



THAILAND

CAPITAL: Bangkok

POPULATION: 65.7 million

GNI PER CAPITA: \$2,990

SCORES	2005	2007
ACCOUNTABILITY AND PUBLIC VOICE:	4.04	2.99
CIVIL LIBERTIES:	3.72	3.65
RULE OF LAW:	4.22	3.79
ANTICORRUPTION AND TRANSPARENCY:	3.48	3.43

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Duncan McCargo

INTRODUCTION

From September 1992 until September 2006, Thailand followed a troubled but broadly liberal political path. The country turned its back on a long history of military-dominated politics exemplified by the February 1991 coup d'etat, which had culminated in the deaths of dozens of unarmed protesters on the streets of Bangkok in May 1992. In 1997, Thailand promulgated a hard-won "people's constitution," the product of years of elite bargaining and an unprecedented exercise in popular consultation. The core agenda of the constitution-drafters was to create legal mechanisms that would help institutionalize a stable and relatively clean form of representative politics. These mechanisms centered on a set of independent institutions that were supposed to curtail abuses of power and reduce the well-established dominance of money in the country's electoral politics.

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Instead, the new constitution ushered in the premiership of Thaksin Shinawatra, a wealthy telecommunications magnate backed by a large catch-all political party, Thai Rak Thai (TRT: Thais Love Thais). Without amending a word of the 1997 constitution, Thaksin proceeded systematically to subvert it. He bragged publicly that his landslide election victories in January 2001 and February 2005 gave him an unprecedented mandate, a legitimacy that trumped that of the Constitutional Court and other bodies. Thaksin actively re-politicized the military, installing his old friends, classmates, and relatives in key positions. Most important, he often appeared ready to challenge the prerogatives of the king—an unprecedented stance for a recent Thai prime minister.

By 2006, Thaksin's bold and assertive leadership style had divided the nation. He was still supported by tens of millions of Thais, especially by rural dwellers in the north and northeast, who admired his populist programs and saw him as a champion of the poor and the voiceless. Indeed, Thaksin had no serious political rivals, either inside or outside TRT. However, most of the Bangkok elite and middle classes, as well as residents of the south, became deeply alienated by his authoritarian leadership style and by growing allegations of corruption.

A turning point came in January 2006, when Thaksin sold his family's telecom holdings to Temasek, a Singaporean investment company. The deal raised serious questions about conflicts of interest and placed Thaksin under intense political pressure. He reacted by dissolving Parliament in the hope of securing a third landslide victory, but the tactic backfired when the opposition boycotted the election. The election degenerated into farce and was eventually annulled by the courts, following advice by the king. Thaksin promised to step down from the position of prime minister—even handing over day-to-day authority to one of his deputies for a time—but never actually resigned.¹

For a time, many leading intellectuals were calling for the king to dismiss Thaksin and establish a royally appointed government, but the monarch declined to do so. A fresh election was eventually scheduled for October 15, 2006. However, on September 19, a military junta known as the Council for National Security (CNS) staged an anachronistic coup d'état, overturning all the progress toward political liberalization that had taken place during the 1990s, apparently with the full blessing of the palace. In time-honored fashion, the coup-makers immediately abrogated the 1997 charter and announced that they would need

a year to oversee the preparation of a new constitution and fresh elections. The CNS leadership cited several reasons for their putsch, including: Thaksin's divisiveness, his actions "bordering on lèse majesté," concerns about corruption, and his government's lack of respect for the 1997 constitution—a curious charge, given that CNS themselves had summarily abolished this very constitution.² CNS appointed Surayudh Chulanont, a former army commander and member of the Privy Council, to the post of prime minister. He proceeded to appoint a cabinet comprising mainly conservative ex-bureaucrats. CNS also established a National Legislative Assembly—a non-elected Parliament—and a set of bodies charged with preparing a new constitution. A provisional constitution was announced as an interim measure. A national referendum on the draft constitution was promised.

Initially, CNS won considerable popular support; leading Thai commentators hailed the coup as a necessary evil that had removed Thaksin from office without recourse to political violence. Yet the new government failed to act decisively against the former prime minister, and from his roving exile Thaksin was able to outmaneuver and disconcert Surayudh and the military. Thailand remained in a deep political crisis as Thaksin's allies regrouped, and the new government appeared to lack a clear vision for restoring representative democratic politics or managing the economy.

ACCOUNTABILITY AND PUBLIC VOICE

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS:	2.25
EFFECTIVE AND ACCOUNTABLE GOVERNMENT:	2.75
CIVIC ENGAGEMENT AND CIVIC MONITORING:	4.33
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION:	2.63
CATEGORY AVERAGE:	2.99

Prior to the 2006 coup, Thailand had a rather open political order, and power had rotated among a number of political parties during the previous fourteen years. Most parties, however, do not represent genuine ideological or policy alternatives but are little more than interest groups closely associated with powerful political faction bosses and cliques.

Given the merger of smaller parties with the ruling TRT, by the February 2005 elections political choice had been reduced to only three parties: TRT, the Democrats, and the small Muanchon Party. Parties were equally free to campaign, but the overwhelming dominance of TRT gave the incumbent considerable advantages. Major opposition parties boycotted a snap general election held in April 2006, arguing that Thaksin's dissolution of Parliament was an unjustified ploy to retain power.

Under the 1997 constitution, a powerful Election Commission (EC) was established, with extensive powers to manage, oversee, and regulate the electoral process. However, despite the existence of campaign finance laws and state support for political parties through the EC, much campaign spending went toward vote buying and other illegal activities that were never declared. Accordingly, candidates with strong financial backing possessed a considerable advantage.

The EC made little serious attempt to monitor spending by political parties. After May 2001, the original, highly interventionist team of five national election commissioners was completely replaced. Their successors were far less independent-minded and pursued very few complaints following the February 2005 elections. After the controversial April 2006 general election, allegations were widespread that the EC had favored TRT, and numerous calls were made for the commissioners to resign. Their resignations were only forthcoming in June, after they were arrested and briefly jailed on charges of mismanaging the election.

The EC was abolished following the September 19 coup. TRT (as well as the opposition Democrats) faced legal proceedings for electoral irregularities—primarily the hiring of fake opposition candidates in the April 2006 election—that had the potential to cause the party's dissolution. [UPDATE: TRT was eventually dissolved by the courts in May 2007, and all of the party's executive members, including Thaksin, were banned from political office for five years. Residual elements of TRT began scrambling to create a range of new parties.]

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, the Constitutional Court, the Administrative Court, and the National Counter-Corruption Commission. Unfortunately, the reality was rather different. The first Senate was full of the wives, children, and associates of politi-

cians, as well as a large contingent of former government officials, many with close personal and financial ties to party leaders and cliques of members of parliament (MPs).³ Only a handful of Thailand's senators, who served between 2000 and 2006, consistently performed the kind of monitoring role envisaged by the constitution. A second group of senators elected in April 2006 appeared even less independent, but the coup meant that the new Senate was never convened. At the time of writing, the future of an elected Senate under a new constitution looked highly uncertain.

Similar problems characterized many of the post-1997 independent agencies. The Thaksin government sought, often successfully, to politicize the process of appointments to these agencies. Given the weakness of the Senate and other bodies, dominant power interests such as the ruling TRT were exposed to limited critical scrutiny. Most civil service posts are gained through open appointment procedures, although some processes—notably for the police and the interior ministry—have been tainted by persistent reports of cheating. Immediately after the September 2006 coup, most of the independent agencies were summarily abolished, except for the auditor general.

Civic groups are able to comment relatively 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. The longer Thaksin remained in office, the less attention his government paid 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, was marginalized for refusing to accept the TRT line. In March 2005, Thaksin himself set up a high-powered National Reconciliation Commission (NRC) packed with the great and the good to propose policy alternatives to address the growing political violence in the country's Muslim-majority southern border provinces, which claimed hundreds of lives in the period following January 4, 2004. After the NRC submitted its report in June 2006, however, Thaksin apparently did not even read the document.⁴ Privy Council president Prem Tinsulanond was critical of the NRC report, rejecting the proposal that Malay be adopted as a working language in the south.⁵ In the period following the 2006 coup, civic organizations

struggled to find a clear role; any statements that implied criticism of the Surayudh government tended to be construed as expressing opposition to the coup and closet support for Thaksin. This crude bifurcation of public discourse made open debate difficult.

The Thaksin government 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 non-governmental organization (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. Activists aligned with the NGO movement played a leading role in the 2005 to 2006 anti-Thaksin movement, which involved a series of mass rallies in Bangkok and other major cities. The government sought to intimidate anti-Thaksin demonstrators, sometimes resorting to crude forms of violence.⁶ The post-September 2006 coup group has made extensive use of martial law provisions to curtail political gatherings, but the government recently permitted some demonstrations by organizations critical of the coup.

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 revenues. Attempts to reform control of the airwaves have so far failed. The CNS has persistently sought to curtail internet materials critical of the new government.

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 was 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.⁷

Print media are not directly funded by the state, but the Thaksin administration ensured that progovernment 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 ele-

ments in the print media. The CNS and the Surayudh government used a variety of measures to muzzle the media, including positioning tanks outside the offices of leading newspapers, and “advising” the press not to publicize the activities of Thaksin and his supporters after his deposal. The Surayudh government also blocked the popular website YouTube because of a controversial video clip that portrayed the Thai king in a negative light. The Ministry of Culture has recently become increasingly active in policing cultural expression in Thailand through a newly established Cultural Surveillance Center, which played a role in banning an English-language book about Thailand containing images deemed improper.⁸ While Thaksin’s government was adept at backdoor means of controlling and influencing media, Surayudh tended to revert to older forms of direct censorship.

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. During the height of the 2005 to 2006 anti-Thaksin movement, politically motivated lawsuits flowed thick and fast. The king criticized such lawsuits in his December 2005 birthday speech, prompting Thaksin to drop six criminal and civil cases brought against leading critic Sondhi Limthongkul.⁹

Although there is considerable freedom of cultural and political expression in Thailand, a notable exception lies in *lèse majesté* laws, which outlaw all criticism of the royal family. These laws were increasingly politicized during the political unrest of 2005 and 2006. After Thaksin dropped regular lawsuits against Sondhi, Thaksin loyalists among the police proceeded to charge him with *lèse majesté*.¹⁰ Later, in an ironic reversal, the September 19 coup-makers made Thaksin’s alleged acts of *lèse majesté* one of their justifications for seizing power.¹¹ In October 2006, Surayudh’s principal aide urged people to desist from criticizing the new cabinet lineup, as such criticisms could constitute *lèse majesté*.¹²

Recommendations

- A new constitution is urgently needed that retains most of the key provisions of the 1997 constitution. In particular, independent agencies must be restored to provide checks and balances and curtail future abuses of power.

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- Free and fair elections should be held as quickly as possible, allowing the military to focus solely their professional role as the guardians of national security.
- Some form of national broadcasting 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.
- Thailand's lèse majesté laws should be amended to ensure that they cannot be exploited for political purposes.

CIVIL LIBERTIES

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE:	3.00
GENDER EQUITY:	3.75
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS:	3.50
FREEDOM OF CONSCIENCE AND BELIEF:	4.00
FREEDOM OF ASSOCIATION AND ASSEMBLY:	4.00
CATEGORY AVERAGE:	3.65

Despite constitutional injunctions against it, torture and abuses of pre-trial detainees by both police and military agencies continue, especially in relation to rural protest movements and alleged drug offenders. Punishment of state officials for such abuses is very rare. Pretrial detention for up to eighty-four days is widely used in criminal cases, and extensions may be requested for complex cases. Thai prisoners are kept in poor conditions: they sometimes have to pay for a space to sleep (even on the floor) and generally need money from outside in order to obtain reasonable food.¹³ 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.¹⁴ No state officials have faced arrest, prosecution, or trial for acts of torture.

Murders of local politicians, journalists, and activists occur regularly in Thailand. Between February 2001 and the end of 2005, eighteen human rights defenders were murdered, yet Thaksin publicly urged human rights activists in Thailand not to “sink the boat” by reporting abuses to the international community.¹⁵ The arbitrary arrest of demonstrators is a widespread practice. During the Thaksin period, citizens were at risk from nonstate actors using hired thugs to enforce land clearances and other actions.

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 2,500 deaths in its initial three months. While the authorities implausibly claimed that most of these killings resulted from drug dealers turning their weapons on each other, there was ample evidence of widespread official collusion in numerous murders.¹⁶ To date, no proper investigation of the war on drugs has taken place, no list of its victims has been published, and no one has been brought to trial over the extrajudicial killings—though the Surayudh government has mooted such actions.

A further area of concern relates to the government’s handling of political violence in the southern border provinces since January 2004. Around 80 percent of the populations of Pattani, Yala, and Narathiwat provinces are Malay Muslims, whose first language is not Thai. This region has been characterized by longstanding yet sporadic separatist violence. The Thaksin government dismantled the existing security command structure in May 2002, placing the police in charge of maintaining order. Tensions mounted following a large-scale attack on an army base on January 4, 2004, and a spate of shootings and small explosions followed. Martial law was subsequently imposed in these provinces. By February 2007, over 2,000 people had been killed in political violence; some had been murdered by the security forces or had disappeared, while many others apparently met their deaths at the hands of Muslim extremists.¹⁷ Many others had been injured. Victims included Buddhist monks, Islamic teachers, government schoolteachers, village leaders, a judge, a deputy governor, and a prominent Muslim senator.

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

Neelaphajit, 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, 2004, Somchai disappeared; although five police officers were charged with his abduction and one was sentenced to a three-year jail term in January 2006, the other four were acquitted for lack of evidence, and his murder remains unsolved.¹⁸ In late 2006, however, the Department of Special Investigations seemed to be closer to resolving the case, and Army Commander Sonthi Boonyaratglin told reporters: "I have received information from investigators that some individuals close to former prime minister Thaksin were behind the disappearance of Somchai."¹⁹ The authorities confirmed that Somchai had been murdered. Somchai's widow Angkhana was later appointed one of the charter drafters for the new constitution.

On April 28, 2004, 106 Muslim men and five security officers were killed when groups of lightly armed militants launched a coordinated attack on eleven security positions in the southern border provinces of Pattani, Yala and Songkla. The day's events culminated in a siege of the historic Kru-Ze mosque in Pattani, where thirty-two 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.²⁰ Pallop responded by publishing a best-selling book defending his actions.²¹ Matters worsened considerably when eighty-four Muslim protesters died in events arising from a demonstration on October 25, 2004, outside a police station in Tak Bai, Narathiwat province. The authorities claimed that seventy-eight of the deceased had died as a result of suffocation after they were arrested and piled into army trucks. An investigation was highly critical of the military commanders responsible but concluded that the deaths were unintentional.²²

The Tak Bai events triggered an international outcry, partly because of Thaksin's inept handling of the issue and failure to apologize properly for the deaths. Surayudh made a full public apology in November 2006.²³ Human rights groups continued to highlight occasional suspicious disappearances and extrajudicial killings during 2005 and 2006, although such cases had apparently declined markedly. After Tak Bai, the security forces adopted a less confrontational approach to mass protests in the south, usually seeking to disperse demonstrators through negotiations.

Emergency legislation hastily introduced in August 2005 allowed suspects in security cases to be held for up to thirty days without charge; these provisions have been used extensively in the southern border provinces.²⁴ The law also allows for prisoners to be held in irregular places of detention and grants immunity from prosecution to enforcement officials accused of human rights violations. The emergency legislation was widely criticized by lawyers and human rights organizations both inside and beyond Thailand.²⁵ In principle, the emergency legislation could be implemented anywhere in the country, including Bangkok, and used to curtail public protest and gag the media.

The 1997 constitution gave 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 was never successfully invoked, partly because 50,000 signatures were required. Citizens may also bring complaints to independent agencies such as the Counter-Corruption or Human Rights commissions, both of which were overwhelmed by the number of cases referred to them. The credibility of the NCCC was seriously undermined in 2005, when the nine commissioners were given two-year suspended jail terms for illegally raising their own salaries.²⁶ The body ceased to function until it was reestablished by the Surayudh government, by which time a backlog of more than 10,000 cases had built up.

Under the 1997 constitution, the state was committed to promoting equal rights between men and women (Article 80) and to supporting individuals with disabilities and underprivileged people. Thailand has a very high level of female participation in the labor force—65 percent—but in 2005 around 10 percent of MPs and senators were female, and only two out of thirty-six cabinet ministers.²⁷ In the Surayudh government, only one ministry was headed by a woman.²⁸ While around two-thirds of civil servants are female, only 20.2 percent of those in the top three civil service grades (9, 10, and 11) were women, and only 9.7 percent in the top grade (11).²⁹ Some women are now serving as ambassadors (19 percent),³⁰ but the important positions of provincial governor (1.4 percent) and district officer (0.3 percent) remain overwhelmingly dominated by men.³¹ Only 10 of the 100 members of the new constitution-drafting assembly were women.

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. The state has made some efforts to tackle the problem by prosecuting offenders and protecting some victims, but there have been no recent prosecutions of police officers or other government officials, some of whom are believed to be implicated in the trade.

Racial discrimination was also prohibited by the 1997 constitution (Article 30), but there was no specific mention of ethnic minorities. This reflects the official view that all Thais are simply Thai and a persistent tendency to deny the significance of ethnic difference. Chapter III of the 1997 constitution was explicitly titled “Rights and liberties of the Thai people,” thereby excluding all noncitizens from exercising those rights. As one informant told Amnesty International, “The Thai constitution does not apply to me, because I am an ethnic minority.”³²

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.³³ The predicament of such groups was highlighted by the arrest in Hong Kong of a stateless man from the Thai-Burmese border region; the Thai government refused to repatriate him.³⁴ Many Muslims, especially in the southern border provinces, have a poor command of the central Thai language, which further restricts their already limited economic opportunities. The Thai state has been slow to recognize the need to address issues of discrimination on racial and ethnic grounds; for many local government officials, minority

groups are stereotyped as sources of insecurity, crime, and social problems, to be dealt with by forcible incorporation into Thai cultural norms.³⁵

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 through, for example, braille or audio versions of important documents. On the positive side, sign language is widely used to accompany television broadcasts. Overall, the government's record on enforcing equality issues is mixed.

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.³⁶

During 2007, there was renewed debate about designating Buddhism as the national religion.

In 2006, a former minister assumed the supposedly independent role of secretary-general of the Islamic Council of Thailand, allegedly claiming in a television interview that Thaksin had assigned him to this position.³⁷ Since 2002, Islamic, Christian, and other religious groups have been overseen by the Department of Religion (part of the Ministry of Culture), while a National Office of Buddhism is located in the office of the prime minister. Registering a new Christian church in Thailand is virtually impossible, as the Department of Religion asks the existing registered churches whether new applicants should be regarded as genuine Christians, with predictable results.³⁸ As a result, many Christian and other religious organizations operate without formal registration.³⁹

Freedom of association is broadly respected in Thailand, although levels of unionization remain low (at less than 2 percent of the total workforce) except in state enterprises, where more than half of employees are union members. Although people are free to join unions, there is evidence that some employers have dismissed union leaders or executive

members. When such cases were brought to government-backed tribunals, the union activists received back pay but employers were not otherwise penalized. The Thaksin government failed to fulfill its 2001 election pledges to ratify International Labor Organization 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 and those opposing the Thaksin government. In 2006, Thaksin supporters also mobilized pro-Thaksin demonstrations to counter political moves against him.

Recommendations

- A review of prison conditions should be made, and inhumane practices such as shackling prisoners in leg irons should be rooted out.
- 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.
- 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.
- The 2005 emergency legislation should be repealed.
- 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

INDEPENDENT JUDICIARY:	4.60
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS:	4.67
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES:	2.00
PROTECTION OF PROPERTY RIGHTS:	4.33
EQUAL TREATMENT UNDER THE LAW:	3.33
CATEGORY AVERAGE:	3.79

Thailand's judiciary is generally independent but also sometimes corrupt. This skews the justice system based on the suspect's ability to pay bribes, leading to structural inequalities and often allowing the guilty to walk free. A national survey in 2000 found that a third of those who had been involved in court cases had been asked to pay bribes to secure a favorable outcome. Of the bribes, 47 percent were paid to public prosecutors, 15 percent directly to judges, and 29 percent to other court officials, some of whom may have been acting on behalf of judges.⁴⁰

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 2002.⁴¹ Well-publicized criminal cases, such as the 2004 acquittal of a politician's son on charges of murdering a policeman, have undermined public confidence in the judicial system.⁴² However, in several high-profile security cases, judges appeared to act independently and rejected political pressures to convict. In 2005, such cases included those against Dr. Waemahadi Wae-daoui, a Narathiwat doctor accused of terrorist offenses, and Najmuddin Ummar, a southern TRT MP who had been accused of treason.⁴³

The Appeal Court—sometimes referred to as “the money court”⁴⁴—has had a particularly problematic reputation. The Central Bankruptcy Court has also been criticized for making politicized decisions that undermined the confidence of foreign investors.⁴⁵ 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. Thaksin's lawyer was charged with contempt of court for his criticisms of some 2006 verdicts concerning the EC.⁴⁶ Successive Thai governments have always complied with judicial decisions.

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 notes dictated by judges themselves constitute the only formal record of court proceedings, a practice that makes appeals difficult to substantiate. Judges are generally held in high

regard in Thai society. In a major policy statement, the Surayudh government identified the “nonpolitical” professional judiciary (in contrast with judges of the Constitutional Court, whose appointments have been politicized) as the most dependable institution in Thailand.⁴⁷ Relative to other Thai institutions, the judiciary has a clean and positive image.

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, extrajudicial killings have taken place in recent years, notably in the southern border provinces. Those accused of serious crimes are provided with lawyers by the state if they cannot afford to pay for their own defense. However, these court-appointed lawyers are often recent graduates with little experience in conducting a defense.⁴⁸ Thammasat University runs an active legal aid and legal literacy program. There are persistent allegations that prosecutors are sometimes subject to political influence.

Leading politicians (including a former prime minister and the former secretary-general of the ruling Democrat Party) and senior officials have been tried on corruption-related charges by the Constitutional Court, although its judgments have been criticized as erratic, especially⁴⁹ the controversial acquittal of Prime Minister Thaksin on charges of asset concealment in 2001.⁵⁰ Full written judgments were sometimes not published for up to a year after Constitutional Court decisions, thereby undermining the court’s credibility. The CNS abolished the Constitutional Court on September 19, 2006; it remains unclear whether a similar body will be established.

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

Despite much talk of security sector reform, no substantive changes have been enacted. Civilian politicians have remained wary of interfering with the military’s internal workings, despite general recognition

that the armed forces are bloated (with an estimated 1,400 generals) and of doubtful professional competence. The Thaksin government pursued a policy of co-opting the military, and relatives and former classmates of the prime minister were appointed to numerous key positions.⁵¹ In the process, however, he alienated rival military factions and destabilized the army, thereby helping create the conditions for the 2006 coup that toppled him.

As an ex-police officer himself, Thaksin enjoyed good relations with the police force, enlisting it in support of various government initiatives. Both the military and the police enjoy close relationships with a range of actors engaged in legal and illegal business activities. The Asian Human Rights Commission has claimed that making complaints against the police is virtually impossible: they cite the case of a Saraburi man trying to pursue serious charges of extortion, illegal detention, and other offenses against a group of police officers. Although he complained to more than nine different institutions and agencies, he was unable to obtain any redress.⁵² The military coup of September 2006 has further eroded the accountability of the armed forces, since future elected politicians will be more wary of challenging military privileges and abuses.

The Surayudh government has mooted a complete restructuring of the police. Longstanding rivalries between the police and the military may have contributed to the deteriorating security situation in the south. Police and military officers have rarely been held accountable for abuses of power or violations of human rights, as illustrated by prominent recent cases relating to the south: Somchai, Krue Se, and Tak Bai.

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.⁵³ 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.⁵⁴ 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.⁵⁵

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.⁵⁶

For the most part, discrimination on grounds of gender, sexual orientation, or ethnic origin is not illegal in Thailand, and the 1997 constitution explicitly differentiated between the rights of nationals and non-nationals.

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 independent 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 need to be rewritten to allow farmers to borrow money without having to hand over their land to predatory creditors and local elites.

ANTICORRUPTION AND TRANSPARENCY

ENVIRONMENT TO PROTECT AGAINST CORRUPTION:	3.00
EXISTENCE OF LAWS AND ETHICAL STANDARDS BETWEEN PRIVATE AND PUBLIC SECTORS:	4.00
ENFORCEMENT OF ANTICORRUPTION LAWS:	3.00
GOVERNMENTAL TRANSPARENCY:	3.71
CATEGORY AVERAGE:	3.43

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 1997 constitution, MPs were not permitted to hold state concessions or contracts, but in practice such regulations are readily subverted. Thaksin nominally transferred most of his considerable business assets to his family and his servants.

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

The award of government contracts has never been open and transparent in Thailand: whatever formal procedures are observed, these processes are widely seen as vitiated by structural corruption. Following the controversial sale of his family company Shin Corp. to Singapore's Temasek in January 2006, Thaksin was accused of abusing his powers as prime minister to further his business interests.⁵⁷ The Thaksin case has raised public awareness about the issue of conflicts of interest, but there is no culture of state intervention to regulate private sector interest conflicts.

Transparency International rates Thailand 63rd out of 163 countries assessed in its 2006 Corruption Perceptions Index, with 3.6 out of a possible 10 points.⁵⁸ In theory, victims of corruption could lodge complaints with the National Counter-Corruption Commission (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.⁵⁹ The post-coup government has struggled to create effective new mechanisms to

investigate corruption under the Thaksin administration, including allegations of massive irregularities surrounding the Suvarnabhumi Airport project. The new airport opened in September 2006 but by January 2007 was facing partial closure because of serious cracking on its runways. Access to higher education is generally open, although scandals concerning alleged abuses of the entrance examination system surface occasionally.⁶⁰

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 2009.⁶¹ The Revenue Department has been encouraging taxpayers to pay online, as this reduces the scope for bribery. The Economist Intelligence Unit has suggested that up to 100 billion baht or US\$3 billion (one-fifth of potential revenue) may be lost annually through tax evasion.⁶²

The State Audit Commission and the auditor general have extensive authority to monitor the proper use of public funds, but in the past their effectiveness has been hampered by lack of timely cooperation on the part of the police, as well as lack of power to implement their findings. Auditor General Jaruvan Menthaka was ousted in controversial circumstances in 2004, allegedly because of her critical position concerning various mega-projects backed by leading ministers.⁶³ The Jaruvan case became an important touchstone for criticism of Thaksin's interference in the independent agencies, and she was restored to office in 2006, apparently following a royal intervention.⁶⁴

Issues concerning corruption by politicians are widely aired in the print media, although the electronic media rarely offer critical perspectives on current power-holders. Whistle-blowers do not feel secure; as media activist Supinya Klangnarong 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."⁶⁵ The Thaksin governments created a climate of fear and self-censorship among media practitioners.⁶⁶

Thailand enacted the Official Information Act in 1997. In principle, this legislation affords extensive disclosure rights to citizens, but in practice its provisions have been extensively circumvented and thwarted by government agencies.⁶⁷ In theory, the national budget is open to scrutiny by the legislature—and dozens of senior officials attend annual

parliamentary sessions for this purpose—but during the period of TRT party dominance in the House of Representatives, this scrutiny was 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.
- 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 whistle-blowers from dismissal or harassment.

NOTES

- ¹ For a detailed account and analysis, see Kasian Tejapira, “Toppling Thaksin,” *New Left Review* 39 (May–June 2006): 5–37.
- ² “Thai coup-leaders’ statements,” BBC News, 19 September 2006, <http://news.bbc.co.uk/2/hi/asia-pacific/5361756.stm>.
- ³ Sombat Chantornvong, “The 1997 constitution,” in Duncan McCargo (ed.), *Reforming Thai Politics* (Copenhagen: NIAS, 2002), 108.
- ⁴ See *Overcoming Violence Through the Power of Reconciliation* (Bangkok: National Reconciliation Commission [NRC], 2006 [English version]).
- ⁵ “Prem not happy with NRC’s idea,” *The Nation* (Bangkok), 26 June 2006.
- ⁶ For example, authorities did little to prevent attacks on the leaders of the opposition Democrat Party in Chiang Mai on 31 March 2006. Worse still, Thaksin’s own security staff assaulted members of the public at the Siam Paragon department store in Bangkok in August 2006. See “Six allege assault by Thaksin supporters,” *The Nation*, 22 August 2006.
- ⁷ See *Gagging the Thai Press* (Bangkok: Southeast Asia Press Alliance, n.d., but apparently published 2004), 23–67.
- ⁸ See Michael K. Connors, “Ministering Culture: Hegemony and Politics of Culture and Identity in Thailand,” *Critical Asian Studies* 37, 4 (December 2005): 523–551.
- ⁹ See “Thailand: P.M. Suits Dropped, But Media Still Under Threat” (New York: Human Rights Watch [HRW], 8 December 2005), <http://hrw.org>.
- ¹⁰ “Sondhi faces deluge of lèse majesté claims,” *Bangkok Post*, 30 March 2006.

- ¹¹ “The administration is usually bordering on ‘lest majest’ [*sic*] actions against the revered King” (initial statement by Thai coup leaders); “Frequently the dignity of the Thai people’s king was affected” (first communiqué by Thai coup leaders). Translated by BBC News, 19 September 2006, <http://news.bbc.co.uk>.
- ¹² Cited in “Thailand: Events of 2006” (HRW, 2006), <http://hrw.org>.
- ¹³ *Thailand Guide* (London: Prisoners Abroad, n.d.), 35–39, www.prisonersabroad.org.uk.
- ¹⁴ *Thailand: Widespread abuses in the administration of justice* (London: Amnesty International [AI], ASA 39/003/2002, 2002), 1.
- ¹⁵ “Thailand Human Rights Overview” (HRW, 2007), <http://hrw.org>.
- ¹⁶ “Not enough graves” (HRW, June 2004), 7–19.
- ¹⁷ 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 nonpolitical business or personal conflicts.
- ¹⁸ “Disappearance of a human rights defender and disappearance of justice in Thailand” (Hong Kong: Asian Human Rights Commission [AHRC], 18 June 2004), www.ahrchk.net.
- ¹⁹ “Thaksin aide link to kidnap of Somchai,” *The Nation*, 2 November 2006.
- ²⁰ *Raingan khanakamakan isara taisuan kho thae jing karani hetkan masayit krue se (phakraek) [Report of the Independent Fact-finding Commission on the Kru-Ze mosque incident (Part I)]* (Bangkok: 26 July 2004).
- ²¹ 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 twelve commandos to throw eight hand grenades into the mosque before opening fire through the windows (39–41).
- ²² *Raingan khong khanakamaka nisara sop kho thaejing karani phu sia chiwit nai hetkan amphoe tak bai jangwat narathiwat mua wan thi 25 tulakhom 2547 [Report of the independent commission to investigate the deaths in the Tak Bai incident, 25 October 2004]* (Bangkok: 2004).
- ²³ “Surayud apologises for govt’s abuses in South,” *The Nation*, 3 November 2006.
- ²⁴ See *Thailand’s Emergency Decree: No Solution* (Brussels: International Crisis Group [ICG], 18 November 2005), 1–4, www.crisisgroup.org.
- ²⁵ For example, “More power, less accountability: Thailand’s new emergency decree” (Geneva: International Commission of Jurists [ICJ], August 2005), www.icj.org.
- ²⁶ See “Court finds Thai anticorruption commission corrupt,” Reuters, 26 May 2005. www.abc.net.au/news/newsitems/200505/s1378107.htm.
- ²⁷ *Women’s right to a political voice in Thailand* (Bangkok: Women for Democratic Development Foundation and UNDP, 2006), 22, www.undp.or.th/mdg/publication-MDG3.html.
- ²⁸ The postcoup Thai cabinet was sworn in 9 October 2006. The only ministry headed by a woman was the tiny Ministry of Culture; another woman occupied a junior post as the PM’s office minister.
- ²⁹ *Women’s right*, 14.
- ³⁰ *Ibid.*, 16.

- ³¹ Ibid., 18.
- ³² *Thailand: Grave Developments: Killings and Other Abuses* (London: AI, ASA 39/008/03, November 2003), 11.
- ³³ Ibid., 23.
- ³⁴ “The tale of a man with no country,” *The Standard*, 10 July 2006.
- ³⁵ 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: Routledge, 2003), 31. Pinkaew points out that the term “hill tribe” is pejorative and inaccurate with respect to the Karen.
- ³⁶ Duncan McCargo, “Buddhism, democracy and identity in Thailand,” *Democratization* 11, 4 (2004): 164–167.
- ³⁷ “Ja kert arai khun mua nayok saeksaeng kitchakan sasana islam [What will happen when the prime minister intervenes in Islamic affairs?],” *Muslim Thai Newspaper*, 15 April–14 May 2006.
- ³⁸ The registered churches comprise the Catholic Church and four “subgroups” including the Baptist and Seventh Day Adventist churches. For example, see “Protestant ‘cult’ triggers concern,” *The Nation*, 21 January 1999.
- ³⁹ “Thailand” in *International Religious Freedom Report 2006* (Washington, D.C.: U.S. Department of State, 2006), www.state.gov/g/drl/rls/irf/2006/71359.htm.
- ⁴⁰ 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.
- ⁴¹ Siriporn Chanjindamane, “White collar crime: Ten years on, not one conviction,” *The Nation*, 12 December 2002.
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- ⁴³ Michael Connors, “On Trial: Competing Interpretations of Violence in the South of Thailand,” *Asian Analysis* (November 2005), www.aseanfocus.com/asiananalysis/article.cfm?articleID=896.
- ⁴⁴ *Thailand* (Prisoners Abroad), 26.
- ⁴⁵ Shawn W. Crispin, “Courts under the spotlight,” *Far Eastern Economic Review*, 4 September 2003.
- ⁴⁶ “Thaksin lawyer faces charge of contempt of court,” *Xinhua News*, 14 February 2007.
- ⁴⁷ “Text of Government’s Statement on Administrative Reform,” *The Nation*, Thai Press Reports, 28 November 2006 [unofficial translation].
- ⁴⁸ *Thailand* (Prisoners Abroad), 20.
- ⁴⁹ 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.
- ⁵⁰ “Retiring president warns court’s impartiality at risk,” *The Nation*, 4 October 2002.
- ⁵¹ Duncan McCargo and Ukrist Pathmanand, *The Thaksinization of Thailand* (Copenhagen: NIAS Press, 2005), 121–157.

- ⁵² “Thailand: The impossibility of complaint against the police” (Hong Kong: Asian Human Rights Commission, 18 July 2006), <http://www.ahrchk.net/statements/mainfile.php/2006statements/645>.
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- ⁵⁴ “Thailand risk: legal and regulatory risk country briefing,” *RiskWire* (London: Economist Intelligence Unit [EIU]), 7 October 2004.
- ⁵⁵ Viti 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.
- ⁵⁶ 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.
- ⁵⁷ The many questions raised by the Shin Corp. sale were summarized in Manok and Denokkrop [pseudo.], *25 Khamtham bunglang dun tek over Shin Corp [25 Questions Behind the Shin Corp Takeover]* (Bangkok: Open Books, 2006).
- ⁵⁸ “Corruption Perceptions Index” (Berlin: Transparency International, 2006), www.transparency.org. The Thai data were based on nine surveys.
- ⁵⁹ Pasuk and Baker, *Thaksin*, 175.
- ⁶⁰ See, for example, “Exam test scandal—Adisai distorted report: Sumet,” *The Nation*, 5 June 2004.
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- ⁶² *Ibid.*
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- ⁶⁴ “Committee agrees to reinstate Jaruvan as auditor general,” *The Nation*, 16 February 2006.
- ⁶⁵ Jane Perlez (*New York Times*), “Thai Activist is sued by Thaksin, and can’t wait for court,” *Cambodia Daily*, 9 July 2004.
- ⁶⁶ See Ubonrat Siriyuvasak, ed., *Pit hu, pit ta, pit pak: sithi seriphap nai mu turakitkan-muang sua [Close your ears, close your eyes, close your mouth: Rights and freedoms in the clutches of a politicized media business]* (Bangkok: Khop Fai, 2005).
- ⁶⁷ See the detailed discussion in *Gagging the Thai Press*, 68–77.