



THAILAND

CAPITAL: Bangkok
POPULATION: 63.8 million
GNI PER CAPITA: \$2,000

SCORES

ACCOUNTABILITY AND PUBLIC VOICE: 4.04
CIVIL LIBERTIES: 3.72
RULE OF LAW: 4.22
ANTICORRUPTION AND TRANSPARENCY: 3.48
(scores are based on a scale of 0 to 7, with
0 representing weakest and 7 representing
strongest performance)

Duncan McCargo

INTRODUCTION

The adoption of a relatively liberal constitution in 1997 was a defining moment in Thailand's recent political history. The new constitution sought to improve the quality of electoral politics, introducing a range of independent agencies (such as the Election Commission and the National Counter Corruption Commission [NCCC]) so as to build checks and balances into the political system and broaden popular participation.

The 1997 constitution was unfinished business dating from the political crises of 1991 and 1992. This troubled period began with a military coup in February 1991, followed by an attempt by the coup leadership to commandeer parliament through the manipulation of the March 1992 election. The turbulence culminated in the 1992 May events, which saw massive street demonstrations in central Bangkok and the shooting dead of scores of unarmed protesters. Subsequently, the military reluctantly withdrew to the barracks, leaving the governance of

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Thailand to a series of unstable coalition administrations based on alliances between professional politicians, business interests, technocrats, and prominent criminals. Liberal elements of the elite, pressing for a cleaner and more responsive political order, led the political reform movement that culminated in the 1997 constitution.

In addition to the promulgation of the new constitution, 1997 also saw the onset of the Asian financial crisis, which began in Bangkok. The economic crash followed almost three decades of strong growth and rapid social change in Thailand. Ironically, just as the reformist agenda of the 1997 constitution was coming into its own, Thais began to embrace alternative ideas: nationalism (the IMF and World Bank were widely criticized for their role in addressing the crisis), reduced dependence on the global economy, and strong government. In 1998, billionaire telecommunications magnate and ex-policeman Thaksin Shinawatra founded his Thai Rak Thai (Thais Love Thai) Party (TRT). TRT capitalized upon the changed popular mood, Thaksin's own financial successes (his businesses had emerged from the crisis virtually unscathed), and the constitutional provisions that favored the emergence of a small number of stronger political parties. After TRT won a decisive victory in the 2001 elections by gaining 248 of the 500 seats (control of almost half of the seats in parliament by a single party was unprecedented in Thailand's multi-party system), Thaksin proceeded to demonstrate his disdain for the causes espoused by the liberal reformers of the 1990s.¹ He sought to neutralize the new independent governance agencies, to achieve total dominance over party politics by creating a grand coalition under his own control, and to move Thailand in a more authoritarian direction.

Thailand is now in a paradoxical position. On paper, it has a rather liberal set of governance arrangements, a vibrant civil society, and progressive stances on many human rights issues. Yet in practice, the spirit and the letter of the 1997 constitution are frequently ignored by the ruling party. Thaksin has made himself a "CEO" (chief executive officer) prime minister, assuming immense personal power and creating an elaborate support network among elements of the private sector, the military, and the police. Most alarmingly of all, the Thaksin government has engaged in a range of human rights violations, notably by apparently sanctioning extrajudicial killings in a 2003 war on drugs. Growing political violence in the Muslim-dominated southern border provinces has

been fueled by the use of torture, disappearances, and excessive harshness by the security forces. Thaksin's critics have argued that there are conflicts of interest between his political position and his family businesses, something he strongly denies. Leading social activist Wanida Thantiwithayaphitak has argued that the 1997 constitution is now bogged down in interest-group politics.² [*Editor's note:* TRT won a landslide victory in the February 2005 election, winning around 75 percent of all parliamentary seats. Thaksin's party was decisively rejected in the southern region, however.]

ACCOUNTABILITY AND PUBLIC VOICE – 4.04

Thailand has a rather open political order, and power has rotated among a number of political parties in recent years. Most parties, however, do not represent genuine ideological or policy alternatives but rather are little more than interest groups closely associated with powerful political faction bosses and cliques. Political choice has contracted since 2001, given the merger of smaller parties with the ruling TRT. Parties are equally free to campaign, but the overwhelming dominance of TRT now gives the incumbent considerable advantages.

Under the 1997 constitution, a powerful Election Commission (EC) was established, with extensive powers to manage, oversee, and regulate the electoral process. The EC adopted a highly interventionist approach to both the 2000 Senate elections and 2001 lower house elections. In response to complaints of electoral abuses—mainly in the form of vote-buying—the EC handed out hundreds of soccer-style yellow cards (forcing reruns) and red cards (also compelling reruns but debarring problematic candidates from standing). In total, 78 reruns were ordered after the initial 200 Senate races and 62 reruns for the lower house. Some Senate elections went through as many as seven reruns.³ However, despite the existence of campaign finance laws and state support for political parties via the EC, much campaign spending goes toward vote-buying and other illegal activities that are never declared. Accordingly, candidates with strong financial backing are at a considerable advantage. The EC has made little serious attempt to monitor spending by political parties.

Although very keen on pursuing rogue candidates, the EC has been less interested in monitoring electoral manipulation by government

officials. As filing a complaint with the EC is essentially cost-free, many complaints are filed as face-saving ploys by losing candidates (or even by losing gambling syndicates), and repeated reruns have the effect of undermining the legitimacy of the electoral process. After May 2001, the original team of five national election commissioners was completely replaced. Their successors appeared far less independent-minded, and members of Parliament (MPs) dropped their calls for a pruning back of the EC's powers.⁴ The real test of the EC will come when there is a close-run general election, which currently seems a distant prospect.

The 1997 constitutional arrangements were deliberately constructed to create a system of checks and balances, primarily through a nonpartisan Senate (whose members are barred from party affiliation) and a range of independent agencies, including the Election Commission, Constitutional Court, Administrative Court, and a National Counter Corruption Commission. Unfortunately, the reality is rather different. The Senate is full of the wives, children, and associates of politicians, as well as a large contingent of former government officials, many with close personal and financial ties to party leaders and cliques of MPs.⁵ Only a handful of Thailand's 200 senators consistently perform the kind of monitoring role envisaged by the constitution.

Similar problems characterize many of the post-1997 independent agencies. There is ample evidence that the government has sought to politicize the process of appointments to these agencies, and TRT has been consistently critical of them. Given the weakness of the Senate and other bodies, dominant power interests such as the ruling TRT are exposed only to limited critical scrutiny. Most civil service posts are gained through open appointments procedures, though some processes—notably for the police and the interior ministry—have been tainted by persistent reports of cheating.

Civic groups are able to comment freely on policy issues and legislation, and many have been very influential. At the same time, formal mechanisms for consultation remain weak—despite a recent vogue for public hearings, the government has tended to rely on ad hoc consultation structures, which produce arbitrary outcomes. After initially seeking to co-opt nongovernmental organizations (NGOs) by adopting progressive rhetoric, the Thaksin government has demonstrated a growing reluctance to listen to critical views from civil society bodies: For example, the outspoken Thailand Development Research Institute

(TDRI), a technocratic think tank employing many of the country's top economists, has been marginalized for refusing to accept the TRT line. In May 2003, the government planned to put pressure on foreign donors to reduce funding for certain NGOs, but the plan was not implemented.⁶ The Thaksin government has also put pressure on major funders of civic organizations, including the progressively inclined Thai Health Fund, which derives its income from a hypothecated excise tax on alcohol and tobacco products. Because there are demanding requirements for NGO registration under legislation dating from 1942, most NGOs are not formally registered with the interior ministry. In practice, legal registration is not required, and Thailand has one of the most vigorous NGO communities in Southeast Asia. However, the Thaksin government sought to discourage political activity by NGOs and organized a clampdown on NGO protests at the time of the October 2003 Asia-Pacific Economic Cooperation (APEC) meeting in Bangkok.

Electronic media are largely controlled by the state and have always been subject to considerable political interference. Radio frequencies remain dominated by the military, supposedly for reasons of national security, but in practice because they are a lucrative source of revenue. Thailand has a long tradition of vigorous and critical print media, with a parallel tradition of press manipulation and cooptation by power-holders. The Thaksin government has been widely criticized for putting pressure on critical media voices—such as the English-language daily *The Nation* and the small but outspoken Thai-language daily *Thai Post*—and for using a combination of sticks and carrots to promote more favorable coverage. In the case of *The Nation*, its editors were subjected to an investigation by the Anti-Money Laundering Organization in 2002, while in 2003, a prominent Thaksin associate bought a significant share in the newspaper group.⁷ To date, however, *The Nation* remains broadly critical of the government. Print media are not directly funded by the state, but the Thaksin government has ensured that pro-government newspapers carry the bulk of state-funded advertising. Media ownership in Thailand is also a problematic issue; there are persistent rumors that prominent figures close to the government have acquired formal or informal ownership of elements in the print media.⁸

Thai libel laws are deeply problematic: Those charged with libel may face immediate imprisonment if they are unable to produce the large sums typically required for bail. Politicians and their associates

have not hesitated to harass critics through use of these punitive laws. One particularly disturbing case occurred in 2003, when Shin Corporation (owned by Thaksin's family) sued Supinya Klangnarong, secretary-general of the small NGO Campaign for Media Reform, along with the *Thai Post*, for the staggering sum of 400 million baht—around US\$10 million. Supinya had asserted that there were conflicts of interest between Thaksin's business activities and his political position.⁹ The controversial trial was deferred by the courts until July 2005, well after the election scheduled for the beginning of the year.

Although there is considerable freedom of cultural and political expression in Thailand, a notable exception lies in lese majesty laws, which outlaw all criticism of the royal family. While technically applying only to the current king, the queen, and the heir-apparent, these laws formed a justification for the 1999 banning of the Hollywood film *Anna and the King*, which deals with the great-great-grandfather of the present monarch. Two Western journalists for the *Far Eastern Economic Review* were threatened with deportation in 2002 for alleged violation of lese majesty laws, although ultimately they were allowed to remain in Thailand.

Recommendations

- The government should respect the spirit and the letter of the 1997 constitution by resisting temptations to interfere in the workings of independent agencies.
- The constitutionally mandated commission to allocate radio frequencies should be established without further delay, and the commission should ensure that control of radio frequencies is completely removed from the military.
- Thailand's libel laws should be urgently overhauled so that those accused of libel do not face imprisonment and cannot be forced to pay disproportionate levels of damages. Meanwhile, leading public figures could set an example by refraining from suing individuals for libel without a compelling justification.

CIVIL LIBERTIES – 3.72

Despite constitutional injunctions (Article 243) there is persistent evidence of torture and abuses of pretrial prisoners by both police and military agencies, especially in relation to rural protest movements and

alleged drug offenders. Punishment of state officials for such abuses is very rare. Pretrial detention for up to 84 days is widely used in criminal cases, and extensions may be requested for complex cases. Thai prisoners are kept in poor conditions: They must pay for a space to sleep (even on the floor) and need money from outside in order to obtain reasonable food.¹⁰ International monitors claim that prisoners are often shackled in leg irons, despite the fact that this is illegal; and trusted convicts are sometimes allowed to beat fellow prisoners.¹¹

Murders of local politicians, journalists, and activists occur regularly in Thailand. Amnesty International has expressed concern about the violent deaths of human rights defenders, including six environmental activists in 2001 and five community leaders in 2002 whose deaths were not comprehensively investigated.¹² The arbitrary arrest of demonstrators is a widespread practice. Citizens may be at risk from non-state actors—in two recent cases, commercial areas in central Bangkok were violently cleared, apparently by landowners operating with the collusion of the police and military. In the January 27, 2003, incident, around 600 men, many of them soldiers, demolished dozens of bars and tourist shops in Sukumvit Soi 10 using bulldozers and cranes. A market area was similarly cleared in 2004.¹³ Thaksin's support for the U.S.-led war on terror was reflected in his August 2003 promulgation of tough antiterrorism laws by executive decree, laws that were subsequently passed by parliament. Critics argued that these laws could be abused to crack down on political dissent and that provisions for detention without trial undermine the human rights of Thai citizens.¹⁴

The most serious assault on civil liberties in modern Thai history was the 2003 war on drugs, an apparently officially sanctioned policy of extrajudicial killing that involved some 2,275 deaths in its initial three months.¹⁵ While the authorities implausibly claimed that most of these killings resulted from drug dealers turning their weapons on each other, there was ample evidence of widespread official collusion in numerous murders. Blacklists of suspected drug dealers in each district formed the basis of the murders, yet many of those on the lists apparently had no connection with the drug trade; others were users rather than dealers. Prime Minister Thaksin personally initiated the drug war and strongly criticized both international bodies such as the United Nations and members of the National Human Rights Commission for their public expressions of concern. Yet even Thailand's revered king expressed

reservations, and in December 2003 he called upon the national police chief to account for the large number of deaths.¹⁷ Local Thai-language media carried little critical or investigative coverage of the drugs war, although one outlet did coin the phrase silent killing (*kha tat ton*) to describe the extrajudicial deaths.

This dark episode undermined Thailand's claims to a good human rights record, nullifying many of the country's recent reforms. To date, no proper investigation of the war on drugs has taken place, and no list of its victims has been published. The policy drove many heroin addicts underground, making it more likely that intravenous drug users would resort to the dangerous practice of sharing needles—thus ultimately leading to further deaths from HIV infection.¹⁸ Amnesty International is said to have scaled down its own investigation of the drugs war because of fears for the safety of its local staff.¹⁹

A further area of grave concern relates to the government's handling of political violence in the southern border provinces during 2004. Around 80 percent of the population of Pattani, Yala, and Narathiwat provinces are Malay Muslims, whose first language is not Thai. This region has been characterized by longstanding yet sporadic separatist violence. The Thaksin government dismantled the existing security command structure in May 2002, placing the police in charge of maintaining order. Tensions mounted following a large-scale attack on an army base on January 4, and a spate of shootings and small explosions followed. Martial law was subsequently imposed in these provinces. By September 2004 around 200 Muslims had been killed by the security forces or had disappeared, while more than 140 security personnel and civilians—including Buddhist monks and one judge—had met violent deaths, many apparently at the hands of Muslim extremists.²⁰

The National Human Rights Commission received complaints of beatings and abductions associated with heavy-handed raids on Muslim communities, including Islamic boarding schools, or *pondok*. Somchai Neelaphaijit, an activist lawyer from the area, accused the police of torturing five suspects charged with involvement in the January army base raid, a claim that was verified by the Commission. On March 12 Somchai disappeared. A remark by Deputy Prime Minister Chavalit Yongchaiyudh two weeks later revealed that the authorities knew he was already dead.²¹ The five suspects whom Somchai had defended were released on May 18, 2004, for lack of evidence.²² No action has been

taken against those accused of using torture. The Asian Human Rights Commission stated that “The authorities in Thailand have abandoned any pretence that they are trying to resolve the disappearance” of Somchai,²³ although five police officers were charged with his abduction.

On April 28, 108 Muslim men and 5 police officers were killed when groups of lightly armed militants launched a coordinated attack on security positions. The day’s events culminated in a siege of the historic Krue Se mosque in Pattani, where 32 Muslim men were killed by commandos, allegedly at point-blank range. Although an investigation found that the military had used excessive force, the prime minister refused to accept the resignation of General Pallop Pinmanee, the officer who ordered this attack.²⁴ Pallop responded by publishing a best-selling book defending his actions.²⁵ [*Editor’s note:* Matters worsened considerably when 84 Muslim protesters died in events arising from a demonstration on October 25 outside a police station in Tak Bai, Narathiwat province. The authorities claimed that 78 of the deceased had died as a result of suffocation after they were arrested and piled into army trucks. The events triggered an international outcry, partly because of Thaksin’s inept handling of the issue and failure to apologize properly for the deaths.]

The 1997 constitution gives citizens the right to petition the president of the Senate for the removal of national politicians or high-ranking officials accused of corruption or abuses of power (Article 304), but the procedure has been little invoked, partly because 50,000 signatures are required. Citizens may also bring complaints to independent agencies such as the Counter-Corruption or Human Rights commissions, both of which have large backlogs of cases. The National Counter-Corruption Commission saw a big increase in reports of alleged corruption in local government bodies, from 501 complaints in 2000, 629 in 2001 to 852 in 2003.²⁶

Under the constitution, the state is committed to promoting equal rights between men and women (Article 80) and to supporting individuals with disabilities and underprivileged people. In practice only around 10 percent of MPs and senators are female, and less than 6 percent of ministers.²⁷ A small number of women are now serving as district officers (8.9 percent) and provincial governors (2.6 percent), positions previously reserved for men.

A number of constitutional provisions support gender equality, but changes in both legislation and practice are needed in relation to issues

such as rape and domestic violence, which are often not taken seriously or handled sensitively by the police. According to a Labor Ministry survey, women are paid around 17 percent less than men—a figure that compares favorably with those in many developed countries. Despite legislation forbidding trafficking in people, Thailand is a major nexus for human trafficking, notably from Burma, Cambodia, China, Laos, and to a lesser extent Vietnam. Much of this trafficking involves placing women and children in the lucrative Thai sex industry, though some of those trafficked are employed in sweatshops, agriculture, construction, and fisheries.

Racial discrimination is also prohibited by the constitution (Article 30), but there is no specific mention of ethnic minorities. This reflects the official view that all Thais are simply Thai and a persistent tendency to deny the significance of ethnic difference. Chapter 3 of the 1997 constitution is explicitly entitled “Rights and liberties of the Thai people,” thereby excluding all noncitizens. As one informant told Amnesty International, “The Thai constitution does not apply to me, because I am an ethnic minority.”²⁸

Many ethnic minority peoples in the northern highland areas of Thailand are not Thai citizens and have been subject to persistent discrimination; similar problems apply in the case of Burmese refugees and illegal workers from Cambodia. The estimated half million Karen or other so-called hill tribe people lack Thai citizenship and are effectively stateless. Many are unable to prove that they were born in Thailand, while others are similarly unable to claim Burmese citizenship. Like Burmese migrants working illegally in Thailand, these groups are vulnerable to arbitrary arrest.²⁹ In the early 1970s, a military regime arbitrarily revoked citizenship for all those descended from Vietnamese fathers who had immigrated to Thailand before 1972, but that decision was reversed in 2004.³⁰ Many Thai Muslims, especially in the southern border provinces, have a poor command of the central Thai language, which compounds their limited economic opportunities. The Thai state has been slow to recognize the need to address issues of discrimination on racial and ethnic grounds; for many local government officials, minority groups are stereotyped as sources of insecurity, crime, and social problems, to be dealt with by forceful incorporation into Thai cultural norms.³¹

Discrimination against people with disabilities is illegal under the constitution, but widespread in practice, and many public buildings lack proper access. In one widely publicized recent case, a law graduate who suffered some slight disabilities from childhood polio was barred from sitting for the examination to become a judge. The government has a poor record of making information available to people with disabilities, for example through braille or audio versions of important documents. On the positive side, sign language is widely used to accompany television broadcasts. Overall, the government's record on enforcing equality issues is mixed.

In theory Thais enjoy freedom of religion, and religious observance is not restricted. However, the Thai state exercises control over the *sangha* (Buddhist order) and has moved to exclude dissident religious groups from the officially sanctioned order. In other words, the state has arrogated to itself the right to determine what does and does not constitute true Buddhism.³² The sangha has recently been thrown into crisis by the serious illness of its aging head,³³ while Prime Minister Thaksin has been criticized for intervening in the leadership of the Buddhist order. Since 2002, Islamic, Christian, and other religious groups have been overseen by the Department of Religion (part of the Ministry of Culture), while a National Office of Buddhism is located in the office of the prime minister.

Freedom of association is broadly respected in Thailand, although levels of unionization remain low (at less than 2 percent of the total workforce) except in state enterprises, where more than half of employees are union members. Although people are free to join unions, there is evidence that some employers have dismissed union leaders or executive members. When such cases were brought to government-backed tribunals, the union activists received back pay but employers were not otherwise penalized. The Thaksin government has so far failed to fulfill its 2001 election pledges to ratify ILO conventions 87 and 98 on freedom of association and collective bargaining.

There is no evidence of citizens being forced by the state to join particular associations. The right to peaceful organization and mobilization is generally widely practiced and respected, but the state has supported harsh repression of certain kinds of protest movements, particularly anti-development movements by the Forum of the Poor and other rural-based

groups. This included repression of protests surrounding the Pak Mun Dam in the northeastern province of Ubon in December 2002³⁴ and violent suppression of protests against the Thai-Malaysian gas pipeline in the same month.

Recommendations

- Thailand should immediately hold a full public inquiry into the circumstances surrounding the war on drugs of 2003 and the extrajudicial killings associated with it.
- Those suspected of involvement in any extrajudicial killings, including senior officers, should be brought to trial.
- Firm action should be taken against state officials allegedly responsible for human rights abuses, torture, and disappearances in the south, including criminal trials where appropriate.
- Full citizenship rights should be granted to all members of Karen and so-called hill tribe minority groups who are long-term residents of Thailand.

RULE OF LAW – 4.22

Thailand's judiciary is generally independent but also somewhat corrupt. This skews the justice system toward the suspect's ability to pay bribes, leading to structural inequalities and often allowing the guilty to walk free. A national survey in 2000 found that a third of those who had been involved in court cases had been asked to pay bribes to secure a favorable outcome. Around half of these requests came from public prosecutors.³⁵ In 2002, Supreme Court Chief Justice Santi Thakral laid down detailed guidelines intended to curtail patronage and corruption in the judiciary, including rules concerning expenses on transportation, meals, and entertainment.

The Economist Intelligence Unit suggests that government interference in the judiciary is increasing. Despite a series of widely publicized fraud cases in the 1990s—such as the collapse of the Bangkok Bank of Commerce, in which a number of prominent politicians were implicated—not a single conviction had been achieved by the end of 2002.³⁶ High-profile criminal cases such as the 2004 acquittal of a politician's son on charges of murdering a policeman have undermined public confidence in the judicial system.³⁷ The Appeal Court—some-

times referred to as “the money court”³⁸—is especially problematic. The Central Bankruptcy Court has also been criticized for making politicized decisions that undermined the confidence of foreign investors.³⁹ However, Thailand’s strict contempt-of-court laws—which apply outside the courtroom—make open discussion of the judicial system very difficult. This in turn curtails critical reporting where abuses in the legal process may be widely suspected.

All career judges must be qualified as barristers, have no less than two years of legal experience, and pass a difficult and competitive examination before being appointed as trainee judges for a trial period of one year. There is no jury system, and verbatim transcripts of court proceedings are not made. Judges are generally held in high regard in Thai society. However, a senior judge from the Central Labor Court has claimed that appointments as associate judges were manipulated by an organized gang that charged candidates 400,000 baht (around US\$10,000) per appointment.⁴⁰

Article 33 of the constitution specifies that criminal suspects are presumed innocent until convicted. Citizens have the right to a fair trial with independent counsel. Despite these provisions, in the case of the 2003 war on drugs, extrajudicial killings did take place. Those accused of serious crimes are provided with lawyers by the state if they cannot afford to pay for their own defense. However, these court-appointed lawyers are often recent graduates with little experience in conducting a defense.⁴¹ Thammasat University runs an active legal aid and legal literacy program.

Leading politicians (including the current prime minister and the former secretary-general of the ruling Democrat Party) and senior officials have been tried on corruption-related charges by the Constitutional Court, although its judgments have been criticized as erratic.⁴² One of the most controversial decisions was the acquittal of Prime Minister Thaksin Shinawatra on charges of assets concealment in 2001. Thaksin escaped conviction on technical grounds by 8 votes to 7, although only four of the judges hearing the case actually found him innocent. The retiring president of the Constitutional Court declared in 2002 that he had “witnessed many subtle attempts by politicians to sway judges” and had “felt strong pressure from the pro-Thaksin mob.”⁴³ Full written judgments have sometimes not been published for up to a year after Constitutional Court decisions, thereby undermining the credibility of the court.

The Thai military (mainly the army) has staged numerous coups and coup attempts since the end of the absolute monarchy in 1932 and until the violence of May 1992 was a prominent and outspoken participant in the political processes of the country. Since 1992, the military has returned reluctantly to the barracks, maintaining a low profile but retaining various economic privileges. Despite much talk of security sector reform, no substantive reforms have been enacted. Civilian politicians remain wary of interfering with the military's internal workings, despite general recognition that the armed forces are bloated (with an estimated 1,400 generals) and of doubtful military competence. The Thaksin government has pursued a policy of co-opting the military, and relatives and former classmates of the prime minister have been appointed to numerous key positions.⁴⁴ As an ex-police officer himself, Thaksin has enjoyed good relations with the police force, enlisting it in support of various government initiatives. Both the military and police enjoy close relationships with a range of actors engaged in legal and illegal business activities. Longstanding rivalries between the police and the military may have contributed to the deteriorating security situation in the South.

Property rights are recognized in law, although in practice the system of land title deeds is complex, and many poor people do not have proper ownership of the land they farm. Many hold so-called Sor Tor Kor deeds, or usufructuary land licenses.⁴⁵ Abuse of land and contractual rights by local elites and corrupt officials is widespread in rural areas, and structural corruption in the legal system often disempowers the poor. The Economist Intelligence Unit describes Thai courts as "generally competent and effective in enforcing property and contractual rights," but notes that "extra-legal means" may complicate cases involving wealthy or powerful individuals.⁴⁶ Problems are exacerbated by legal provisions that allow people to sell land provisionally yet retain the right to redeem it. Many sell their land in this way, only to discover that in practice their redemption rights are almost impossible to exercise.⁴⁷ The Sor Pho Kho 4-01 land reform program in the 1990s resulted in many local elites improperly obtaining lands that were supposed to be allocated to poor farmers. Local traditions of common land usage have been widely overridden by the state; the Kho Jo Ko program of the 1980s and early 1990s saw many poor farming communities forcibly evicted from lands designated as reserve forest areas, despite their having lived on them for decades or even generations.⁴⁸

Recommendations

- A special investigative team should be created to identify corrupt judges and prosecutors, who should be swiftly suspended and then dismissed from office.
- A substantive program of security sector reform is needed, first concentrating on the core objective of reducing the number of generals—a problem that underpins a culture of military privilege.
- A new agency should be created to police the police, with an emphasis on identifying and removing officers deeply involved in the illegal economy.
- Land tenure needs to be reformed so that wherever possible those who actually farm the land own the land, and laws rewritten to allow farmers to borrow money without having to hand over their land to predatory creditors and local elites.
- The Constitutional Court should promptly publish full written judgments by all judges, and judges who have not attended all hearings should not be allowed to pass judgment on the case concerned.

ANTICORRUPTION AND TRANSPARENCY – 3.48

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

Under Article 110 of the constitution, MPs are not permitted to hold state concessions or contracts, but in practice such regulations are readily subverted. Thaksin has nominally transferred most of his considerable business assets to his family and his servants. In 1996, two of Thaksin's maids were listed as the 12th and 13th richest people in Thailand, and his driver the 49th richest.⁴⁹ Assets declarations are required from all cabinet members, MPs, senators, and other senior elected officials. Those made by ministers (including the prime minister) are open

to public and media scrutiny, but the assets declaration system has so far failed to stop endemic conflicts of interest between politicians and the business sector. Concessions allocations in Thailand typically reflect a culture of benefit sharing rather than the public interest, or the interests of individual consumers. The award of government contracts has never been open and transparent in Thailand: Whatever formal procedures are observed, these processes are widely seen as vitiated by structural corruption.

Transparency International rates Thailand number 64 out of 146 countries assessed in its 2004 Corruption Perceptions Index, with 3.6 out of a possible 10 points.⁵⁰ Victims of corruption may lodge complaints with the NCCC, which has extensive powers to investigate corruption by state officials. However, the 2003 appointment of new commissioners widely seen as government-friendly meant that the NCCC was effectively neutralized.⁵¹ Access to higher education is generally open, although scandals concerning alleged abuses of the entrance examination system surface regularly.⁵²

Collection of income taxes is uneven. In 2004 there were 6.27 million taxpayers (including corporate and value-added taxpayers), a figure the Revenue Department hopes to increase to 20 million by 2009.⁵³ The Revenue Department has been encouraging taxpayers to pay online, as this reduces scope for bribery. The Economist Intelligence Unit suggests that up to 100 billion baht (or one-fifth of potential revenue) may be lost annually through tax evasion. The State Audit Commission and the auditor general have extensive authority to monitor the proper use of public funds, but in the past their effectiveness has been hampered by lack of timely cooperation on the part of the police, and lack of power to implement their findings. Auditor General Jaruvan Menthaka was ousted in controversial circumstances in 2004, with some senators alleging that her removal reflected her critical stance concerning various mega-projects backed by leading ministers.⁵⁴

The most notable success of the NCCC has been the conviction of Sanan Kachornprasart on asset-declaration charges in March 2000. As secretary-general of the ruling Democrat Party and interior minister, Sanan was among the three or four most powerful men in Thailand, and his five-year ban from serving in any political office was an impressive achievement for the NCCC. While Prime Minister Thaksin Shinawatra avoided a similar ban in controversial circumstances in 2001, the

Constitutional Court did convict a minister of fraud in 2003. Sanan organized a petition to impeach four of the judges who failed to convict Thaksin on asset declaration charges, but his attempts foundered because fewer than 50,000 of the signatures he raised were found to be genuine.⁵⁵ [*Editor's note:* In December 2004 former foreign minister Prasong Sunsiri successfully defended a defamation action brought by eight constitutional court judges who had “acquitted” Thaksin in 2001; allegations of political interference and the offering of incentives to judges in the case resurfaced.⁵⁶] Issues concerning corruption by politicians are widely aired in the media, although the electronic media rarely offer critical perspectives on current power-holders. Whistleblowers do not feel secure; as media activist Supinya Klangnarong told the *New York Times*, there is a hierarchy of punishment in Thailand: “If you act too much, you’ll be killed. If you talk too much, you will be sued. If you’re an academic, you might be discredited.”⁵⁷

Thailand has enacted freedom of information legislation. In principle, it affords extensive rights to citizens, although to date its provisions have been little used. In principle, the national budget is open to scrutiny by the legislature—and dozens of senior officials attend annual parliamentary sessions for this purpose—but given the current dominance of the ruling TRT party in the House of Representatives, this scrutiny is necessarily limited. Foreign assistance can be freely distributed in Thailand, although the relatively high level of economic development means that apart from long-standing support from Japan and from the Asian Development Bank, Thailand is not a major aid recipient country.

Recommendations

- New legislation to regulate potential conflicts of interest between politicians and business concerns is urgently needed.
- More rigorous regulatory mechanisms are needed to protect the interests of consumers, especially in areas such as telecommunications.
- Current loopholes allowing serving MPs and ministers to transfer their business assets to relatives and servants should be closed.
- The Revenue Department should be strongly supported in its attempts to increase the tax base and curtail tax evasion.
- New legislation should be enacted to protect whistleblowers from dismissal or harassment.

NOTES

- ¹ See Pasuk Phongpaichit and Chris Baker, *Thaksin: The Business of Politics in Thailand* (Chiang Mai: Silkworm, 2004), 89.
- ² Wanida Thantiwithayapithak, "The Weak People's Constitution," *Thailand Human Rights Journal* 1 (2003): 221.
- ³ Sombat Chantornvong, "The 1997 Constitution and the Politics of Electoral Reform," in Duncan McCargo (ed.), *Reforming Thai Politics* (Copenhagen: Nordic Institute of Asian Studies [NIAS], 2002), 207–09; "Thailand's house elections of 6 January 2001: Thaksin's landslide victory and subsequent narrow escape," in Michael H. Nelson (ed.), *Thailand's New Politics: KPI Yearbook 2001* (Bangkok, White Lotus, 2002), 395.
- ⁴ Pasuk and Baker, *Thaksin*, 174–75.
- ⁵ Sombat, "The 1997 constitution," 108.
- ⁶ *Thailand: Grave Developments: Killings and Other Abuses* (London: Amnesty International [AI], ASA 39/008/03, November 2003), 2.
- ⁷ *Thailand 2004 Annual Report* (Paris: Reporters without Borders [RSF]), <http://www.rsf.org>. According to Matichon (25 May 2004), relatives of TRT secretary-general Suriya Jungrungruangkit hold 19.97 percent of the Nation Group's shares.
- ⁸ On problematizing received concepts of media ownership in the Thai case, see Duncan McCargo, *Media and Politics in Pacific Asia* (London: Routledge, 2003), 7–11.
- ⁹ The original article appeared in *Thai Post*, 16 July 2003. For details of the case, see the Web site of Forum Asia (<http://www.forumasia.org>) and also *The Nation*, 6 September 2004.
- ¹⁰ *Thailand Guide* (London: Prisoners Abroad, n.d.), 36–39, <http://www.prisonersabroad.org.uk>.
- ¹¹ *Thailand: Widespread abuses in the administration of justice* (London: AI, ASA 39/003/2002, 2002), 1.
- ¹² *Thailand: Grave Developments* (AI), 15–17.
- ¹³ For details on the first of these, see "PM condemns 'mafia,'" *The Nation*, 28 January 2003; "Heavies received Bt20m," *The Nation*, 29 January 2003.
- ¹⁴ Shawn W. Crispin and Jeremy Wagstaff, "The terror war's next offensive," *Far Eastern Economic Review*, 28 August 2003.
- ¹⁵ "Not enough graves: The War on Drugs, HIV/AIDS, and Violations of Human Rights," (New York: Human Rights Watch [HRW]), 16, 8 [C], 1.
- ¹⁶ "Not enough graves" (HRW), 7–19.
- ¹⁷ *The Nation*, 6 December 2003.
- ¹⁸ "Not enough graves," *HRW*, 1–3.
- ¹⁹ "Amnesty's concerns about Thai probe," *Far Eastern Economic Review*, 2 October 2003.
- ²⁰ "Disappearance of a human rights defender and disappearance of justice in Thailand" (Hong Kong: Asian Human Rights Commission [AHRC], 18 June 2004), <http://www.ahrchk.net>. Exact numbers of politically related deaths are difficult to establish, as Thailand has a high murder rate, and some of the killings may have been the outcome of "ordinary" business or personal conflicts.
- ²¹ Pasuk and Baker, *Thaksin*, 236.

- ²² "Submission to UN Sub-Commission on the Promotion and Protection of Human Rights" (Bangkok: Asian Forum for Human Rights and Development [AFHRD], August 2004), <http://www.forumasia.org>.
- ²³ "Disappearance" (AHRC).
- ²⁴ "Submission to UN" (AFHRD).
- ²⁵ Pallop Pinmanee, *Phom phit ru? thi yut Krue Se!* [Was I wrong to storm Krue Se?] (Bangkok: Good Morning Publishing, 2004). The book is completely unapologetic, arguing that any military in the world would have responded similarly. Pallop explains how he ordered 12 commandos to throw 8 hand grenades into the mosque before opening fire through the windows (39–41).
- ²⁶ *Prachachat Thurakit*, 27 September 2004.
- ²⁷ *Monitoring the Pulse of the Nation: Indicators of Good Governance and Development in Thailand* (Nonthaburi: King Prajadhipok's Institute [KPI], 2003), 100–03.
- ²⁸ *Thailand: Grave Developments* [AI], 11.
- ²⁹ *Thailand: Grave developments* (AI), 23.
- ³⁰ "Battle over: citizenship restored to Vietnamese descendants," *The Nation*, 4 August 2004.
- ³¹ Pinkaew Laungaramsri, "Constructing marginality: The 'hill tribe' Karen and their shifting locations within Thai state and public perspectives," in Claudio Delang (ed.), *Living at the Edge of Thai Society: The Karen in the highlands of Northern Thailand* (London: RoutledgeCurzon, 2003), 31. Pinkaew points out that the term "hill tribe" is pejorative and inaccurate with respect to the Karen.
- ³² Duncan McCargo, "Buddhism, democracy and identity in Thailand," *Democratization* 11, 4 (2004): 164–67.
- ³³ "Buddhist reform is long overdue," editorial, *The Nation*, 20 July 2004; "Thaksin to monastic plan critics: Pipe down," *The Nation*, 22 July 2004.
- ³⁴ Protesters' camps were destroyed under suspicious circumstances. *Thailand: Grave developments* (AI), 18–19.
- ³⁵ Pasuk Phongpaichit, Nualnoi Treerat, Yongyuth Chaiyapong, and Chris Baker, *Corruption in the Public Sector in Thailand: Perceptions and Experience of Households* (Bangkok: Chulalongkorn University, Political Economy Centre, 2000), 58–59.
- ³⁶ Siriporn Chanjindamane, "White collar crime: Ten years on, not one conviction," *The Nation*, 12 December 2002.
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- ³⁸ *Thailand* (Prisoners Abroad), 26.
- ³⁹ Shawn W. Crispin, "Courts under the spotlight," *Far Eastern Economic Review*, 4 September 2003.
- ⁴⁰ "Top judge exposes appointments scam," *The Nation*, 5 April 2002.
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- ⁴² For detailed discussion see James R. Klein, "The battle for the rule of law in Thailand: the role of the Constitutional Court," in Amara Raksataya and James R. Klein, *The Constitutional Court of Thailand: The Provisions and Workings of the Court* (Bangkok: Constitution for the People Society, 2003), 76–78.

- ⁴³ “Retiring president warns court’s impartiality at risk,” *The Nation*, 4 October 2002.
- ⁴⁴ Duncan McCargo and Ukrist Pathmanand, *The Thaksinization of Thailand* (Copenhagen: NIAS Press, 2004), 121–57.
- ⁴⁵ Philip Hirsch, *Political Economy of the Environment in Thailand* (Manila: Journal of Contemporary Asia, 1993), 60–61.
- ⁴⁶ “Thailand risk: legal and regulatory risk country briefing,” Economist Intelligence Unit *RiskWire*, 7 October 2004.
- ⁴⁷ Vitit Muntarbhorn and Charles Taylor, *Roads to Democracy: Human Rights and Democratic Development in Thailand* (Bangkok and Montreal: International Centre for Human Rights and Democratic Development, 1994), 37.
- ⁴⁸ Somchai Phatarathananunth, *Civil Society in Northeast Thailand: The Struggle of the Small Scale Farmers’ Assembly of Isan* (Leeds: University of Leeds, unpublished PhD thesis, 2001), 85–86.
- ⁴⁹ Klein, “The battle,” 93.
- ⁵⁰ “Corruption Perceptions Index” (Berlin: Transparency International, 2004).
- ⁵¹ Pasuk and Baker, *Thaksin*, 175.
- ⁵² See, for example, “Exam test scandal—Adisai distorted report: Sumet,” *The Nation*, 5 June 2004.
- ⁵³ “Thailand Tax Regulations Country Briefing,” Economist Intelligence Unit *ViewsWire*, 10 February 2004.
- ⁵⁴ “Senate votes to seek Jaruvan’s replacement,” *Bangkok Post*, 2 November 2004.
- ⁵⁵ See *The Nation*, 17 March 2004, and 1 July 2004.
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