpreters, and cartoon materials for persons with learning disabilities;</p>	<p>election manuals, websites and mobile phone applications that meet the WCAG standards.</p> <p>2) Create various channels of registration for advance voting, such as, self-registration by post and online registration.</p> <p>-Post-election measures</p> <p>1). Create a system that reports accurate, accessible election results to persons with disabilities without undue delay.</p> <p>2) Document statistical data regarding the voter turnout of voters with disabilities in each polling station.</p>
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		<p>APSC 5 Raise awareness within the judiciary, political bodies, and election commissions on the rights of persons with disabilities and disability inclusion through the celebration of the International Day of Persons with Disabilities (IDPD) and other relevant events, such as arts and sports events as well as various communication and informative media.</p>	<p>- General measures 1) Amend the law to make it inclusive of the rights of persons with disabilities to participate in the election at all stages, be it before, during, and after the election.</p>
	<p>B. Peaceful, Secure, and Stable Region</p>	<p>APSC 8 Strengthen national and local policies to provide reasonable accommodation to children, youth, women, and</p>	<p>- General measures 1) Amend the law to make it inclusive of the rights of persons with disabilities to participate in the election at all stages, be it before,</p>

		elderly/older persons who often experience some form of disability due to ageing.	during, and after the election.
ASEAN SocioCultural Community (ASCC)	A. Engages and Benefits the People	ASCC 1: Promote the rights of all persons with disabilities to full, equal, and effective participation in all aspects of life in all ASEAN Member States;	- General measures 1) Amend the law to make it inclusive of the rights of persons with disabilities to participate in the election at all stages, be it before, during, and after the election.
		ASCC 2: Enhance access to social protection and economic opportunities to attain independent living for persons with disabilities, ensuring their rights to live with dignity within an engaged and empowered community, including	- General measures 1) Amend the law to make it inclusive of the rights of persons with disabilities to participate in the election at all stages, be it before, during, and after the election. - Pre-election measures 1) Equip all personnel whose work is related to the election with positive attitudes

		<p>opportunities to enjoy and take part in socio-cultural and religious activities, sports and leisure;</p>	<p>towards persons with disabilities and knowledge about how they should treat persons with disabilities when providing them with assistance and accommodation during the election day.</p> <p>- Measures during the election</p> <ol style="list-style-type: none"> 1) Make polling stations accessible for persons with disabilities 2) Provide facilities and accommodation for persons with disabilities as appropriate according to their needs
		<p>ASCC 3: Strengthen capacity building activities relevant to persons with disabilities and their family members, personal assistants and caregivers,</p>	<p>- General measures</p> <ol style="list-style-type: none"> 1) Amend the law to make it inclusive of the rights of persons with disabilities to participate in the election at all stages, be it before, during, and after the election.

		<p>focusing on diversity, inclusion, social norm change, anti-stigma, unconscious bias and discrimination against persons with disabilities, and their application in the daily roles and functions of service providers, including civil servants, legal professionals, social welfare officers, law enforcement officials, and healthcare providers, among others;</p>	<p>- Pre-election measures</p> <p>1) Equip all personnel whose work is related to the election with positive attitudes towards persons with disabilities and knowledge about how they should treat persons with disabilities when providing them with assistance and accommodation during the election day.</p> <p>-Measures during the election</p> <p>1) Make polling stations accessible for persons with disabilities</p> <p>2) Provide facilities and accommodation for persons with disabilities as appropriate according to their needs</p> <p>3) Create central polling stations or special polling stations that can accommodate voters with</p>
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			<p>disabilities and offer alternative voting methods that can be done outside the polling stations.</p>
		<p>ASCC 5: Enhance availability and accessibility of websites; including of public and private sectors, in particular online banking; as well as use of new technologies, information and communication technologies, assistive technologies, and adaptive technologies for persons with disabilities.</p>	<p>- Pre-election measures</p> <p>1) Publicize accessible information about the election including political parties' policies and their candidates in various media, such as braille election manuals, websites and mobile phone applications that meet the WCAG standards.</p> <p>2) Create various channels of advance voting registration including self-registration by post and online.</p> <p>- Measures during the election</p> <p>1) Create central polling stations or special polling stations that can accommodate</p>

			<p>voters with disabilities and offer alternative voting methods that can be done outside the polling stations.</p> <p>- Post-election measures</p> <p>1) Create a system that reports accurate, accessible election results to persons with disabilities without undue delay.</p>
	<p>B. Inclusive</p>	<p>ASCC 7</p> <p>Recognise and mainstream the rights of persons with disabilities to fully participate in all aspects of their community life by respecting their autonomy, independence and decision-making and to ensure that the community services, and facilities are responsive to</p>	<p>- General measures</p> <p>1) Amend the law to make it inclusive of the rights of persons with disabilities to participate in the election at all stages, be it before, during, and after the election.</p>

		<p>the needs of persons with disabilities;</p>	
		<p>ASCC 13 Recognise the rights of persons with disabilities to live by their choice, and to ensure a wide range of selection with regard to living with dignity⁶, making their own decision and to guarantee autonomy for persons with disabilities over living arrangements and accessibility, and to protect both within and outside the home, from all forms of disability based-discrimination, the deprivation of liberty, exploitation, abuse and violence, including</p>	<p>- General measures 1) Amend the law to make it inclusive of the rights of persons with disabilities to participate in the election at all stages, be it before, during, and after the election. Measures during the election 1) Make polling stations accessible for persons with disabilities 2) Provide facilities and accommodation for persons with disabilities as appropriate according to their needs</p>

		sexual and gender-based discrimination and violence;	
		<p>ASCC 15</p> <p>Ensure universal access to build environment, especially educational, health and legal institutions and services, law enforcement agencies, national human rights institutions, and offices of service providers, including public transportation, applying universal design standards, and accessible information and communication technology focusing on issues of gender and various age-groups in all</p>	<p>- Pre-election measures</p> <p>1) Publicize accessible information about the election including political parties' policies and their candidates in various media, such as braille election manuals, websites and mobile phone applications that meet the WCAG standards.</p> <p>Measures during the election</p> <p>1) Make polling stations accessible for persons with disabilities</p> <p>2) Provide facilities and accommodation for persons with disabilities as appropriate according to their needs</p> <p>3) Create central polling stations or special polling</p>

		<p>ASEAN member states;</p> <p>ASCC 15.1 Ensure the recognition of national sign language as the language for the deaf in all ASEAN Member States.</p>	<p>stations that can accommodate voters with disabilities and offer alternative voting methods that can be done outside the polling stations.</p> <p>4) Provide public transportations to pick up voters with disabilities from their residences to the polling stations and back.</p>
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Other suggestions

To ensure the full realization of the rights of persons with disabilities to participate in the election for as per standards laid out in the ASEAN Enabling Masterplan 2025 on Mainstreaming the Rights of Person with Disabilities, all stakeholders including the government, private sector, organizations for persons with disabilities, and most importantly, the persons with disabilities themselves and their families, must work together to advocate for and raise public awareness of basic human rights of persons with disabilities and foster positive public attitudes towards persons with disabilities as competent people who can contribute to the development of the country and society as much as able-bodied people.

In addition, this research has not addressed the issues of those “of unsound mind or of mental infirmity”, who are also considered mentally and intellectually disabled. According to the Constitution of Thailand and the Organic Act on the Election of Members of Parliament B.E. 2561 (2018), this group of people is legally incompetent to exercise their franchise. We still need to conduct more studies exploring the level of their capacity to engage in electoral processes in order to determine what the appropriate legal measures shall be undertaken to realize their rights to participate in the election.