

THE BANGKOK MASSACRES:
A CALL FOR ACCOUNTABILITY

—A White Paper by Amsterdam & Peroff LLP

EXECUTIVE SUMMARY

For four years, the people of Thailand have been the victims of a systematic and unrelenting assault on their most fundamental right — the right to self-determination through genuine elections based on the will of the people. The assault against democracy was launched with the planning and execution of a military *coup d'état* in 2006. In collaboration with members of the Privy Council, Thai military generals overthrew the popularly elected, democratic government of Prime Minister Thaksin Shinawatra, whose Thai Rak Thai party had won three consecutive national elections in 2001, 2005 and 2006. The 2006 military coup marked the beginning of an attempt to restore the hegemony of Thailand's old moneyed elites, military generals, high-ranking civil servants, and royal advisors (the "Establishment") through the annihilation of an electoral force that had come to present a major, historical challenge to their power. The regime put in place by the coup hijacked the institutions of government, dissolved Thai Rak Thai and banned its leaders from political participation for five years.

When the successor to Thai Rak Thai managed to win the next national election in late 2007, an *ad hoc* court consisting of judges hand-picked by the coup-makers dissolved that party as well, allowing Abhisit Vejjajiva's rise to the Prime Minister's office. Abhisit's administration, however, has since been forced to impose an array of repressive measures to maintain its illegitimate grip and quash the democratic movement that sprung up as a reaction to the 2006 military coup as well as the 2008 "judicial coups." Among other things, the government blocked some 50,000 web sites, shut down the opposition's satellite television station, and incarcerated a record number of people under Thailand's infamous *lèse-majesté* legislation and the equally draconian Computer Crimes Act. Confronted with organized mass demonstrations that challenged its authority, the government called in the armed forces and suspended constitutional freedoms by invoking the Internal Security Act and a still more onerous Emergency Decree. Since April 7, 2010, the country's new military junta — the Center for the Resolution of the Emergency Situation ("CRES") — rules without any form of accountability, under a purported "state of emergency" that was declared improperly, implemented disproportionately, and continued indefinitely with the purpose of silencing any form of opposition to the unelected regime. Once again, the Establishment could not deny the Thai people's demand for self-determination without turning to military dictatorship.

In March 2010, massive anti-government protests were organized in Bangkok by the "Red Shirts" of the United Front for Democracy against Dictatorship (UDD). The Red Shirt rally was sixty-six days old on May 19, 2010, when armored vehicles rolled over makeshift barricades surrounding Bangkok's Rachaprasong intersection and penetrated the Red Shirts' encampment. Weeks earlier, on April 10, 2010, units had carried out a failed attempt to disperse a Red Shirt gathering at the Phan Fa Bridge, resulting in the death of twenty-seven people. At least fifty-five more people died in the dispersal of the Ratchaprasong rally between May 13 and May 19. By the time the site of the demonstrations was cleared, several major commercial buildings stood

smoldering, more than eighty people lay dead, and over fifty alleged UDD leaders faced possible death sentences on “terrorism” charges. Hundreds of other protesters remain detained, for violating the Internal Security Act and the Emergency Decree, which the Thai authorities wield in an effort to criminalize legitimate political protest.

Thailand has obligations under International Law, including treaty obligations under the International Covenant of Civil and Political Rights (ICCPR), to investigate all serious human rights violations during the Red Shirts demonstrations and, if applicable, to prosecute members of the military and its civilian chain of command for crimes such as the summary and arbitrary executions of more than eighty civilians in Bangkok in April-May 2010. The facts strongly suggest violations of International Law through a disproportionate use of force by the Thai military, prolonged arbitrary detention and disappearances, and a repressive system of political persecution that denies freedom of political participation and expression to its citizens, including the Red Shirts. There is ample evidence of serious human rights abuses to trigger an independent and impartial investigation into the facts, so that those who are guilty of international crimes may be brought to justice.

Additionally, the use of military force against the Red Shirts in April-May 2010 is the kind of systematic or widespread attack on civilian populations that might rise to the level of crimes against humanity under the Rome Statute that created the International Criminal Court in The Hague. While Thailand has not acceded formally to the Rome Statute, these kinds of attacks might warrant consideration for a referral to the International Criminal Court if they were carried out knowingly under a policy to acquiesce in or encourage unnecessary loss of life, or if they are designed to target a specific political group. There is substantial evidence that the four-year campaign of attacks against the Red Shirts is being carried out under a policy approved by the Abhisit government, and that the recent Red Shirt massacres are only the latest manifestation of that policy.

Lastly, the Thai government’s purported investigation into the Red Shirt massacres in April-May 2010 promises to be neither independent nor objective, as required by International Law. While Thailand may be guilty of additional violations of the ICCPR and of customary international law for its failures to ensure a fair and complete investigation into the massacre, international pressure is necessary to ensure its compliance and pre-empt the government’s ongoing attempts to whitewash the incidents.

There is no dispute that Thailand must move beyond violence and work toward reconciliation. Reconciliation, however, necessarily begins with the restoration of the Thai people’s fundamental right to self-governance; moreover, it requires full accountability for serious human rights violations committed in the attempt to repress that right. International Law mandates nothing less.

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PROLOGUE

In 1998, I founded the Thai Rak Thai party on the heels of the first genuinely democratic Constitution ever adopted in Thailand. This new document, called the People's Constitution, gave the Thai masses genuine representation in the electoral process for the first time. As Prime Minister, I always tried to implement the public policies I advocated while campaigning, and the majority of Thais, I believe, approved of the fact that their voices were considered. This is why the Thai Rak Thai was so popular and strong.

In 2006, the coup took away our right to vote, which offended most Thais and made many people stand up in opposition. But instead of listening to these voices, the cabal has tried to eliminate them. These ambitions are noxious, and offend the human spirit.

Consequently, I have asked Amsterdam & Peroff to examine the Red Shirt demonstrations to tell us whether the events on April 10 and May 19, 2010 comported with standards of International Law. I have also asked them to examine the systematic assault against the political movement behind the Red Shirts, and the significance of those events under International Law. The world must understand that true democracy is under attack in Thailand.

Within that context, I am fully convinced that elections will come soon. However, if elections are to be a predicate for reconciliation, they must fairly address the fundamental concerns surrounding empowerment of the people and the restoration of Thailand as an inclusive democratic state. At the same time, we must all renounce violence as a vehicle for achieving political objectives. Inclusiveness is, by definition, a peaceful state of affairs.



Dr. Thaksin Shinawatra

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1. INTRODUCTION

For four years, the people of Thailand have been the victims of a systematic and unrelenting assault on their most fundamental right — the right to self-determination through genuine elections based on the will of the people. The assault against democracy was launched with the planning and execution of a military *coup d'état* in 2006. In collaboration with members of the Privy Council, Thai military generals overthrew the popularly elected, democratic government of Prime Minister Thaksin Shinawatra, whose Thai Rak Thai party had won three consecutive national elections in 2001, 2005 and 2006. The regime put in place by the coup hijacked the institutions of government, dissolved Thai Rak Thai and banned its leaders from political participation for five years. When the successor to Thai Rak Thai managed to win the next national election in late 2007, an *ad hoc* court consisting of judges hand-picked by the coup-makers dissolved that party as well and banned its leaders from politics for five years. Abhisit Vejjajiva currently holds the office of Prime Minister only because the parties that won the last four democratic elections were dissolved.

The 2006 military coup marked the beginning of an attempt to restore the hegemony of Thailand's old moneyed elites, military generals, high-ranking civil servants, and royal advisors — groups this paper collectively refers to as the Establishment. The restoration of Thailand's *ancien régime* entailed first and foremost the annihilation of Thai Rak Thai, an electoral force that had come to present a major, historical challenge to the Establishment's power. Subsequently, it required that the Establishment stop at nothing to extirpate the movement for democracy that emerged as a result.

Thai Rak Thai was the first political party in the history of Thailand to have earned a popular mandate to govern the country, interrupting a long-standing tradition of weak coalition governments serving at the pleasure of the Establishment. Thanks to its empowerment of constituencies long relegated to the margins of the country's political life, Thai Rak Thai enjoyed unprecedented levels of popular support, such that it felt no need to surrender to the Establishment any of the powers that the Constitution vested in the elected government. Its administration therefore set out to assert its control of the policymaking process, place the military under civilian control, and dismantle the networks of patronage through which powerful members of the Privy Council had exerted their influence over the bureaucracy, the courts, and the armed

forces. Both prongs of the “dual track” economic platform that Thai Rak Thai rapidly implemented as a result of its electoral dominance, moreover, alienated the support of Bangkok’s business elites. Whereas Thai Rak Thai’s free market agenda threatened to expose large business conglomerates to increased competition, the popularity of programs addressing the needs of provincial farmers and poor urban dwellers rendered the government increasingly impervious to the pressure exerted by the Establishment’s key players.

Unable to remove or undermine the elected administration by any other means, the military took the extraordinary step of deploying its tanks and its Special Forces to reclaim the country from the representatives of the people.

Since the coup, the Establishment has sought to consolidate its political power while retreating behind a façade of constitutional democracy. Its relentless campaign to erase Thai Rak Thai from the country’s political landscape was designed to ensure that elections would return to produce weak civilian governments subservient to the interests of the Establishment. Failing that, the Establishment could now rely on Thailand’s highly politicized judicial branch — empowered by the 2007 Constitution to overturn the results of freely conducted elections — to confer upon the potential removal of elected governments a semblance of legality.

Thanks to its control of the courts, the partial success of its campaign to weaken Thaksin’s legislative coalition, and the chaos wreaked by its extra-parliamentary wing — the People’s Alliance for Democracy (“PAD”) — the Establishment managed to install Abhisit Vejjajiva in the Prime Minister’s office. Abhisit’s administration, however, has since been forced to impose an array of repressive measures to maintain its illegitimate grip and quash the democratic movement that sprung up as a reaction to the 2006 military coup as well as the 2008 “judicial coups.” Among other things, the government blocked some 50,000 web sites, shut down the opposition’s satellite television station, and incarcerated a record number of people under Thailand’s infamous *lèse-majesté* legislation and the equally draconian Computer Crimes Act. Confronted with organized mass demonstrations that challenged its authority, the government called in the armed forces and suspended constitutional freedoms by invoking the Internal Security Act and a still more onerous Emergency Decree. Since April 7, 2010, the country’s new military junta — the Center for the Resolution of the Emergency Situation (“CRES”) — rules without any form of accountability, under a purported “state of emergency” that was declared improperly, implemented disproportionately, and continued indefinitely with the purpose of silencing any form of opposition to the unelected regime. Once again, the Establishment could not deny the Thai people’s demand for self-determination without turning to military dictatorship.

In March 2010, massive anti-government protests were organized in Bangkok by the “Red Shirts” of the United Front for Democracy against Dictatorship (UDD). The Red Shirt rally was sixty-six days old on May 19, 2010, when armored vehicles rolled over makeshift barricades surrounding Bangkok’s Ratchaprasong intersection and

penetrated the Red Shirts' encampment. This was the second clearing operation carried out by the Royal Thai Army. Weeks earlier, on April 10, 2010, units had botched an attempt to disperse a Red Shirt gathering at the Phan Fa Bridge, resulting in the death of twenty-seven people. At least fifty-five more people died in the dispersal of the Ratchaprasong rally between May 13 and May 19. In the face of inevitable defeat, the UDD leaders quickly called off the demonstrations and surrendered to the police.

Hundreds of eyewitness accounts and thousands of video clips have documented the systematic use of live fire by the Thai security forces against unarmed civilians — including journalists and emergency medical personnel — in April and May. By the time the site of the demonstrations was cleared, several major commercial buildings stood smoldering, more than eighty people lay dead, and over fifty alleged UDD leaders faced possible death sentences on “terrorism” charges. Hundreds of protesters remain detained for violating the Internal Security Act and the Emergency Decree, which the Thai authorities wield in an effort to criminalize legitimate political protest. Many among them are held without charge and were stripped of their right to due process. Meanwhile, the number of pending arrest warrants could be as high as eight hundred, while the authorities have frozen the assets of at least eighty-three supposed UDD cadres and financiers. Disturbingly, a series of local Red Shirt leaders have since turned up dead in the provinces of Chonburi, Korat, and Pathum Thani.

Against these tragic events — the culmination of a four-year campaign to bend the will of the people to the commands of the Establishment — this White Paper has three related but distinct objectives:

The first objective is to highlight Thailand's obligations under International Law, including treaty obligations under the International Covenant of Civil and Political Rights (ICCPR), to investigate all serious human rights violations during the Red Shirts demonstrations and, if applicable, to prosecute members of the military and its civilian chain of command for crimes such as the summary and arbitrary executions of more than eighty civilians in Bangkok in April-May 2010. The facts strongly suggest violations of International Law through a disproportionate use of force by the Thai military, prolonged arbitrary detention and disappearances, and a repressive system of political persecution that denies freedom of political participation and expression to its citizens, including the Red Shirts. There is ample evidence of serious human rights abuses to trigger an independent and impartial investigation into the facts, so that those who are guilty of international crimes may be brought to justice. Given the four-year history of antagonism against the Red Shirt movement, it is reasonable to insist upon a proper examination into the facts — through independent and impartial bodies — so that those responsible are held accountable, as required by International Law.

The second purpose relates to Thailand's duty to investigate potential human rights violations in the area of political rights. After the 2006 coup, and during Mr. Abhisit's time as Prime Minister, military-backed administrations have attempted to consolidate their power by suppressing the Red Shirts' voice of political opposition. Among other things, the movement's suppression has involved systematic and widespread violent

attacks against unarmed civilians that might rise to the level of crimes against humanity under the Rome Statute that created the International Criminal Court in The Hague. While Thailand has not acceded formally to the Rome Statute, these kinds of attacks might warrant consideration for a referral to the International Criminal Court if they were carried out knowingly under a policy to acquiesce in or encourage unnecessary loss of life, or if they are designed to target a specific political group. There is substantial evidence that the four-year campaign of attacks against the Red Shirts is now being carried out under a policy approved by the Abhisit government, and that the recent Red Shirt massacres are only the latest manifestation of that policy.

This paper examines the recurrence of violence in Thailand — including the military operations in April and May 2010 as well as the crackdown of April 2009, when at least two people were killed — in light of the guarantees contained in the ICCPR. The evidence is ample enough to warrant a proper investigation — again, through independent and objective bodies — into the criminal implications of this form of political persecution under International Law.

The third objective of this White Paper is to assert the international treaty rights of several hundred UDD members facing criminal charges in connection with their roles in the Red Shirt demonstrations. The International Convention on Civil and Political Rights guarantees a fair defense in Thailand, including the right to choose one's own counsel, to prepare a defense with adequate time and facilities, and to receive equal access to the evidence.¹ The accused have a right to examine the evidence independently, through their own experts and lawyers, under the same conditions as the government, and to assemble the evidence affirmatively in their own defense.²

In response to the international outcry over the violence in April and May, Mr. Abhisit announced a roadmap for reconciliation and formed an official investigative committee to look into the violence. The glaring omission from Mr. Abhisit's roadmap, however, is genuine independence and impartiality in the process of self-examination. The man appointed to lead the investigative committee, former Attorney General Khanit na Nakhon, almost immediately told the press that he was more interested in "promoting forgiveness" than in learning the facts.³ This kind of gentile glossing-over might keep with the traditional Thai approach to reconciliation, which gave amnesty to the killers of hundreds of pro-democracy demonstrators in 1973, 1976 and 1992, but it does nothing to inquire into the true facts or promote actual reconciliation.

Indeed, several factors suggest that international involvement may be necessary to secure an independent and impartial investigation into each of the potential human rights abuses. First, the government is unlikely to compromise its tenuous grasp on political power by exposing its military and civilian leaders to prosecution for

¹ International Covenant on Civil and Political Rights ("ICCPR"), Article 14, including sections 3(b) and 3(e).

² ICCPR, Art. 14, Sec. 3(e).

³ "Deaths Probe 'Won't Cast Blame'," *Bangkok Post*, June 12, 2010.

<http://www.bangkokpost.com/news/local/38619/deaths-probe-won-t-cast-blame>

international crimes. Second, the prolonged detention and the disregard for the due process rights of hundreds of Red Shirts the government prejudged as “terrorists” calls into question the fairness of its probe. Third, Abhisit’s investigative committee serves at the pleasure of the Prime Minister and has no clear mandate to investigate or prosecute the government, while its ability to uncover the truth is hindered by regulations issued under an Emergency Decree that seems likely to remain in effect for much of the duration of the committee’s activities. Finally, the Thai regime’s analysis of the evidence promises to be as tendentious and unreliable as it proved to be every time it has investigated itself. The government’s unwavering reliance on investigators chosen for their partisanship rather than their expertise taints the entire inquiry. A biased, partial investigation subservient to the interests of the military regime amounts to no investigation at all.

There is no dispute that Thailand must move beyond violence and work toward reconciliation. Reconciliation, however, necessarily begins with the restoration of the Thai people’s fundamental right to self-governance; moreover, it requires full accountability for serious human rights violations committed in the attempt to repress that right. International Law mandates nothing less.

2. THAILAND’S PATH TO CONSTITUTIONAL DEMOCRACY

Thailand has ostensibly been a “democracy” since the country’s absolute monarchy was replaced with a constitutional regime in 1932, during the reign of King Prajadhipok. In fact, with the exception of a period of harsh military dictatorship (1958-1969), Thailand has held regular legislative elections since the 1932 Revolution. Ever since, however, power has most often changed hands not through constitutionally mandated procedures for government alternation, but rather through military coups that would replace the Constitution and government of the day with a military-sponsored Constitution and military-appointed government. Post-coup d’état constitutions have commonly been drafted so as to favor the continued dominance of the group that carried out the putsch — whether the coup-makers intended to exercise power directly or indirectly, through the use of proxies or the manipulation of weak civilian governments. That arrangement would typically remain in force until a different group of military men staged another coup and introduced a new Constitution designed to enshrine into law the new balance of power.⁴ This general trend persisted — through eleven successful military coups, fourteen constitutions, and several more thwarted plots and failed rebellions — from June 1932 until May 1992.

Throughout this time, Thailand only experienced three brief “democratic” interludes rooted in freedom of expression and genuine electoral competition — the first

⁴ Pinai Nanakorn, “Re-Making of the Constitution in Thailand,” *Singapore Journal of International & Comparative Law*, 6(2002): 90-115, p. 93.

following the introduction of the 1946 Constitution, the second after the mass protests of 1973, and the third after the election to Prime Minister of Chatichai Choonhavan in 1988. In all three instances, the democratically elected governments were overthrown at the barrel of a gun, through military force, and were replaced with regimes better suited to protect the Establishment's power as well as its vast economic interests.

With the exception of these brief periods, since 1932 Thailand has been ruled by regimes that embodied different mixtures of democracy and authoritarianism. What all these regimes had in common, however, is that a network of officials in the civilian and military bureaucracy (*amartaya*, in Thai) served as the locus of real political power — not the country's elected officials. The people's representatives have typically enjoyed some independence — increasingly so over the past three decades — but under *amartayathipathai* (the term designating a system of government dominated by the *amartaya*; often contrasted with *prachathipathai*, or democracy) elected governments have never been accorded the right to place the military under civilian control and take charge of the policy-making process. In fact, the idea of “Thai-style democracy” that has been purveyed by the Thai state since at least the late 1950s designates a form of government where elections do take place but severe restrictions are placed on the freedoms enjoyed by the country's citizens and the scope of the powers exercised by elected officials. This system of government, founded on the passive acquiescence of the vast majority of the Thai population, preserves the authority of the military, the bureaucracy, big business, and a coterie of royal advisors (collectively, the “Establishment”) to set most national policy. The Establishment presides over a rigidly hierarchical society stratified on the basis of wealth, education, ethnicity, and birthright.

The sequence of events that followed the replacement of Prime Minister Chatichai Choonhavan with a military junta led by General Suchinda Kraprayoon in 1991 marked a decisive disruption in hegemony of the unelected Establishment over Thailand's political system. The massive popular protests against Suchinda's rise to Prime Minister, after the ostensibly “democratic” elections held in March 1992, led to historic, violent clashes between civilians and military forces between May 17-20. Dozens of demonstrators demanding Suchinda's resignation and a return to democracy were brutally murdered by the military during “Black May” 1992. Suchinda eventually resigned following the King's public intervention, paving the way for new elections in September 1992.

The tragic events of “Black May” placed the country on the path to becoming a real “democracy with the King as Head of State,” setting in motion a five-year process of reform that culminated in the promulgation of a new Constitution on October 11, 1997. Given the highly participatory nature of the process leading to its adoption as well as its unambiguously democratic content, the 1997 Constitution has since been known as the “People's Constitution.”

The 1997 Constitution ushered in a new era of political inclusiveness in Thailand. For the first time in the country's history, a Constitution drafted and approved by

representatives of the people — not one imposed from above — promised to usher in era of true democracy, transparency, and accountability. The Constitution offered the Thai people a series of human rights and civil liberties that previous charters had failed to acknowledge. It imposed several mechanisms — including elections for members of both legislative chambers, a party-list electoral format to accompany the traditional constituency system, and the creation of an Election Commission — designed to both guarantee the people a fully representative government and to create a level playing field for candidates, while preserving the fairness and honesty of elections.⁵ Significantly, the 1997 Constitution prohibited the exercise of rights or liberties to overthrow the democratic regime, and it barred any attempt “to acquire the power to rule the country by any means which is not in accordance with the modes provided in this Constitution.”⁶ In addition, it prohibited its own amendment except in accordance with specifically prescribed procedures.⁷

The 1997 Constitution created unprecedented political stability. It is important to note that it was adopted during a period of severe financial and economic crisis in Thailand, as declining export growth and concerns over the health of the financial sector triggered sudden and massive capital outflows, culminating in a currency crisis in late 1997.⁸ In the face of public dissatisfaction with the government’s inability to improve the state of the country’s economy, a twelfth successful coup d’état might have been expected. Yet the 1997 financial crisis did not lead to a political crisis. Thailand’s commitment to a future as a real constitutional democracy finally appeared secure.⁹

The 1997 Constitution also imposed a new political strategy. Previously, weak and fragmented political parties depended on local notables and their patronage networks to mobilize support in most of the country’s electoral districts, given their scarce programmatic content and the faint appeal of party labels. Thanks to its system of checks and balances, its anti-fraud measures, and the new provisions that strengthened the power of the executive branch by making the elected Prime Minister less vulnerable to factional defections, the 1997 Constitution created an opening for the rise of new political leaders seeking to establish strong, national parties based on a clear programmatic agenda that might appeal to voters throughout the country. This was the environment that enabled Thaksin Shinawatra to establish and lead Thai Rak Thai to unprecedented electoral success in 2001 and 2005, capturing the imagination of millions and giving voice to the political force that presently stands in firm opposition to Abhisit Vejjajiva’s administration.

⁵ Ibid., p. 107-09.

⁶ Constitution of the Kingdom of Thailand, BE 2540 (1997) (hereinafter the “1997 Constitution”), Section 63.

⁷ Ibid., Section 313.

⁸ Pansak Vinyaratn, *21st Century Thailand, Facing the Challenge, Economic Policy & Strategy* (Hong Kong: CLSA Books, 2004), p. 1.

⁹ Chaturon Chaisang, *Thai Democracy In Crisis: 27 Truths* (Bangkok: A.R. Information & Publication Co. Ltd., 2009), p.37.

3. THE RISE OF THAI RAK THAI

Thaksin Shinawatra was born in 1949, in the northern province of Chiang Mai. He graduated first in his class from the Thai Police Cadet Academy in 1973 and served as a police officer for fourteen years, eventually earning the rank of Lieutenant Colonel. During this period, he received government scholarships to pursue a Master's degree and a Doctorate in criminal justice from Eastern Kentucky University and Sam Houston University in Texas, before returning to Thailand.

In 1983, while serving as a police officer, Thaksin founded Shinawatra Computer and Communications Group with his wife and brother-in-law. After leaving the police force in 1987 and dedicating his full attention to business, his company grew into Shin Corp. In the 1990s, the company pioneered Thailand's nascent mobile telecommunications industry. In 1994, the year he entered politics, Forbes estimated Thaksin's net worth at \$1.6 billion, most of it made as a result of the successful public offering of several companies within the Shin Corp group.

Thaksin entered Thai politics by joining the Chuan administration in 1994, when he was appointed Foreign Minister as a member of Maj.-Gen. Chamlong Srimuang's party, Phalang Dharma. He subsequently served short stints as Deputy Prime Minister in the governments of Banharn Silpa-archa (1995-1996) and Chavalit Yongchaiyudh (1997). On July 14, 1998, he officially formed Thai Rak Thai, together with twenty-two other founding members. Under Thaksin's leadership, the party would soon achieve a measure of success never before enjoyed by an electoral organization in Thailand.

In an attempt to tackle the 1997 financial crisis, the Thai government had sought assistance from the IMF. In exchange for its seventeen billion dollar rescue package, the IMF imposed financial reforms, privatizations, and other measures designed to attract foreign direct investment.¹⁰ Initially, the reforms ushered in a deep recession, lower wages, and higher unemployment — damaging the livelihood of farmers and workers most severely.¹¹ Themselves hit hard by the crisis, Bangkok's business elites joined a burgeoning nationalist campaign against the IMF and the ruling Democrat Party. Prime Minister Chuan Leekpai came under attack from multiple fronts. Big business, academics, and civil society organizations berated him for wrecking the economy, for outsourcing national policy, and for allowing foreign interests to scoop up valuable Thai assets at bargain-basement prices.¹²

During the run-up to the election in January 2001, Thaksin's Thai Rak Thai addressed these issues head-on. The party's platform placed a keen focus on the economy, public

¹⁰ Pasuk Phongpaichit and Chris Baker, *Thailand's Crisis* (Chiang Mai: Silkworm, 2000).

¹¹ Kevin Hewinson, "Thailand: Class Matters," in *East Asian Capitalism: Conflicts, Growth and Crisis*, *Annali della Fondazione Giangiacomo Feltrinelli*, no. XXXVI, ed. L. Tomba (Milan: Feltrinelli, 2002), 287-321.

¹² Pasuk Phongpaichit and Chris Baker, *Thailand's Boom and Bust* (Chiang Mai: Silkworm, 1998), Ch. 12.

health, education, and energy. At the same time, Thai Rak Thai's social welfare proposals and its rural development platform proved extraordinarily popular among the country's urban working class and provincial farmers. These constituencies had characteristically suffered the most from the crisis, but their needs had largely been ignored by the Chuan administration.

By the standards of a country accustomed to coalition governments made up of as many as sixteen political parties, Thai Rak Thai won the 2001 general election — the first under the 1997 Constitution — in a landslide, winning 248 of the five hundred seats in the House of Representatives. For the first time in Thai history, a party had come close to an outright parliamentary majority. As a result, Thaksin was appointed the twenty-third Prime Minister of Thailand.

Thai Rak Thai's victory at the ballot box and the subsequent expansion of its legislative contingent ushered in an unprecedented situation. Thailand's traditional Establishment — members of the Privy Council, the army leadership, senior bureaucrats, senior members of the judiciary and business leaders who had amassed wealth in the pre-Thaksin political environment — had initially supported Thaksin's rise enthusiastically. But if the legitimacy of a strong parliamentary majority put the Prime Minister in a position to push through Thai Rak Thai's policies without the need to bargain with or seek approval from Thailand's Establishment, the strength of his electoral appeal threatened the power to make national policy the *amarthaya* have exercised throughout the time Thailand has ostensibly been a "democracy."

Thailand's Establishment had previously maintained its dominance over the country's political system — and had continued to enjoy the lavish benefits that their control of government guaranteed — thanks to a strategy of "divide and conquer." The extreme fragmentation of the country's party system had invariably prevented the rise of a cohesive organized force that could challenge the Establishment's extra-constitutional authority based on the strength of its electoral backing. The 2001 elections had given Thaksin an unprecedented measure of mass support, which he used to implement the agenda he had promised he would pursue. During his first fiscal year in power, he formally initiated each of the policies proposed in the run-up to the 2001 elections, something that had never occurred previously in Thai politics.¹³ Thaksin went on to become the first Prime Minister in Thai history to complete a full parliamentary term. Thai Rak Thai campaigned for the 2005 elections with a follow-up policy platform under the slogan "Four Years to Get it Right, Four Years to Build."¹⁴ As a result, the general election held on February 6, 2005 yielded an even larger landslide victory; after the 2005 elections, Thai Rak Thai controlled seventy-five percent of the seats in the House of Representatives. The largest opposition party, the Democrats, lost a quarter of their seat share, now reduced to less than twenty percent of the total. For Thailand, Thaksin's re-appointment as Prime Minister was another first.

¹³ Chaturon, op. cit., fn. 12, p.17.

¹⁴ Ibid., p.3.

Whereas many in Thailand's Establishment had seen Thaksin as something of a potential savior in the wake of the Asian Crisis, which destroyed a sizable portion of their wealth, by the beginning of his second term in office Thaksin had evolved into a severe threat to their economic interests and their political authority. By 2005, Thaksin had not only asserted his dominance over Thailand's electoral arena; his unprecedented popularity gave him the opportunity to move aggressively in the direction of claiming from the old Establishment constitutional prerogatives that civilian Prime Ministers had never managed to exercise, never mind the fact that most of Thailand's constitutions had at least formally vested such powers in the elected government.

Thaksin's administration posed several distinct threats to the four major groups that collectively comprise Thailand's Establishment: 1) Bangkok's moneyed business elites; 2) Top military men; 3) High ranking civil servants; and 4) A small group of the King's closest advisors.

Bangkok's business elites, whom Thaksin had courted aggressively during his first run for Prime Minister, turned against Thai Rak Thai's administration because of the focus that its economic policies had placed on farmers and the urban poor as well as its emphasis on free trade. His opponents said explicitly that the "objective is to campaign against Thaksinomics."¹⁵

Ironically, while Thaksin is often attacked for his "populism" (more recently, the Red Shirts have been described as "Marxists"), it was his promotion of free trade that most annoyed the wealthy. Economic historian Suehiro Akira described Thailand's postwar economy as being dominated by a few dozen "client capitalist" families that achieved and maintained virtual monopolies over large sectors of the economy thanks to their connections with influential state officials. In exchange for great personal wealth, powerful officials in the civilian and military bureaucracy have consistently made sure that large domestic conglomerates would benefit from favorable fiscal policies, a weak labor movement, and the state's protection from both domestic and international competition.¹⁶

The Asian Crisis had plunged many of these families into debt, forcing them to give up large portions of their economic empires to foreign investors. The Thai government had rescued the big business in early 2001 by establishing the National Asset Management Corporation to buy \$1.2 billion in non-performing loans made by state and private.¹⁷ Many of these loans were still underperforming in 2005 and the

¹⁵ "New Parties Sprouting Already," *The Nation*, May 17, 2006.

http://nationmultimedia.com/2006/05/17/headlines/headlines_30004216.php

¹⁶ Suehiro Akira, *Capital Accumulation in Thailand, 1855-1985* (Chiang Mai: Silkworm Books, 1996), p. 170.

¹⁷ See Cynthia Pornavalai, "Thailand: Thai Asset Management Corporation," *Mondaq Banking and Financial*, March 6, 2002.

<http://www.mondaq.com/article.asp?articleid=15878>

borrowing companies had huge bank arrears.¹⁸ With Thaksin in office, Bangkok's business elites — who had traditionally relied on their political leverage to protect their economic interests — now risked losing their influence over the government and other state institutions, placing them in a weaker bargaining position as they negotiated with the banks over their arrears. In addition, the emphasis that Thai Rak Thai's economic policies placed on the promotion of free trade threatened to expose domestic business conglomerates to real competition — something they had never been accustomed to facing.¹⁹ The families controlling some of Thailand's largest economic empires — among them Bangkok Bank, Kasikorn Bank, Thai Beverage, and TPI Polene — became fierce opponents of Thaksin.

In addition to Thailand's "client capitalists", Thaksin's policies threatened the network of state officials (or *amarthaya*) who had traditionally guaranteed these families' dominance over the Thai economy. On the one hand, Thaksin's attempt to weaken the power of the military, the bureaucracy, and the Privy Council to set national policy further eroded the protections from competition that business elites had traditionally enjoyed thanks to their association with the *amarthaya*. On the other hand, Thaksin's determination to relegate unelected institutions to the non-political role mandated by the constitution threatened the influence as well as the revenue streams of the *amarthaya*.

Career bureaucrats were perhaps the constituency that turned most rapidly on Thaksin's administration. From the very beginning, Thaksin had defined his candidacy in direct contrast to the figures of the bureaucrat and the career politician. Upon taking office, the implementation of Thai Rak Thai's programs required that the government take direct charge of the policymaking process, which had typically been in the hands of unelected civil servants. In an effort to assert his government's control over the design and the implementation of the new policies, Thaksin marginalized top-ranking civil servants through both the empowerment of political appointees and a comprehensive package of reforms that created six new ministries in an effort to streamline the bureaucratic process, increase its efficiency and ensure its responsiveness to the directives coming from the elected government.²⁰

Unlike career bureaucrats, Thaksin had made strong efforts to earn the support of the military.²¹ At the time Thaksin took office, the military still suffered from the disrepute its leaders had brought onto the institution during the events of Black May 1992. Because of Thailand's history, however, the generals remained a powerful constituency

¹⁸ See Pachorn Vichyanond, "Crucial Transitions in Thailand's Financial System After the 1997 Crisis," Brookings Institution Asian Economic Panel 2007. http://www.brookings.edu/~media/Files/Programs/Global/asian_economic_panel/2007_Vichyanond.pdf

¹⁹ George Wehrfritz, "All Politics Isn't Local: The Real Enemy of Demonstrators Threatening to Shut Down the Country is Globalization," *Newsweek*, September 6, 2008. <http://www.newsweek.com/2008/09/05/all-politics-isn-t-local.html>

²⁰ Pasuk Phongpaichit and Chris Baker, *Thaksin* (Chiangmai: Silkworm, 2009), pp. 184-188.

²¹ *Ibid.*, pp. 176-184.

that the elected administration could ill-afford to ignore. The military's budget, which has suffered massive cuts after the Asian Crisis, was gradually increased during Thaksin's first term — from 71.3 billion baht in 2000 to an estimated 86.7 billion in 2006.²² At the same time, however, Thaksin attempted to place the military under firmer civilian control. On the one hand, he invested unprecedented amounts of money in education, health care, and infrastructure, resisting calls for greater increases in military expenditures — an idea of what the generals wanted is offered by the thirty-five percent increase in the military's budget that the junta authorized in the wake of the coup.²³ On the other hand, Thaksin used regular reshuffles to favor men he perceived to be more loyal to the elected administration and himself — angering many top-level officers who resented being passed over for promotions or saw future prospects for career advancement compromised.²⁴

The opposition of a network of palace advisors led by Privy Council President Prem Tinsulanonda, however, was perhaps most decisive to Thaksin's eventual removal. For Prem and his allies, the issue was the erosion of political power that went along with Thaksin's systematic attempt to dismantle the patronage network through which palace associates wielded enormous power over virtually every aspect of government.²⁵ Thaksin's attempts to assert the government's control of the military and civilian bureaucracy, as well to reduce Prem's influence on the courts and independent government agencies, were a major factor to the Privy Council's opposition. In 2006, having secured the promotion of General Sonthi Boonyaratglin to the position of army chief, Prem began to plan the coup behind the scenes and mounted an unprecedented public campaign against the government — one that specifically aimed at weakening the loyalty of the armed forces to the elected leadership.²⁶

An important unwritten rule had governed Thailand's real politics since World War II — that is, civilian governments were tolerated only so long as they were weak, internally divided, deferential to *amartaya* in the military, the bureaucracy, and the Privy Council, and subservient to the interests of Bangkok's business elites. Any government that had attempted to do anything different had been systematically undermined and, failing that, forcibly removed by the military. Thaksin not only violated this informal rule by unapologetically committing himself to governing the country. The completion of his first mandate as Prime Minister and the back-to-back landslide election victories achieved thanks to the massive popular support enjoyed by his policies threatened to transform Thailand's political landscape by depriving the country's unelected Establishment of the extra-constitutional powers it had long

²² SIPRI, "The SIPRI Military Expenditure Database 2010."

<http://milexdata.sipri.org/result.php4>

²³ "Junta at Risk of a Backlash over Lucrative Benefits," *The Nation*, April 5, 2007.

http://nationmultimedia.com/2007/04/05/politics/politics_30031147.php.

²⁴ Pasuk and Baker, *op. cit.*, fn. 23, p. 183.

²⁵ See Duncan McCargo, "Network Monarchy and Legitimacy Crises in Thailand," *Pacific Review*, 18(2005): 499-519.

²⁶ "Military 'Must Back King'," *The Nation*, July 15, 2006.

http://www.nationmultimedia.com/2006/07/15/headlines/headlines_30008782.php

claimed for itself. Given the advanced age of some among the *amarthaya's* most charismatic leaders, the Establishment resolved that quick and decisive action was required to annihilate Thai Rak Thai and destroy the most severe challenge that their authority had faced in decades.

4. ROAD TO THE 2006 COUP

In response to the assertion of Thai Rak Thai's dominance over the country's political system, the various components of Thailand's Establishment launched a multi-pronged offensive designed to restore their prominence before it was too late. They lent support to mass protests designed to create an atmosphere of chaos that could justify the re-imposition of military rule in Thailand. They also fostered allegations of *lèse-majesté* (tort against the King), which are taken extremely seriously in Thailand. When these strategies failed, they resorted to the traditional remedy, a military coup.

The campaign to oust Thaksin and Thai Rak Thai developed in earnest after the 2005 general elections. One prominent leader amongst Thaksin's opponents was media tycoon Sondhi Limthongkul, once one of the Prime Minister's most ardent supporters, who accused Thaksin's administration of authoritarianism and systematic abuses of power. Sensationally, Sondhi grounded his calls for Thaksin's removal in the imperative to protect the King from the Prime Minister's secret republican designs.

In Thai law and society, the King enjoys semi-divine status and is greatly revered by the population. The most recent Constitution states that the King "shall be enthroned in a position of revered worship." Even the display of indirect disrespect for the monarchy may be grounds for prosecution for the crime of *lèse-majesté*, punishable with a period of incarceration ranging between three to fifteen years for each count.

More ominous still, the argument that the Prime Minister posed an imminent danger to the prestige of the monarchy, if not its existence, was similar to the excuse that had led to the removal and banishment from the country of some of the most illustrious among Thaksin's predecessors. False accusation of regicide and contempt for the monarchy were the basis for the character assassination and the permanent exile of Pridi Banomyong — one of the leaders of the 1932 Revolution and hero of the underground resistance against the Japanese during World War II. Police Director-General Phao Sriyanond and Field Marshal Phibulsongkhram were overthrown and banished from the country by the third member of the then "triumvirate" of dictators, Field Marshal Sarit Thanarat, on the grounds that they posed a danger to the survival of the institution. In 1991, similar implications could have been deduced from the charge that deposed Prime Minister Chatichai Choonhavan had attempted to establish a "parliamentary dictatorship" so dangerous to compel the generals of the National Peace-Keeping Council to stage a coup d'état. In Thailand, accusations of disloyalty to the monarchy are the most common foundation upon which to base attempts to

discredit, imprison, banish, and assassinate those whose political ideas threaten entrenched powers.

Time and again, at least since Sarit's 1957 coup the existence of supposed threats against the monarchy has served as the justification for military coups and extended periods of military rule — the supposed basis of Sarit's 1958 "revolution," Thanom Kittikachorn's 1971 self-coup, the authoritarian reversal-cum-massacre of 1976, and Chatchai's removal in 1991. Upon coming to power in 1957, twenty-five years after the absolute monarchy had been deposed, Sarit was the first military dictator to ground his personal claim to political legitimacy in the imperative to defend the monarchy, as well as to dedicate himself to the restoration of the prestige, the inviolateness, and the public's veneration of the institution. Since then, the *amarthaya* have transformed the need to protect the monarchy from threats both real and imaginary into an incontestable argument — one specifically designed to justify the exercise of powers that no constitution ever formally granted them for purposes that have little to do with actually safeguarding the throne. Since then, those who objected to the *amarthaya*'s extra-constitutional authority have consistently been demonized and slandered as the enemies of the monarchy.

In April 2005, shortly after his re-election, Thaksin presided over a ceremony at the Temple of the Emerald Buddha, usually (though not exclusively) officiated by the King. The incident sparked a furore in Thailand. While Thaksin was never formally charged, the episode helped the old Establishment once again position themselves as defenders of the King.

The event that most galvanized the opposition to Thaksin and Thai Rak Thai, however, was the sale of Shin Corp on January 23, 2006. Thaksin had previously divested his interests in Shin Corp before entering politics, as required under the law, by transferring his shares to his two eldest children. Apparently in response to accusations of conflict of interest, Thaksin's family decided to sell its 49.6% stake in the company to Temasek Holdings, Singapore's sovereign fund. After the sale, critics complained that Thaksin had sold off critical national assets to a foreign country. It was also alleged that Thaksin's children had made use of a loophole in Thailand's tax code by making the sale through offshore accounts in order to avoid paying taxes. Accusations of "selling out the country" and tax evasion became the opposition's war cry.

The timing of Shin Corp's sale was fortuitous for the opposition's purposes, coming just in advance of a planned anti-Thaksin rally scheduled for February 4-5, 2006 at the Royal Plaza. The issue allowed organizers to build some momentum, purpose and energy for the rally. More importantly, it served to crystallize Thaksin's opposition — intellectuals, NGOs, business elites, upper-middle classes, civil servants, employees of state-owned enterprises, Democrat Party activists, and supporters of demagogues such as Sondhi Limthongkul and former Thaksin mentor Chamlong Srimuang — in the People's Alliance for Democracy ("PAD"), formed a few days thereafter. Fifty thousand protesters led by Sondhi and Chamlong demanded Thaksin's resignation on February

4-5. Sondhi himself submitted a petition to the King through General Prem Tinsulanonda calling on the King to use Article 7 of the 1997 Constitution to remove Thaksin and appoint his own prime minister.²⁷ Sondhi's approach, based on a rather dubious reading of the Constitution, eschewed the more democratic constitutional protocol of parliamentary elections to select a new Prime Minister.

In response to mounting opposition, shortly after the rally at Royal Plaza Thaksin dissolved the House of Representatives and called an election for April 2, 2006. All major opposition parties boycotted the contests. As expected, the elections yielded a comfortable victory by Thai Rak Thai, which secured more than ninety percent of the seats. The opposition immediately alleged irregularities. In parts of Bangkok and in southern Thailand, Thai Rak Thai candidates won a plurality of votes, while a majority of voters cast ballots that rejected all candidates. In some southern constituencies, the vote shares of Thai Rak Thai candidates running unopposed did not exceed the required twenty percent of eligible voters, invalidating the results of those races. The PAD appealed to the Administrative Court, requesting that the election be thrown out altogether. It accused the Election Commission of violating voter privacy and levelled allegations of electoral fraud against Thai Rak Thai.²⁸ Two days after the election, Thaksin announced his resignation, staying on as caretaker Prime Minister.

On April 26, 2006, King Bhumibol spoke publicly about the elections. Addressing the Administrative Court directly, he stated:

Should the election be nullified? You have the right to say what's appropriate or not. If it's not appropriate, it is not to say the government is not good. But as far as I'm concerned, a one party election is not normal. The one candidate situation is undemocratic.

*When an election is not democratic, you should look carefully into the administrative issues. I ask you to do the best you can. If you cannot do it, then it should be you who resign, not the government, for failing to do your duty. Carefully review the vows you have made.*²⁹

Shortly thereafter, the Administrative Court cancelled by-elections that were meant to finally decide the races that had yielded inconclusive results. Subsequently, on May 8, 2006, the Constitutional Court annulled the April elections altogether and ordered new elections, which were scheduled for October. The judges, led by Jarun Pakdeetanakul and other close associates of Prem, then publicly called for the resignation of the Election Commissioners. When they refused to step down, the Criminal Court

²⁷ Oliver Pye and Wolfram Schaffar, "The 2006 Anti-Thaksin Movement in Thailand: An Analysis," *Journal of Contemporary Asia*, 38(2008): pp. 38-61.

²⁸ Simon Montlake, "Election Further Clouds Thai Leader's Future," *The Christian Science Monitor*, April 4, 2006.

<http://www.csmonitor.com/2006/0404/p06s02-woap.html>

²⁹ "His Majesty the King's April 26 Speeches," *The Nation*, April 27, 2006,

http://www.nationmultimedia.com/2006/04/27/headlines/headlines_30002592.php

sentenced them to four years in prison on charges of malfeasance, stripping them of their voting rights and their posts.³⁰

Following the King's pronouncement on the April elections, the fulcrum of the opposition to Thaksin shifted from the PAD to General Prem Tinsulanonda, the powerful President of the Privy Council. Born in 1920, Prem is one of the most remarkable figures in recent Thai history. The roots of his rise to a position of unrivalled political influence within the Thai state can be traced all the way back to 1941, when as a young cavalry officer Prem fought against Allied Forces alongside the Japanese under future dictator Sarit Thanarat.³¹ Prem's subsequent ascendance was closely linked to Sarit — widely regarded as Thailand's most brutal and corrupt military ruler. Sarit promoted Prem to the rank of Colonel and appointed him to the military-controlled Constitutional Drafting Committee in 1959. Prem also shared a close bond with vicious Thai military rulers Thanom Kittikachorn and Praphat Charusatien, who promoted him to the rank of Major General in 1971. He considered Maj. Gen. Sudsai Hasdin, the leader of the Red Guard militia responsible for the Thammasat University massacre in 1976, a close personal friend.

By September 1978, Prem had risen to the position of Deputy Minister of the Interior and Commander-in-Chief of Thailand's armed forces. Shortly thereafter, in March 1980, the National Assembly elevated him to the position of Prime Minister. Though Prem never submitted his candidacy to a popular election, he served as Thailand's Prime Minister between 1980 and 1988 — a time during which Prem survived at least two attempted military coups (in 1981 and 1985) and was confirmed twice in parliament after the 1983 and 1986 elections. Perhaps the pinnacle of his power was achieved after his resignation as Prime Minister, though, when Prem was nominated to the Privy Council, serving as Privy Council President since 1998. Over the course of a seventy-year career, Prem built a network of influence and power stretching deep into the military, the bureaucracy, and the judiciary as well as Thailand's largest business conglomerates. Among many others Prem has served on Bangkok Bank's Board of Directors and until quite recently as the Chief Advisor to the CP Group, one among the Democrat Party's main contributors.

In the wake of the Court's ruling invalidating the results of the April elections, Prem gave a series of speeches criticizing Thaksin's administration.³² Given the General's stature and authority, his public campaign appeared immediately to foreshadow Thaksin's removal from power. A contest ensued for control of the military and the state, as public reports of a possible coup began to emerge. On June 29, Thaksin spoke

³⁰ James Vander Meer, "Thaksin in the Dock," *Asia Sentinel*, August 9, 2006.

http://www.asiasentinel.com/index.php?option=com_content&task=view&id=82&Itemid=31

³¹ Paul Chambers, "The Challenges for Thailand's Arch-Royalist Military," *New Mandala*, June 9, 2010.

<http://asiapacific.anu.edu.au/newmandala/2010/06/09/the-challenges-for-thailand's-arch-royalist-military/>

³² See the news timeline at General Prem's own website:

<http://www.generalprem.com/news.html>.

to a group of civil servants — referring to Prem, he denounced the ongoing attempts made by a person with “extra-constitutional power” and no “respect for the rule of law” to undermine the government. Prominent critics immediately accused Thaksin of offending the monarchy.³³ Together with Privy Councilor and former army commander General Sarayud Chulanont, Prem consulted with top military men and visited military units. Portentously, on July 14 he reminded officers that their loyalty should not rest with the elected government, but with the King.³⁴

Several opinion polls during the interim period leading up to the scheduled October elections demonstrated that Thaksin would win again by a large margin. Tensions came to a head in August 2006, when a car packed with seventy kilograms of explosives was discovered near Thaksin’s residence. Five military officers were arrested but later released for lack of evidence. Critics of Thaksin’s administration hastened to declare that the car bomb was a government ploy aimed at discrediting the opposition and rallying support for the administration.

5. THE ILLEGAL RESTORATION OF *AMARTHAYATHIPATHAI*

The rise of Abhisit Vejjajiva to the office of Prime Minister — as of 2006, he was the leader of a largely regional party commanding less than twenty percent of the total House seats — was only rendered possible by the military coup staged on September 19, 2006 and the rescission of the democratically adopted 1997 Constitution. Following the coup, the junta set out systematically to dismantle Thaksin’s “regime.” The process involved the dissolution of Thai Rak Thai based on a retroactive new statute, the banning of its most prominent politicians from elected office, the imposition of a new Constitution, and the prosecution of Thaksin Shinawatra on a multitude of criminal charges. Even these measures, however, could not prevent the Thai people from voting into office a government led by Thai Rak Thai’s successor party in late 2007. More importantly, a large grassroots movement for democracy was born of the repeated subversion of the people’s will, the dismantling of Thailand’s representative institutions, and the campaign of political repression inaugurated by the 2006 coup. This democratic movement only went from strength to strength as the *amartaya* overturned the results of the 2007 elections and made Abhisit the Prime Minister in late 2008.

5.1 *The Military’s Seizure of Power*

After a decade of democratic rule, with three free and open elections held under the 1997 Constitution, the Thai state was seized by force. On September 19, 2006, while

³³ “LEGAL WARNING: Thaksin Is ‘Violating the Constitution’,” *The Nation*, July 5, 2006.

<http://www.nationmultimedia.com/option/print.php?newsid=30008036>

³⁴ Prem Tinsulanonda, “A Special Lecture to CRMA Cadets at Chulachomkhalo Royal Military Academy,” July 14, 2006. <http://www.crma.ac.th/speech/speech.html>

Thaksin was attending a meeting of the United Nations General Assembly in New York, the military took control of the capital. The coup d'état was led by General Sonthi Boonyaratglin — the Commander-in-Chief of the Army — in concert with the Supreme Commander of the Armed Forces, the commanders of the Navy, Air Force and Police, and the Secretary-General of the National Security Council. The junta was named the Administrative Reform Council under the Democratic System with the King as Head of State; it later changed its official English title to Council for Democratic Reform (CDR) to avoid any “misunderstanding” about “the role of the monarchy.”³⁵

As justification for the coup, the CDR proclaimed: (1) that Thaksin’s administration had led to “problems of disunity and the erosion of solidarity among the Thai people;” (2) that the majority of the Thai population was sceptical of the Thaksin’s government, owing to “signs of rampant corruption and malfeasance;” and (3) that independent agencies had been “interfered with” leading to “problems and obstacles to the conduct of political activities.”³⁶ The CDR stated that, despite continuous efforts to “compromise to resolve the situation, peace and order could not be maintained.” General Sonthi had therefore “seized control of Thailand’s administration.”³⁷

Although General Sonthi had assured the public in March 2006 that “the army will not get involved in the political conflict,” as “[m]ilitary coups are a thing of the past,”³⁸ General Saprang Kalayanamitr subsequently admitted that preparations for the coup had begun as early as February.³⁹ General Sonthi, acting in his capacity as official Leader of the CDR,⁴⁰ moved swiftly to take complete control of government and lay the groundwork for the restoration of the military’s long-standing political role, seeking to project it well into the future.

General Sondhi imposed martial law throughout Thailand,⁴¹ assuming full control over the movement of the military and police forces.⁴² He simultaneously abrogated the 1997 Constitution and abolished the Senate, House of Representatives, Council of Ministers and the Constitutional Court. He vested the duties of the Prime Minister in

³⁵ “CDRM Now Calls Itself as CDR,” *The Nation*, September 28, 2006.

<http://nationmultimedia.com/breakingnews/read.php?newsid=30014778>

³⁶ Announcement on the Appointment of the Leader of the Council for Democratic Reform, dated September 20, 2006, <http://www.mfa.go.th/web/2455.php?id=740>.

³⁷ Ibid.

³⁸ “Thaksin Refuses to Resign Despite Protests in Bangkok,” *International Herald Tribune*, March 6, 2006.

<http://www.ihf.com/articles/2006/03/06/news/thai/php>.

³⁹ Chang Noi, “The Persistent Myth of the ‘Good’ Coup,” *The Nation*, October 2, 2006.

http://www.nationmultimedia.com/2006/10/02/opinion/opinion_30015127.php

⁴⁰ Announcement by the Council for Democratic Reform No. 11: Appointment of Key Members of the Council for Democratic Reform, dated September 20, 2006, <http://www.mfa.go.th/web/2455.php?id=740>.

⁴¹ Announcement by the Council for Democratic Reform No. 1, dated September 19, 2006, <http://www.mfa.go.th/web/2455.php?id=740>.

⁴² Announcement by the Council for Democratic Reform No. 2: Prohibition on the Movement of Military and Police Forces, dated September 19, 2006, <http://www.mfa.go.th/web/2455.php?id=740>.

the leader of the CDR (i.e., himself) or his designee,⁴³ together with any matters requiring approval of the Parliament, the House of Representatives or the Senate.⁴⁴ Further, he announced that all courts, with the exception of the Constitutional Court, would retain the power to adjudicate cases so long as they were “in accordance with the law and announcements of the Council for Democratic Reform.”⁴⁵ Notably, General Sonthi declared that the Privy Councilors would “remain in office and continue with their duties.”⁴⁶

The CDR immediately implemented a range of measures to take control over the country’s political process. General Sonthi announced that the general elections earlier scheduled for October 2006 would be postponed for a year,⁴⁷ as it became clear that any future elections would take place only on the CDR’s terms.

The Election Commission — which had been created by the 1997 Constitution to address the perennial problem of vote-buying — was responsible for holding and regulating the election of members of the House of Representatives and senators, including the duty to investigate dishonest electoral conduct. Its independence was assured through seven-year fixed terms of office for the Election Commissioners and a prohibition against re-appointment after the term’s expiration.⁴⁸ The day after the coup, General Sonthi formally nominated the Commissioners who had been recently selected by the Senate and empowered the new Election Commission to ensure that future elections “proceed and are conducted fairly and justly.”⁴⁹ The Election Commission was granted the power to revoke the electoral rights of any elected person whenever it believed that such person had committed a dishonest or illegal act relating to their election.⁵⁰

The CDR also announced a strict ban against any political gathering of five or more people, at risk of imprisonment for up to six months and/or a fine of up to ten thousand baht.⁵¹ It prohibited existing political parties from meeting or conducting political activities, and suspended the establishment or registration of any new

⁴³ Announcement by the Council for Democratic Reform No. 4: Executive Power, dated September 19, 2006, <http://www.mfa.go.th/web/2455.php?id=740>.

⁴⁴ Announcement by the Council for Democratic Reform No. 16: Leader of the Council for Democratic Reform to act for the National Assembly, the House of Representatives and the Senate, dated September 21, 2006, <http://www.mfa.go.th/web/2455.php?id=740>

⁴⁵ Ibid.

⁴⁶ Announcement by the Council for Democratic Reform No. 3, dated September 19, 2006, <http://www.mfa.go.th/web/2455.php?id=740>.

⁴⁷ <http://www.msnbc.msn.com/id/14916631/>

⁴⁸ Pinai, op. cit., fn. 5, p. 109.

⁴⁹ Announcement by the Council for Democratic Reform No. 13: Selected Organic Laws shall continue to be in effect, dated September 20, 2006, <http://www.mfa.go.th/web/2455.php?id=740>.

⁵⁰ Announcement by the Council for Democratic Reform No. 32: Authority and Duties of the Election Commission regarding Local Administrative Council Members and Local Administrator Elections, dated September 30, 2006, <http://www.mfa.go.th/web/2455.php?id=740>.

⁵¹ Announcement by the Council for Democratic Reform No. 7: Ban on Political Gatherings, dated September 20, 2006, <http://www.mfa.go.th/web/2455.php?id=740>.

political parties.⁵² Perhaps most significantly, the CDR adopted a provision banning the full executive committee of any dissolved political party from participating in politics for a five-year period, even if the alleged conduct occurred prior to the coup.⁵³

5.2 *New Constitutional Order*

On October 1, 2006, the newly renamed Council for National Security (“CNS”) introduced a skeletal Interim Constitution⁵⁴ and designated Surayud Chulanont, a former Army Commander General and Privy Councilor, to serve as Prime Minister. The promulgation of the Interim Constitution revived the precedent of rewriting the constitutional rules in favour of coup leaders in order to lend a semblance of legality to the military takeover. Thus, for example, the Interim Constitution deemed all announcements and orders of the CDR following the coup to be “legitimate and in accordance with the Constitution.”⁵⁵ The Interim Constitution also granted the CDR leaders and everyone acting in concert with them “immunity from all responsibility and conviction” in the event their seizure of power were subsequently found to have been illegal.⁵⁶

The Interim Constitution established a National Legislative Assembly, with members appointed by the CNS, to replace the old House of Representatives and Senate, thereby taking over all legislative functions.⁵⁷

The Interim Constitution also ordered the drafting of a new permanent Constitution, which began with the formation of a National Confederation of up to two thousand members appointed by the King. Their appointment was countersigned by the Chairman of the CNS, which prepared the list of candidates and controlled the nominations.⁵⁸ The National Confederation then compiled a list of two hundred of its members to be candidates for a Constitution Drafting Assembly that would actually draft the new Constitution.⁵⁹ This list was submitted to the CNS, which reduced it to a hundred members to be approved by the King and countersigned by the CNS.⁶⁰ The CNS subsequently narrowed the one hundred members down to twenty-five and handpicked an additional ten “legal experts” to comprise the final thirty-five-member

⁵² Announcement by the Council for Democratic Reform No. 15: Ban on Meetings and other Political Activities by Political Parties, dated September 21, 2006, <http://www.mfa.go.th/web/2455.php?id=740>.

⁵³ Announcement by the Council for Democratic Reform No. 27: Amendment of Announcement by the Council for Democratic Reform No. 15 dated 21 September B.E. 2549 (2006), dated September 30, 2006, <http://www.mfa.go.th/web/2455.php?id=740>.

⁵⁴ An unofficial translation of the Interim Constitution is available at http://www.nationmultimedia.com/2006/10/02/headlines/headlines_30015101.php.

⁵⁵ Interim Constitution dated October 1, 2006, at Art. 36.

⁵⁶ Interim Constitution dated October 1, 2006, at Art. 37.

⁵⁷ Interim Constitution dated October 1, 2006, at Art. 5.

⁵⁸ Interim Constitution dated October 1, 2006, at Art. 20.

⁵⁹ Interim Constitution dated October 1, 2006, at Art. 22.

⁶⁰ Interim Constitution dated October 1, 2006, at Art. 23.

Constitution Drafting Assembly. In this manner, the CNS exercised direct control over the drafting of the permanent Constitution.⁶¹

Upon completion of the Draft Constitution, the Constitution Drafting Assembly (CDA) embarked on an all-out publicity blitz to secure its adoption via referendum. The CDA budgeted some thirty million baht for a campaign that included television, cable and radio stations, websites, print media outlets, government agencies, educational institutions and billboards.⁶² Although a debate over the draft was held, it was aired only on a subscription cable channel, not on any of the government-owned free access television channels. Government officials were assigned to a massive door-to-door campaign to push for the draft's adoption. The CNS held coordinated rallies throughout the country during the run-up to the referendum, and voters were given free transportation to the polls, a practice that constituted a criminal offense in general elections.

One of the most effective tools used by the regime to secure votes in favor of the 2007 Constitution was the suggestion that its passage was a necessary precursor to elections. The regime's public relations campaign emphasized that approving the Draft Constitution was an essential step toward holding elections — many voters cast “yes” votes simply to restore parliamentary rule, not because they much cared about differences between the 2007 Constitution and the 1997 Constitution.⁶³ In addition, the junta asserted its right to introduce (and suitably amend) any of Thailand's old constitutions, some among them quite illiberal in nature, in the event that the voters failed to approve the draft submitted for their consideration.

In accordance with this all-out official push for adoption, the National Legislative Assembly passed a Referendum Act imposing severe penalties for the public expression of opposition to the Draft Constitution. Political parties were banned from attempting to persuade voters to vote either for or against the Draft Constitution, on pain of a possible prison sentence. Anybody who “disturbed” the referendum was subject to criminal prosecution, and if the troublemaker was an executive of a political party, he or she could also be banned from politics for five years.⁶⁴ Martial law remained in effect. Opponents of the Draft Constitution were intimidated and materials were confiscated from houses and post offices. Protesters against the 2006 coup were charged with criminal offenses.⁶⁵ The Asian Human Rights Commission condemned the Referendum Act as a clear attempt to “intimidate and silence persons

⁶¹ “No Dictation [*sic.*] on the Charter: CNS Chief,” *The Nation*, December 20, 2006, http://nationmultimedia.com/2006/12/20/headlines/headlines_30022102.php

⁶² “Publicity Blitz to Counter Moves to Reject New Charter,” *The Nation*, July 11, 2007, http://www.nationmultimedia.com/2007/07/11/politics/politics_30040282.php

⁶³ Duncan McCargo, “Thailand: State of Anxiety,” in *Southeast Asian Affairs 2008*, ed. Daljit Singh and Tin Maung Maung Than (Singapore: ISEAS, 2008), 333-356, p. 337.

⁶⁴ Somroutai Sapsomboon and Supalak Khundee, “Referendum Law or Penalty Law?,” *The Nation*, July 6, 2007. http://www.nationmultimedia.com/2007/07/06/politics/politics_30039559.php

⁶⁵ Asian Human Rights Commission, “THAILAND: A Referendum Comes; a Coup is Completed,” July 6, 2007. <http://www.ahrchk.net/statements/mainfile.php/2006statements/1110/>.

who don't share the official view,"⁶⁶ in stark contrast to the inclusiveness of the process by which the 1997 Constitution was adopted.

On August 19, 2007, the 2007 Constitution was approved by referendum on a historically low voter turnout. It was formally promulgated on August 24, 2007.⁶⁷ The 2007 Constitution marks an important departure from the principles enshrined in the 1997 Constitution. For instance, it returned to the pre-1997 multi-member parliamentary constituencies, creating more opportunities for smaller parties, thereby producing unstable coalition governments. While the party list system was retained, the proportional component was reduced from a hundred to eighty MPs. Further, voting was no longer based on national lists, but rather conducted by regional blocks, some gerrymandered rather awkwardly for the purpose of diluting the support enjoyed by parties loyal to Thaksin.⁶⁸ The elected Senate created by the 1997 Constitution was replaced by 150-member Senate composed of seventy-six members elected on a provincial basis and seventy-five members appointed by a Selection Committee composed of judges and top-level bureaucrats.⁶⁹ All of these changes were carefully crafted to prevent the emergence of a dominant elected force in the mold of Thai Rak Thai.⁷⁰

5.3 *Dismantling Thai Rak Thai*

Having taken the reins of power by force, the CNS set out to dismantle Thai Rak Thai's organization and to diminish its popular appeal. In January 2007, the junta allocated a secret twelve million baht budget to a public relations campaign to discredit Thaksin's administration and its policies.⁷¹ Reportedly, the junta-approved, taxpayer-funded campaign — coordinated by the media company owned by the cousin of CNS deputy secretary-general Saprang Kalayanamitr — availed itself of the services of prominent Democratic Party officials, including Korn Chatikavanij and Korbsak Sabavasut.⁷²

As noted, the Constitutional Court was disbanded immediately after the coup. In its place, the Interim Constitution established a nine-member Constitutional Tribunal, comprised entirely of members of the judiciary, appointed by the CNS.⁷³ On May 30,

⁶⁶ Ibid.

⁶⁷ Asian Human Rights Commission, "THAILAND: A Long Road Back to Human Rights and the Rule of Law," August 20, 2007.

<http://www.ahrchk.net/statements/mainfile.php/2006statements/1156/>.

⁶⁸ 2007 Constitution, Articles 95-98.

⁶⁹ 2007 Constitution, Articles 111-112.

⁷⁰ McCargo, op. cit., fn. 66, p. 337.

⁷¹ "CNS's Anti-Thaksin Campaign," *Bangkok Post*, April 8, 2007.

<http://pages.citebite.com/i1t5f0u5a3yao>

⁷² "Saprang's Cousin Given PR Work 'Because of Experience'," *The Nation*, April 11, 2007.

http://www.nationmultimedia.com/2007/04/11/politics/politics_30031650.php

⁷³ "Nine Constitution Tribunal Members," *The Nation*, October 7, 2006.

<http://nationmultimedia.com/breakingnews/read.php?newsid=30015571>;

See also "Thailand's Struggle for Constitutional Survival," *Article 2 of the International Covenant on Civil and Political Rights* (Special Edition), 6(2007), p. 4.

2007, the handpicked Constitutional Tribunal dissolved Thai Rak Thai.⁷⁴ The decision was ostensibly based upon a finding that Thai Rak Thai had bribed smaller opposition parties to participate in the April 2006 elections. The Democrat Party — the main parliamentary opposition to Thai Rak Thai — was accused of similar offenses, but was absolved by the Tribunal. In addition to dissolving the former governing party, the Tribunal's ruling banned 111 Thai Rak Thai executives from politics for five years, in accordance with the retroactive policy imposed by the CDR pursuant to its Announcement No. 27. This insured that once the party was disbanded, its leaders could not be re-elected under a different label, notwithstanding the fact that the alleged misconduct occurred months before Announcement No. 27 was issued. Most Thai Rak Thai leaders were denied an opportunity to speak for themselves in court.⁷⁵

The Asian Human Rights Commission described the Constitutional Tribunal's decision as follows:

*Thus, we have the spectacle of a group of judges appointed by an unelected and antidemocratic military regime making a decision on the actions of an elected political party that is alleged to have undermined democratic process.*⁷⁶

For the new regime, elections could only take place after Thai Rak Thai was disbanded, its leaders disqualified, its image tarnished, and its once invincible electoral organization scattered to pieces.

5.4 *Judicial Coups and Organized Chaos*

Undaunted by the dissolution of Thai Rak Thai, its former members regrouped in August 2007 under the banner of the People Power Party ("PPP"), to be led by long-time Bangkok politician Samak Sundaravej. Shortly after the PPP was established, the CNS issued an order to suppress its activities, which led the PPP to file a complaint against the CNS before the Election Commission. The Election Commission, however, dismissed the complaint on the grounds that the CNS had granted itself immunity when it replaced the 1997 Constitution with a new one.⁷⁷

On December 23, 2007, Thailand held the first and to date the only post-coup general elections. Despite overwhelming opposition and suppressive tactics employed by the CNS, the PPP achieved a plurality of seats in the House of Representatives, winning 233 out of 480 seats. Although the Election Commission disqualified a significant number

⁷⁴ See Christian Schafferer, "The Parliamentary Election in Thailand, December 2007," *Electoral Studies* 27(2009): 167-170, p.167.

⁷⁵ Vorajet Pakirat et al., "Decision of the Constitutional Tribunal to Dissolve Thai Rak Thai — A Legal Analysis," Faculty of Law, Thammasat University.

⁷⁶ Asian Human Rights Commission, "THAILAND: The Judiciary is the Real Loser," May 31, 2007. <http://www.ahrchk.net/statements/mainfile.php/2007statements/1041/>

⁷⁷ "Junta 'Never Harmed PPP'," *Bangkok Post*, December 13, 2007. <http://thailandpost.blogspot.com/2007/12/junta-never-harmed-ppp.html>

of elected members, primarily those who ran under the PPP's banner,⁷⁸ the party was able to build a coalition government and seat Prime Minister Samak Sundaravej on January 29, 2008. Once again, the vote spoke volumes about the Thai people's enduring commitment to self-governance in the face of political persecution. Confronted with the election of yet another administration inimical to their interests, however, the *amartaya* adopted a new approach. Instead of re-taking power by force, they set out to undermine the government through violent street protests and the disruption of essential public services.

The PAD re-appeared on the streets of Bangkok in May 2008, only five months after the clear statement offered by the general elections. In late August, after their three months old demonstration on Ratchadamnern Avenue had failed to gather any traction, armed PAD protesters stormed a television station in Bangkok, assaulted several ministries, and occupied the grounds of the Government House, physically preventing the government from working. At about the same time, PAD supporters seized airports in the southern cities of Phuket, Krabi and Hat Yai, and blocked major roads and highways. Unions interrupted train operations across Thailand and threatened to interfere with electricity and water services. PAD leader Sondhi Limthongkul raised the possibility of massive bank withdrawals by wealthy supporters.⁷⁹

The PAD demanded that Samak's "nominee government" step down, but notably did not call for new elections to pick a replacement.⁸⁰ It instead renewed its pleas for another military coup. As the *Economist* put it back then: "The PAD's claim that the [Samak] government is somehow 'illegitimate' is based on the belief that the poor do not deserve the right to vote because they are too stupid."⁸¹

When the PAD had first sought the removal of Thaksin in 2006, it had done so by arguing that Thailand had morphed into an authoritarian regime under his leadership; when it pleaded for the King's intervention back then, the PAD had adduced the need for the country to be placed on the path to a fuller version of "democracy." The framing of its campaign in democratic rhetoric was perhaps the reason why the PAD was at first able to attract the sympathies of many ordinary citizens in Bangkok and elsewhere. Much of its popular support, however, had evaporated by the time the group resumed its activities in 2008. Confronted with small numbers at its rallies as well as the failure of the military coup, the consequent re-drawing of the rules, and the witch-hunt conducted against the remnants of Thai Rak Thai to bring about a

⁷⁸ "Thai Election Agency Disqualifies More Winning Candidates," *People's Daily*, January 7, 2008. <http://english.people.com.cn/90001/90777/90851/6333842.html>

⁷⁹ Nirmal Ghosh, "I Won't Quit: Samak," *The Straits Times*, August 31, 2008.

http://www.straitstimes.com/Breaking%2BNews/SE%2BAsia/Story/STIStory_273817.html.

⁸⁰ David Pallister, "Thai PM's Compound Stormed as Anti-Government Protests Grow," *The Guardian*, August 26, 2008.

<http://www.guardian.co.uk/world/2008/aug/26/thailand>.

⁸¹ "Worse than a Coup," *The Economist*, September 4, 2008

http://www.economist.com/opinion/displaystory.cfm?story_id=12070465.

government more favorable to Establishment interests, the PAD's strategy took a sharp, radical turn. First, the group increasingly resorted to violent means. Second, its leadership took to arguing *against* democracy in Thailand, complaining that much of the country's provincial electorate and urban proletariat remained too gullible, uneducated, and pre-occupied with basic material needs to vote in a rational manner.⁸² What the PAD proposed instead was a system of tutelage where the contingent of elected politicians in Parliament would be downsized to thirty percent of the total number and stripped of much of its power to shape national policy.

Even in a place with Thailand's checkered democratic record, it is unusual to hear an organized group base its public case against democracy in terms quite so harsh and elitist. But the kind of worldview purveyed by the PAD is nonetheless deeply embedded in the country's official ideology, which has traditionally made a sharp distinction between a small ruling class and the subjects of its rule. In fact, what seems to have most alarmed the PAD was not Thaksin's supposed "corruption" or "authoritarianism." That the PAD would call for the intervention of the military, notoriously the most corrupt institution in Thailand, to say nothing of its abominable human rights record, is good illustration of the PAD's utter disinterest in democracy and the rule of law. Most problematic for the PAD was rather the popularity Thaksin had achieved thanks to policies he introduced and the sense of empowerment he instilled among groups once relegated to a largely passive role in Thailand's political life. As one academic recently stated, Thaksin's "real crime" was that he "no longer really needed to buy votes to win elections."⁸³

The PAD is in essence an "astroturf" organization that draws much of its membership from well-to-do citizens in Bangkok, receives most of its funding from large business conglomerates with close ties to Prem and other Establishment figures, and owes just about all its influence to the backing of powerful men in the military, the Privy Council, and the Democrat Party. Once again, the threat posed by Thai Rak Thai and its successors to the PAD and its backers was twofold.

On the one hand, the social programs Thaksin had pushed through compromised the exclusive access that the Bangkok-based Establishment once enjoyed to the state's favors and the state's coffers. In this regard, Karl D. Jackson of Johns Hopkins University argues that "the fundamental problem of the Thai political system is that most of the money is in Bangkok and most of the votes are outside of Bangkok."⁸⁴ What Prof. Jackson neglects to say, however, is that while the high concentration of a country's wealth in the capital city is hardly unique to Thailand, the Bangkok jet set has yet to accept the idea that the country should be governed by representatives chosen, for the most part, by provincial voters.

⁸² George Wehrfritz "Crackdown," *Newsweek*, September 2, 2008.
<http://www.newsweek.com/2008/09/01/crackdown.html>

⁸³ Federico Ferrara, *Thailand Unhinged: Unraveling the Myth of a Thai-Style Democracy* (Singapore: Equinox Publishing, 2010), p. 87.

⁸⁴ Richard Bernstein, "The Failure of Thailand's Democracy," *New York Times*, May 25, 2010.
<http://www.nytimes.com/2010/05/26/world/asia/26iht-letter.html>

On the other hand, the mere fact that an active, mobilized citizenry had taken to voting en masse for a single political party threatened to eclipse the power of unelected institutions and Democrat politicians who saw their party's electoral strength continue to decline. Prominent Democrat Party officials like Somkiat Phongpaiboon and Somran Rodphet are also leaders of the PAD. Current Foreign Minister Kasit Piromya made frequent appearances at PAD rallies held at the site of illegal occupations of public facilities like Suvarnabhumi International Airport. Current Finance Minister Korn Chatikavanij spoke proudly of his support for the group, even in the wake of its most violent actions and the adoption of its most hateful, rabidly anti-democratic rhetoric. Korn himself explained the symbiotic relationship between the PAD and the Democrat Party in an opinion piece published in the *Bangkok Post*:

No point shying away from the obvious after all, it is a well-known fact that one of the PAD leaders, even if he is acting on an individual basis, is a Democrat MP.

Many other key speakers were our candidates in the recent general elections. Almost all of the tens of thousands of the attending public are Democrat voters. Most importantly, the PAD and their supporters make similar arguments with us that the government has lost its way and lost its legitimacy, given breach of both law and ethics.

He added:

I also believe that, like it or not, the Democrats could not on our own have resisted the PPP or the government from abusing their powers in the seven months of their rule. I think that without our parallel efforts, it is likely that the Constitution would by now have been amended and protection given to both Thaksin and PPP itself.⁸⁵

For the same actions that have most recently earned Red Shirt sympathizers accusations of treason and Red Shirt leaders charges of terrorism leading to possible death sentences, men like Korn and Kasit were rewarded with Cabinet posts.

On September 9, 2008, in response to charges brought forth by opposing politicians and the Election Commission, the Constitutional Court forced Prime Minister Samak to resign, owing to the fact that Samak had hosted a cooking class on television and had therefore violated the prohibition against elected officials receiving compensation from other sources.⁸⁶ Samak argued that he was not actually employed by the television station and that, although the programs had aired during his tenure as Prime Minister, they had been recorded before he became premier. Those arguments, however, did not

⁸⁵ Korn Chatikavanij, "The Last Whistle and the PAD's 'Final Battle'," *Bangkok Post*, September 9, 2008.

http://www.korndemocrat.com/th/issues/bangkok_post/BangkokPost090908.htm

⁸⁶ Leo Lewis, "Thai Prime Minister Samak Sundaravej Forced Out over TV Chef Role," *The Times*, September 10, 2008.

<http://www.timesonline.co.uk/tol/news/world/asia/article4716195.ece>.

prevail before the Constitutional Court, which voted unanimously to remove him. Ironically, Constitutional Court judge Jarun Pakdeetanakul was himself a regular guest on the radio, and had received compensation for lectures to private law schools while presiding as a judge on the Constitutional Court. On September 18, 2008, Samak was replaced by PPP leader Somchai Wongsawat, Thaksin's brother-in-law. Unmoved and still holed up at the Government House, PAD refused to disperse.

Perhaps the turning point came on October 7, when violent clashes broke out in front of the National Assembly between the police and a few thousand PAD protesters seeking to block access to the Parliament. Hundreds of people were injured in the scuffle. PAD guards fired weapons and lobbed ping-pong bombs at police officers; the police fought back with teargas and batons. Two members of the PAD died on that day. One of them, a young woman, was said to have died as a result of suffering a direct hit by a Chinese-made teargas canister. The other, a PAD guard, did not actually die at the scene of the clashes, but succumbed to injuries sustained when his vehicle, loaded with explosives, blew up in front of the headquarters of Chart Thai Party. The Queen made an appearance at the funeral of Angkana Radabpanyawoot, the woman killed at the National Assembly. Former Prime Minister Anand Panyarachun and future Prime Minister Abhisit Vejjajiva took the time to show their support for the PAD by attending the funeral of Methee Chartmontri, the would-be terrorist killed by his own explosives.

At the time, Abhisit made a series of comments that contrast sharply with the approach he has taken to the killings that took place on his own watch.⁸⁷ He was especially indignant at a press conference announcing his party's stance on the October 7 battle between the police and the PAD, where he declared:

For all that has happened, the PM cannot deny his responsibility, either by negligence or intention. What is even worse than laying the blame on the authorities is vilifying the people. I have never thought that we would have a state which has the people killed and seriously injured, and then accuses the people of the crimes. This is unacceptable. I have heard those in the government always asking people whether they are Thai or not. Considering what you are doing now, it is not the question of being Thai or not, but whether you are human at all.

Today, [the Somchai government] has lost legitimacy. We are demanding that the PM take responsibility. [The PM] can resign, or if he is afraid that by his resignation, the Democrat Party will take power, he can dissolve the House. He cannot just do nothing, because if he does nothing, it would be tantamount to damaging the country and the political system.

⁸⁷ See, for instance, "PM: Dissolution is Not the Answer," *Bangkok Post*, April 25, 2010. <http://www.bangkokpost.com/breakingnews/175728/pm-dissolution-is-not-the-answer>

*There is nowhere else on earth, in democratic systems, where the people are abused by the state, but the government which comes from the people does not take responsibility.*⁸⁸

As chronicled below, Abhisit the opposition leader underwent a remarkable transformation, on the road to becoming Abhisit the Prime Minister.

On November 25, 2008, PAD mobs descended on Bangkok's Suvarnabhumi International Airport — Thailand's main airport and an important regional hub. The occupation of the facility prompted its immediate closure, leaving tens of thousands of travelers stranded. Concurrently, the PAD also took control of Bangkok's old international airport at Don Muang, to thwart the government's possible attempt to re-route most of the air traffic in and out of the capital city to a facility equipped to handle it. Thousands of PAD supporters used human shields to prevent the police from dispersing the occupation — the group had reportedly lured children into the airport by paying their parents to allow them to join the protest⁸⁹ — while its rearguard overpowered police officers deployed to blockade access to Suvarnabhumi.⁹⁰ The government imposed the Emergency Decree and called on the country's armed forces to restore order. The military, however, refused to comply. Instead, army chief Anupong Paochinda, flanked by the heads of the Navy, Air Force and Police, publicly called for the government to resign during in an interview broadcast live on national television. Government attempts to evict the PAD were unsuccessful. The economic damage inflicted by the occupations was later estimated at over twelve billion dollars.⁹¹

It was once again the increasingly politicized judiciary that broke the impasse. On December 2, the Constitutional Court handed down its decision dissolving the People Power Party as well as coalition partners Chart Thai and Matchima Thippathai — disqualifying every member of the three parties' executive committees from politics for five years. Among the politicians banned as a result was Prime Minister Somchai Wongsawat, who was automatically stripped of his office.⁹² Within hours, Sondhi Limthongkul held a press conference and announced that the PAD was ending its siege of the airport. He did not fail to warn the public that the PAD would come back in force if Thaksin's nominees returned to power.⁹³ Contrary to the UDD leaders, who have been in military custody since May 19, no PAD leader ever spent a night in jail for the

⁸⁸ "Abhisit vs. Abhisit," *Prachatai*, April 23, 2010.

www.prachatai.com/english/node/1760

⁸⁹ Matt Bachl, "Parents 'Giving Up Kids for Cash in Thai protest'," *Nine News*, November 30, 2008. <http://news.ninensn.com.au/article.aspx?id=676153>.

⁹⁰ Ed Copley, "Assault on Police Shows Thai Protesters' Ugly Side," Reuters, November 29, 2010. <http://www.forbes.com/feeds/afx/2008/11/29/afx5755965.html>

⁹¹ "Airport Siege Cost \$12.2," *The Straits Times*, January 7, 2009.

http://www.straitstimes.com/Breaking%2BNews/SE%2BAsia/Story/STIStory_323020.html

⁹² "Thai Premier Banned from Politics, Ruling Party Dissolved: Court," *Agence France-Press*, December 1, 2008.

<http://www.google.com/hostednews/afp/article/ALeqM5hfJ-IAMzPxNPjyXUtOzsYIEvJeow>

⁹³ "PAD Cease All Anti-Government Protests," *The Nation*, December 2, 2008,

http://www.nationmultimedia.com/2008/12/02/headlines/headlines_30090031.php

violation of the Emergency Decree, the illegal airport occupations, the property destruction at the Government House, or the shooting of civilians and police officers.

It should be noted that the provisions on party dissolution, upon which the Constitutional Court based its decision, were written into the 2007 Constitution at the junta's insistence. Outwardly aimed at strengthening the judiciary in its fight against corruption, the statute offered the military-appointed Constitutional Court vast powers to overturn the choices of the electorate. Much like the Interim Charter promulgated in the wake of the coup, the 2007 Constitution gives the Court the option to dissolve any party whose executive committee includes at least one politician found guilty of fraud by the Election Commission of Thailand. Concurrent with the dissolution of a political party, the Constitutional Court may also ban the party's entire executive committee from elected office for a period of five years. In the specific instance, the Constitutional Court dissolved the People Power Party and disqualified its executive committee exclusively on the basis of violations that former House Speaker Yongyuth Tiyyapat was alleged to have committed in the run-up to the most recent general election. Though similar cases have been brought against the Democratic Party, the courts have thus far found a way to avoid ordering its dissolution.

It was only in the aftermath of the bruising confrontation between the government and the PAD, the airport occupations, and the Constitutional Court's verdict that the Democrat Party was able to form a coalition government and install Abhisit Vejjajiva as its Prime Minister on December 18, 2008. The new coalition was brought into being thanks to the defection of one among the PPP's key factions, led by banned politician Newin Chidchob, and former PPP coalition partners such as the reconstituted Chart Thai Pattana of former Prime Minister and erstwhile Thaksin ally Banharn Silpa-archa. The deal was concluded on December 6, at the home of Army Chief Anupong Paochinda. At the meeting, Anupong is reported to have cautioned the participants that he spoke for "a man whose message could not be refuted."⁹⁴

Despite popular elections in 2001, 2005, 2006, and 2007, in which the Thai people expressed their preference for political parties associated with Thaksin Shinawatra — by a healthy plurality when not by an outright majority — *amathayathipathai* was restored thanks to a military coup, a fifteen-month campaign to repress, prosecute, and discredit politicians elected by the people, the illegal occupation of the Government House and the country's major airports, and a series of convenient judicial decisions that dissolved four major political parties, removed three governments from the office to which they had been duly elected, and modified the composition of the national legislature in a way consistent with the *amathaya's* interests and preferences.

Notwithstanding the participation of prominent Democrat Party politicians in the PAD's rallies, the instrumental role played by the PAD in Abhisit's rise to Prime

⁹⁴ "Democrat Govt a Shotgun Wedding?," *The Nation*, December 10, 2008. <http://www.nationmultimedia.com/search/read.php?newsid=30090626>

Minister, and the impunity that the new Democrat-led administration has guaranteed for the PAD, the relationship between the two groups remains uneasy. PAD leaders — Sondhi Limthongkul in particular — have been quite vocal in their condemnation of the old-style politicking of the Democrat Party, especially with regard to the horse-trading that the Democrats were forced to engage in with notoriously corrupt politicians in an effort to put their coalition together and then hold it together.⁹⁵

In addition, the PAD has repeatedly criticized the Abhisit administration for its perceived weakness and lack of assertiveness. It is for this reason that the PAD has formed its own party — the New Politics Party⁹⁶ — in the months since Abhisit came to office. The stated objectives of the NPP are to protect the monarchy and clean up Thailand's politics, tasks the administration is apparently not carrying out to its satisfaction. Sondhi Limthongkul has argued that Abhisit is incapable of moving the country forward. He instead called for “returning parliamentary powers to the King”⁹⁷ and suggested that the military should stage a coup in the event that Abhisit is not able to establish a “Dharma-ocracy” that would do away with the Parliament, which he described as “a place of evil.”⁹⁸

In light of both their symbiotic relationship and their uneasy co-existence, the Democrat Party and the PAD are perhaps best described as two separate wings of Thailand's loosely structured Establishment. The PAD is the extra-parliamentary wing to which messy street operations can be outsourced when the need arises. The Democrat Party is the parliamentary wing whose task it is to put a presentable face on a government dominated by military men, royal advisors, and business elites. For both organizations, the affiliation with the interests of the *amarthaya* is both a matter of ideology and necessity — at least to the extent that neither group would have been able to achieve anywhere near the influence it currently wields without the backing of the military, the patronage of powerful courtiers, and the sponsorship of Bangkok's wealthiest families.

The Establishment's support for the PAD and the Democrat Party has had destabilizing consequences well beyond Thailand's domestic frontiers. It was the PAD and the Democrat Party, in particular, who manufactured the controversy over the Preah Vihear Temple, bringing the country on the brink of war with Cambodia over a territorial dispute that had been settled by the International Court of Justice (to the satisfaction of both governments) as far back as 1962. In 2008, the Samak-led PPP government endorsed Cambodia's application to turn the Preah Vihear temple into a UNESCO World

⁹⁵ “Suthep, Sondhi War of Words Widens,” *Bangkok Post*, March 11, 2009.

<http://www.bangkokpost.com/news/local/137304/suthep-sondhi-war-of-words-widens>

⁹⁶ “PAD Names Somsak as Party Head,” *Bangkok Post*, June 2, 2009.

<http://www.bangkokpost.com/news/politics/144914/pad-names-new-political-party>

⁹⁷ ‘สนธิ’ สาวไส้ नेता ดร.“เทพประทาน” ตัวทำลาย-ณะ รม.คืนพระราชอำนาจ, *ASTV-Manager*, May 28, 2010.

<http://www.manager.co.th/Politics/ViewNews.aspx?NewsID=9530000073858>

⁹⁸ ‘สนธิ’ ลากออกหัวหน้าพรรค ด้านประชาธิปัตย์ หนุนธรรมชาธิปไตย จักรพรรดิวิบัติถ้า ‘มาร์ค’ ทำไม่ได้, *Prachatai*, May 14, 2010.

<http://www.prachatai3.info/journal/2010/05/29465>

Heritage Site. The PAD and their supporters spuriously seized on this as evidence that “Thaksin’s nominees” were willingly handing over Thai territory. Foreign Minister Noppadon Pattama, who had signed a joint-communiqué with Cambodia on the site’s UNESCO status, was forced to resign. In July 2008, a group of Thai nationalists attempted to plant a Thai flag on the Preah Vihear complex — an act that resulted in an armed clash between Thai and Cambodian forces⁹⁹ — while the PAD made nightly calls from their protest stage in for “the return of Preah Vihear temple to Thailand.”¹⁰⁰ From the PAD stage at occupied Suvarnabhumi Airport, Foreign Minister to be Kasit Piromya would later promise to use the blood of Cambodian Prime Minister Hun Sen to wash his feet. Since then, Thai and Cambodian troops have exchanged fire in the vicinity of the temple on several occasions. The prospect of regional volatility raised by the actions of the PAD and Democrat Party officials has greatly alarmed Thailand’s major trading partners. Thailand’s slide into military dictatorship, particularly, can only damage ASEAN’s capability to hold brutal regimes such as the Burmese junta in check. Blinded by their hatred of Thaksin, the *amarthaya* and their bedfellows in the PAD and Democrat Party do not appear to be demurred by the dire international repercussions of their actions.

6. THAILAND’S BLACK SUMMER: THE RED SHIRT MASSACRES

Driven by anger and frustration over the repeated subversion of popular will and the systematic suppression of their political voice, more than a hundred thousand members and sympathizers of the National United Front for Democracy against Dictatorship (“UDD”), popularly known as the Red Shirts, began to descend on Bangkok from every province around the country on March 12, 2010, vowing not to leave until Abhisit dissolved the House and called new elections. It was not the first time the Red Shirts had pressed their demands on the streets of the capital — most famously, a series of large demonstrations had taken place in April 2009. This, however, was billed as the “last battle against dictatorship.” For the next two months, the Red Shirts remained holed up behind barricaded encampments built in locations of strategic and symbolic significance.

6.1 *What do the Red Shirts Want?*

For the UDD, this show of force was the result of years of painstaking work. Formed in the wake of the coup by supporters of ousted Prime Minister Thaksin Shinawatra, the Red Shirts have become a real force for democratic change in the intervening years, thanks to tireless efforts to raise awareness, mobilize support, and build an intricate organization spanning much of the country’s territory. It is the largest social

⁹⁹ “Thai Troops ‘Cross into Cambodia’,” BBC News, July 15, 2008.

<http://news.bbc.co.uk/1/hi/world/asia-pacific/7506872.stm>

¹⁰⁰ Apinya Wipatayotin, “The Real Victim at Preah Vihear,” Bangkok Post, July 20, 2008.

http://www.bangkokpost.com/200708_News/20Jul2008_news002.php

movement ever to emerge in the history of Thailand — arguably, the UDD now leads the largest democratic movement in Asia.

Because the Red Shirts draw much of their support from Northern Thailand, the impoverished Northeast, and the urban working class, supporters and critics alike frequently describe their campaign as a “class struggle.” But though class is certainly an important dimension to Thailand’s political crisis, the Red Shirts are not waging a “class war” pitting poor versus rich. The UDD does not aim to abolish class distinctions or fundamentally rework Thailand’s social structure. Indeed, though demands for a measure of social justice and economic opportunity are central components of their platform, the Red Shirts are more interested in the ideas of “equal opportunity” and “equality of being” characteristic of a mainstream movement for civil and political rights than they are in any notion of “equality of wealth” more typical of Marxist ideology.

Indeed, the Red Shirt movement is less about economics than it is about politics — specifically, the struggle for full political inclusion and enfranchisement. The UDD has summarized its political agenda in “six principles” that emphasize political dimensions of their struggle over economic grievances:

- 1) Achieving the goal of establishing a genuine democracy that has the King as our Head of State, with political power belonging exclusively to the people. We reject any attempt, past or future, at using the monarchy to silence dissent or advance a particular agenda.*
- 2) Dissolving the 2007 Constitution and restoring the 1997 Constitution, which may then be amended through a transparent, consultative, and democratic process.*
- 3) Bringing Thais together in an effort to solve our political and socio-economic problems, recognizing that such efforts must stem from the power of the people.*
- 4) Implementing the rule of law, due process and a system of equal justice for all, free of any obstructions or double-standards.*
- 5) Uniting all Thais who love democracy, equality, and equal justice within all facets of society, in an effort to deconstruct and move beyond amarthayathipathai.*
- 6) Using exclusively non-violent means to achieve these objectives.*

As any social movement aiming to bring about sweeping political change, the Red Shirts have employed a “big tent” approach in an attempt to appeal to diverse constituencies that may not necessarily share an especially clear ideology. At its heart, however, the Red Shirt movement fights for a democratic Thailand. The Red Shirts want to transform Thailand into a country where elections matter, elected

governments actually govern, and every citizen is guaranteed a basic set of civil and political rights. For the most part, its supporters belong to constituencies whose right to be full and equal participants in Thailand's political life has never been recognized — not only because of their income level, but also their social status, their education, their regional origin, and their ethno-linguistic background. For them, the Red Shirt struggle is less about class than it is about asserting their equal worth to the small, Bangkok-based Establishment, which has long claimed a monopoly on political power by arguing that the vast majority of the population is too stupid, too ignorant, and too corruptible to be trusted with the selection of the country's government.

Certainly, Thaksin Shinawatra provided the spark for the movement by instilling in long-marginalized constituencies a newfound sense of political empowerment, by fostering a new awareness of their rights, and by inspiring an unprecedented level of confidence in their strength to shape Thailand's future. But the basis for the Thai people's "awakening" lie in decades of social and economic change. The country's modernization, among other things, made a system of government founded on the acquiescence of the majority of the population no longer sustainable in the long run. Given the transformation of much of the country's electorate into an increasingly sophisticated, ambitious, and modern force, it was only a matter of time before someone would attempt to mobilize this largely untapped reservoir of support — and in the process confer upon the masses a political role commensurate to their strength, their numbers, and the size of their aspirations. Thaksin understood this phenomenon and successfully harnessed it, but he did not create it. And though many Red Shirts would like to see Thaksin returned to the position to which he was repeatedly elected, the movement has now gone far beyond Thaksin.

In a speech given to supporters in 2008, UDD leader and former government spokesman Nattawut Saikua, one of the most eloquent voices in the Red Shirt movement, described the movement's fight for a more inclusive, more democratic future:

We were born on the land. We grew up on the land. Each step that we take is on this same land. We stand, with our two feet planted here, so far away from the sky.

Tilting our heads fully upwards, we gaze at the sky, and we realize how far away that sky is.

Standing on this land, we only have to look down to realize that we are worth no more than a handful of earth.

But I believe in the power of the Red Shirts. I believe our number is growing day-by-day, minute-by-minute. Even though we stand on this land, and we speak out from our place among the earth, our voice will rise to the sky. Of this I have no doubt.

The voice we're making now — our cries and shouts — is the voice of people who are worth only a handful of earth. But it is the voice of the people who were born and grew up on this land, and it will rise to the level of the sky.

We, the Red Shirts, want to say to the land and sky that we too have heart and soul.

We, the Red Shirts, want to remind the land and sky that we too are the Thai people.

We, the Red Shirts, want to ask the land and sky whether we have been condemned to seek, for ourselves, a rightful place to plant our feet here.¹⁰¹

The Red Shirts are not fighting for Thaksin. They are fighting for themselves.

6.2 *An Illegal Campaign of Persecution and Violence*

Before the UDD had even started demonstrating against the latest usurpation of the people's will, the Abhisit government had long sought to silence the opposition through the *lèse majesté* legislation and the Computer Crimes Act. In 2009 alone, the courts are reported to have accepted charges of *lèse majesté* (a violation of Article 112 of Thailand's Criminal Code) for 164 cases. That exceeded the previous record of 126 cases set in 2007, in the wake of the coup, and more than doubled the number of cases (seventy-seven) taken up by the judiciary during the People Power Party's administration in 2008. It should be noted that the highest number of cases prior to the coup was recorded in 2005, when thirty-three were successfully submitted to the courts. Owing to both legal restrictions and the unwillingness of major media outlets to discuss information that might damage the image of the monarchy, the vast majority of the cases have gone unreported by the local and international press.¹⁰²

The year 2009 also marked the continued prosecution — and in some cases the conviction and harsh sentencing — of Red Shirt activists who had charges of *lèse majesté* filed the year before, at a time when the UDD was staging small counter-demonstrations to the PAD's sustained rallies. Most disturbing is the case of Darunee Charnchoensilpakul ("Da Torpedo"), sentenced on August 28 to eighteen years in prison for three charges of *lèse majesté* (one per offending comment) stemming from a speech she gave in July 2008. Her trial was held in secret, ostensibly for reasons of "national security." Contrary to most defendants facing similar accusations and the routine denial of due process, Da Torpedo refused to plead guilty to the charges. In return, she not only received an extraordinarily severe sentence. Once convicted, she

¹⁰¹ May Adadol Ingawanij, "The Speech that Wasn't Televised," *New Mandala*, April 27, 2010. <http://asiapacific.anu.edu.au/newmandala/2010/04/27/the-speech-that-wasn't-televised/>

¹⁰² Marwaan Macan-Markar, "Thailand: Lese Majeste Cases Rise but Public in the Dark," *Inter Press Service*, May 14, 2010. <http://ipsnews.net/login.asp?redir=news.asp?idnews=51434>

was placed in solitary confinement and was forced to wear a nametag that identified the crime for which she was convicted, exposing her to harassment.¹⁰³

The abuse of the Computer Crimes Act has complemented prosecutions of *lèse majesté*. Police Colonel Suchart Wongananchai, Inspector of the Ministry of Information and Communications Technology, recently admitted to blocking over fifty thousand websites found by Ministry employees to have violated the Act.¹⁰⁴

The two highest profile prosecutions for violations of the Computer Crimes Act are those mounted against Suwicha Thakor and Chiranuch Premchaiporn. Suwicha Thakor was arrested in January 2009 for posting on the Internet a picture deemed offensive of the King. While he was later sentenced to twenty years based on both the Computer Crimes Act and Thailand's *lèse majesté* statute, the sentence was commuted to ten years on account of his guilty plea. After spending a year and a half in prison, Suwicha eventually received a royal pardon on June 28, 2010.

Chiranuch Premchaiporn, the web manager of independent publication Prachatai, was arrested in March 2009 and charged with ten counts of violating the Computer Crimes Act. She is being prosecuted owing to her failure to promptly remove comments on the *Prachatai* forum that the authorities had deemed injurious to the monarchy. The comments in question were subsequently removed at the urging of the MICT. She currently faces a sentence of fifty years in prison at the end of a criminal trial set to begin in February 2011. Meanwhile, the *Prachatai* website has been blocked repeatedly by the authorities since the beginning of the latest Red Shirts demonstrations. As a result, its online forum is scheduled to close at the end of July 2010.

Other arrests for supposed violations of the Computer Crimes Act include those of Nat Sattayapornpisut (for transmitting anti-monarchy videos), Tantawut Taweewarodomkul (for posting anti-monarchy content), Wipas Raksakulthai (for posting an offensive comment on Facebook), and four people accused of spreading "rumors" about the King's health — at least two of them for merely translating into Thai a *Bloomberg* article on the subject.¹⁰⁵

The systematic abuse of political crimes legislation has earned the Abhisit administration harsh rebukes from the Committee to Protect Journalists¹⁰⁶ and Reporters Without Borders.¹⁰⁷ Owing to the ongoing campaign of persecution and

¹⁰³ "Corrections Dept Asked to Explain Da Torpedo's Solitary Confinement," *Prachatai*, September 14, 2009.

<http://www.prachatai.org/english/node/1400>

¹⁰⁴ "50,000 Websites Shut Down, MICT Inspector Says," *Prachatai*, May 7, 2010.

<http://www.prachatai.org/english/node/1795>

¹⁰⁵ "EDITORIAL: Criminals or Scapegoats?," *Bangkok Post*, November 3, 2009.

<http://www.bangkokpost.com/opinion/opinion/26746/criminals-or-scapegoats>

¹⁰⁶ Committee to Protect Journalists, "Attacks on the Press 2009: Thailand," February 2010.

<http://cpj.org/2010/02/attacks-on-the-press-2009-thailand.php>

¹⁰⁷ Reporters Without Borders, "Government Uses State of Emergency to Escalate Censorship," April 8, 2009.

<http://en.rsf.org/thailand-government-uses-state-of-emergency-08-04-2010,36968.html>

harassment of political opponents, in January 2010 Human Rights Watch lamented the “serious backsliding” observed in Thailand’s human rights record over the course of Abhisit’s tenure in office.¹⁰⁸ By all accounts, the hounding of political opponents is bound to continue as long as the current government is in office. Juti Krai-rirk, the new Minister of Information and Communication Technology, has recently promised the continuation of the crackdown, on the grounds that “the government has given too much freedom for its citizens.”¹⁰⁹ Accordingly, in June the Cabinet instituted a new agency — the Bureau of Prevention and Eradication of Computer Crime — to eradicate internet content critical of the monarchy,¹¹⁰ while the Prime Minister unveiled a new “Cyber Scout” project designed to instruct people to make the “correct” use of modern technology like the internet.¹¹¹ Meanwhile, the Department of Special Investigations announced that it has assigned three hundred agents to identifying individuals whose statements and behavior with regard to the monarchy are “detrimental or ill-minded.”¹¹² Department of Special Investigations Deputy Head, Pol. Lt. Col. Seksan Sritulakarn subsequently reported to the Senate that as many as two thousand suspected cases of *lèse majesté* are currently under investigation. He added that routine external pressure is turning the DSI into an increasingly “political tool.”¹¹³

Of an altogether more serious nature is the campaign of violence to which the Red Shirts have been subjected by the Abhisit administration, even prior to the most recent massacre. Most famously, similar abuses appear to have been perpetrated by the armed forces, albeit on a smaller scale, to quell Red Shirts demonstrations that broke out during the Songkran holidays in April 2009.

On April 11, 2009, hundreds of Red Shirts had forced the cancellation of an ASEAN Summit in Pattaya by breaking into the hotel where the meetings were taking place. Following the operation’s unexpected success, the focus of the protests shifted to Bangkok, where the Red Shirts staged traffic blockades and at times unruly demonstrations around the city.

The government, which had previously relied on Newin Chidchob’s “blue shirts” to attack UDD demonstrators in Pattaya, declared the State of Emergency for Bangkok and five surrounding provinces in preparation for a more incisive crackdown. In the

¹⁰⁸ Human Rights Watch, “Thailand: Serious Backsliding on Human Rights,” January 20, 2010. <http://www.hrw.org/en/news/2010/01/20/thailand-serious-backsliding-human-rights>

¹⁰⁹ “MICT to Curb Violations of Computer Act,” National News Bureau of Thailand Public Relations Department, June 15, 2010. <http://thainews.prd.go.th/en/news.php?id=255306150051>

¹¹⁰ “Thailand Sets Up Unit to Tackle Websites Insulting Royals,” *Agence France Press*, June 15, 2010. http://news.yahoo.com/s/afp/20100615/tc_afp/thailandroyalinternet

¹¹¹ นายกฯ เปิดโครงการ 'ลูกเสือบนเครือข่ายอินเทอร์เน็ต' (Cyber Scout), *Prachatai*, July 1, 2010.

¹¹² “DSI Sets Up Large Lese Majeste Force,” *The Nation*, July 9, 2010. <http://www.nationmultimedia.com/home/2010/07/09/politics/DSI-sets-up-large-lese-majeste-force-30133403.html>

¹¹³ รองอธิบดีดีเอสไอยอมรับมี "การเมือง" แทรกแซงถูกใช้เป็นเครื่องมือเผยแพร่ข่าวให้องค์กรเป็นอิสระเหมือน ป.ป.ช., *Matichon*, 12 July 2010.

early morning hours of April 13, the military was sent in to disperse the Red Shirts, now scattered across various locations around Bangkok. The crackdown rapidly led UDD leaders to surrender and leave the encircled Government House to avoid a bloody siege. As usual, the government claimed that the military acted in accordance with international standards, shooting warning shots in the air and rubber bullets at the crowds in self-defense — claims that were denied in video and photographs taken by eyewitnesses. Later, a panel concluded that no Red Shirts were killed in the clashes,¹¹⁴ while 123 were injured. Demonstrators, however, reported that the bodies of at least six Red Shirts who had suffered gunshot wounds were quickly loaded onto military trucks and carried away by the troops, never to be seen again. Days after the crackdown, the bodies of two bound and gagged UDD guards were fished out of the Chaopraya River, showing evident signs of torture.¹¹⁵

In its 2010 report, Human Rights Watch highlighted the measures taken by the government in the wake of the 2009 demonstrations as evidence of the differential treatment experienced by the anti-Establishment Red Shirts and the pro-Establishment Yellow Shirts exposed to similar allegations of wrongdoing:

*The government's double standards in law enforcement worsened political tensions and deepened polarization. Leaders and members of the UDD were arrested, detained, and criminally charged after the dispersal of their protests. But the government has ignored public demands for an impartial investigation into politically motivated violence and human rights abuses committed by the yellow-shirted People's Alliance for Democracy (PAD) during its protests and occupation of the Government House and Suvarnabhumi airport in 2008, which created conditions that enabled Abhisit to come to power. Long delays in prosecuting PAD leaders are fuelling a growing public perception that they are immune to legal accountability.*¹¹⁶

While Thailand's military government has made much of the Red Shirts' supposed "terrorist" leanings, its systematic attempts to discredit the movement are designed to mask the relentless campaign of persecution, harassment, and extra-judicial executions that the Abhisit administration has carried out against the UDD and its political enemies ever since the military, the Privy Council, the courts, and the PAD engineered its rise to power in December 2008.

¹¹⁴ "No Death Inflicted by Crowd Control during Songkran Mayhem," *The Nation*, September 11, 2009.

http://www.nationmultimedia.com/2009/09/11/politics/politics_30112037.php

¹¹⁵ "2 Bodies of UDD Supporters Found in Chao Phraya River," *National New Bureau of Thailand Public Relations Department*, April 15, 2009.

<http://thainews.prd.go.th/en/news.php?id=255204160028>

¹¹⁶ Human Rights Watch, *op. cit.*, fn. 140.

6.3 *Crushing the Red Shirts*

On March 8, 2010, Nattawut Saikua issued a public announcement that the Red Shirts would attend a great demonstration in Bangkok, beginning on the upcoming March 14. He emphasized the peaceful nature of the demonstrations, stating that the Red Shirts would abide by the principles of democracy, and that they did not intend to cause chaos to the nation. The next day, before the Red Shirts even set foot in Bangkok, Abhisit invoked the Internal Security Act.

Upon arriving in Bangkok, the Red Shirts set up camp at the Phan Fa Bridge, on Rachadamnern Avenue. The choice of the location was highly symbolic, marking the movement's continuity with the legacy of demonstrators who fought for democracy on the same grounds in 1973 and again in 1992. Though their numbers were well short of the million people the Red Shirts had promised to bring to Bangkok, the well-organized demonstration was perhaps the largest ever in Thailand — certainly the largest in thirty-five years. Their demands were simple: Abhisit should resign, “return power to the people,” and finally submit to an election.

The reception that the Red Shirts received in Bangkok was mixed. Reports indicate that perhaps most of the Red Shirt demonstrators themselves lived in Bangkok — the UDD's support is especially strong among the millions of recent and seasonal migrants from the North and the Northeast. Many ordinary citizens as well as members of the security forces cheered them on as they staged marches and rallies across town in the weeks that followed the official start of their demonstration. Perhaps the vast majority of Bangkokians stayed on the fence — some annoyed by the inconvenience wrought upon their lives by repeated “color-coded” protests, others perhaps not sure what to make of the movement itself.

Most telling of Thailand's social structure, however, was the level of hatred and contempt with which the Red Shirts were met by Bangkok's media and its largely pro-yellow upper-middle class. For the most part, the government-controlled media ignored their grievances and demands, continuing its systematic portrayal of the demonstrators as Thaksin's rent-a-mob, bought or brainwashed into attending protests whose sole purpose was to restore one man's political power, return his wealth, and expunge his criminal convictions. On March 13, as thousands converged on the capital city, the front page of the Bangkok Post famously carried the title “UDD Rural Hordes Head for the Capital.” The calls for a violent crackdown only intensified as the protests continued unabated and repeatedly humiliated the government. Most significantly, the Red Shirts occupied the Ratchaprasong intersection, at the heart of Bangkok's high-end shopping district — a symbol of opulence and privilege, aside from a location of great commercial significance. Predictably, it was the PAD that most stridently attacked the government's supposed reticence to crack down hard on the Red Shirts.

Though the first four weeks of the protests had been overwhelmingly peaceful, almost celebratory, by the second week of April the government had resolved to evict the demonstrators from the streets of Bangkok. In the run-up to the dispersal operation on

April 10, the government issued a series of official notifications restricting movement in the area. On April 7 Abhisit declared a state of emergency and created the Center for Resolution of Emergency Situation (CRES), headed by Deputy Prime Minister Suthep Thaugsuban.¹¹⁷ On April 8, the military blocked the satellite signal of the People's Channel television station. After demonstrators stormed the Thaicom station in Pathum Thani and managed to briefly restore the broadcast, the government once again took PTV off the air.

Scores were killed during the initial outbreak of violence on April 10, during which Red Shirts armed with rocks, firecrackers, Molotov cocktails, and other rudimentary, homemade weapons fought back against heavily armed security forces. By the time the government agreed to a ceasefire, twenty-seven people lay dead, including twenty-one members of the UDD and a handful of military officers killed by a group of shadowy "men in black," whose motives and allegiances remain unclear. The failed dispersal operation gave way to a tense standoff. The government re-grouped, looking for alternative means to resolve the crisis. The Red Shirts hunkered down, concentrating their forces at Ratchaprasong.

On May 3, the Prime Minister unilaterally announced a plan for reconciliation that among other things included the possibility of an early, November election — provided that the Red Shirts agreed to voluntarily disperse. But Abhisit's offer to dissolve the House of Representatives did not come with genuine guarantees. The government did nothing to suggest that the stringent censorship regime it had imposed during the demonstrations would be relaxed in advance of the election, nor did it commit to a proper independent investigation into the violence that had taken place on April 10. The Red Shirts embraced the Prime Minister's call for reconciliation but refused to disperse absent these basic guarantees. Looking back now, their skepticism of Abhisit's promises appears to have been justified.

On May 13, one day after the government withdrew its offer to hold early elections, Major-General Khattiya Sawasdipol, a renegade Army officer better known as Seh Daeng — the purported leader of the movement's extreme faction — was shot in the head by a sniper while he stood before cameras and microphones, right before the eyes of a Western reporter, at the edge of Lumpini Park.¹¹⁸ The shot that took Seh Daeng's life (he died a few days later) was only a precursor to the thousands of live rounds that the military would fire on unarmed protesters, innocent by-standers, emergency medical workers, and journalists over the ensuing week. While the Red Shirts repeatedly called for international assistance to establish a dialogue that might lead to a political solution to the crisis, the government had opted to crush them militarily,

¹¹⁷ Suthep is essentially a political appointee, since a land corruption scandal forced him to resign his position as MP in 2009. See "Suthep Resigns as MP," *Bangkok Post*, July 17, 2010. <http://www.bangkokpost.com/news/politics/149293/suthep-resigns-as-mp>

¹¹⁸ Seh Daeng was shot in the head in front of Thomas Fuller of the *New York Times*. See Thomas Fuller and Seth Mydans, "Thai General Shot; Army Moves to Face Protesters," *New York Times*, May 13, 2010. <http://www.nytimes.com/2010/05/14/world/asia/14thai.html>

dispatching armored personnel carriers and thousands of soldiers to the streets of Bangkok.

In the days that followed Seh Daeng's assassination — the government denies any involvement in the incident, even though it had earlier promised it would shoot "terrorists"¹¹⁹ and had previously identified Seh Daeng as a "terrorist"¹²⁰ — a massacre unfolded to the north and south of the Ratchaprasong encampment, in the Din Daeng and Lumpini area.

Some locations like Soi Rangnam to the north and Rama IV Road to the south were declared by the military to be "live fire zones." There, the military was given the authority to shoot the mostly unarmed demonstrators on sight, as documented in a wealth of detailed eyewitness accounts like the one written by photojournalist Nick Nostitz.¹²¹ Whether by accident or due to the Thai military's trademark disregard for human life, a number of passers-by were injured or killed by military fire, among them a ten-year old boy shot in the stomach near the Makkasan Airport Link station¹²² and later pronounced dead at the hospital. Journalists also appeared to have been intentionally targeted; one eyewitness behind army lines at Rama IV Road reports a soldier asking a commanding officer: "Is it OK to shoot foreigners and journalists?"¹²³

Most shamefully, perhaps, the military closed off the "red zones" to emergency medical staff¹²⁴ and repeatedly opened fire on medics as they attempted to assist injured demonstrators,¹²⁵ complicating rescue operations for the scores of wounded protesters.

¹¹⁹ "Bangkok Gears Up for Protest Siege," *Associated Press*, May 13, 2010.

<http://asiancorrespondent.com/breakingnews/bangkok-gears-up-for-protest-siege.htm>

¹²⁰ "Khattiya Sawatdiphol (Seh Daeng)," *New York Times*, May 17, 2010.

http://topics.nytimes.com/top/reference/timestopics/people/k/khattiya_sawatdiphol/index.html

¹²¹ Nick Nostitz, "Nick Nostitz in the Killing Zone," *New Mandala*, May 16, 2010.

<http://asiapacific.anu.edu.au/newmandala/2010/05/16/nick-nostitz-in-the-killing-zone/>

For an update on the fate of some of the Red Shirt protesters who were at the scene described in the report, see "Daughter of a Slain Red Shirt Hears Story of Father from Nick Nostitz," *Prachatai*, June 21, 2010.

<http://www.prachatai.com/english/node/1899>

¹²² "3 Injured as Van Trying to Clash through Security Checkpoint at Makkasan," *The Nation*, May 15, 2010.

<http://www.nationmultimedia.com/home/3-injured-as-van-trying-to-clash-through-security--30129399.html>

¹²³ Jack Picone, "Is it OK to Shoot Foreigners and Journalists?'," *Sydney Morning Herald*, May 22, 2010.

<http://www.smh.com.au/world/is-it-ok-to-shoot-foreigners-and-journalists-20100521-w1ur.html>

¹²⁴ "Medics Banned from Entering 'Red Zones'," *The Nation*, May 16, 2010.

<http://www.nationmultimedia.com/home/2010/05/16/national/Medics-banned-from-entering-red-zones-30129456.html>

¹²⁵ Bill Schiller, "Why Did So Many Civilians Die in Bangkok Violence?," *The Star*, May 23, 2010.

<http://www.thestar.com/news/world/article/813547--why-did-so-many-civilians-die-in-bangkok-violence>

Days of fierce battles fatally weakened the Red Shirt defenses, manned for the most part by civilians burning tires in a vain attempt to stave off the advance of a modern army. Even a last-ditch diplomatic effort, which was still on the table as of May 18, was snubbed by the Abhisit government.¹²⁶ Finally, on May 19 the army broke through the Red Shirts barricades. Shortly thereafter, the Red Shirt leaders at Ratchaprasong announced their surrender to the police in an effort to avoid more bloodshed. While May 19, 2010 already marks one of the darkest days in the history of Thailand — the culmination of the country’s worst-ever massacre of pro-democracy demonstrators — the death toll would likely have been far greater were it not for the UDD leaders’ eleventh-hour surrender.

The surrender of Red Shirt leaders, however, failed to halt the carnage. Hours after the Red Shirts were dispersed, six more people died in an assault staged on Wat Pathumwanaram, the spot designated as a safe haven for Red Shirt demonstrators who wished to escape the violence. A foreign journalist injured at the scene describes military snipers firing from elevated train rails into groups of unarmed civilians claiming sanctuary in the Buddhist temple. A uniformed nurse was among the civilians shot to death.¹²⁷

Officially, an additional fifty-five civilians died during the weeklong crackdown that resulted in the Red Shirts’ dispersal on May 19. Despite repeated accusations of “terrorism” leveled at the UDD, no security forces died during the operations, while none of the people gunned down by the authorities proved to have been carrying weapons. The government, nonetheless, has rejected any responsibility for the violence. Retiring army chief Anupong Paochinda recently denied that soldiers had fired at unarmed civilians. The military, he said, “never intended to harm people.” The dispersal operations had taken place in accordance with “international standards.”¹²⁸

6.4 *International Standards on Use of Force*

Thailand is a State Party to the ICCPR, which is authoritatively interpreted by the Human Rights Committee, a body of eighteen experts created by the ICCPR to oversee its enforcement. In its General Comment on the Right to Life as guaranteed by Article 6 of the ICCPR, the Committee states:

¹²⁶ On May 18th, one day before the final violent crackdown, a group of Senators were welcomed by the Red Shirts to serve as a last ditch mediation effort, which was firmly rejected by the government, leading to the bloody assault the following morning.

¹²⁷ Andrew Buncombe, “Eyewitness: Under Fire in Thailand,” *The Independent*, May 20, 2010. <http://www.independent.co.uk/news/world/asia/eyewitness-under-fire-in-thailand-1977647.html>

See also: Bangkok Pundit (pseud.), “What Happened at Wat Pathum Wanaram?,” *Bangkok Pundit*, May 31, 2010.

<http://asiancorrespondent.com/bangkok-pundit-blog/what-happened-at-wat-pathum-wanaram>

¹²⁸ “Anupong: Soldiers Not Involved in Temple Killings,” *Bangkok Post*, June 3, 2010.

<http://www.bangkokpost.com/news/local/179998/anupong-soldiers-not-involved-in-killing-at-temple/page-2/>

*States parties should take measures ... to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.*¹²⁹

At a minimum, to meet this ICCPR treaty obligation, states must comply with the United Nations Basic Principles on the Use of Force and Fire Arms by Law Enforcement Officials (the “UN Basic Principles”). These principles exist to help UN member states like Thailand ensure and promote the proper conduct of their law enforcement officials, and they are to be taken into account and respected within the local rules and regulations of each member state.¹³⁰ They are particularly relevant to Thailand and the Red Shirt massacres because they specifically contemplate appropriate boundaries for the use of force in situations involving demonstrations, including those that may become violent or illegal.

The UN Basic Principles establish an overarching duty to minimize the use of lethal force against civilians. Thus, the UN Principles require from all law enforcement personnel:

Principle 3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.

Principle 4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

Principle 5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;

(b) Minimize damage and injury, and respect and preserve human life;

*(c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment.*¹³¹

¹²⁹ General Comment 6, par. 3, April 30, 1982.

¹³⁰ United Nations Basic Principles on the Use of Force and Fire Arms by Law Enforcement Officials of 1990.

¹³¹ *Ibid.*, Principles 3, 5.

The UN Basic Principles relating to the dispersal of demonstrations are:

Principle 12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

Principle 13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

*Principle 14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.*¹³²

Principle 9 states:

Principle 9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

In April-May 2010, the Abhisit administration and Royal Thai Army appear to have ignored these crowd control principles altogether. Contrary to the “international standards” the government is eager to invoke, its dispersal operations made little use of “non-lethal incapacitating weapons.” No care whatsoever appears to have been taken to “minimize the risk of endangering uninvolved persons” and to “preserve human life.” Its shoot-to-kill policy for demonstrators burning tires and setting off firecrackers does not appear to constitute a response undertaken “in proportion to the seriousness of the offense.” Attacks on medical workers were not ordered in the interest of ensuring that “assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment.” Even if the Red Shirts demonstrations could be regarded as “violent” and “unlawful” — if only because the State of Emergency declared them to be illegal — the wealth of eyewitness accounts that emerged from the government’s live fire zones strongly suggests that the use of force was not limited to the “minimum extent necessary” (*Principle 13*). Moreover, the fact that none of those killed appeared to have been armed with deadly weapons

¹³² Ibid., Principles 12-14 (emphasis added).

indicates that the government's "intentional lethal use of firearms" was not restricted to instances where such use was "strictly unavoidable in order to protect life" (*Principle 9*).

Instead of carrying out a conventional dispersal operation, the administration unleashed on the Red Shirts a force trained for armed combat against a foreign army. Simply stated, it appears that the Royal Thai Army did what it has always done when confronted with large demonstrations challenging its control over Thailand's political system. It set genuine international standards aside and put the demonstrations down by force.

7. A NEW SEASON OF MILITARY RULE

Ninety people have been killed and around 1,800 injured in the six weeks leading up to the May 19 crackdown. An additional casualty of the conflict was the pretense of "democratic rule" and of "the respect for the rule of law" that Abhisit's administration had sought to protect throughout its tenure in office. Confronted with a massive, well-organized, and largely peaceful challenge to its legitimacy, Abhisit demonstrated his inability to govern in accordance with the protections that even the post-coup 2007 Constitution formally affords the people of Thailand. Even before the demonstrations began, the government suspended many constitutional protections by invoking the Internal Security Act in an attempt to restrict the Red Shirts' activities. On the eve of the first crackdown, moreover, the government claimed dictatorial powers and declared the State of Emergency. Three months on, the Emergency Decree remains in force, indefinitely.

The military is once again in control of the country. Unlike in the aftermath of the 2006 coup, it governs under the cover of law — more specifically, thanks to the abuse of repressive legislation allowing the new junta to place itself beyond any form of accountability, to suspend any of the freedoms guaranteed by the Constitution, and to decide what the law is according to its interests and needs. The current government's abuse of emergency powers in fact marks the wholesale subversion of the rule of law absent the formal declaration of a coup. The government's pretense of legality notwithstanding, one should make no mistake about it: the imposition and subsequent indefinite extension of the Emergency Decree marks the staging of a silent (if unacceptably violent) coup on the part of the Abhisit administration and its military backers. It is now clear that the Emergency Decree remains in force not for the purpose of confronting an emergency, but rather to give the government the dictatorial powers it needs to stamp out its opposition and attempt to consolidate its illegitimate hold on political power.

The Emergency Decree thus constitutes an additional violation of the ICCPR, Article 4 of which permits emergency suspension of certain ICCPR rights, such as the right to demonstrate, only "to the extent strictly required by the exigencies of the situation."

7.1 *The Internal Security Act*

Enacted in 2008, the Internal Security Act provides for an all-encompassing definition of “the maintenance of internal security”, which includes “operations to prevent, control, resolve, and restore any situation which is or may be a threat arising from persons or groups of persons creating disorder, destruction, or loss of life, limb, or property of the people or the state.”¹³³ However, the Act allows these extraordinary, extra-constitutional measures only “in order to restore normalcy for the sake of the peace and order of the people, or the security of the nation.”¹³⁴

The Act situates the power of the state in the office of the Prime Minister. Under the Act, “In the event of an occurrence which affects internal security but which does not yet require the declaration of a state of emergency [...] the Cabinet shall pass a resolution to have the Internal Security Operations Command (“ISOC”) take responsibility for prevention, suppression, and eradication or mitigation of this occurrence which affects internal security, within an assigned area and time-period.” ISOC, the branch of the military tasked with defending the country’s security from internal threats,¹³⁵ operates under the direct command of the Prime Minister, who is defined by the Act the “Director of Internal Security.”¹³⁶

Once the resolution is issued, the state’s administrators are no longer the National Assembly, the Cabinet, the Courts, but rather the Prime Minister as Director, the Commander-in-Chief of the Army as Deputy Director, and the Chief of Staff of the Army as the Secretary.¹³⁷ The only mediating influence is the Cabinet, although that influence is weak as it is limited to approving the Prime Minister to exercise the power to “issue regulations as follows”:

- (1) to have relevant state officials implement any action, or suspend any action;*
- (2) to prohibit entry or exit at a locality, building, or designated area during its operating hours, except with the permission of a competent official or being an exempted person;*
- (3) to prohibit exit from dwelling places within a designated time;*
- (4) to prohibit the carrying of weapons outside dwelling places;*
- (5) to prohibit the use of routes or vehicles or to prescribe conditions on the use of routes or vehicles;*

¹³³ Internal Security Act, B.E. 2551 (2008), s. 3.

¹³⁴ *Ibid.*, s. 3.

¹³⁵ For a brief account of ISOC’s disturbing human rights record, see Paul Busbarat, “Thailand, International Human Rights and ISOC,” *New Mandala*, January 27, 2009. <http://asiapacific.anu.edu.au/newmandala/2009/01/27/thailand-international-human-rights-and-isoc/>

¹³⁶ *Ibid.*, ss. 4-5.

¹³⁷ *Ibid.*, s. 5.

*(6) to order persons to perform or suspend any action in connection with electronic equipment in order to guard against danger to life, limb, or property of the people.*¹³⁸

Item (2) to (6) are provided only for greater certainty, as the scope of the powers of the Prime Minister is captured by item (1): the power “to have relevant state officials implement any action, or suspend any action.” This power is exercised by Prime Ministerial “regulation,” not by Act of the legislature. There is no democratic oversight; there is no parliamentary review. Only the Prime Minister, his Cabinet, and the Army are made responsible to rule. This has been the state of the rule of law in Thailand since March 11, 2010.

7.2 State of Emergency

Undeterred by the imposition of the Internal Security Act and the corresponding restriction of their movements, thousands of Red Shirts from all walks of life descended on Bangkok to protest the current government and call for elections. In response to the mounting opposition, Prime Minister Abhisit and his family retreated from their Bangkok residence to a military barrack, providing yet another indication of Abhisit’s dependence on the generals’ support. On April 7, following weeks of speculation, the government doubled down on the imposition of the Internal Security Act and declared the State of Emergency for Bangkok and part or all of five surrounding provinces.

Pursuant to Section 9 of the Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (2005), the government proscribed any “assembly or gathering to conspire of five persons or more” as well as “any act to incite unrest” taking the form of:

Obstructing the traffic in such a way that prevents normal commuting;

Blocking the entry or exit of buildings or compounds in such a way that obstructs the carrying out of work, business or daily life of the general public;

Attacking or using force in such a way that causes disruption, harm, fear and anxiety over the safety of life, body and property among the public;

Disobeying directives of the competent officials pertaining to the demonstrations aiming at maintaining peace and preventing disruption to the daily life of the public.

The penalty for violators was decreed to consist of “imprisonment for a term not exceeding two years or a fine of no more than forty-thousand baht.”¹³⁹ Furthermore, the government prohibited “the release of news, distribution or dissemination of

¹³⁸ Ibid., s. 18.

¹³⁹ Announcement of the Centre for the Resolution of the Emergency Situation Re: Prohibition of Assembly or Gathering to Conspire, April 8 B.E. 2553 (2010).

newspapers, publications or any means of communications containing content which may cause fear amongst the public or is intended to distort information leading to misunderstanding of the emergency situation to the extent of affecting the security of the state or public order or the good morals of the people throughout the Kingdom.”¹⁴⁰

Pursuant to Section 11 of the Emergency Decree, the government further issued regulations that conferred upon the administration extraordinarily expansive powers. Among other things, the government would now be empowered to “arrest and detain a person suspected in taking part in instigating the emergency situation or a person who advertises or supports the commission of such act,” “summon an individual to report to the officers or to give statements or hand in documents or evidence pertaining to the emergency situation,” and “prohibit or order any action in so far as necessary to ensure national security or public safety.”¹⁴¹

The imposition of the Emergency Decree provided the government with the pseudo-legal foundation upon which it based the botched crackdown of the Red Shirts on April 10. On May 13, the day Seh Daeng was assassinated, the Emergency Decree was expanded to fifteen other provinces in the Central, North and Northeast regions of the country. Upon the dispersal of the Red Shirts, on May 19, the State of Emergency encompassed a total of twenty-four out of Thailand’s seventy-six provinces. The Emergency Decree remained in force even after the government lifted the curfew. The latest extension leaves the Emergency Decree in effect in sixteen provinces through early October, with no end in sight.

It was only by replacing the rule of law with their whim, thereby suspending most civil liberties and political rights the Thai people were supposedly guaranteed by the 2007 Constitution, that the Prime Minister and his military backers could hope to suppress challenges to their illegitimate rule. Many of those who still resisted paid for it with their lives, their limbs, or their freedom.

It should be added that the manner in which the Emergency Decree has been enforced in the aftermath of the dispersal of the Red Shirt demonstrations offers further evidence of the government’s double standards. Aside from the UDD’s core leaders, who remain in custody and face a possible death sentence stemming from the trumped up charges of terrorism, as of June 10 the government had arrested 417 people associated with the Red Shirts, mostly for violations of the Emergency Decree. Several were tried and convicted within hours of their arrest. On June 26, activist Sombat Boonngarmanong was apprehended for violating the Emergency Decree while attempting to tie a red ribbon at Ratchaprasong in remembrance of those killed by the state a month earlier.

¹⁴⁰ Regulation pursuant to Section 9 of the Emergency Decree on Public Administration on Emergency Situation, B.E. 2548 (2005).

¹⁴¹ Announcement pursuant to Section 9 of the Emergency Decree on Public Administration on Emergency, Situation B.E. 2548 (2005).

The government's extreme repression of the Red Shirts stands in sharp contrast to the more lenient posture adopted with regard to similar violations of the Emergency Decree that PAD/Multicolor protesters and their organizers have engaged in at the same time. Nobody was arrested among the thousands of pro-government activists who staged rallies at Royal Plaza and Silom Road — in contravention of emergency rules banning political gatherings — while the Red Shirts were demonstrating at Ratchaprasong. On April 22, groups of “Multicolor” shirts pursued by the police after repeatedly attacking the Red Shirt encampment were given safe haven behind army lines. Video evidence shows a military officer pointing a gun at the head of a policeman who was in the midst of arresting a pro-government militant.

7.3 *Control of Information*

Throughout its tenure, the Abhisit administration has sought to control the dissemination of facts and ideas that are contrary to the official version of the events by making extensive use of the Computer Crimes Act, passed on June 10, 2007 by the military-appointed National Legislative Assembly.¹⁴² Buried in the latter sections of the Computer Crimes Act is a provision criminalizing the dissemination of statements via computer “that might have an impact on the Kingdom's security . . . or that [] might be contradictory to the peace and concord or good morals of the people”¹⁴³ This vague provision is highly subjective and, in light of the abundance of internet-based communication, a powerful repressive tool. Still, the government found it necessary to further bend this illiberal piece of legislation. Contrary to what the law provides, most of the websites that were targeted by the government prior to the most recent round of protests were blocked without the requisite court order.

More recently, the Centre for the Administration of Peace and Order (“CAPO”) — established by the Internal Security Act — and the Center for the Resolution of the Emergency Situation (“CRES”) — instituted after the promulgation of the Emergency Decree — have further restricted the flow of inconvenient facts and unfavorable information through the abuse of regulations issued pursuant to the Emergency Decree. CAPO/CRES blocked a slew of websites under the declared State of Emergency. While most such websites were closely aligned with anti-regime protesters, independent news and commentary sites were also included.¹⁴⁴ According to a spokesperson of the regime, the websites were disseminating “false” information, such as that “Abhisit had authorized the use of force against demonstrators.”¹⁴⁵

¹⁴² A translation of the Computer Crimes Act B.E. 2550 (2007) is available at http://www.iclrc.org/thailand_laws/thailand_cc.pdf.

¹⁴³ Computer Crime Act, Sections 3 (defining “Computer Data” to include “statements”) and 20.

¹⁴⁴ Statement by the Asian Human Rights Commission, “THAILAND: Censorship and Policing Public Morality,” April 9, 2010, <http://www.ahrchk.net/statements/mainfile.php/2010statements/2498/>.

¹⁴⁵ “Thailand Government Shuts Down Protesters’ TV Station,” *The Guardian*, April 8, 2010, <http://www.guardian.co.uk/world/2010/apr/08/thailand-bangkok-protests>

Simultaneously, the regime shut down the PTV satellite television station, five magazines, and a host of community radio stations operated by the Red Shirts pursuant to the declared state of emergency. Once again, the shutdowns were necessary, according to Abhisit, to “restore peace and order and to stop the spreading of false information to the Thai public.”¹⁴⁶

7.4 *Are the Red Shirts Terrorists?*

The Emergency Decree on Public Administration in Emergency Situation, B.E. 2548 (2005) describes the situations in which the government may suspend its citizens’ constitutional rights in ways that bring into question the appropriateness of government’s initial promulgation and indefinite extension of regulations issued pursuant to the Decree. Section 11 of the Decree, which provides the government with the most extensive powers, speaks of instances “where an emergency situation involves terrorism, use of force, harm to life, body or property, or there are reasonable grounds to believe that there exists a severe act which affects the security of state, the safety of life or property of the state or person.” Justifying the extraordinary use of dictatorial powers, therefore, has required the government to mount a relentless media campaign aimed at defining the Red Shirts as a subversive movement threatening the integrity and the security of the Thai state.

The government continues to justify its recourse to the Emergency Decree based on both the means allegedly employed by the UDD (and the broader Red Shirt movement) as well as the political agenda it has accused the Red Shirts of pursuing.

Since the beginning of the protests, despite ongoing attempts to give the public the impression that most Red Shirts demonstrators were bribed or brainwashed into joining the protests, the government has taken care to reiterate that at least some the *economic* grievances of rank-and-file Red Shirts are legitimate. The so-called “Roadmap to Reconciliation” that the Prime Minister announced in May does include promises that new social programs will address Thailand’s vast social inequalities. At the same time, the government has dismissed the UDD’s *political* agenda of real democratization. On the one hand, the Abhisit administration rejects charges of illegitimacy and continues to argue that it rose to power through an entirely democratic process. On the other hand, the government has long made the case that the calls for Thailand’s “democratization” put forth by the Red Shirts are nothing other than a smokescreen behind which lie more insidious goals.

The charge most often leveled against the Red Shirts is that their true objective is the creation of a “New Thai state” that would dispense with the country’s revered monarchy and replace it with a presidential republic that would, at least initially, presumably be led by Thaksin Shinawatra. These accusations have a long history. As noted, opponents of Thaksin had grounded their campaign to remove him from office

¹⁴⁶ “Thai Protesters Demand Government Reopen TV Station,” *CNN World*, April 8, 2010, <http://www.cnn.com/2010/WORLD/asiapcf/04/08/thailand.protests/index.html>.

in the need to protect the monarchy. These accusations have continued to hound the Red Shirts in spite of their leaders' repeated statements to the contrary. After the imposition of the Emergency Decree, the government announced to the press the discovery of an intricate network engaged in a conspiracy to overthrow the monarchy. The only evidence CRES provided was a messy diagram that connected the names of dozens of Red Shirt leaders, opposition politicians, writers/editors of dissident publications, university professors, and business owners to one another. Abhisit used the "discovery" as retroactive justification for the Emergency Decree, claiming that the additional powers had allowed CRES to gain greater insight into the plot and take more decisive action to protect the institution of the monarchy.¹⁴⁷

In the government's public statements, the threat that the Red Shirts are alleged to pose to the security of the Thai state is said to be aggravated by the presence of supposed "terrorists" in their midst. The Red Shirts have been accused of having instigated or carried out several acts of violence. After the dispersal of the rallies, the government has filed charges of terrorism against dozens of UDD leaders as well as Thaksin Shinawatra — who stands accused, without much in the way of proof, of having directed the acts of terrorism and provided the bulk of the rallies' funding. The International Crisis Group recently concluded: "It is difficult to make a case that Thaksin's role in the recent violence in Thailand fits with definitions of terrorism widely used internationally."¹⁴⁸ Bail was recently denied for ten Red Shirt leaders held since the crackdown.

Notwithstanding the fiery rhetoric employed by some of its speakers, little hard evidence connects the UDD and its core leaders to the episodes of violence they are accused of carrying out.

First, the government has failed to provide any credible information linking Red Shirt leaders with the dozens of grenade attacks that targeted several banks, military installations, public offices, party headquarters, and the private residence of coalition politician Banharn Silpa-archa since the beginning of the rallies. Though some observers have noted that other groups besides the Red Shirts had far greater interest in building the climate of fear that the string of attacks generated, the government accused the Red Shirts by default. Bomb attacks that immediately preceded the beginning of the rallies were instrumental to the government's case for imposing the Internal Security Act, while those carried out since were crucial to the justification for the Emergency Decree. At one point, the Department of Special Investigations sensationally announced that on March 20 the Red Shirts had targeted the Temple of the Emerald Buddha — one of Thailand's most sacred structures — in a failed attack with a Rocket-Propelled Grenade (RPG), based on the "confession" of a man who

¹⁴⁷ "Govt Claims Plot Targets King," *Bangkok Post*, April 27, 2010.

<http://www.bangkokpost.com/news/local/175917/govt-claims-plot-targets-king>

¹⁴⁸ International Crisis Group, "Bridging Thailand's Deep Divide," *ICG Asia Report 192*, July 5, 2010, p. 18.

http://www.crisisgroup.org/~media/Files/asia/south-east-asia/thailand/192_Bridging%20Thailands%20Deep%20Divide.ashx

claimed to have been paid by a politician to carry out the bombing.¹⁴⁹ Nothing has been heard since about the plot the government alleged.

Second, while the “men in black” who appeared to have killed military officers during the clashes on April 10 were never identified, the commandos are thought to have been highly trained military officers — whether retired or active duty.¹⁵⁰ Again, though the government has claimed that these men likely worked for the Red Shirts, presumably at the orders of the slain Maj.-Gen. Khattiya Sawasdipol (Seh Daeng), it has offered no evidence to support that claim. In the pro-Establishment publication *The Nation*, conservative columnist Avudh Panananda recently speculated that the killing of Col. Romklao Thuwatham was likely to have been related to the dominance achieved by the Queen’s Guard and the “Eastern Tigers” clique within the country’s armed forces.¹⁵¹

Third, the government was quick to point the finger against the UDD in the immediate wake of an M-79 grenade attack on the Sala Daeng SkyTrain station that took place during a stand-off between Red Shirts and pro-government “Multicolor” Shirts on April 22, resulting in one death. The suspects it had initially detained, however, were quickly released. Contradicting CRES’ conclusion that the grenades were lobbed from the Red Shirt encampment near the Rama VI monument, eye-witnesses among pro-government counter-protesters claim the grenades were fired from nearby Chulalongkorn Hospital.¹⁵²

Fourth, the government repeatedly cautioned the public that the Red Shirts were heavily armed and maintained large stockpiles of weapons at the demonstration sites. Days after the May 13-19 massacre, CRES showcased to journalists and foreign dignitaries an underwhelming array of weaponry it alleges to have found at the Ratchaprasong intersection during its clearing operations.¹⁵³ Modest as the stockpile was, the crackdown’s lopsided casualty figures reveal that the incidence of heavily armed elements within the Red Shirts was negligible. While reports of Red Shirts fighting back against the military with improvised weaponry and antiquated small

¹⁴⁹ “Ex-policeman Held in RPG Case,” *The Nation*, May 1, 2010.

<http://www.nationmultimedia.com/home/2010/05/01/national/Ex-policeman-held-in-RPG-case-30128366.html>

¹⁵⁰ Avudh Panananda, “Anti-Riot Squad Cut Up by Soldiers in Black,” *The Nation*, April 13, 2010.

<http://www.nationmultimedia.com/home/2010/04/13/politics/Anti-riot-squad-cut-up-by-soldiers-in-black-30127131.html>

¹⁵¹ Avudh Panananda, “Is Prayuth the Best Choice amid Signs of Army Rivalry?,” *The Nation*, June 8, 2010.

<http://www.nationmultimedia.com/home/2010/06/08/politics/Is-Prayuth-the-best-choice-amid-signs-of-Army-riva-30131079.html>

See also International Crisis Group, op. cit., fn. 133, p. 10.

http://www.crisisgroup.org/~media/Files/asia/south-east-asia/thailand/192_Bridging%20Thailands%20Deep%20Divide.ashx

¹⁵² คนเลวมีเอ็ม79ที่เอสศาลาแดงเจ็บ75ดับ1-พยานอ้างยิงจากรพ.จุฬาฯ, *ASTV-Manager*, April 23, 2010.

<http://www.manager.co.th/Crime/ViewNews.aspx?NewsID=9530000055677>

¹⁵³ “More Red Arsenal on Show,” *The Straits Times*, May 23, 2010.

http://www.straitstimes.com/BreakingNews/SEAsia/Story/STIStory_530261.html

arms abound, less than a handful of protesters were actually seen using automatic weapons and grenade launchers in the run-up to May 19.

Finally, the government maintains that the thirty-nine arson attacks that took place in Bangkok on May 19 were “systematically planned and organized.”¹⁵⁴ However, it has provided no credible evidence of a conspiracy. Most of the Red Shirt leaders were already in custody by the time the arson attacks occurred and had publicly instructed their followers to disperse. Moreover, important questions remain about the timing of the incident at the Central World shopping mall and the effects that the military’s actions had on the speed with which firefighters arrived on the scene and extinguished the fire. At the very worst, the evidence suggests that the fires were set in frustration by leaderless Red Shirts supporters who had just witnessed days of carnage, in which the military took the lives of so many of their family members, their friends, and their comrades. Even in that context, the destruction of regularly insured commercial property remains inexcusable. Yet, unlike the human tragedy that unfolded prior to the alleged arson attacks, it is not altogether inconceivable.

Despite its apparent lack of grounding in credible evidence, the portrayal of the Red Shirts as “terrorists” made the government’s case for the assumption of dictatorial powers and for the need to crack down on the movement as violently as it did on April 10 and again in the lead-up to the dispersal of the rallies on May 19.

It is worth noting that the systematic demonization of pro-democracy demonstrators for the purposes of building public support for episodes of state violence is a technique with a long track record in Thailand. As they have over the course of the most recent incidents, for instance, throughout the events of Black May 1992 the demonstrators had been portrayed as violent “revolutionaries.” Then as now, the military government had accused the protesters of aiming to overthrow Thailand’s constitutional monarchy.¹⁵⁵ Then as now, the military government had imposed the Emergency Decree and announced that drastic action would be taken against “rioters.”¹⁵⁶ Then as now, the military government claimed the soldiers had only shot in self-defense.¹⁵⁷ The crucial difference between now and then is that, in 1992, the public in Bangkok reacted to the mass killings and attempted cover-up staged by a military government with justifiable disgust; this time, the upper-middle class in Bangkok largely applauded the massacre that the military government carried out in the interest of avoiding an election that would likely see parties favoring Establishment interests defeated.

¹⁵⁴ Jocelyn Gecker, “Thai Troops Open Fire on Red Shirt Protesters in Bangkok,” *Associated Press*, May 20, 2010.

<http://www.adelaidenow.com.au/thai-troops-open-fire-on-red-shirt-protesters-in-bangkok/story-e6frea6u-1225868598260>

¹⁵⁵ Tan Lian Choo, “Clashes Provoked by Group Bent on Revolt: Suchinda,” *The Straits Times*, May 20, 1992.

¹⁵⁶ “‘Drastic Action’ to Quell Protest,” *Bangkok Post*, May 18, 1992.

¹⁵⁷ “Shootings Were in Self-Defence, Says Spokesman,” *The Nation*, May 20, 1992.

The current junta's systematic portrayal of the Red Shirts is even more strikingly reminiscent of the manner in which the military justified to the public the murder of several dozen pro-democracy students — some of them raped, tortured, mutilated, and burned alive — that took place at Thammasat University on October 6, 1976.¹⁵⁸ Much like the Red Shirts, the students who had barricaded themselves in the Thammasat University campus had been falsely accused of having stockpiled large amounts of weapons in the halls of the university. Much like the Red Shirts, the students had been dehumanized through genocidal language that referred to them as beastly, un-Thai and, as a famous 1970s propaganda song (recently dusted off by the PAD) did at the time, “the scum of the earth” (*nak paengin*). Much like the Red Shirts, the students had been accused of posing a threat to the institution of the monarchy, of having been infiltrated by foreign agents, and of harboring radical ideas. In 1976, the students were labeled “communists;” today, the government updated its terminology to the changed geo-political context and branded the Red Shirts “terrorists.”

The way in which the military dealt with the Red Shirts is also evocative of the manner in which it had repressed Thammasat University students thirty-four years earlier. In 1976, the military had relied on fanatical right-wing royalist vigilantes — paramilitary groups like the Village Scouts and the Red Gaurs — to massacre the students. It then used the violence it had itself orchestrated as the pretext to stage a coup. Similarly, in late April 2010, the government relied on right-wing royalist vigilantes, mostly members of the PAD donning “multicolor” shirts, to provoke a violent confrontation with the Red Shirts in the Silom area. Just like the current military government has, moreover, the regime that was installed by the military in 1976 (led by Tanin Kraivixien, now a distinguished member of the Privy Council) placed the responsibility for the massacre squarely on the shoulders of its victims. It therefore instituted a strict censorship regime, summarily cleared those who had murdered the students of any wrongdoing, and pursued dissidents relentlessly, forcing thousands to flee the country or join the communist insurgency in the North and the Northeast. Notably, in 1976 as well as in 2010, the government's systematic demonization of the demonstrators appears to have successfully appealed to the fears of the upper-middle class residents of Bangkok, or at least secured their indifference. In addition, unlike similar incidents of state violence in 1973 and 1992, the mass killings of 1976 and 2010 did not prompt the King to intervene publicly.

These historical parallels point to the fact that the most recent wave of demonstrations and violence played out according to the same script followed by the events of 1973, 1976, and 1992. Just as in all those instances, the Red Shirts' calls for “democracy” were described by the government as a façade for an ideology threatening the security of the Thai state. Just as in all previous instances, the Red Shirts did engage in some

¹⁵⁸ Thongchai Winichakul, “Remembering/Silencing the Traumatic Past: The Ambivalence Narratives of the October 6, 1976 Massacre in Bangkok,” in *Cultural Crisis and Social Memory: Modernity and Identity in Thailand and Laos*, eds. Charles F. Keyes and Shigeharu Tanabe (London: Routledge/Curzon, 2002), 243-283.

violence, looting, and property destruction — mostly in situations when they were themselves under fire — but were not the armed “terrorists” or “Marxist revolutionaries” the government had made them out to be. However, just as in all previous instances, dubious accusations of ideological extremism and violent tendencies were highly instrumental to the case made by the military to justify the imposition of extraordinarily repressive measures and to shoot scores of unarmed demonstrators with the utmost impunity. Now as ever, the Establishment answered the calls for democracy in Thailand with the dehumanization of their opponents, the subversion of the rule of law, and human rights violations on a massive scale.

8. A CALL FOR ACCOUNTABILITY

Thailand has multiple levels of obligations under International Law to bring its human rights violators to justice. It is required to investigate — and, if applicable, prosecute — all cases in which there is reasonable ground to believe that a serious human rights violation, such as summary or arbitrary execution of civilians, has been committed, especially where the responsible parties appear to be agents of the government. The investigations must be fair, complete, and conducted by truly independent and impartial bodies. This is the standard required of the Abhisit regime, as it looks within its own ranks to determine whether any of its soldiers or civilian leaders is responsible for the deaths of ninety individuals, the injury of thousands more, and hundreds of prolonged arbitrary detentions in harsh conditions. In serious cases like summary or arbitrary executions, a government cover-up can mean fresh violations of International Law.

8.1 *Thailand's Duty to Investigate and Prosecute*

Thailand has obligations under both treaty and customary international law to investigate all cases in which there is reasonable ground to believe that serious human rights violations and other international offenses have been committed and, where applicable, to prosecute the responsible parties. This duty applies directly to possible excessive use of force by military troops against civilians during the clearing operations in April-May 2010, as well as to other serious human rights violations there exist reasonable grounds to believe were committed during the demonstrations and their aftermath: disappearances, prolonged arbitrary detention in harsh conditions and other cruel or inhumane acts. The facts strongly suggest multiple grounds for prosecution within the ranks of the Royal Thai Army. The regime is therefore required to conduct a proper investigation through independent and impartial bodies.

Thailand's duty to investigate arises from the principle of *aut dedere aut judicare* (“duty to prosecute and extradite”) contained in numerous international treaties to which Thailand is a party state, such as the Common Article of the four Geneva Conventions of 1949, the Anti-Torture Convention of 1984, the European Terrorism

Convention of 1977, the Hostages Convention of 1979 and the New York Convention of Crimes against Internationally Protected Persons of 1973.¹⁵⁹

The duty to investigate serious violations of human rights is now so pervasive in international human rights law that it may be said to be a rule of customary International Law. Authoritative interpretations of all widely ratified international and regional human rights treaties recognize the duty. In the case of Thailand, the duty arises most directly under the International Covenant on Civil and Political Rights (“ICCPR”).¹⁶⁰ According to the Human Rights Committee of the United Nations, which supervises and authoritatively interprets the ICCPR:

[T]he positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, ... against violations of Covenant rights by its agents, ... There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts ... States are reminded of the interrelationship between the positive obligations imposed under article 2 and the need to provide effective remedies in the event of breach under article 2, paragraph 3.¹⁶¹

It is highly significant that the ICCPR requires state parties to be both complete and fair in the investigation and, if applicable, prosecution of persons responsible within the party state's own governmental structure:

Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies.¹⁶²

It is also worthy of note that a state party's failure to bring perpetrators to justice can itself constitute a separate treaty violation, particularly in cases involving serious crimes such as arbitrary killing:

Where the investigations referred to in paragraph 15 reveal violations of certain Covenant rights, States Parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate

¹⁵⁹ Edward M. Wise, “Aut Dedere Aut Judicare: The Duty to Prosecute or Extradite,” in *International Criminal Law, 2nd Edition*, ed. M. Cherif Bassiouni (New York: Transnational Publishers, 1998), pp. 18-19.

¹⁶⁰ See ICCPR, Article (6)(1), guaranteeing protections against arbitrary killing. Thailand acceded to the ICCPR on October 29, 1996.

¹⁶¹ U.N. Human Rights Committee General Comment 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, issued 29 March 2004 (“Comment 31”), Paragraph 8 (emphasis added).

¹⁶² Comment 31, Paragraph 15 (emphasis added).

*breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman and degrading treatment (article 7), [and] summary and arbitrary killing (article 6) . . . Accordingly, where public officials or State agents have committed violations of the Covenant rights referred to in this paragraph, the States Parties concerned may not relieve perpetrators from personal responsibility.*¹⁶³

Thailand is therefore bound by international treaty to hold a complete and fair investigation conducted by “independent and impartial bodies.” There is not only reasonable ground to believe that serious violations of human rights have been committed by agents of the government; there is in fact strong evidence that such human rights abuses took place under the government’s direction. Using the country’s politicized judicial branch or a non-transparent investigative committee controlled by the Abhisit regime does not meet international law standards of independence and impartiality; indeed, the failure to investigate should be examined as a possible separate violation of Thailand’s obligations under the ICCPR.

8.2 Summary and Arbitrary Executions; Other Serious Human Rights Violations

The International Covenant on Civil and Political Rights (ICCPR) guarantees that no one shall be arbitrarily deprived of his or her life.¹⁶⁴ It also guarantees, among other things, the right to be free from torture, cruel or degrading treatment,¹⁶⁵ and arbitrary detention.¹⁶⁶ In addition to the numerous deaths, there are scores of UDD members being held without bail on charges of violating the Emergency Decree and/or Internal Security Act, which was illegally imposed and has been illegally maintained. The due process rights of these accused are also subject to scrutiny under International Law.

Even if Thailand were not a party to the ICCPR, it would still have a duty under International Law to conduct a thorough and impartial investigation into extrajudicial, summary, or arbitrary executions. This obligation has been upheld repeatedly by the United Nations General Assembly. Most recently in 2009,¹⁶⁷ the General Assembly “strongly condemn[ed]” the practice of extrajudicial, summary or arbitrary executions, “demand[ed]” that all States ensure that the practice is brought to an end, and reiterated the “obligation of all States to conduct exhaustive and impartial investigations into all suspected cases” of such executions.

Not only investigations but also, where appropriate, prosecutions are required. The General Assembly reiterated the obligation of all states, in suspected cases of extrajudicial, summary or arbitrary executions, “to identify and bring to justice those responsible [...] and to adopt all necessary measures, including legal and judicial

¹⁶³ Comment 31, Paragraph 18 (emphasis added).

¹⁶⁴ ICCPR, Article (6)(1).

¹⁶⁵ ICCPR, Article 7.

¹⁶⁶ ICCPR, Article 9 (1)

¹⁶⁷ UNGA Res. 63/182, 16 March 2009, pars. 1-3.

measures, to put an end to impunity and to prevent the further occurrence of such executions.”¹⁶⁸

These obligations apply especially where, as in Thailand, there may have been targeting or disproportionate use of force against demonstrators, journalists and human rights defenders (such as medical personnel). The General Assembly specifically urged all States “to investigate promptly and thoroughly all killings, including those targeted at specific groups of persons, such as ... killings of persons for reasons related to their activities as human rights defenders, lawyers, journalists or demonstrators [...] and to bring those responsible to justice.”¹⁶⁹

Like the investigation, the prosecution, too, must be before an “independent and impartial” judiciary. Where national courts are not independent and impartial, the cases should be taken to international courts where appropriate. The General Assembly specified that justice must be sought:

*Before a competent, independent and impartial judiciary at the national or, where appropriate, international level, and to ensure that such killings, including those committed by security forces, police and law enforcement agents, paramilitary groups or private forces, are neither condoned nor sanctioned by State officials or personnel.*¹⁷⁰

All these obligations apply in the case of Thailand, as there is reasonable ground to believe that extrajudicial, summary or arbitrary executions were committed by security forces or by other agents of the state. Under International Law, there is no need to specify into which of these three categories (“extrajudicial, summary or arbitrary”) an instance of unlawful killing might fall. As put succinctly by the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, “These terms had important roles to play in the historical evolution of the mandate but today they tell us relatively little about the real nature of the issues.”¹⁷¹ What matters is that security forces may kill only in cases consistent with the universal principles of necessity and proportionality.¹⁷²

The killings of demonstrators by Thai security forces or agents do not appear to have complied with these principles. According to the Special Rapporteur, the principles establish “clear legal standards on the use of lethal force,” which “stipulate that the police [or other security forces repressing demonstrations] may shoot to kill only when it is clear that an individual is about to kill someone (making lethal force

¹⁶⁸ Ibid., par. 3.

¹⁶⁹ Ibid., par. 6(b).

¹⁷⁰ Ibid., par. 6(b).

¹⁷¹ Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, UN Doc. E/CN.4/2005/7, 22 Dec. 2004, par. 6.

¹⁷² Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, UN Doc. A/HRC/14/24, 20 May 2010, par. 34 (emphasis added).

proportionate) and there is no other available means of detaining the suspect (making lethal force necessary).”¹⁷³

There is little if any reason at all to believe that either standard was met in Thailand: most (and perhaps all) demonstrators who were killed were not about to kill someone else, and scant if any effort appears to have been made to avoid such threats by means short of lethal force. On the contrary, the declarations by Thai military officials that certain areas were “live fire zones” are strong evidence that the principles of necessity and proportionality — essential to the lawfulness of any killings — were not met. As the Special Rapporteur has emphasized, “shoot-to-kill” policies constitute “dangerous official rhetoric [which] displaces the clear legal standards on the use of lethal force.”¹⁷⁴

The Thai security forces should have complied strictly with the UN Basic Principles on the Use of Force (summarized above). The importance of these Principles is underscored by the Special Rapporteur, whose studies conclude that “the right to life is at grave risk in States where the use-of-force guidelines are inconsistent with these rules.”¹⁷⁵

Judgment should not be pronounced, of course, based solely on the limited information in the public domain about the conduct of Thai security forces, and on the necessity and proportionality of any extrajudicial, summary or arbitrary executions they may have committed. What is essential, and what is mandated by both the ICCPR treaty and customary International Law, is an exhaustive, independent and impartial investigation of these killings.

8.3 Political Persecution

By the time the Red Shirts began setting up their encampments in Bangkok on March 12, 2010, the campaign of political persecution against the opponents of the current regime had been underway for years. As noted, the campaign started with the 2006 coup, when Thai generals seized the state and overthrew the country’s Constitution for the sole purpose of obliterating the country’s ruling political party, dissolving the party through retroactive legislation, denying Thai Rak Thai politicians their individual right to seek and hold elected office, subjecting its leaders to selective criminal prosecutions, taking control of the courts, seizing Thaksin Shinawatra’s assets, and changing the rules of the game in an effort to hamper to reconstitution of the former ruling party. Throughout the time the generals were in power (September 2006-December 2007), they dedicated themselves to rooting out Thaksin’s supporters by having recourse to almost every available form of political persecution — the subversion of the rule of law, the deprivation of freedom, the denial of citizens’ basic right to free speech and assembly, the revocation of a citizen’s right to stand for

¹⁷³ Ibid., par. 35.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid., par. 34.

election, the suppression of freedom of association, legal harassment, the seizure of property, and the introduction of laws *ad personam*. Based on the generals' statements at the time, there can be no question that the attempt to stamp out Thai Rak Thai was a campaign that aimed explicitly to discriminate on account of political affiliation.

The campaign of persecution continued during the Samak and Somchai administrations (January 2008-December 2008), albeit in a different form. As documented in this White Paper, the 2007 Constitution enshrined into law the right of the Courts to intervene in the country's politics for the purposes of subverting the results of competitive elections, altering the composition of the House of Representatives, ordering the disbandment of lawfully registered political parties, and stripping the executives of such parties (even those who were not found guilty of any offenses) of their right to hold public office. In and of themselves, these rules represent violations of several among the *individual* rights sanctioned in the ICCPR — the right to “take part in the conduct of public affairs, directly or through freely chosen representatives” (Article 25) and the right to “to freedom of association with others” (Article 22). It matters little that a military junta managed to write these provisions into the Constitution. These provisions stand in direct contrast to the treaty obligations Thailand has freely contracted. Whereas, moreover, the extraordinary powers the Courts have at their disposal do not necessarily lead to political persecution, it is the systematic, targeted enforcement of the rules against those perceived to be loyal to Thaksin, those who stood in opposition to the coup, and those calling for a reduction in the extra-constitutional authority of the *amarthaya* that constitutes discrimination on the basis of political affiliation.

Perhaps the strongest evidence of political persecution, however, are the massive restrictions that have been placed upon freedom of expression, both in emergency and non-emergency situations, through the imposition of the strictest censorship regime Thailand has witnessed in thirty years, as well as the prosecution of an unprecedented number of people for crimes of conscience. Once again, it makes little difference that the censorship and internment of political prisoners is grounded in laws like the Computer Crimes Act and Article 112 of the Criminal Code. Those laws themselves constitute illegal restrictions placed on the Thai people's right to free expression and their freedom to “seek, receive, and impart information and ideas of all kinds.” While, moreover, government officials have often justified these restrictions with the need to protect national security (something the ICCPR explicitly provides for), there exists no rational argument in support of the case that a comment on Facebook endangers national security, or that a speech containing three statements critical of the monarchy has had an effect on public order and morals tantamount to an instance of murder (and hence worthy of a eighteen-year prison sentence). This, in fact, is precisely the kind of expression that the ICCPR is meant to protect — the freedom to criticize the institutions of the state. In addition, the censorship of outlets that might criticize “the monarchy, the nation, or religion” is not justified even in emergency situations, as the ICCPR renders the right to hold political opinions and share them with others explicitly non-derogable (Article 4(2)). Again, the crime of “political persecution” results from the

enlistment of these repressive laws against a group of people identified on the basis of their opposition to the government.

Other rights of people calling for Thailand's return to democracy have been systematically violated over the course of the Abhisit administration's ongoing campaign of political persecution. It is arguable, in particular, that the Internal Security Act and the Emergency Decree were enacted, enforced, and maintained in effect largely to restrict the Thai people's constitutionally sanctioned right to free assembly. What is inarguable, however, is that the prosecution, the indefinite detention, and the denial of due process suffered exclusively by anti-government demonstrators for violating regulations issued pursuant to the Emergency Decree — while pro-government demonstrators who engaged in the same violations walk free — constitutes an unacceptable double standard. Most importantly, the campaign of repression launched in the period since the demonstrations have ended, which is evocative of the witch-hunt conducted in the wake of the 1976 massacre, is clear evidence of the government's intent to persecute its opponents by stripping them of their protections from arbitrary detention (ICCPR, Article 9), their entitlement to a fair trial (Article 14), and their right to equal protection before the law (Article 26).

It is also noteworthy that some forms of political persecution can amount to crimes against humanity. Sections 7(1)(h) and 7 (2)(G) of the Rome Statute of the International Criminal Court explicitly define the crime against humanity of "Persecution" as "the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity," including persecution on "political" grounds, when committed in connection with other crimes under the ICC Statute, such as murder. As noted in the preceding section, there is reason to believe that an independent and impartial investigation would conclude that acts of murder were committed by Thai security forces under the Abhisit administration. It is also clear that the acts of repression directed at the Red Shirts were inflicted on political grounds.

The only remaining question of law, then, is whether such practices as indefinite detention, trumped up prosecutions, and grossly excessive prison sentences for the exercise of free expression, constitute "severe deprivation of fundamental rights." There is substantial precedent for the proposition that use of the judicial system to inflict harm, and other forms of persecution that do not inflict bodily harm, can constitute acts of persecution for purposes of crimes against humanity. The ICTY has recognized that a persecutory act (*actus reus*) can include acts not covered by the Statute.¹⁷⁶ The *Kupreškić* court elaborated on this standard in light of customary international law and the decisions of national courts, and defined acts of persecution as "the gross or blatant denial, on discriminatory grounds, of a fundamental right, laid

¹⁷⁶ See *Prosecutor v. Tadic*, Case No. IT-94-1-T, Opinion and Judgment of 7 May 1997 (Trial Chamber), ¶ 710 (Persecutory acts include, "*inter alia*, those of a physical, economic, or judicial nature, that violate an individual's right to the equal enjoyment of his basic rights.") (second emphasis added).

down in international customary or treaty law, reaching the same level of gravity as the other acts prohibited in Article 5.”¹⁷⁷ International tribunals have held that the *mens rea* for persecution is higher than for other crimes against humanity, in the sense of that it requires the intent to discriminate on account of political affiliation.¹⁷⁸

The *Kupreškić* court concluded that “organized detention” could constitute persecution (e.g., in the form of imprisonment).¹⁷⁹ This proposition could well bear on the Abhisit administration’s organized and prolonged detention of Red Shirt protesters.

Even economic harm can amount to a severe deprivation of fundamental rights. The *Kupreškić* court noted that although confiscation of industrial property was not recognized as persecution in the *Flick* and *Krauch* cases at Nuremberg, the *Flick* case left open the question whether deprivations of personal property could constitute persecution.¹⁸⁰ The court noted that denial of economic rights to Jews and expropriation of Jewish property formed part of the acts of persecution recognized in the IMT judgment. It further noted that use of the legal system to implement these actions was part of the charge of persecution in the *Justices* case.¹⁸¹ The court also found that “comprehensive destruction of ... homes and property” of Muslim civilians could constitute persecution, if the destruction had “a severe enough impact on the victim” such as “destruction of the livelihood of a certain population.”¹⁸² The court noted that despite the *Flick* and *Krauch* cases, the IMT did convict persons of economic discrimination, including Göring, whose acts of persecution focused on “how to get their [the Jews’] property and how to force them out of economic life in Europe.”

In short, if the general requirements for all crimes against humanity are met (as discussed in the next section), there is reasonable ground to believe that Thai authorities and forces committed acts of political discrimination that intentionally and severely deprived Red Shirt protesters of their fundamental rights under International Law, in connection with the murder of some protesters. Such discriminatory deprivations arguably amount to the crime against humanity of persecution.

8.4 Crimes Against Humanity

In addition to violating the ICCPR and customary international law, the apparently widespread and seemingly systematic killings by security forces in Bangkok in April-May 2010 and the associated political persecution of the Red Shirts may have been sufficiently egregious to qualify as crimes against humanity under the Rome Statute establishing the International Criminal Court.

¹⁷⁷ *Kupreškić*, ¶ 621.

¹⁷⁸ *Ibid.*, ¶ 636.

¹⁷⁹ *Ibid.*, ¶¶ 630-31.

¹⁸⁰ *Ibid.*, ¶ 619, n. 897.

¹⁸¹ *Ibid.*, ¶¶ 611-12.

¹⁸² *Ibid.*, ¶¶ 630-31.

Since Nuremberg, international criminal law has recognized murder as a form of crime against humanity, which gives rise to individual criminal responsibility under International Law.¹⁸³

The Rome Statute defines murder as “[t]he perpetrators killed one or more persons.”¹⁸⁴ In order to qualify as a crime against humanity, however, the killing must be: (1) directed against a “civilian population”; (2) as part of “a widespread or systematic attack”; (3) pursuant to or in furtherance of a “State or organizational policy to commit such attack”; (4) with knowledge of the attack.¹⁸⁵ Each of these criteria appears to be present in the killing of more than eighty civilians by the Thai Army during April-May 2010.

- “Civilian Population”

According to ICC jurisprudence, the attack must be against a “civilian population,” defined as a group “distinguished by nationality, ethnicity or other distinguishing features.”¹⁸⁶ Further, the attack must be directed against the civilian population as a whole and not merely against randomly selected individuals, and the civilian population must be the primary object of the attack in question and cannot merely be an incidental victim.¹⁸⁷

Although the government claimed it has only applied deadly force against violent elements among the Red Shirts, thus far it has been unable to show that any of those killed on April 10 as well as on May 13-19 posed any threat to the security forces. In fact, dozens of video clips, photographs, and eyewitness accounts point to several instances in which those killed manifestly *did not* pose any danger, but were rather shot through the head while holding slingshots, flags, cameras, or medical equipment. Indeed, the government appears to explain the danger posed by each of the persons killed or injured as a result of the military’s actions collectively as opposed to individually — specifically, based on the victims’ participation in the activities of a group the government has described as a “terrorist” organization. For this reason, those killed appear to have been targeted by the authorities based on “distinguishing features” identifying them as members of a particular civilian group — such as their red clothing and their publicly stated opposition to the government — whether or not the individual themselves actually committed any acts of violence or intimidation against the security forces.

¹⁸³ The Charter of the International Military Tribunal, art. 6 (c), defines crimes against humanity as “murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population ... in execution of or in connection with any crime within the jurisdiction of the Tribunal” (emphasis added).

¹⁸⁴ Rome Statute, Article 7(1).

¹⁸⁵ Rome Statute, Article 7(1), 7(2)(a).

¹⁸⁶ “Pre-Trial Chamber II,” Situation in the Republic of Kenya, ICC-01/09-19, para. 81.

¹⁸⁷ *Ibid.*, para. 82.

- “Widespread” or “Systematic”

To qualify as a crime against humanity, an attack must be *either* “widespread” or “systematic,” but it need not be both. “[W]idespread” refers to “the large-scale nature of the attack and the number of resultant victims,” while “systematic” refers to the “organized nature of the acts of violence and the improbability of their random occurrence.”¹⁸⁸

In Bangkok, the scale and the duration of the killings, together with manner in which they were conducted, suggests that both criteria may have been met. On the one hand, an aggregate casualty toll of at least eighty civilians killed and approximately two thousand injured over a forty-day period attests to the “widespread” nature of the attack. On the other hand, the repeated occurrence of similar incidents across time and space demonstrates the “systematic,” non-random nature of the offenses.

- “State or Organizational Policy”

The Rome Statute does not define the terms “policy” or “State or organizational.” However, the International Criminal Court has stated that the requirement:

*[...] ensures that the attack, even if carried out over a large geographical area or directed against a large number of victims, must still be thoroughly organised and follow a regular pattern. It must also be conducted in furtherance of a common policy involving public or private resources. Such a policy may be made either by groups of persons who govern a specific territory or by any organisation with the capability to commit a widespread or systematic attack against a civilian population. The policy need not be explicitly defined by the organisational group. Indeed, an attack which is planned, directed or organised - as opposed to spontaneous or isolated acts of violence - will satisfy this criterion.*¹⁸⁹

In the case against Tihomir Blaskic, the ICTY Trial Chamber made clear that the plan to commit an attack: “need not necessarily be declared expressly or even stated clearly and precisely,” and that it can be surmised from surrounding factors, including:

- *the general historical circumstances and the overall political background against which the criminal acts are set;*
- *media propaganda;*
- *the mobilisation of armed forces;*
- *temporally and geographically repeated and co-ordinated military offensives;*
- *links between the military hierarchy and the political structure and its political programme;*
- *alterations to the “ethnic” composition of populations;*

¹⁸⁸ Ibid., para. 94-96.

¹⁸⁹ Ibid., para. 84 (emphasis added), *citing* Pre-Trial Chamber I, Decision on the confirmation of charges, ICC-01/04-01/07-717, para. 396.

- *discriminatory measures, whether administrative or other (banking restrictions, laissez-passer,...);*
- *the scale of the acts of violence perpetrated - in particular, murders and other physical acts of violence, rape, arbitrary imprisonment, deportations and expulsions or the destruction of non-military property, in particular, sacral sites.*¹⁹⁰

The repetition of similar crimes — such as during a sustained attack on a civilian population — itself constitutes the manifestation of a policy.¹⁹¹ Further, with regard to the definition of the terms "State or organizational," the Kenya Chamber has indicated that while the term "State" is self explanatory, the policy need not be conceived "at the highest level of the State machinery."¹⁹²

The killings of April-May 2010 were not isolated or sporadic incidents, but were rather the result of coordinated plans in response to the Red Shirts demonstrations. Armed forces were repeatedly mobilized and the instructions were conveyed along a chain of command, including civilian links within the Abhisit government. Shortly preceding the April 10 military clearing operation, for example, the government declared a State of Emergency, giving the troops what Reporters Without Borders calls "a license to kill"¹⁹³ — *carte blanche* to use whatever force was deemed necessary to clear the areas. It seems clear, therefore, that the highest levels of the Abhisit regime either knew or tacitly approved of the operations, without consideration for the likelihood that they would result in unnecessary loss of human life.

- Knowledge

All crimes require *mens rea*, or criminal intent. In the context of murder as a crime against humanity, it is sufficient that the intention of the perpetrator was "to cause the victim serious injury with reckless disregard for human life."¹⁹⁴ The Appeals Chamber of the UN's International Criminal Tribunal for the former Yugoslavia in the 1999 *Tadic* case stated that a perpetrator needs to know that an attack occurs on the civil population and that his acts are part of this attack, besides knowing being aware of the risk that his/her actions comport and willfully taking this risk.¹⁹⁵ However, it is not required that the perpetrator know all the details of the attack.¹⁹⁶

Notwithstanding the government's denials that the military intended to harm civilians, eyewitnesses on both sides of the army lines claim to have observed both the intent to

¹⁹⁰ ICTY, Prosecutor v. Blaskic, Case No. IT-95-14-T, Judgement, 3 March 2000, para. 204.

¹⁹¹ Antonio Cassese, *International Criminal Law, Second Edition* (Oxford: Oxford University Press, 2008), pp. 98-99.

¹⁹² See Pre-Trial Chamber II, Situation in the Republic of Kenya, ICC-01/09-19, para. 89, citing ICTY, Prosecutor v. Blaskic, Case No. IT-95-14-T, Judgement, 3 March 2000, para. 205.

¹⁹³ Reporters Without Borders, "Thailand: Licence to Kill," July 2010.
http://en.rsf.org/IMG/pdf/REPORT_RSF_THAILAND_Eng.pdf

¹⁹⁴ *Prosecutor v. Akayesu*, ICTR TC, 2 September 1998, Case No. ICTR-96-4-T, at 589-590; see also Cassese, o.c., p. 109.

¹⁹⁵ *Prosecutor v. Blaskic*, ICTY TC, 3 March 2000, Case No. IT-95-14-T, at 247, 251.

¹⁹⁶ *Prosecutor v. Kunarac and others*, ICTY TC, 22 February 2001, Case No. IT-96-23-T, at 434.

cause serious injury and the utter disregard for human life and dignity on the part of the Thai security forces. The May crackdown spanned an entire week, and unfolded in a similar manner in different parts of the city assigned to different units of the armed forces. This pattern seems to indicate that those involved in the crackdown operated under precise rules of engagement.

Once confronted with reports of widespread and systematic abuses perpetrated by the armed forces, the civilian and military leadership failed to either suspend the operations or reshape them in a way consistent with international standards. In fact, on May 17 the Thai-language daily *Matichon* reported that officials in the “war room” set up by the Democrat Party were satisfied with the fact that “only” thirty-five people had died up to that point — much lower than the two to five hundred casualties they had expected.¹⁹⁷ That number itself is consistent with the purportedly leaked internal government report that UDD leader Jatuporn Prompan revealed to the press on April 19, indicating that the military planned to carry out the crackdown over a one-week period, setting the acceptable death toll of the operations at five hundred.¹⁹⁸ On the eve of the crackdown, the government warned that it would shoot “armed terrorists;” without making reference to the leaked document, its spokesmen estimated that five hundred “armed elements” had infiltrated the Red Shirts.¹⁹⁹

8.5 Evidence of An Incipient Cover-Up

Publicly, the Thai government has acknowledged the need for an investigation into the abuses. Nothing in its history or in the steps it has taken since the dispersal of the Red Shirt rallies appears to suggest that any serious, independent inquiry is forthcoming. The Abhisit administration has instead taken measures more indicative of an incipient cover-up. Independent observers have wondered how a full investigation can take place when the Emergency Decree remains in effect — allowing the government to suppress information it considers damaging and detain anyone it deems a threat to “national security.”²⁰⁰ Because this government has a history of confusing “national security” with the security of its tenure in office, there are good reasons to be skeptical of its intentions.

In the wake of the dispersal of the Red Shirt rallies at the Ratchaprasong intersection, the Abhisit administration has agreed to impanel a “fact-finding” committee tasked with investigating the violence. The committee is led by former Attorney-General

¹⁹⁷ "บรรหาร-เนวิน" ขวางพรรคร่วมถอนตัว คาด "อภิสิทธิ์" ล่าออกหลังลุมมีอบแดงจบ อาจยึดเชื้ออีก 1 สัปดาห์," *Matichon*, May 17, 2010.

http://www.matichon.co.th/news_detail.php?newsid=1274104360&catid=01

¹⁹⁸ "จตุพร" ปลดทหารแดงโมแฉแผน "อนุพงษ์" สั่งขอ 4 ชั้นจัดการแดงให้จบใน 7 วัน ห้ามพลาด อ้างสูญเสีย 500 ก็ยอม, *Matichon*, April 20, 2010.

http://www.matichon.co.th/news_detail.php?newsid=1271686129&grpId=10&catid=01

¹⁹⁹ "Sansern: 500 Terrorists Infiltrating Reds," *Bangkok Post*, May 14, 2010.

<http://www.bangkokpost.com/breakingnews/177896/500-terrorists-blending-with-reds-sansern>

²⁰⁰ Pokpong Lawansiri, "Thai Fact-Finding Committee Falls Short," *The Irrawaddy*, June 28, 2010. http://www.irrawaddy.org/opinion_story.php?art_id=18817&page=2

Khanit na Nakhon. While Khanit only submitted the list of ten legal “experts” and academics who will take part in the investigation on July 7,²⁰¹ the committee has already come under sharp criticism for its apparent lack of independence and the opaqueness of its mandate. Khanit himself is reported to have stated that the “fact-finding committee” is less interested in “finding fact or identifying who was right and who was wrong” than it is in “promoting forgiveness.”²⁰² As a result, much like a similar committee Khanit led in the wake of the coup into the 2003 “War on Drugs,” this inquiry is not likely to result in any prosecutions, or bring forth clear allegations of wrongdoing against top military men. Khanit, moreover, was appointed by the Prime Minister, who himself stands accused of gross human rights violation. Unsurprisingly, the committee was stacked with people whose loyalty to Thailand’s Establishment is unquestioned — among them, PAD supporter Somchai Homla-or.²⁰³

The government’s choice of figures who will head other new bodies it has set up in the wake of the crackdown is consistent with this pattern. Its “Reconciliation Committee” will be headed by Anand Panyarachun, who served as Prime Minister after the 1991 military coup and is currently the Chairman of Siam Commercial Bank, which is controlled by the Crown Property Bureau. Its “Reform Assembly,” charged with examining the issues of public participation and social justice,²⁰⁴ is to be led by Prawet Wasi, the key proponent of the idea of “elite civil society.”²⁰⁵ And its nineteen-member “Committee for Constitutional Reform” is filled with PAD sympathizers — one of its members, Prof. Banjerd Singkaneti, once argued that Thaksin Shinawatra was “worse than Hitler.”²⁰⁶

It should be added that the current government has an abysmal record of “independent investigations.” Previous investigations into the human rights abuses it has been accused of having perpetrated over its nineteen-month tenure in office provide important clues about what to expect from its investigations into the violence of April and May 2010.

Especially illustrative of the government’s approach to investigating its own activities is the track record of “famed” pathologist and Director of the Central Institute of Forensic Science (CIFS) Doctor Khunying Pornthip Rojanasunand, who has been

²⁰¹ “Kanit Soon to Pass on List of Independent Committee to PM,” *National New Bureau of Thailand Public Relations Department*, June 28, 2010.

<http://thainews.prd.go.th/en/news.php?id=255306280033>

²⁰² Atiya Achakulwisut, “Reconciliation Will Have Its Price,” *Bangkok Post*, June 15, 2010.

<http://www.bangkokpost.com/opinion/opinion/38778/reconciliation-will-have-its-price>

²⁰³ Achara Ashayagachat, “Mixed Reactions to Kanit Panel,” *Bangkok Post*, July 8, 2010.

<http://www.bangkokpost.com/news/politics/185193/mixed-reactions-on-kanit-panel>

²⁰⁴ Nirmal Ghosh, “Ex-PM, Scholar to Mediate in Thailand,” *The Straits Times*, June 19, 2010.

<http://www.asianewsnet.net/news.php?id=12601&sec=1>

²⁰⁵ Somchai Phatharathananunth, *Civil Society and Democratization* (Copenhagen: NIAS Press, 2006).

²⁰⁶ For an overview, see Bangkok Pundit (pseud.), “Thailand: Road Map for Reconciliation UPDATE,” *Bangkok Pundit*, June 22, 2010.

<http://us.asiancorrespondent.com/bangkok-pundit-blog/road-map-for-reconciliation>

involved in all of the most controversial cases. The government's extensive reliance on Dr. Pornthip is no doubt owed to the fact that the flamboyant forensic scientist ranks among the country's most famous celebrities. A recent survey conducted by *Reader's Digest* also found her to be the most trusted.²⁰⁷ Better still, as most of the other "experts" the government typically calls upon when controversial cases are brought to the fore, Dr. Pornthip can be counted on to produce findings that invariably square with the theory offered by the government and the PAD.

Even before Abhisit came to office, Dr. Pornthip was highly instrumental to discrediting the People Power Party administration's handling of the clashes that took place between riot police and PAD protesters at the Thai Parliament on October 7, 2008. While, in particular, PAD activist Angkana Radubpanyawoot had been rumored to have died as a result of injuries sustained after the explosion of a small bomb carried by the demonstrators themselves, Dr. Pornthip concluded that her death was caused by the explosion of a Chinese-made teargas canister fired by the police directly into the crowd. Those claims were later rejected by a police investigation, which allegedly found traces of C-4 explosives on Angkana's clothing.²⁰⁸ As Dr. Pornthip explained it: "Our team has used a GT-200 substance detector and found no substance used in making bombs. We've already checked the clash scenes and the bodies and clothing of the injured victims."²⁰⁹

The GT-200 "substance detector," however, has recently been shown to be nothing other than a plastic box with no electronic component.²¹⁰ Following revelations of its complete ineffectiveness, the British government has banned the export of a similar device, the ADE-651, and arrested the managing director of the company that produces it on suspicions of fraud.²¹¹ More recently, the offices of three manufacturers including Global Technical were raided by British authorities.²¹² In spite of overwhelming evidence attesting to the uselessness of the GT-200, Dr. Pornthip has steadfastly defended its adoption and continued utilization in a series of interviews given earlier this year. The device's failure calls into question the integrity of investigations that have resulted in the conviction of hundreds of people — among them, a large number

²⁰⁷ Wannapa Khaopa, "Pornthip Named Most Trustworthy Person in the Country," *The Nation*, February 26, 2010.

<http://www.nationmultimedia.com/home/2010/02/26/national/Pornthip-named-most-trustworthy-person-in-the-coun-30123440.html>

²⁰⁸ "Police: Residual C4 Chemical Found on Oct 7 Victim," *National New Bureau of Thailand Public Relations Department*, February 25, 2009.

<http://thainews.prd.go.th/en/news.php?id=255202250025>

²⁰⁹ Piyanuch Thamnakasetchai, "No Explosive Residue: Pornthip," *The Nation*, October 11, 2008.

http://www.nationmultimedia.com/2008/10/11/national/national_30085759.php

²¹⁰ "Explosives Expert Tests 'Black Box' of 'Bomb Detector'," *BBC News*, January 27, 2010.

<http://news.bbc.co.uk/2/hi/programmes/newsnight/8483200.stm>

²¹¹ Simon de Bruxelles, "Head of ATSC 'Bomb Detector' Company Arrested on Suspicion of Fraud," *The Times*, January 22, 2010.

<http://www.timesonline.co.uk/tol/news/uk/article6997859.ece>

²¹² Michael Peel and Sylvia Pfeifer, "Police Conduct Raids in Bomb Detector Probe," *Financial Times*, June 8, 2010.

<http://www.ft.com/cms/s/0/ba30e518-72f5-11df-9161-00144feabdc0.html>

of presumed Muslim “insurgents” in the South — to say nothing of the lives of young soldiers who have relied on this device to make sure the areas they patrol are free of explosives. Moreover, interesting questions remain about the reason why government agencies would spend tens of thousands of dollars on equipment that does not work, other than the rich kickback opportunities offered by the procurement of an empty plastic box that costs upwards of a million baht. Dr. Pornthip’s own agency is reported to have paid 1,100,000 baht for each of six units, a price three times as high as that paid by the Customs Department.²¹³

In any country that values honesty and efficiency more than ideological purity, Dr. Pornthip’s waste of taxpayer funds and her continuing use of a plainly fraudulent device would have destroyed her credibility to carry out high-profile investigations of any sort. In Thailand, however, someone like Dr. Pornthip has regularly proven useful to Abhisit’s government.

In the wake of the scandal that hit in January 2009, after it was revealed that the military had mistreated hundreds of Rohingya refugees who landed on Thailand’s shores before towing them out to sea and leaving them to die of hunger and thirst on barges with no engines, Dr. Pornthip justified the treatment of the refugees as a national security threat. She announced that traces of explosives had been found on their boats. It is not clear whether the GT-200 was used in that instance.²¹⁴

Likewise, during the most recent Red Shirts demonstrations, Dr. Pornthip produced multiple findings that favored Abhisit’s administration. Her investigation of the grenade attacks at Sala Daeng produced muddled results that admitted the possibility that some of the grenades could have been fired from Chulalongkorn hospital but stopped short of rejecting the hasty conclusions reached by the government the night of the attacks.²¹⁵ Her investigation into the shooting of a soldier shown on video to have been killed by friendly fire during a Red Shirt march to the northern outskirts of Bangkok on April 28 concluded that the fatal shot was fired from a building nearby — coincidentally, in an area where foreign media had previously shown images of a Red Shirt protester carrying a handgun.²¹⁶ Her investigation into Seh Daeng’s

²¹³ Supalak Ganjanakhundee, “Money Wasted on So-Called Bomb Detectors,” *The Nation*, January 29, 2010.

<http://www.nationmultimedia.com/search/read.php?newsid=30121417&keyword=gt200>

²¹⁴ Bangkok Pundit (pseud.), “How Did Dr. Pornthip Detect Explosive Residue on the Rohingya Boat?,” *Bangkok Pundit*, February 10, 2010.

<http://us.asiancorrespondent.com/bangkok-pundit-blog/so-how-did-dr.-pornthip-detect-the-explosive-residue-on-the-rohingya-boat>

²¹⁵ “Porntip Takes Chula Flak over Grenade Attack Theory,” *Bangkok Post*, June 5, 2010.

<http://www.bangkokpost.com/news/politics/36864/porntip-takes-chula-flak-over-grenade-attack-theory>

²¹⁶ “Porntip: Troop Killed in Don Muang Clash Not Killed by Friendly Fire,” *The Nation*, May 4, 2010.

<http://www.nationmultimedia.com/home/Porntip-Troop-killed-in-Don-Muang-clash-not-killed-30128559.html>

assassination²¹⁷ has thus far produced no results. And her investigation into the shootings that claimed the lives of six protesters who had taken shelter inside Wat Pathumwanaram on May 19 raised the possibility that the dead had been “executed” at close range,²¹⁸ in contrast to the account offered by eyewitnesses including foreign journalists Mark MacKinnon and Andrew Buncombe, who left little doubt that the shots were fired by armed men outside the temple. They identified those men as military officers.²¹⁹

Dr. Pornthip was appointed to the Center for the Resolution of the Emergency Situation (CRES) on April 20 and is likely to continue to play a pivotal role in future probes of the incidents that have resulted in the death of almost a hundred protesters in April and May.²²⁰ So long as the government’s investigations continue to rely on discredited, partisan “experts” like Dr. Pornthip, it will be next to impossible to judge the results of its probes as anything but a political statement and an instrument of propaganda.

8.6 Fairness for the Accused

Meanwhile, the government is moving forward to prosecute purported UDD leaders, which again raises the issue of fairness and disclosure. Despite what the government may wish to do with these men and women, the ICCPR guarantees a fair defense in Thailand, including the right to choose one’s own counsel, to prepare a defense with adequate time and facilities, and to receive equal access to the evidence.²²¹ The accused have a right to examine the evidence independently, through their own experts and lawyers, under the same conditions as the government, and to assemble the evidence affirmatively in their own defense.²²²

In the cases against the alleged UDD leaders, the government claims that they personally directed the killings at Phan Fa Bridge and the Rachaprasong intersection, through “men in black” controlled by the UDD. Given these allegations, the true identity of every shooter and grenade thrower is a fundamental issue in each case. Under the ICCPR, therefore, the defense team is entitled to evidence things like ballistics and other forensics, DNA, video recordings, orders within the military chain of command and other items, to develop potential alternate causes, such as the

²¹⁷ “Khunying Pornthip to Gather Evidence on Seh Daeng’s Assassination Attempt,” *National New Bureau of Thailand Public Relations Department*, May 14, 2010.

<http://thainews.prd.go.th/en/news.php?id=255305140044>

²¹⁸ “Six Bodies Found in Safe-Zone Temple Show Signs of Execution,” *National New Bureau of Thailand Public Relations Department*, May 21, 2010.

<http://thainews.prd.go.th/en/news.php?id=255305210020>

²¹⁹ Andrew Buncombe, “Eyewitness: Under Fire in Thailand,” *The Independent*, May 20, 2010.

<http://www.independent.co.uk/news/world/asia/eyewitness-under-fire-in-thailand-1977647.html>

²²⁰ “DSI to Deliberate 153 UDD Cases,” *Bangkok Post*, June 14, 2010.

<http://www.bangkokpost.com/breakingnews/181227/dsi-to-deliberate-on-153-udd-cases>

²²¹ ICCPR, Article 14, including sections 3(b) and 3(e).

²²² ICCPR, Art. 14, Sec. 3(e).

possibility that the bullets might have come from Royal Thai Army rifles, or that the “men in black” acted independently of the UDD.

The accused are entitled to examine the conclusions reached by government experts like Dr. Pornthip and others, as well as the evidence upon which their findings are based. They have a right to use their own forensic experts to reconstruct the crime scenes, to use DNA analysis, to examine video footage and all other evidence in the government’s hands — with equal access as the government — and to use that evidence in their own defense. Fairness and full disclosure for these men and women is paramount; only a proper investigation through independent and impartial bodies can guarantee that their rights are protected. A formal written demand has been made on behalf of the accused UDD members, asserting their rights under International Law for preservation and access to all of the evidence, including, among other things, physical and other forensic evidence, video, documents and expert reports.²²³ The matter has also been raised before the United Nations Human Rights Commission, which supervises compliance with the ICCPR.

9. CONCLUSION: THE ONLY PATH TO RECONCILIATION

Even before another fifty-five Red Shirts were murdered at the hands of the Royal Thai Army, Prime Minister Abhisit Vejjajiva committed himself and his government to “reconciliation.” Especially in the wake of the worst-ever massacre of pro-democracy demonstrators in the history of the country, Thailand appears to need reconciliation more than ever. Regrettably, it is increasingly obvious that the forces presently governing Thailand have neither the capacity nor the serious intention to promote genuine reconciliation. Coupled with the draconian measures and campaign of persecution launched over the past six weeks — marked by the renewal of the Emergency Decree, the arrest and detention of hundreds of Red Shirt sympathizers, the internment of UDD leaders in army camps, and the continued suppression/censorship of all alternative media — the staffing of the committees set up under the pretense of moving the country forward demonstrates that what the government means by “reconciliation” is in fact “ideological conformity” enforced through a mixture of propaganda and repression.

The Prime Minister and the military junta pulling the government’s strings, however, have chosen to ignore two simple facts the entire world already understands. First, there can be no reconciliation without truth. Second, repression is not the way to either truth or reconciliation. Dictatorship only breeds more hatred and more lies.

²²³ A copy of our letter to the Thai authorities can be downloaded here:
http://robertamsterdam.com/thailand/wp-content/uploads/2010/06/Letter-to-Thai-Authorities-Demanding-Investigation-and-Access-to-Evidence-June-29-2010-Final-Corrected_.pdf.

A review of the evidence suggests that the Abhisit administration and the Royal Thai Army could be responsible for a series of human rights violations, possible crimes against humanity, and a systematic campaign of political persecution. While it is the Thai government's duty under International Law to investigate its own abuses and bring those responsible to justice, it is the moral responsibility of the international community to ensure that the possible criminal conduct of the regime is not the subject of a cover-up. Indeed, it is now clear that only international pressure and incisive international involvement can assure that the government-led investigation into the Bangkok Massacres is not merely an exercise in obfuscation — one leading to the same kind of whitewash that has shielded from justice those responsible for every major episode of state violence in the history of Thailand. No doubt, history will judge those responsible for the most recent carnage as harshly as those who murdered similar numbers of pro-democracy demonstrators in 1973, 1976, and 1992. This time, however, those responsible should also face accountability for their actions in a real court of law, one that is not stacked with their own comrades, protégés, and appointees.

“Reconciliation” also requires the acknowledgment that the current political unrest is the result of the repeated subversion and denial of the people's will. As such, it can be resolved only by letting the people of Thailand speak for themselves in an election. Certainly, it will not be enough to merely hold elections. Thailand needs elections that take place in a context where no side enjoys an undeserved advantage thanks to the censorship of the opposition, the backing of the state's entire institutional apparatus, the propensity of the courts to distort the outcome, the prospect that the Establishment will once again undermine a government elected by the people, or the specter of a military coup looming just over the horizon. Thailand, that is, needs inclusive, competitive elections that take place under rules respecting the right of the people to run for office, vote for candidates of their own choosing, and be governed by the parties they have elected to govern. The junta-imposed 2007 Constitution, which gives the courts the power to dissolve political parties and ban their leaders from participating in elections, fails this test of legitimacy. Insofar as Abhisit is sincere in his belief that he has a mandate to govern the country, he should welcome the opportunity to show as much in election fought out on a level playing field. Insofar as he fears the judgment of the people, he has no place in government.

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