



COUNTRIES AT THE CROSSROADS 2011: THAILAND

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INTRODUCTION

From April 2007 to September 2010, Thailand was in political turmoil, torn between two competing factions that divided the nation. There was a constitutional referendum, a general election, three governments, and four different prime ministers during this period, in addition to several major protest movements, some of which ended in violence. Yet neither parliamentary politics nor extra-parliamentary developments could bridge the color-coded divide between yellow and red shirts that threatened to tear the nation apart.

Thailand is now divided between two competing power networks, each backed by a sizeable element of the population. On one side are those loyal or sympathetic to Thaksin Shinawatra, a self-exiled billionaire former police officer who made his fortune in telecommunications. Thaksin's Thai Rak Thai Party won decisive election victories in 2001 and 2005. Thaksin supporters look back on his period in office with great nostalgia, as a time of unprecedented civilian political dominance, when the bureaucracy became more responsive and efficient, and the government paid more attention to the concerns of the less well-off. His support base is strongest in the populous north and northeast regions of the country, which contain the majority of the country's parliamentary seats. On the other side are those whose primary orientation is towards the monarchy, the military, and the bureaucracy, often linked to the Democrat Party. The Democrats form the core of the government, led by Abhisit Vejjajiva. The Thai monarchy exerts considerable extra-constitutional influence, mainly through an extensive network of allies. Rightly or wrongly, the monarchical network viewed the rise of Thaksin as a challenge to the status of the King. Supporters of network monarchy are typically concentrated in the great Bangkok region and in the south of the country.

The turbulent politics of Thailand during the period under review defy simple summary, but may be best characterized as a struggle to gain the upper hand before the impending royal succession. King Bhumibol enjoys enormous prestige, but is 83 years old and in poor health. His son, Crown Prince Vajiralongkorn, is less popular, and few look forward to the day when he ascends the throne. In the new reign, the military and bureaucracy will no longer have their

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standing buttressed by monarchical charisma, and may have to cede ground to elected politicians. Other than Thaksin, elected politicians in Thailand have been content to play second fiddle to the palace. The idea of a country in which the prime minister is the most popular public figure is alarming to many Thais.

The government of the post-coup Council for National Security (CNS), led by retired general and privy councilor Surayud Chulanont (2006-08) was widely criticized for its ineffectiveness. Surayud admitted after stepping down from the premiership that he had hated the job, while coup leader Sonthi Boonyaratglin declared that making Surayud prime minister had been a mistake.¹ Nevertheless, the National Legislative Assembly (NLA), an unelected parliament created by the junta, passed a huge amount of legislation during the last few months of 2007, much of it both regressive and hastily-drafted.² It would take Thailand's normally sclerotic parliamentary system many years to unravel the gordian legal legacies of the NLA.

Thai politics have been in near-constant turmoil since the ratification of the 2007 constitution that August. Despite the hostility of the junta to the pro-Thaksin People Power Party, the PPP won the December 2007 elections and remained in office for nearly a year. During the period the pro-royalist People's Alliance for Democracy (PAD) staged a series of huge protests against the government, including occupying Government House (the office of the prime minister) for three months. PAD protests culminated in the seizure of Bangkok's airports, which was followed soon afterwards by the dissolution of the PPP and the emergence of a Democrat-led government. Abhisit Vejjajiva became prime minister without an electoral mandate, and presided over a turbulent period during which pro-Thaksin demonstrators led by the UDD (United Front for Democracy against Dictatorship) sought to destabilize his administration. In April 2009 an ASEAN summit had to be hastily abandoned in the resort town of Pattaya when protestors stormed the conference hotel; the Chinese and Japanese premiers were forced to flee by helicopter. Violence then broke out in Bangkok. From March to May 2010, mass redshirt protests paralyzed areas of central Bangkok, and more than 90 people were killed, many of them at the hands of the security forces. A harsh crackdown by the authorities saw many redshirt leaders arrested and driven into hiding, resulting in an uneasy semi-calm.

[**Editor's Note:** On July 3, 2011, the pro-Thaksin Phuea Thai Party won elections with a large majority. Thaksin's younger sister, Yingluck Shinawatra, was subsequently appointed prime minister.]

ACCOUNTABILITY AND PUBLIC VOICE

Elections have been held regularly in Thailand since the 1980s, interrupted only by military coups in 1991 and 2006. In both cases, coups were followed by a year or so of military-based government during which a new constitution was drafted before the holding of fresh elections. Nevertheless, electoral politics have been extensively disrupted in recent years by legal challenges. Pro-Thaksin parties won the last four elections (2001, 2005, 2006, and 2007), but the 2006 election was annulled by the courts, which went on to dissolve the winning party in the 2007 elections (see below). Since December 2008, Thailand's government has been led by the Democrat Party, despite the fact they lost the 2007 elections. This reversal happened as a result of defections by former pro-Thaksin politicians following the dissolution of the Palang Prachachon Party. These events parallel a similar volte-face in late 1997, which allowed the

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Democrats to hold power until the beginning of 2001. Although legal, such non-electoral power transitions lacked popular legitimacy, and testify to the continuing dominance of entrenched elites.

Thai political parties carry relatively little ideological baggage, and all apart from the Democrat Party are of recent origin. Thai elections are characterized by vote buying and other abuses. Since 2007, four pro-Thaksin political parties have been dissolved by the courts for allegedly manipulating electoral laws and committing voting fraud: the Thai Rak Thai Party (2007), and the Palang Prachachon Party, Chart Thai Party, and Matchimathipataya Party (2008). The Democrat Party narrowly escaped dissolution on technical grounds in 2010. 220 executive members of these dissolved parties were banned from holding political office for five years, including Thaksin himself and virtually everyone who had served as a minister under his party's cabinet quota. Thaksin supporters have criticized these legal decisions for their partiality. It is an open secret that virtually all Thai parties and candidates routinely violate election laws, so decisions about prosecuting and convicting offenders often appear partisan.

Thailand's current constitution dates from 2007, and was promulgated during a period of military-backed rule. Although widely viewed as less legitimate than the popular 1997 constitution, the 2007 constitution was the first to be ratified in a national referendum. The 2007 constitution provides for a range of independent agencies, including an Election Commission (EC), but in practice much of the responsibility for refereeing the Thai political game lay with the courts, notably the Constitutional Court and the Supreme Court's Criminal Division for Holders of Political Positions. The new election commission was rather even-handed in its first parliamentary election test in December 2007, and its interventions to 'yellow card' and 'red card' rogue candidates had no significant impact on the final result.

Under the 2007 constitution, the 150 senators are supposed to be non-partisan. One senator is elected for each of Thailand's provinces (of which there are currently seventy-six) and the remainder are appointed. Since Thaksin was believed to have controlled the former senate through the old system of a wholly elected upper chamber, the appointed members were apparently intended to ensure that the bureaucratic elite retained the upper hand. The post-2007 senate had more powers than its predecessor. The 2007 constitution also reduced the number of proportional representation seats from 100 to 80, and carved up those seats using districts that slightly favored the Democrats.

Most civil service posts are gained through open appointment procedures, although some processes—notably for the police and the interior ministry—have been tainted by persistent reports of cheating. Thailand's recent political polarization has contributed to a greater politicization of public sector promotions.

Civic groups are able to comment relatively freely on policy issues and legislation, and many have been very influential. But in recent years Thailand's once-thriving civil society sector has been politicized and factionalized. During the Thaksin period, many previously critical groups were co-opted by the government. Following the 2006 coup, most prominent civil society organizations and activists adopted pro-coup stances and lost much of their credibility as progressive voices. Some joined or supported the royalist People's Alliance for Democracy (PAD) movement in their campaign against the pro-Thaksin governments during 2008. A smaller number of social activists, including some former leftists, supported the 2009 and 2010 protests by the pro-Thaksin UDD.³ Because there are demanding requirements for nongovernmental organization (NGO) registration under legislation dating from 1942, most

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NGOs are not formally registered with the interior ministry. In practice, legal registration is not required.

Electronic media are largely controlled by the state and have always been subject to considerable political interference. Thai PBS, a supposedly neutral public broadcasting television channel created in the wake of the coup, has adopted a consistently pro-royalist line. The anti-Thaksin PAD has its own extremely popular satellite channel, ASTV. Radio frequencies remain dominated by the military, supposedly for reasons of national security, but in practice because they are a lucrative source of revenues. Anachronistic arrangements for the control of electronic media were reinforced in the 2007 Radio and Television Broadcasting Bill. Nevertheless, the red-shirt movement has used a network of community radio stations, especially in the north and northeast, to help bolster its support base. Almost 50 such radio stations were closed down in April/May 2010.

Thailand has a long tradition of vigorous and outspoken print media, with a parallel tradition of press manipulation and cooptation by power-holders. The Thaksin government was widely criticized for putting pressure on critical media voices and for using a combination of sticks and carrots to promote more favorable coverage.⁴ Since the 2006 coup, most of the Thai print media has fallen into line, and adopted a broadly anti-Thaksin, pro-Democrat line.⁵ One prominent dissenter, veteran *Matichon* journalist Sathien Junthimathorn, was reportedly forced to drop his column in 2009 on account of his pro-Thaksin views, as was *Matichon* editor Chulalak Phukert.⁶

Thai libel and defamation laws are deeply problematic: those charged with libel may face immediate imprisonment if they are unable to produce the large sums typically required for bail. Politicians and their associates have not hesitated to harass critics through use of these punitive laws. Several journalists were killed and injured during the 2010 red shirt protests, apparently shot by members of the security forces. The deceased included a Japanese and an Italian national.

Since the 2006 coup, successive governments have made extensive attempts to control the internet. The 2007 Computer Crime Bill, supposedly designed to protect national security, has been widely abused to curtail freedom of expression online.⁷ The Abhisit government has invested heavily in monitoring internet traffic and has closed down numerous websites. 75,000 web-pages have been blocked by the courts using the legislation, 57,330 because of inappropriate content concerning the monarchy; 44,000 web pages were blocked in 2010 alone.⁸ Although there is considerable freedom of cultural and political expression in Thailand, a notable exception lies in *lèse majesté* laws, which outlaw all criticism of the royal family. These laws have been increasingly politicized since 2005, and have begun to assume a catch-all character. For example, in October 2006, Surayudh's principal aide urged people to desist from criticizing the new cabinet line-up as such criticisms could constitute *lèse majesté*.⁹ Both red shirt and yellow shirt leaders have faced *lèse majesté* charges, as did former BBC Bureau Chief Jonathan Head. A number of issues of *The Economist* have been informally banned in Thailand because of their critical references to the royal institution. The proliferation of *lèse majesté* charges—from an average of 2.5 in the 1980s to 164 in 2009—has undermined the standing of the law.¹⁰ The authorities are now using the Cybercrime Bill to do the work of *lèse majesté* legislation, as in the case of Chiranuch Premchaiporn, the webmaster of the Prachatai news site. She faces a possible fifty-year jail sentence because of anti-monarchy comments posted on a web-board, despite the fact that they were promptly removed.¹¹

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CIVIL LIBERTIES

Despite constitutional injunctions against it, torture and abuses of pretrial detainees by both police and military agencies continue, especially in relation to rural protest movements and alleged drug offenders. Punishment of state officials for such abuses is very rare. Pretrial detention for up to eighty-four days is widely used in criminal cases, and extensions may be requested for complex cases. Thai prisoners are kept in poor conditions: they sometimes have to pay for a space to sleep (even on the floor) and generally need money from the outside in order to obtain reasonable food. International monitors claim that prisoners are often shackled in leg irons, despite the fact that this is illegal, and trusted convicts are sometimes allowed to beat fellow prisoners.¹² No state officials have faced arrest, prosecution, or trial for acts of torture.

Murders of local politicians, journalists, and activists occur regularly in Thailand. Around twenty human rights defenders were murdered between 1999 and 2005, including Somchai Neelaphajit, a lawyer who accused the police of torturing five suspects charged with involvement in the southern unrest, a claim that was verified by the National Human Rights Commission. On March 12, 2004, Somchai disappeared and the case remains unsolved.

The most serious assault on civil liberties in modern Thai history was the 2003 war on drugs, an apparently officially sanctioned policy of extrajudicial killing that involved over 1500 deaths in its initial three months. While the authorities implausibly claimed that most of these killings resulted from drug dealers turning their weapons on each other, there was ample evidence of widespread official collusion in numerous murders.¹³ To date, no proper investigation of the war on drugs has taken place, no list of its victims has been published, and no one has been brought to trial over the extrajudicial killings.¹⁴

A further area of concern relates to the government's handling of political violence in the southern border provinces since January 2004. Around 80 percent of the populations of Pattani, Yala, and Narathiwat provinces are Malay Muslims, whose first language is not Thai.¹⁵ This region has been characterized by longstanding yet sporadic separatist violence. The Thaksin government dismantled the existing security command structure in May 2002, placing the police in charge of maintaining order. Tensions mounted following a large-scale attack on an army base on January 4, 2004, and a spate of shootings and small explosions followed. Martial law was subsequently imposed in these provinces. By February 2011, over 4,300 people had been killed in political violence; some had been murdered by the security forces or had disappeared, while many others apparently met their deaths at the hands of Muslim extremists.¹⁶ Many others had been injured. Victims included Buddhist monks, Islamic teachers, government school teachers, village leaders, a judge, a deputy governor, and a prominent Muslim senator.

While most victims were killed by militant groups, the security forces were responsible for the largest incident. Eighty-four Muslim protesters died in events arising from a demonstration on October 25, 2004, outside a police station in Tak Bai, Narathiwat province. The authorities claimed that seventy-eight of the deceased had died as a result of suffocation after they were arrested and piled into army trucks. An investigation was highly critical of the military commanders responsible but concluded that the deaths were unintentional.¹⁷ A Songkhla court declared in 2009 that there had been no intention by state officials to kill anyone, a verdict which was met with disappointment and incredulity among the Malay Muslim community.¹⁸ Amnesty International found evidence of extensive use of torture by military units in the south during 2008 and 2009, and a number of high profile cases suggested that this practice continued

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even after pledges by the Abhisit government to clamp down on abuses. The most notorious case was that of Imam Yapa Kaseng, who was tortured and killed by soldiers while in their custody in Narathiwat in 2008.¹⁹ Some torture was carried out at improvised military camps inside Buddhist temples. The state has wavered between a rhetorical commitment to reconciliation and ‘winning hearts and minds’, and recourse to heavy-handed security tactics.

Emergency legislation hastily introduced in August 2005 allowed suspects in security cases to be held for up to thirty days without charge; these provisions have been used extensively in the southern border provinces.²⁰ The law also allows for prisoners to be held in irregular places of detention and grants immunity from prosecution to enforcement officials accused of human rights violations. The emergency legislation was widely criticized by lawyers and human rights organizations both inside and beyond Thailand.²¹ Though ostensibly introduced to address the ongoing insurgency in the South, the provisions were also widely used in Bangkok and numerous other provinces during red-shirt protests in 2009 and 2010. The draconian 2007 Internal Security Act (ISA), another product of the post-coup NLA, was also used on various occasions by the Abhisit government. The ISA was deployed by the Abhisit government to deal with large scale protests in Bangkok, Hua Hin, and Cha-am in October 2009 and in Bangkok and surrounding provinces in March 2010. The ISA has been criticized by the ICJ for its vagueness and for granting virtual impunity to security officials.²² Hundreds of arrests were made under the ISA during and immediately after April–May 2010 protests, and there is evidence that some detainees were abused in custody.²³

Despite legislation forbidding trafficking in people, Thailand is a major nexus for human trafficking, notably from Burma, Cambodia, China, Laos, and to a lesser extent, Vietnam. Much of this trafficking involves placing women and children in the lucrative Thai sex industry, though some of those trafficked are employed in sweatshops, agriculture, construction, and fisheries. The state has made some efforts to tackle the problem by prosecuting offenders and protecting some victims, but there have been no recent prosecutions of police officers or other government officials, some of whom are believed to be implicated in the trade.

Thailand established an Office of the Ombudsman to deal with citizen complaints following the 1997 constitution. Under the 2007 constitution, the agency’s role was extended to focus more on monitoring ethical abuses by powerholders. To date, the agency remains only weakly institutionalized.

Under the 2007 constitution, the state was committed to promoting equal rights between men and women (Article 30) and the rights of children, youth, women, and the disabled to access justice, education, health, and welfare. Millennium Development Goal 3—concerning the promotion of gender equality and empowering women—has already been achieved in Thailand, but little progress has been made as regards national and local political participation. Thailand has a very high level of female participation in the labor force—65 percent—but in 2010 around 13 percent of MPs and senators were female, and only three of the 35 cabinet ministers: Commerce Minister Pornthiva Nakasai and the deputy ministers for education and health. While around two-thirds of civil servants were female in 2006, only 20.2 percent of those in the top three civil service grades were women, and only 9.7 percent in the top grade.²⁴ Some women are now serving as ambassadors (nineteen percent),²⁵ but the important positions of provincial governor (1.4 percent) and district officer (0.3 percent) remain overwhelmingly dominated by men.²⁶ Only ten of the hundred members of the 2007 constitution-drafting assembly were women.

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A number of constitutional provisions support gender equality, but changes in both legislation and practice are needed in relation to issues such as rape and domestic violence, which are often not taken seriously or handled sensitively by the police. According to a Labor Ministry survey, women are paid around 17 percent less than men, a figure that compares favorably with those in many developed countries.

Racial discrimination is prohibited under the 2007 constitution (Article 30), but there was no specific mention of ethnic minorities. This reflects the official view that all Thais are simply Thai and a persistent tendency to deny the significance of ethnic difference. Chapter III of the 2007 constitution was explicitly entitled “Rights and liberties of the Thai people,” thereby excluding all noncitizens from exercising those rights. As one informant told Amnesty International, “The Thai constitution does not apply to me, because I am an ethnic minority.”²⁷

Many ethnic minority peoples in the northern highland areas of Thailand are not Thai citizens and have been subject to persistent discrimination; similar problems apply in the case of Burmese refugees and illegal workers from Burma, Cambodia, and Laos. Many of these illegal workers—whose estimated numbers range from 1.8 to 3 million, or between 5 and 10 per cent of Thailand’s workforce—are systematically abused by the Thai authorities, notably through extortion rackets run by the Royal Thai Police and other local officials: Human Rights Watch reported that virtually all migrants held in police custody that representatives of the organization were able to interview indicated that policy officials had demanded bribes for their release.²⁸ The estimated half million Karen or other so-called ‘hill tribe’ people lack Thai citizenship and are effectively stateless. Many are unable to prove that they were born in Thailand, while others are similarly unable to claim Burmese citizenship. These groups are also vulnerable to arbitrary arrest.²⁹ Early in 2009, the Thai military allegedly cast adrift nearly a thousand Rohingya refugees from Burma, leaving them to die at sea.³⁰ In response to criticism, Thai premier Abhisit Vejjajiva declared, “Let’s get that straight—they’re not refugees, they’re just illegal migrants.”³¹ During the Christmas period in 2009, taking advantage of low staffing levels at foreign embassies and international organizations, the Thai military forcibly repatriated over 4,000 Hmong refugees to Laos, an action condemned by UNHCR.³²

A large proportion of Malay Muslims in the southern border provinces have a poor command of the central Thai language, which further restricts their already limited economic opportunities. The Thai state has been slow to recognize the need to address issues of discrimination on racial and ethnic grounds; for many local government officials, minority groups are stereotyped as sources of insecurity, crime, and social problems, to be dealt with by forcible incorporation into Thai cultural norms.³³

Discrimination against people with disabilities is illegal under the constitution but widespread in practice, and many public buildings lack proper access. The Surayudh government passed the Disabled Persons Promotion and Development Life Quality Act in 2007, providing a stronger basis for disabled rights.³⁴ However, the government has a poor record of making information available to people with disabilities through, for example, Braille, or audio versions of important documents. On the positive side, sign language is widely used to accompany television broadcasts. Overall, the government’s record on enforcing equality issues is mixed.

More than 90 percent of Thais are Buddhists, though the Muslim minority is growing and probably exceeds 3.5 million, or 5 percent of the population. In theory, Thais enjoy freedom of religion, and religious observance is not restricted. However, the Thai state exercises control over the *sangha* (Buddhist order) and has moved to exclude dissident religious groups from the officially sanctioned order. In other words, the state has arrogated to itself the right to determine

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what does and does not constitute true Buddhism.³⁵ During 2007, there was renewed debate about designating Buddhism as the national religion, but ultimately this amendment was not made in the 2007 constitution.

In 2006, a former minister assumed the supposedly independent role of secretary-general of the Islamic Council of Thailand, allegedly claiming in a television interview that Thaksin had assigned him to this position.³⁶ Since 2002, Islamic, Christian, and other religious groups have been overseen by the Department of Religion (part of the Ministry of Culture), while a National Office of Buddhism is located in the office of the prime minister. Registering a new Christian church in Thailand is virtually impossible, as the Department of Religion asks the existing registered churches whether new applicants should be regarded as genuine Christians,³⁷ with predictable results. As a result, many Christian and other religious organizations operate without formal registration.³⁸

Freedom of association is broadly respected in Thailand, although levels of unionization remain low (at less than 2 percent of the total workforce) except in state enterprises, where more than half of employees are union members. Although people are free to join unions, there is evidence that some employers have dismissed union leaders or executive members. When such cases were brought to government-backed tribunals, the union activists received back pay but employers were not otherwise penalized. The Thaksin government failed to fulfill election pledges to ratify ILO Conventions 87 and 98, on freedom of association and collective bargaining, and subsequent administrations have also stalled on these issues. There is no evidence of citizens being forced by the state to join particular associations.

The right to peaceful organization and mobilization is widely practiced, but the state has supported harsh repression of certain kinds of protest movements. In recent years this has applied especially to pro-Thaksin red shirt protestors. Around 92 people were killed during red shirt demonstrations March-May 2010, and there is considerable evidence that many of the victims died at the hands of the security forces, in flagrant violations of both domestic and international law.³⁹ The heavy-handed state repression of the 2010 protests echoed earlier traumatic events in recent Thai political history, showing how little progress has been made since the harsh crackdowns of the 1970s and of May 1992.

Thaksin's legal team has sought to initiate a case against Prime Minister Abhisit Vejjajiva at the International Criminal Court in The Hague for his complicity in these events.⁴⁰ The Abhisit government has appointed a committee to investigate the protests, chaired by respected former attorney general Kanit na Nakorn. But at an early stage of the proceedings, Kanit declared that he would not be seeking to apportion blame for the deaths, a comment that raised grave doubts concerning the value of his investigation.⁴¹ A leaked report by Thailand's Department of Special Investigations appeared to confirm that the military was responsible for many of the deaths.⁴² In the wake of the deaths, the government has invoked emergency powers to suppress red shirt forces, and made extensive use of military camps as detention centers, practices condemned by human rights groups.⁴³

RULE OF LAW

The 2007 constitution, like the 1997 constitution, includes provision for a Constitutional Court, though the Supreme Court is the highest chamber overseeing normal criminal cases. The post-2007 Constitutional Court has been involved in controversial decisions, notably debarring former

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prime minister Samak Sundaravej from office, and dissolving the People Power Party in 2008.⁴⁴ Thailand's judiciary is generally independent but also sometimes corrupt. This skews the justice system based on the suspect's ability to pay bribes, leading to structural inequalities and often allowing the guilty to walk free. A national survey in 2000 found that a third of those who had been involved in court cases had been asked to pay bribes to secure a favorable outcome. Of the bribes, forty-seven percent were paid to public prosecutors, fifteen percent directly to judges, and twenty-nine percent to other court officials, some of whom may have been acting on behalf of judges.⁴⁵

Despite a series of widely publicized fraud cases in the 1990s—such as the collapse of the Bangkok Bank of Commerce, in which a number of prominent politicians were implicated—not a single conviction had been achieved by the end of 2002.⁴⁶ Well-publicized criminal cases such as the 2004 acquittal of a politician's son on charges of murdering a policeman have undermined public confidence in the judicial system.⁴⁷ However, in several high-profile security cases, judges appeared to act independently and rejected political pressures to convict. These included cases against Dr. Waemahadi Wae-daai, a Narathiwat doctor accused of terrorist offenses, and Najmuddin Ummar, a southern TRT member of parliament (MP) who had been accused of treason.⁴⁸ By contrast, the Supreme Court for political office-holders has convicted some prominent figures of crimes, notably former prime minister Thaksin Shinawatra, who was given a two year jail sentence on corruption-related charges in 2008.

The Appeal Court has a rather mixed reputation, especially concerning the length of time taken to reach appeal decisions, often between five and 15 years; it is alleged that these times may be expedited through the payment of informal fees.⁴⁹ The Central Bankruptcy Court has also been criticized for making politicized decisions that undermined the confidence of foreign investors.⁵⁰ However, Thailand's strict contempt-of-court laws—which apply outside the courtroom—make open discussion of the judicial system very difficult. This, in turn, curtails critical reporting where abuses in the legal process may be widely suspected. A Thaksin lawyer was charged with contempt of court for his criticisms of some 2006 verdicts concerning the Election Commission.⁵¹ Successive Thai governments have always complied with judicial decisions.

All career judges must be qualified as barristers, have a minimum of two years of legal experience, and pass a difficult and competitive examination before being appointed as trainee judges for a trial period of one year. There is no jury system, and notes dictated by judges themselves often constitute the only formal record of court proceedings, a practice that makes appeals difficult to substantiate. Judges are generally held in high regard in Thai society. In a major policy statement, the Surayudh government identified the “nonpolitical” professional judiciary (in contrast with judges of the Constitutional Court, whose appointments have been politicized) as the most dependable institution in Thailand.⁵² Relative to other Thai institutions, the judiciary has a clean and positive image, but the Supreme Court has been harshly criticized in recent years for a series of decisions negatively impacting pro-Thaksin political forces.

Article 39 of the 2007 constitution specifies that criminal suspects are presumed innocent until convicted. Citizens have the right to a fair trial with independent counsel. Despite these provisions, extrajudicial killings have taken place in recent years, notably in the southern border provinces. Those accused of serious crimes are provided with lawyers by the state if they cannot afford to pay for their own defense. However, these court-appointed lawyers are often recent graduates with little experience in conducting a defense. Thammasat University runs an active

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legal aid and legal literacy program. There are persistent allegations that prosecutors are sometimes subject to political influence.

Leading politicians (including a former prime minister and the former secretary-general of the ruling Democrat Party) and senior officials have been tried on corruption-related charges by the Constitutional Court. However, Constitutional Court judgments have been criticized as erratic,⁵³ especially the controversial acquittal of Prime Minister Thaksin on charges of asset concealment in 2001.⁵⁴ Full written judgments were sometimes not published for up to a year after Constitutional Court decisions, thereby undermining the court's credibility. The post-2007 Constitutional Court was smaller than the post-1997 court, and the majority of its members were now former career judges.

The Thai military (mainly the army) has attempted and successfully staged numerous coups since the end of the absolute monarchy in 1932. Until the violence of May 1992, the military was a prominent and outspoken participant in the political processes of the country. After 1992, the military returned reluctantly to the barracks, maintaining a low profile but retaining various economic and other privileges. In the face of rising discontent with the Thaksin government and a deteriorating security situation in the south, the military grew increasingly assertive during 2005 and 2006 and finally seized power in a bloodless coup d'état on the night of September 19, 2006. Although a civilian, elected government was re-established at the beginning of 2008, the military retained considerable political influence, and was strongly aligned with the Democrat Party in 2008 and 2009.

Despite much talk of security sector reform, no substantive changes have been enacted. Civilian politicians have remained wary of interfering with the military's internal workings, despite general recognition that the armed forces are bloated (with an estimated 1,400 generals) and of doubtful professional competence. Thaksin co-opted the military, and relatives and former classmates of the prime minister were appointed to numerous key positions.⁵⁵ Legal changes following the 2006 coup curtailed the authority of politicians to intervene in military promotions, so reducing accountability. The army is now firmly controlled by a royalist faction, and is once again a major player in Thai politics.⁵⁶

Both the military and the police enjoy close relationships with a range of actors engaged in legal and illegal business activities. Making complaints against the police is difficult if not impossible in most cases.

Like the Surayud government before it, the Abhisit government has called for police reform. In 2010, Abhisit tasked the well-respected retired Police General Vasit Dejkunjorn with drawing up reform plans, but progress has been slow given the strength of vested interests involved.⁵⁷ Vasit has argued that de-politicization of the police must be a priority for any reforms to succeed. Longstanding rivalries between the police and the military may have contributed to the deteriorating security situation in the south. Police and military officers have rarely been held accountable for abuses of power or violations of human rights, which have included the use of torture and carrying out of extra-judicial killings.

Property rights are recognized in law, although in practice the system of land title deeds is complex, and many poor people do not have proper ownership of the land they farm. They often hold so-called 'possessory' deeds, or usufructuary land licenses,⁵⁸ which may be contested by rival claimants.⁵⁹ Abuse of land and contractual rights by local elites and corrupt officials is widespread in rural areas, and structural corruption in the legal system often disempowers the poor. The Economist Intelligence Unit describes Thai courts as "generally competent and effective in enforcing property and contractual rights," but notes that "extra-legal means" may

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complicate cases involving wealthy or powerful individuals.⁶⁰ Problems are exacerbated by legal provisions that allow people to sell land provisionally yet retain the right to redeem it. Many sell their land in this way, only to discover that in practice their redemption rights are almost impossible to exercise.⁶¹

The Sor Pho Kho 4-01 land reform program in the 1990s resulted in many local elites improperly obtaining lands that were supposed to be allocated to poor farmers. Local traditions of common land usage have been widely overridden by the state; the Kho Jo Ko program of the 1980s and early 1990s saw many poor farming communities forcibly evicted from lands designated as reserve forest areas, despite their having lived on them for decades or even generations.⁶²

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ANTICORRUPTION AND TRANSPARENCY

Thailand is a legalistic and bureaucratic state in which opportunities for official corruption are legion. The state is extensively involved in the economy, notably through numerous state enterprises, including the Electricity Generating Authority of Thailand, the Petroleum Authority of Thailand, the State Railway, Thai Airways International, and the Thailand Tobacco Monopoly. Privatization of state enterprises has been much discussed, but progress has been slow. Given the current structure of the economy, it seems likely that greater privatization would simply allow privileged elites further opportunities for self-enrichment.

Under Article 265 of the 2007 constitution, parliamentarians are not permitted to hold state concessions or contracts, or act as employees or shareholders of any company. In practice the provision widely flouted. Then Prime Minister Samak Sundaravej was forced out of office in September 2008, on the grounds that he had illegally hosted a television cooking show. Deputy Prime Minister Suthep Theuksuban resigned his seat in July 2009 after he was accused of violating the same provision, but Suthep never quit his ministerial post, and returned to parliament the following year. In both cases, judicial decisions were highly controversial.

Former prime minister Thaksin Shinawatra, ousted in the 2006 military coup, has been widely demonized by his opponents as a by-word for corruption and abuse of power. In February 2010, the Supreme Court resolved to seize \$1.4 billion of the \$2.2 billion Thaksin family assets seized after the coup. Thaksin is still seeking the return of this money. Thaksin himself was convicted on corruption charges in 2008, while his former wife escaped on a technicality, but has been convicted of tax evasion.

Asset declarations are required from all cabinet members, MPs, senators, and other senior elected officials. Those made by ministers (including the prime minister) are open to public and media scrutiny, but the assets declaration system has so far failed to stop endemic conflicts of interest between politicians and the business sector. Concessions allocations in Thailand typically reflect a culture of benefit sharing rather than the public interest or the interests of individual consumers.

The award of government contracts has never been open and transparent in Thailand: formal procedures are widely seen as vitiated by structural corruption. Following the controversial sale of his family company, Shin Corp., to Singapore's Temasek in January 2006, Thaksin was accused of abusing his powers as prime minister to further his business interests.⁶³ The Thaksin case has raised public awareness about the issue of conflicts of interest, but there is no culture of state intervention to regulate private sector interest conflicts. The military have often been accused of involvement in corrupt procurement practices; one notorious recent case involved large-scale purchases of GT200 'bomb detectors' which in 2010 turned out to be little more than empty plastic boxes. To date, no dismissals or prosecutions of military officers involved have taken place.⁶⁴

Transparency International rated Thailand 78 out of 163 countries assessed in its 2010 Corruption Perceptions Index, with 3.5 out of a possible 10 points.⁶⁵ However the 2010 Global Corruption Barometer found that 39 per cent of Thais surveyed thought corruption had declined in the past three years. In theory, victims of corruption may lodge complaints with the National Anti-Corruption Commission (NACC), which has extensive powers to investigate corruption by state officials, but in practice the recent performance of the agency has been patchy and there is a large backlog of investigations. A major 2009 investigation into corruption at the Ministry of

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Public Health—which culminated in the resignation of minister Withaya Kaoparadai—was conducted not by the NCC but by a taskforce appointed by the cabinet.⁶⁶ Access to higher education is generally open, although scandals concerning alleged abuses of the entrance examination system surface occasionally.⁶⁷

The original post-1997 National Anti-Corruption Commission was captured by pro-Thaksin forces during his premiership and effectively ceased to function. The new NACC, relaunched under the 2007 constitution, was widely seen as a pro-royalist entity with a primary focus on bringing Thaksin and his supporters to book. A major case of public sector corruption occurred in 2009, when Minister of Public Health Withaya Kaoparadai was forced out of office following an investigation by a cabinet-appointed independent task force.⁶⁸ The creation of this taskforce suggested that the NCCC was not the most effective agency to address a major political scandal involving corruption. At least seven counter-corruption campaigners and activists have been assassinated in recent years, and in each case the killing was linked to the abuse of state power. One of these campaigners, Police Lt Chit Tongchit, was killed a group of fellow police officers on January 15, 2009.

Collection of income taxes is uneven. In 2004 there were 6.27 million taxpayers (including corporate and value-added taxpayers), a figure the Revenue Department hopes to increase to 20 million by 2009.⁶⁹ The Revenue Department has been encouraging taxpayers to pay online, as this reduces the scope for bribery; between 60 and 70 percent of taxpayers are now doing so.⁷⁰ The Economist Intelligence Unit has suggested that up to \$3 billion (one fifth of potential revenue) may be lost annually through tax evasion.

The State Audit Commission and the auditor general have extensive authority to monitor the proper use of public funds, but in the past their effectiveness has been hampered by lack of timely cooperation on the part of the police, as well as lack of power to implement their findings. Auditor General Jaruvan Menthaka was ousted in controversial circumstances in 2004, allegedly because of her critical position concerning various mega-projects backed by leading ministers.⁷¹ Though she returned to office following the 2006 coup, she has faced repeated challenges to her authority and even over the legality of her position.

Issues concerning corruption by politicians are widely aired in the print media, although the electronic media rarely offer critical perspectives on current power-holders. Whistle-blowers do not feel secure; as media activist Supinya Klangnarong has said, there is a hierarchy of punishment in Thailand: “If you act too much, you’ll be killed. If you talk too much, you will be sued. If you’re an academic, you might be discredited.”⁷² The Abhisit government has clamped down on commentators and media practitioners who are supportive of pro-Thaksin positions.⁷³

Thailand enacted the Official Information Act in 1997. In principle, this legislation affords extensive disclosure rights to citizens, but in practice its provisions have been extensively circumvented and thwarted by government agencies.⁷⁴ In theory, the national budget is open to scrutiny by the legislature—and dozens of senior officials attend annual parliamentary sessions for this purpose—but in practice certain areas of the budget, especially relating to the military, are off-limits. Foreign assistance can be freely distributed in Thailand, although the relatively high level of economic development means that apart from long-standing support from Japan and from the Asian Development Bank, Thailand is not a major aid-recipient country.

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RECOMMENDATIONS

- Repeal the 2007 Computer Crime Act to prevent the law from being used to curtail legitimate free expression.
- Amend lèse majesté laws to ensure that they cannot be exploited for political purposes.
- Investigate the deaths of 92 people during the 2010 red shirt protests properly and independently, by creating a commission specifically charged with the task of determining who was responsible.
- Initiate a substantive program of security sector reform, with the core objective of reducing the number of generals—a problem that underpins a culture of military privilege.
- Reform land tenure laws so that wherever possible those who actually farm the land own the land, and revise laws to allow farmers to borrow money without having to hand over their land to predatory creditors.

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² See Duncan McCargo, “Thailand: State of Anxiety,” in *Southeast Asian Affairs* (2008): 348–50, http://muse.jhu.edu/journals/southeast_asian_affairs/v2008/2008.mccargo.html.

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⁴ The Journalists Association and the Southeast Asia Press Alliance, *Gagging the Thai Press* (Bangkok: The Journalists Association and the Southeast Asia Press Alliance, 2004), 23–67.

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⁶ See Prachatai, “Senior columnists at Matichon sacked for their ‘red’ stance,” April 30, 2009, <http://www.prachatai.com/english/node/1186>.

⁷ Sinfah Tunsarawuth and Toby Mendel, “Analysis of Computer Crime Act of Thailand,” May 2010, <http://thainetizen.org/sites/default/files/Analysis%20of%20Computer%20Crime%20Act%20of%20Thailand%20By%20Sinfah%20Tunsarawuth%20and%20Toby%20Mendel.pdf>.

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¹⁴ See Michael Connors, Connors, “Ambivalent about rights: democracy, coups d’etat and accidental killing machines” (Working Paper 102, City University of Hong Kong Southeast Asia Research Center, November 2009),

http://www6.cityu.edu.hk/searc/Data/FileUpload/296/WP102_09_MConnors.pdf.

¹⁵ For a recent discussion, see the special issue of *Contemporary Southeast Asia* 32, no. 2, August 2010.

¹⁶ Exact numbers of politically related deaths are difficult to establish, as Thailand has a high murder rate, and some of the killings may have been the outcome of non-political business or personal conflicts.

¹⁷ *Raingan khong khanakamaka nisara sop kho thaejing karani phu sia chiwit nai hetkan amphoe tak bai jangwat narathiwat mua wan thi 25 tulakhom 2547* [Report of the independent commission to investigate the deaths in the Tak Bai incident, 25 October 2004] (Bangkok: 2004).

¹⁸ Marwaan Macan-Markar, “Courts to Military, ‘Deaths in Custody’ Are Okay,” Inter Press Service, June 1, 2009, <http://ipsnews.net/news.asp?idnews=47050>.

¹⁹ “Thailand: Torture in the Southern Counter-Insurgency,” AI, January 13, 2009, <http://www.amnesty.org/en/library/asset/ASA39/001/2009/en/45c12270-dcd6-11dd-bacc-b7af5299964b/asa390012009eng.html>.

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