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Thailand's Lengthening Roadmap to Elections

Asia Report N°274 | 10 December 2015

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Executive Summary

On 6 September 2015, a reform council appointed by Thailand's military-run administration, the National Council for Peace and Order (NCPO), rejected a constitution prepared by a drafting committee it had itself appointed. With the draft scuppered, the military regime extended its tenure by at least seven months, backtracking on the roadmap to "fully-functioning democracy" it announced after the May 2014 coup and delaying a general election until mid-2017. Passage to a general election, including a new constitution subject to a national referendum, has started over. The process is unfolding against a backdrop of impending royal succession, a faltering economy and continuing political and social polarisation that military rule has failed to ease. The regime's autocratic bent and evident determination to oversee the succession preclude an inclusive national dialogue on a political order rooted in popular sovereignty that protects the rights of all.

The country is in the grip of a conflict between forces of change and continuity that has political, economic and geographical dimensions. It manifests itself as friction between elected and unelected authority. The traditional establishment – bureaucracy, military, and palace networks – seeks to preserve the status quo in the face of socio-economic change and political claims of provincial voters. Thaksin Shinawatra, prime minister from 2001 until a coup in 2006, challenged the old guard with his ambition and electoral prowess. The establishment's repertoire of bureaucratic oversight, constitutional engineering, judicial intervention, street protests and coups d'état failed to contain Thaksin or suppress the popular political aspirations he harnessed. Thaksin-aligned parties have won every general election since 2001. With the 69-year reign of King Bhumibol Adulyadej drawing to an end and royal succession looming, the establishment required a more assertive effort to control events.

The NCPO seized power in 2014, citing the threat of continued violence after months of protests against Prime Minister Yingluck Shinawatra, Thaksin's sister, elected in July 2011. Many who demanded Yingluck's ouster saw the coup as a necessary step in eradicating corruption and what they called parliamentary dictatorship. The NCPO proclaimed a three-phase roadmap to democracy: reestablishment of security and reconciliation; an elected government; and an ongoing reform process. However, it has repeatedly postponed the projected date for a general election.

Ratification of a new constitution is a precondition of the roadmap's second phase. The Constitution Drafting Committee (CDC) produced a document that alarmed observers across the political divide. Provisions included a majority-appointed senate, allowance for an unelected prime minister and a "crisis committee" stacked with military officers empowered to override parliament and the executive in the interests of national security. The NCPO appeared to lobby its appointed reform council to reject the draft, thereby not only extending its tenure, but also sparing it the potential embarrassment of rejection by voters in a plebiscite. Few lamented the draft's demise, but for many, its rejection casts doubt on the military's commitment to relinquish power to an elected government. Most Thais do not expect the military to step down for several years, until well after a new king is on the throne. Some are concerned that it will use the next constitution to engineer enduring political supremacy.

A new CDC must produce a draft constitution by 1 April 2016 that will be subject to a national referendum. The failure of the 2015 draft suggests that the NCPO may not be able to issue a constitution that both satisfies its concerns about maintaining political control and is acceptable to the public. If the next draft fails, the process will start yet again. If the public approves a draft simply in order to return to elected government, the conflict between elected and unelected authority is likely to re-emerge. The NCPO has spurned the kind of deliberative drafting process that could help confer legitimacy on the next constitution and appears to be playing for time.

A handful of democracy activists have staged sporadic demonstrations, but the regime's political opponents have mostly opted to bide their time. The NCPO faces no evident challenge to its hold on power. Nevertheless, continued harassment of regime critics betrays its insecurity, which may stem in part from arcane elite factionalism. Meanwhile, allegations of corruption have undermined its assertion of moral guardianship, and a worsening economy fuels growing discontent, which, if not assuaged, could spur more active opposition.

After a decade of turmoil, and with the king's reign drawing to an end, most Thais appear either receptive or resigned to a period of military rule. Yet, expectation of future turmoil is pervasive. Those convinced that time is on the side of popular sovereignty cite recurring collective demands for greater democracy. But few see the military surrendering its veto over the constitutional order. Nor would a new constitution and a general election by themselves resolve the legitimacy struggle between elected and unelected authority. This requires a new social contract, best achieved through dialogue about Thailand's political order. Necessary conditions for such a dialogue, including protection of political rights and leadership with a stake in compromise, are absent. For now, anxiety surrounding the end of the current reign and the regime's repression of dissent rule out such a process.

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I. Introduction

Thailand's politics have fallen into a disturbing pattern. Since 2006, the military has staged two coups and scrapped two constitutions; the king has endorsed two interim charters and one "permanent" constitution; courts have dissolved four political parties, invalidated two elections and ousted three elected prime ministers; and protest-related violence has killed scores of people.[1] This record of turmoil appears anachronistic. The National Council for Peace and Order (NCPO), the ruling military council, evokes military dictatorships of the 1950s-1970s; and an old cycle of coups, constitutions, elections and crises has re-emerged.[2]

Like earlier coup makers, the NCPO promised an end to the cycle and a return to democracy following a period of military-guided reform. Its advertised path to a general election requires a new constitution, Thailand's twentieth since 1932.[3] On 6 September 2015, however, the NCPO's hand-picked reform council rejected a draft constitution written by a drafting committee it had selected, requiring that the process start again.

The regular recurrence of coups d'état and the fact that successful coup makers are never punished demonstrate that constitutions are not the supreme law of the land. This points to a paradox: constitutions are transitory, lasting slightly longer than four years on average, but political elites believe that a superior one would result in a stable political system. The repeated efforts to draft a better document demonstrate that they play some role in legitimising power.[4] A scholar described this perennial grappling with constitutional reform as "a kind of terminal political malaise", which "reflects a continuing concern with the legitimation of power".[5]

As an arena for struggles over legitimacy, constitutions have incorporated popular demands over the past 40 years for more representative political institutions. The 1997 constitution, in particular, conceded greater popular representation. But even

[1] See Crisis Group Asia Reports N°s 263, *A Coup Ordained? Thailand's Prospects for Stability*, 3 December 2014 and 192, *Bridging Thailand's Deep Divide*, 5 July 2010; and Briefings N°s 121, *Thailand: The Calm Before Another Storm?*; 11 April 2011, 82, *Thailand: Calming the Political Turmoil*, 22 September 2008; and 80, *Thailand: Political Turmoil and the Southern Insurgency*, 28 August 2008.

[2] Chai-anan Samudavanija, *The Thai Young Turks* (Singapore, 1982), pp. 1-2.

[3] "Political Situation in Thailand", national broadcast by General Prayuth Chan-ocha, head, National Council for Peace and Order, www.mfa.go.th, 27 June 2014.

[4] Tom Ginsburg, "Constitutional Afterlife: The Continuing Impact of Thailand's Postpolitical Constitution", *International Journal of Constitutional Law*, vol. 7, no. 83 (2009), p. 86. "Constitutionalism was not designed so much to constrain the rulers as to facilitate their rule". Fred W. Riggs, *Thailand: The Modernization of a Bureaucratic Polity* (Honolulu, 1966), p. 153.

[5] Duncan McCargo, "Alternative Meanings of Political Reform in Thailand", *Copenhagen Journal of Asian Studies*, no. 13 (1998), pp. 27, 9.

this charter, acclaimed as the "People's Constitution", was drafted by conservative elites who disdained electoral politics and sought to constrain elected institutions.[6] Thai constitutions, including the forlorn 2015 draft, are elite efforts to offer a degree of popular participation while preserving the autonomy of the monarchy, military and bureaucracy. In practice, constitution drafting often involves "consolidating elite power, diverting dissenting voices".[7]

This report reviews the failure of the military government's first effort to promulgate a constitution and what it may portend for future stability. It also assesses progress on the NCPO's proclaimed roadmap to a general election.

[6] Kevin Hewison, "Constitutions, Regimes and Power in Thailand", *Democratization*, vol. 14, no. 5 (December 2007), p. 933.

[7] Duncan McCargo, "Introduction: Understanding Political Reform in Thailand", in Duncan McCargo (ed.), *Reforming Thai Politics* (Copenhagen, 2002), p. 3.

II. Road to the Roadmap

For the past decade, Thailand has been gripped by a conflict between elected and unelected authority, in part a result of unresolved tensions between competing sources of political legitimacy, namely traditional hierarchy and popular sovereignty.[8] This conflict dates to 1932, when a small group of military officers and bureaucrats overthrew the absolute monarchy. In principle, that coup introduced the idea of popular sovereignty, embodied in parliament, political parties, constitutionalism and elections. In practice, the older royalist order, based on patrimonialism and hierarchy, continued to inform the organisation of political power, typified by military rule. Economic change in the second half of the twentieth century helped generate popular demands for democracy that were met with state repression, most dramatically when the army, or its proxies, killed pro-democracy demonstrators in 1973, 1976 and 1992. But popular pressure also resulted in a more pluralist political order, as the establishment sought to co-opt rising social classes after each deadly confrontation.

Thailand is an oligarchy, beset by deep economic and social inequality.[9] The bureaucracy, military and palace networks represent the establishment, old-guard elite. It views majoritarian politics as the domain of money-grubbing provincial parvenus, in contrast to the noble work of administration in service of the crown. It prefers appointed, technocratic control to what it calls "tyranny of the majority". The establishment derives power from an "unwritten constitution", a set of informal conventions that govern how the unelected institutions operate, including the military's power to abrogate constitutions with impunity.[10] This gives rise to a "parallel state" in which unelected, unaccountable institutions retain a veto over the constitutional order.[11]

The monarchy stands at the apex of the social and political order and serves as the focus of national identity. Since the 1980s, the king has acted as "the ultimate arbiter of political decisions in times of crisis". Between crises, he has influenced developments through trusted proxies, especially privy councillors, military officers, judges and intellectuals. The main proxy was Prem Tinsulanond, former army chief and prime minister (1980-1988), who supervised important military and bureaucratic appointments. Prem, now 95, has been Privy Council chairman since 1998. This "network monarchy" functioned informally, working around elected institutions, and favoured governance by "good people".[12]

The establishment and its allies oppose Thaksin Shinawatra, an upstart businessman-turned-politician, whose ambition, cupidity and electoral success upset the

[8] Chai-anan, op. cit., p. 67; Michael H. Nelson, "Some Observations on Democracy in Thailand", Southeast Asia Research Centre, City University of Hong Kong, Working Paper Series, no. 125 (February 2012).

[9] "Thailand ranks 6th in global unequal wealth distribution list", National News Bureau of Thailand, 14 October 2014.

[10] Ginsburg, "Constitutional Afterlife", op. cit., p. 89; Somchai Preechasinlapakun, "Dynamics and Institutionalization of Coups in Thai Constitutions", Institute of Developing Economies, Japan External Trade Organization, V.R.F. Series, no. 483 (July 2013), p. 28.

[11] Paul Chambers, "Military 'Shadows' in Thailand Since the 2006 Coup", *Asian Affairs: An American Review*, vol. 40, no. 2 (2013), pp. 67-82.

[12] Duncan McCargo, "Network Monarchy and Legitimacy Crises in Thailand", *The Pacific Review*, vol. 18, no. 4 (2005), p. 501.

political order.[13] As prime minister from 2001 to until his ouster by coup in 2006, his redistributive policies won support from rural voters and awakened a sense of political efficacy among millions, especially in the populous, relatively poor North and North East. Thaksin-aligned parties have won every general election since 2001.

The elite-level conflict over power has generated popular political movements. First the People's Alliance for Democracy (PAD) and later the People's Democratic Reform Committee (PDRC), among others, opposed Thaksin and his allies. Known broadly as Yellow Shirts for the colour associated with the king's birthday, they explicitly linked their activism to defence of the monarchy and called for military intervention to topple Thaksin-aligned governments. They drew support from the urban middle class, anxious about maintaining its status and resentful of subsidising populist policies that benefit the rural poor, have grown ambivalent about electoral politics over the past decade and largely side with the establishment. They backed the conservative, royalist Democrat Party (DP), which has strong support in the Upper South and urban areas. Those who supported Thaksin are known as Red Shirts, a fragmented movement under nominal leadership of the United Front for Democracy Against Dictatorship (UDD), and are concentrated in the North and North East.

Yingluck Shinawatra, Thaksin's sister, became prime minister in 2011, after the Pheu Thai Party (PTP) won a landslide election in July. Beginning in late 2013, her government faced months of protests by the PDRC and allied groups.[14] Yingluck dissolved parliament, but a February 2014 general election, boycotted by the DP and disrupted by the PDRC, failed to resolve the impasse. In May, the Constitutional Court forced her from office for transferring a senior bureaucrat in 2011.[15] With the caretaker government refusing to resign, the army declared martial law on 20 May and seized power two days later.

The courts and watchdog agencies empowered by the 2007 constitution to curb the ambitions of pro-Thaksin politicians stymied elected governments but also helped foster political deadlock and a period of unprecedented political violence. Ultimately, they could not ensure establishment electoral supremacy. With the king increasingly infirm, network monarchy has lost some of its coherence. In the absence of alternatives, the military has become the predominant defender of the status quo. An army faction of the Queen's Guard, the Burapha Payak (Eastern Tigers), was instrumental in the 2006 and 2014 coups and dominates the current military regime.

The NCPO justified the 2014 coup on grounds that the military was obliged to prevent further bloodshed and provide a respite in which fractured politics could be repaired. Army chief General Prayuth Chan-ocha said: "The most important [reason for the coup] was because we respect the democratic process".[16] A week after the coup,

[13] Thaksin remains the only Thai premier to have served a full term. In 2008, the Supreme Court's Criminal Division for Political Office Holders sentenced him to two years in jail for conflict of interest in a land deal concluded by his wife. He has since lived in self-imposed exile, based in Dubai. His Thai Rak Thai Party (TRT) was dissolved in May 2007 for electoral fraud and succeeded by the People's Power Party (PPP), which won the December 2007 general election. The Constitutional Court dissolved PPP in December 2008 for electoral fraud. The Pheu Thai Party (PTP) was formed in September 2008 in expectation of the PPP's dissolution.

[14] Protests organised by the DP gained fresh momentum after the PTP-controlled House of Representatives passed an amnesty bill that would have allowed for Thaksin's return to Thailand.

[15] Yingluck transferred Thawil Pliensri from his post as director of the National Security Council. The ensuing reshuffle allowed her former brother-in-law to become national police chief.

[16] "Unofficial translation, National Broadcast" by General Prayuth, www.mfa.go.th, 6 June 2014.

he proclaimed a three-phase roadmap to reach an elected government and "fully-functioning democracy". The first phase, national reconciliation, was to be achieved within three months. In practice, the NCPO interprets reconciliation as submission and absence of conflict.[17] The second phase was appointment of governing bodies, adoption of an interim charter and drafting of a new constitution. The third was a general election resulting in administration by "decent, honest people".[18]

To pursue this roadmap, the NCPO appointed the National Legislative Assembly (NLA), National Reform Council (NRC) and Constitution Drafting Committee (CDC). Together with the cabinet and the NCPO, these bodies formed what the NCPO calls the "Five Rivers of Reform". The NLA appointed General Prayuth as prime minister in August 2014. Progress on the roadmap has been the military government's constant refrain: to assure the public it is not clinging to power, but rather guiding a necessary process of reforming "a flawed democratic system".[19]

The roadmap's timeline is ever-shifting.[20] From an initial projection in May 2014 of fifteen months, the timing of a general election has been pushed back repeatedly. In September 2015, the prime minister said there could be an election in July 2017. In October, a deputy prime minister said a 2017 election remains contingent on a sufficient degree of reform and reconciliation.[21] Prayuth later said that if politicians refused to stop talking, he would stay on and "close down the country".[22]

[17] Siwach Sripokangkul, "'Forgetting,' 'Returning to Ironic Happiness,' and 'Threatening and Hunting': Reconciliation Process of 2014 Post-Coup Government in Thailand", *Asian Social Science*, vol. 11, no. 15 (2015). "Reconciliation", like "reform", is much-abused in Thailand's political discourse. Thailand has had two reconciliation commissions, the National Reconciliation Commission Thaksin established in 2005 to respond to violence in the southernmost provinces, and the Truth for Reconciliation Commission Abhisit established in response to political violence in 2010. Both produced reports decision-makers ignored. "The concept of reconciliation has been criticised as conservative, vague, illiberal, question begging, assimilative, quietist and exculpatory". Duncan McCargo, *Mapping National Anxieties: Thailand's Southern Conflict* (Copenhagen, 2012), pp. 89-90.

[18] "National Broadcast", by General Prayuth www.mfa.go.th, 30 May 2014.

[19] Ibid; "Leader of Thai junta hints at delay in return to elections", Reuters, 15 October 2014.

[20] The NCPO's theme song, "Returning Happiness to the People", attributed to General Prayuth, pleads: "Please, will you wait? We will move beyond disputes. We will do what we promised. We are asking for a little more time". As translated in "Army unveils song 'authored by Gen. Prayuth'", *Khaosod English*, 8 June 2014.

[21] "National Broadcast", by General Prayuth, 30 May 2014, op. cit., and 27 June 2014; "Public constitution vote likely", *The Bangkok Post*, 7 November 2014; "Thai general election to be delayed until late next year", Kyodo News, 20 May 2015; "No polls till 2017 if draft charter voted down", *The Bangkok Post*, 3 August 2015; "Election tipped for end 2016", ibid, 29 August 2015; "Thai prime minister says election likely in July 2017", Reuters, 16 September 2015; ""วิษณุ" ระบุ หากมีเค้าไม่สามารถสร้างปรองดองได้สำเร็จ เลือกตั้งปี60 คงเกิดยาก!", *มติชน*, 27 ตุลาคม 2558 ["'Wissanu' says if some can't achieve reconciliation, '17 election will be difficult", *Matichon*, 27 October 2015].

[22] "'ประยุทธ์'ลั่นไม่จบพร้อมปิดประเทศ", Nation TV, 28 ตุลาคม 2558 ["'Prayuth' swears if (conflicts) don't end, he'll close down the country", Nation TV (online), 28 October 2015]. He later apologised for this and other intemperate comments. "National Broadcast", by General Prayuth, www.thaigov.go.th, 6 November 2015.

III. Drafting the Twentieth Constitution

If the 2014 coup is to succeed where the 2006 coup failed, the twentieth constitution will have to devise more effective means to constrain elected authority. By late 2014, the contours of the prospective constitution were discernible from early proposals and the parameters set in the 2014 interim charter. Section 35 stipulates a ten-point framework, including "efficient mechanisms" for preventing corruption; ensuring independence of officials and office holders from "manipulation" by "masterminds"; strengthening rule of law and morals; eschewing populist policies; narrowing socio-economic disparities; auditing state spending; and ongoing reform.[23] The constitution would weaken political parties, rein in politicians, strengthen the senate and foster coalition governments.

A. *First Draft*

The regime and its appointees selected the 36-member CDC, empaneled on 4 November 2014. The NRC nominated the chairman – legal scholar Borwornsak Uwanno, a member of the 1997 constitution drafting committee and the post-2006 coup-appointed national assembly – and twenty further members, while the cabinet, NLA and NCPO each selected five. Members were largely aligned with the conservative establishment; five had been drafters of the 2007 charter.

The first draft, issued in mid-April 2015, was long, at 315 sections.[24] Highly detailed and moralistic, it emphasised a narrow notion of citizenship framed in terms of the duties to monitor the conduct of politicians. The draft provided for a host of councils charged with scrutinising officials and enforcing moral standards, including Public Scrutiny Councils in each province and a National Ethics Assembly, with members selected by the mostly-appointed senate and an appointed selection committee. The National Reform Assembly and National Reform Strategy Committee, both appointed bodies, would propel political reform, with authority to draft and propose legislation that could pass with only senate approval. The two bodies would exist for five years from promulgation, with possibility of extension by means of a referendum.

The military-dominated senate would have greater authority, including not only to propose but also to approve laws and to vet prospective cabinet ministers. Only 77 of its 200 members would be elected, one per province, from a slate of pre-screened candidates. Appointed committees would select the remaining 123 along functional lines, with quotas for the military, civil servants, and professional organisations.

The election system aimed to correct what Borwornsak described as a "lack of balance between elector preference for particular individuals and parties and the actuality that falls far short of expectation".[25] The draft allowed the House of Representatives, the lower house of the national assembly, to appoint an unelected prime

[23] Constitution of the Kingdom of Thailand (Interim), B.E. 2557 (2014), unofficial translation, (http://lawdrafter.blogspot.com/2014/07/translation-of-constitution-of-kingdom.html).
[24] Pakorn Nilprapunt, Chintapun Dungsubutra, Vareerat Ratanaviboonsom and Natthanicha Aneksomboonphol, Office of the Council of State, unofficial translation, constitution (draft, April 2015), www.student-weekly.com/pdf/200415-constitution-en.pdf.
[25] Borwornsak Uwanno and Navin Damrigan, "Constitution Drafting in Thailand", unpublished paper, March 2015, p. 5.

minister. Individuals would be permitted to stand for election as representatives of "political groups" rather than parties. The draft specified a mixed-member proportional (MMP) voting system, based on Germany's, with a constituency vote and a party vote, the latter determining the party's share of seats. An "open list", however, would allow voters, rather than party leaders, to rank candidates on the party list. The drafters intended to foster coalition governments by boosting prospects for small parties.[26]

The draft received a tepid response. On 23 April, to gauge their views, the NCPO summoned politicians and activists from opposing camps. In a rare instance of consensus, they agreed that it would be better to delay an election than to proceed with a constitution they regarded as undemocratic.[27] A senior PTP member warned that the National Reform Strategy Committee would manipulate the government and the senate would be too powerful.[28] Some saw the clause allowing an unelected prime minister as laying the foundation for Prayuth or another general to assume the office after a general election.[29]

Many with strong anti-Thaksin credentials also opposed provisions. Sombat Thamrongthanyawong, chairman of the NRC political reform committee and a former PDRC leader, said the MMP voting system would result in weak coalitions beholden to small political parties, like the Abhisit Vejjajiva government of 2008-2011.[30] Teerapat Serirangsan, chairman of the Political Development Council (PDC), said the draft was designed to allow the NCPO to "take power" and urged the NRC to reject it.[31] Abhisit warned it would create a new parliamentary dictatorship.[32]

[26] Achara Ashayagachat, "Charter drafter sees 'grand coalition'", *The Bangkok Post*, 9 April 2015. A study of how the MMP system would have affected the 2007 and 2011 election results found little change, because Pheu Thai and the Democrats earned 80 per cent of the list vote. There was no significant boost for smaller parties. Allen Hicken and Bangkok Pundit (pseudonym), "The Implications of MMP for Thailand", Thai Data Points blog, 16 January 2015 (updated 19 January 2015).

[27] "Redshirt leader calls for delaying election to fix charter", *Khaosod English*, 24 April 2015.

[28] Crisis Group interview, Bangkok, 22 July 2015.

[29] A similar clause in the 1991 draft constitution, done under the military National Peace-Keeping Council, sparked popular opposition but was passed by an appointed legislature. When former army chief General Suchinda Kraprayoon became prime minister in 1992 under it, reneging on a promise not to do so, massive protests erupted in Bangkok. The army suppressed them with scores of fatalities, an event known as Black May.

[30] "อ.รัฐศาสตร์ วิเคราะห์ ไทยมีอำนาจแฝงมาก ตรวจสอบล้นเกิน จนเกิดวิกฤต แนะปรับดุลอำนาจ", *มติชนออน ไลน์*, 24 ม.ค. 2558 ["Dr Sombat analyses Thailand's great hidden power, excessive checks, leading to crises, suggests rebalancing power", *Matichon* (online), 24 January 2015]; "Sombat warns of German method", *The Nation*, 24 January 2015.

[31] The PDC was established after the 2006 coup to promote ethics in politics and people's participation. Teerapat, a prominent Thaksin critic, was Prime Minister's Office minister in the post-2006 coup government. "สภาพัฒนาการเมือง ไม่เห็นชอบร่างรธน.'ธรภัทร์' อัด เนื้อหาล้าหลัง-ศรีธนญชัย", *มติชนออน ไลน์*, 9 พฤษภาคม 2558 ["Political Development Council opposes draft charter, Teerapat says it's outmoded, 'tricky'", *Matichon* (online), 9 May 2015], "Charter draft meets more opposition", *The Bangkok Post*, 9 May 2015.

[32] "Abhisit blasts CDC for creating new parliamentary dictatorship", Thai PBS English, 28 April 2015.

B. *Roadmap Dead Ends*

As criticism of the draft mounted, support for a referendum to confer popular legitimacy on the constitution gained momentum.[33] On 13 May, the CDC sent a letter to Prime Minister Prayuth urging that the interim charter be amended to permit a referendum. The cabinet endorsed the idea and, on 18 June, the NLA approved provisions for a referendum, among seven amendments to the charter.[34]

The NRC and the cabinet each proposed changes to the initial draft. The CDC submitted a revised version, with 285 sections, to the NRC on 22 August. It reflected concerns of disparate interests, including the NCPO, independent agencies and the major political parties, which objected to different aspects of the first draft. The CDC's secrecy meant that the rationale for specific revisions was not always clear, but that draft's moralism and planned watchdog role for "active citizens" found little support.[35]

The final draft dropped the National Ethics Assembly and Public Scrutiny Committees. It modified the voting system, adopting a single, nationwide constituency instead of the six-region, open-party list. Provision for a non-elected prime minister remained, but required an individual who was not a member of the legislature to gain support from two thirds of House members. In a move interpreted as a measure to prevent Thaksin from holding office again, the CDC also proposed prohibiting candidacies for the House or Senate of anyone who had been impeached for being unusually wealthy; corruption; behaviour that demeaned public office; or "misconduct in the justice system".[36]

The preferences of establishment players received special attention. The Office of the Judicial Commission, which oversees judicial appointments and transfers, objected to a clause that would have required one third of its members to be non-judges. In June, Privy Council member Tanin Kraivixien wrote to Prayuth arguing this would compromise the judiciary's independence. More than 1,300 judges signed a petition against the requirement. The CDC reverted to the pre-existing system.[37]

The most controversial change was a clause inserted in August at the behest of the NCPO that authorised a committee dominated by senior military officers to override the elected government in times of crisis.[38] In July, the cabinet urged the CDC to combine the proposed National Reform Assembly and National Reform Strategy Committee into the National Strategic Reform and Reconciliation Committee (NSRRC).[39]

[33] The 2007 constitution was the first subject to a referendum; 42 per cent voted against the draft.
[34] Other amendments included allowing former politicians who had served political bans to join the cabinet; extending the deadline for the CDC to revise the draft to 90 days; and dissolution of the NRC after its vote on the draft constitution and its replacement with a reform steering committee.
[35] Khemthong Tonsakulrungruang, "Coups and constitutions", New Mandala blog, 28 August 2015; Puangthong Pawakapan, "Protracted Period in Power can Prove Perilous for Thailand's Military Government", *Perspective*, ISEAS-Yusuf Ishak Institute, no. 65 (19 November 2015), pp. 2-3; Duncan McCargo, "Peopling Thailand's 2015 Draft Constitution", *Contemporary Southeast Asia* (December 2015).
[36] "Life ban for Shinawatras in latest charter draft", *The Bangkok Post*, 17 July 2015; "Draft charter faces rejection if Shinawatras banned: Pheu Thai member", *The Nation*, 21 July 2015.
[37] "CDC changes judiciary provision in charter", *The Bangkok Post*, 29 June 2015.
[38] Crisis Group interview, former NRC member, Bangkok, November 2015.
[39] Its 23 members would include the heads of the legislative, executive and judicial branches; the supreme commander; the three military service commanders; the national police chief; the former parliament president; the former Supreme Court president and select former prime ministers.

Under the revised section, the NSRRC could, with a two-thirds vote of its members, invoke its special powers. Its decisions would be final, and it would operate for five years from the promulgation of the new constitution.

This late addition of what the media called the "crisis-committee" provision caused alarm. Critics described it as a politburo and an attempt to legalise coups d'état.[40] Thaworn Senneam, former deputy leader of the DP and a PDRC leader, said it would allow "coups without tanks".[41] Likhit Dhiravegin, a member of the 1997 constitution drafting committee, said that any provision conflicting with Section 3's guarantee that sovereignty belongs to the people was unconstitutional, and the "crisis committee", among other provisions, would thus render the draft void.[42]

Explaining the NSRRC's authority, Borwornsak said that, "rather than trying to inflict another 'mature' democracy on the country", the proposed five-year transition reflected lessons of the past: "After things fell apart like we'd never seen, I would like to ask if we still want it – a Western-style full-fledged democracy?"[43]

Opposition to the draft was almost universal. Yingluck wrote on Facebook, "I don't think there is a need to have a board that dominates the government and legislature in order to make decisions, even in times of crisis".[44] Abhisit called for the draft to be rejected.[45] On 6 September 2015, the NRC voted 135 to 105, with seven abstentions, to reject the draft, and in accordance with the interim constitution, the NRC and CDC were dissolved.

A month before the NRC vote, Deputy Prime Minister Wissanu Krea-ngam declared that any deviation from the roadmap "would be accidental".[46] In the event, military officers in the NRC reportedly lobbied other members to reject the draft, and 30 of the 33 military and police officers voted "no".[47] The lone military officer serving in both the CDC and NRC abstained. After the vote, Borwornsak thanked the three officers who voted for the draft and said the others, "had to heed their superiors".[48] The overwhelming military vote against the draft suggested that the NCPO orchestrated its defeat. The NRC's rejection conferred on the regime the advantage of extending the government's tenure.

"นับถอยหลัง โหวต 'รธน.'", *ไพสต์ทูเดย์*, 23 สิงหาคม 2558 ["Countdown to draft charter vote", *Thai Post*, 23 August 2015].

[40] Crisis Group interview, legal scholar, Bangkok, 1 September 2015.

[41] "'ถาวร' สวดยับ 'ยกร่างฯ' แก้ไม่ถูกที่คัน", *ไทยรัฐ*, 18 สิงหาคม 2558 ["Thaworn complains draft doesn't fit the bill", *Thai Rath*, 18 August 2015].

[42] Likhit Dhiravegin, legal scholar and Fellow of the Royal Society, comments at seminar, วิเคราะห์เคราะห์ร่างรัฐธรรมนูญ 2558 กับทิศทางการปฏิรูปการเมืองไทย ทางออกหรือทางตัน ["Analyzing the 2015 draft constitution and the direction of Thai political reform: Solution or stalemate?"], Chulalongkorn University, Bangkok, 3 September 2015.

[43] "CDC defends five-year 'transitional system'", *The Nation*, 27 August 2015.

[44] "Ousted former Thai PM criticises draft constitution", Reuters, 17 August 2015.

[45] "อภิสิทธิ์ จี้ สปช. คว่ำร่างรธน.-ประชาธิปัตย์ รอได้2-3เดือนหากต้องแก้ร่างใหม่", *มติชนออนไลน์*, 25 สิงหาคม 2558 ["Abhisit says NRC should reject draft, Dems can wait 2-3 months if revisions needed", *Matichon* (online), 25 August 2015].

[46] "Wissanu says no to 'reform before election'", *The Nation*, 3 August 2015.

[47] "'Yes' or 'no', the military still wins", *The Bangkok Post*, 9 September 2015.

[48] "22นายพลโหวตคว่ำ ไม่รับ'รธน.'", *มติชน*, 7 กันยายน 2558 ["22 officers in upset vote, reject draft", *Matichon*, 7 September 2015]; "Borwornsak hints at pressure from above after 'no' vote", *The Nation*, 7 September 2015; "คว่ำรัฐธรรมนูญ ขยาย roadmap อันลิมิต เอาที่สบายใจเลยครับพี่", *ผู้จัดการรายวัน*, 12 กันยายน 2558 [Draft rejected, 'unlimited' roadmap extension, drafters – go ahead and take comfort", *Manager Daily*, 12 September 2015].

The NCPO remains concerned that the PTP will win the next general election and, in any case, wishes to delay that vote until well after royal succession. It also seemed to lack confidence that the public would approve the draft.[49] A referendum would have confronted the government with the risk of a humiliating rebuke.[50] A former Red Shirt local leader said: "A referendum would have motivated people to oppose the government, not just the draft".[51]

[49] Crisis Group interviews, former senator; senior DP member; former NRC member, all Bangkok, November 2015; McCargo, "Peopling Thailand's 2015 Draft Constitution", op. cit.

[50] "The crisis committee idea … was contemptuous of the people. If not for that provision, it probably would have passed". Pro-PDRC political scientist, North East, 8 September 2015; "They shot it down because they knew it wouldn't pass in a referendum". Provincial Administrative Organisation member (PAO, an elected body) and PDRC leader, Upper South, 1 October 2015; "[The draft failed] because they put unacceptable things in it, like the 'crisis committee'". Tambon (Sub-district) Administrative Organization (TAO, an elected body) member and PDRC activist, Upper South, 30 September 2015. All Crisis Group interviews.

[51] Crisis Group interview, North East, 9 September 2015.

IV. The Road Ahead

A. *Revised Roadmap*

On 16 September, Deputy Prime Minister Wissanu explained the revised roadmap, corresponding to the formula "six-four-six-four": six months to draft the constitution; four to prepare a referendum; six to draft organic laws; and four to organise a general election. Accordingly, an election would take place in June 2017.[52] If the draft were rejected in the referendum, the process would start again.

On 5 October, Prayuth appointed legal expert Meechai Ruchupan, 77, to head the new CDC. He is an NCPO member and an experienced constitution drafter, having led the drafting committees for the 1991 document and 2006 interim charter. Meechai has exemplary conservative credentials as a deputy prime minister in the short-lived government of General Suchinda Kraprayoon in 1992 and as president of the appointed national assembly after the 2006 coup. Four of the other twenty members had served in the NRC.[53]

The CDC is unlikely to stray from the NCPO's preferences. It is still bound by the interim charter's Section 35 (see Section III above). Controversial elements of the rejected draft, including the "crisis committee", are likely to be retained in some form.[54] Meechai said the draft will provide for an unelected prime minister, that the senate need not be elected, and the constitution would be difficult to amend.[55] The final draft is due on 1 April 2016.

The arch-conservative character of the new CDC and indications that contentious elements of the earlier draft will reappear suggests that a referendum could present the NCPO with a dilemma. If the next draft is similar to the defeated one, it is likely to face extensive opposition and could fail in a national vote. Voters' desire to avoid re-extending the NCPO's tenure and to vote again in a general election could result in approval of an unpopular, undemocratic draft.[56] This was the apparent result of the 2007 constitutional referendum, which though rejected by voters in the North and North East passed with 58 per cent of the vote.[57] Such an outcome would likely reproduce the deadlock that followed, in which elected governments were hobbled by appointed oversight bodies and unable to amend the constitution. Consequences could be more severe this time, given the uncertainties attending royal succession

[52] Deputy Prime Minister Wissanu Krea-ngam, comments at "Briefing Session on the Roadmap and related political processes", foreign ministry, Bangkok, 16 September 2015. Later that week "Thai prime minister says election likely in July 2017", Reuters, 16 September 2015.

[53] The NCPO also appointed a 200-member National Reform Steering Assembly (NRSA) to replace the disbanded NRC, like which it will propose reforms in areas such as administration, law, economy and society. Ten members are party representatives; 77 are former or serving military or police officers. Tinnapan Nakata, 81, the chairman, was minister of the prime minister's office in General Suchinda Kraprayoon's cabinet.

[54] "New CDC chair to beat same drum", *The Nation*, 6 October 2015.

[55] "CDC chief hints at outsider PM", *The Bangkok Post*, 14 October 2015; "Crisis management must be part of charter: Meechai", *The Nation*, 14 October 2015.

[56] "Villagers will choose the path that leads to an election, even if it means voting for a constitution they don't really like. At least that way, there will be a parliament and representatives. That's the main thing". Crisis Group interview, municipality official, North East, 19 September 2015. Also, Crisis Group interview, senior Pheu Thai Party member, Bangkok, 22 July 2015

[57] Voters could approve the draft or let the military-backed government select a former charter.

and the absence of accountable, participatory institutions better able to respond to popular demands.

A better approach would be to have a participatory drafting process, with an elected constituent assembly and public hearings like those that informed drafting of the 1997 constitution. A referendum alone is not sufficient to ensure a constitution's popular legitimacy.[58] A deliberative drafting process is more likely to confer legitimacy and foster the institutions and practices that can safeguard democracy.[59] At the least, however, a referendum should offer voters a choice between a new draft and the 1997 constitution, which is still widely regarded as legitimate.[60]

B. *Incipient Praetorianism?*

The NCPO demonstrates no urgency in returning the country to civilian rule. Few doubt that a Thaksin-aligned party would win a general election under current circumstances.[61] The automatic seven-month extension of its rule following the NRC's rejection of the draft confirmed many Thais' conviction that the military intends to remain in power indefinitely.[62] A former Red Shirt explained: "They are trying to break the links between the [political] parties and the people. I am certain nothing will change in the next two years".[63]

The army appears to be digging in for a protracted stay. In Red Shirt strongholds of the North and North East, it is drawing on its 1980s counter-insurgency experience, when it was tasked with promoting democracy to defeat the Communist Party.[64] The strategy called for a "political offensive" in which the army would pre-empt the communists in the battle for the people by promoting economic development and just administration.[65] The Reconciliation Centres for Reform established immediately after the coup to mend relations between the political camps are now propagating "correct" understanding among villagers in the North East. Soldiers are dispatched to villages to offer advice on farming but also to convey government positions on issues such as the draft constitution. An army spokesman said, "we … want them to

[58] Crisis Group interviews, senior Pheu Thai Party member, Bangkok, 22 July 2015; PAO and PTP members, North East, 18 September 2015.
[59] Todd Eisenstadt, A. Carl LeVan and Tofigh Maboudi, "When Talk Trumps Text: The Democratizing Effects of Deliberation during Constitution-Making, 1974–2011", *American Political Science Review*, vol. 109, no. 3 (August 2015), pp. 592-612.
[60] Crisis Group interviews, village headman and Red Shirt activist, Upper South, 29 September 2015, former NRC member, Bangkok, 10 November 2015; David Streckfuss, "Let Thais choose their own constitution", *Nikkei Asian Review*, 28 November 2014; Thitinan Pongsudhirak, "A well-intentioned but problematic charter", *The Bangkok Post*, 24 April 2015.
[61] Crisis Group interviews, PAO member, PDRC leader, Upper South, 1 October 2015; former senator, Bangkok, 4 November 2015; former NRC member, 10 November 2015.
[62] "It could be like the Thanom [Kittikachorn]-Praphat [Charusathian] era". Crisis Group interview, ex-Red Shirt leader, North East, 9 September 2015. Field Marshals Thanom and Praphat were military dictators, 1963-1973. Others made similar points about the NCPO. Crisis Group interviews, rubber farmer, 29 September 2015, ex-PDRC guard, 30 September 2015, both Upper South.
[63] Crisis Group interview, former Red Shirt activist, North East, 22 September 2015.
[64] Michael J. Montesano, "Praetorianism and 'the People' in Late-Bhumibol Thailand", SEATIDE Online Paper 10 (2015).
[65] This strategy was codified in "Policy on the Struggle to Defeat the Communists", Prime Minister's Order 66/2523 (1980), issued by Prime Minister General Prem Tinsulanond.

understand the work that the NCPO does and what our roadmap to democracy is".[66] In the North East the army is seeking to act as the people's patron, ready to solve problems with corrupt or shiftless officials. Villagers are encouraged to contact military officers with details of official malfeasance.[67]

In September, Deputy Prime Minister Wissanu floated the idea of requiring all parties to dissolve and re-register prior to the next general election, so as to level the playing field.[68] Some interpreted this as a move toward formation of a military-aligned party, which would permit the generals to maintain control of parliament after an election.[69] Such a party could enjoy a degree of popular support.[70] The DP's Abhisit suggested the proposal had a hidden agenda. The PTP's Chaturon Chaisang said it would serve the interests of those seeking an unelected prime minister.[71]

The impending royal succession is widely regarded as a major factor in the NCPO's calculations. King Bhumibol Adulyadej, who has reigned since 1946, is 88 and in failing health. Many believe the army staged the May 2014 coup to ensure that it, rather than a Thaksin-aligned government, would preside over succession.[72] There have long been rumours of a possible succession struggle, but, by appearances, the designated heir, Crown Prince Maha Vajiralongkorn, will become the next king.[73] Nevertheless, the opacity of palace and military factionalism and the world's harshest lèse-majesté law make it difficult to gauge how a new reign might upset elite power dynamics.

The intensity of its campaign to protect the monarchy from criticism is a measure of regime anxiety. The 2015 budget allots $482 million to "uphold, protect and preserve the monarchy from any offenses".[74] The NCPO has stepped up prosecutions under Criminal Code Article 112 (the lèse-majesté law), which prohibits insults, threats or defamation against the king, queen, heir to the throne and regent and carries a penalty of three to fifteen years in jail. Since the coup, military courts have handed down record sentences.[75] Commenting on lèse-majesté cases, Prime Minister Prayuth

[66] Panarat Thepgumpanat and Amy Sawitta Lefevre, "Field marshalling – Thai military launches rural education plan", Reuters, 16 October 2015; "Army unit helps Isaan folk find 'correct political understanding'", *The Nation*, 10 October 2015.
[67] Crisis Group interviews, army officer, community liaison, North East, June and September 2015.
[68] "บทนำมติชน: พิสดารการเมือง", *มติชน*, 20 กันยายน 2558 ["*Matichon* editorial: Peculiar politics", *Matichon*, 20 September 2015].
[69] Sutichai Yoon, "Back to square one versus 'forced reconciliation'", *The Nation*, 8 October 2015.
[70] "I'd vote for the NCPO if I could. Dictatorship? I don't see the downside". Crisis Group interview, small business owner, North East, 8 September 2015.
[71] "Critics rap politics reboot", *The Bangkok Post*, 22 September 2015.
[72] "[The NCPO] want to ensure that at the time of the transition, or the succession period, that they are still in control". Kasit Piromya, former foreign minister and DP member, quoted in Sebastian Strangio, "The Strongman of Siam", *Foreign Policy* (online), 21 May 2015.
[73] Crisis Group interviews, political analyst, Bangkok, August 2015; democracy activist, North East Thailand, September 2015; former PDRC guard, Upper South, September 2015.
[74] "Thailand's Budget in Brief Fiscal Year 2015", budget bureau, Bangkok, p. 8.
[75] In March 2015, a man received a 50-year sentence for five Facebook posts. On 7 August, a military court sentenced a man to 60 years for six such posts. The same day, a military court in the northern city of Chiang Mai sentenced a woman to 56 years on seven counts. The courts halved all three sentences because the defendants confessed. "Northern military court sends mother of two to 28 years in prison under lèse majesté", Prachatai, 7 August 2015; "Man gets 30 years for six Facebook posts", Agence France-Presse, 8 August 2015.

posited incompatibility between democracy and the monarchy: "Only in Thailand do they destroy everything in order to achieve unlimited democracy".[76]

Lèse-majesté charges have also been filed against people in the royalist camp, including relatives and associates of the crown prince's former consort.[77] In October 2015, the NCPO filed such charges against a police officer and two civilians for citing the monarchy for personal benefit.[78] The police officer and one of the civilians, an astrologer who reportedly once worked for the crown prince and served on royal-charity committees, died in custody.[79] A major general in the crown prince's security detachment was stripped of his rank and royal decorations on 9 November, and rumours of his death circulated on social media.[80] Two army officers close to former army chief and current Deputy Defence Minister General Udomdej Sittabutr were also charged with lèse-majesté in the case.[81]

The military government is likewise growing less tolerant of those who question its actions. On 1 April 2015, the NCPO lifted martial law but invoked Section 44 of the interim constitution, which grants the prime minister unchecked power over the government and immunity from prosecution. The NCPO periodically detains critics in military camps for days at a time. This practice, known as "attitude adjustment", appears calibrated to intimidate potential opponents.[82] Many Red Shirts who were detained immediately after the coup are required to report to authorities weekly and give advance notification of travel outside the provinces in which they live. Some

[76] "ออกหมายจับพลเรือน-ตำรวจคดีหมิ่นเบื้องสูง", *กรุงเทพธุรกิจ*, 21 ตุลาคม 2015 ["Arrest warrants for civilians, police for defaming the high institution", *Krungthep Thurakhit*, 21 October 2015]. A local official in the North East said, "General Prayuth is always talking about those who have ill intentions or who don't love the king. This kind of talk is itself divisive". Crisis Group interview, 19 September 2015.

[77] In late 2014, the crown prince's consort, formerly known as Princess Srirasmi, was stripped of her royal status. Several members of her family, including her parents, two brothers, a sister, and an uncle, who was chief of the police Criminal Investigation Bureau, were convicted of a variety of crimes, including lèse-majesté for abusing their ties to the royal family.

[78] "Three lèse majesté suspects charged", *The Bangkok Post*, 22 October 2015; "'Royal imposters' suspect involved in past lèse majesté crackdowns", *Khaosod English*, 22 October 2015.

[79] The police officer, Police Major Prakrom Warunprapa, had worked in the Technology Crime Suppression Division, which monitors illegal online activity including lèse-majesté offences and criticism of the coup. He allegedly hung himself in his cell on 23 October. The astrologer, Suriyan Sujaritpalawong, reportedly died of a blood infection on 7 November. "Police officer charged for lèse majesté dies in custody", Prachatai, 24 October 2105; "Detained famous Thai fortuneteller dies in military prison", Associated Press, 9 November 2015.

[80] Crisis Group interview, security analyst, Bangkok, 30 October 2015.

[81] Colonel Kachachat Boondee reportedly absconded in mid-October. The second officer, Major General Suchat Prommai, had been promoted by General Udomdej and assigned command of the 11th Infantry Regiment in Bangkok, a coveted post. He has not been seen since mid-October, but the defence minister accepted his resignation on 12 November. Kachachat was stripped of his rank and royal titles on 25 November. A military court issued arrest warrants on lèse-majesté charges the same day for Suchat and three police colonels.

[82] Crisis Group interview, former minister in Yingluck Shinawatra government, Bangkok, 27 August 2015. On 9 September 2015, the military detained two PTP officials, ex-Energy Minister Pichai Naripthapan and ex-parliamentarian Karun Hosakul, for criticising the government. Journalist Pravit Rojanaphruk, a prominent coup critic, was detained on 13 September. All three were released on 15 September. Prayuth said more critics might be summoned or have passports revoked. "Prayuth threatens to silence critics amid uptick in detentions", *Khaosod English*, 10 September 2015.

government critics are cautious about associating with other activists because of continuing military surveillance.[83]

The NCPO has banned dozens of academic seminars on politics, culture and other sensitive subjects.[84] After 323 academics signed a petition calling for an end to such intimidation and protection of academic freedom, Prayuth warned that academic critics of his government might face violence.[85] In addition to pending cyber-security laws that would facilitate online surveillance, the NCPO reportedly plans to reduce Thailand's ten internet gateways to one to allow tighter control of information from overseas, especially content deemed threatening to the monarchy. Faced with widespread disapproval and denial-of-service attacks that brought down several of its websites, the government denied that it was pursuing a single gateway. Many are sceptical of this assurance, and there are indications that it may be proceeding with such a plan.[86]

The military-run administration has also sought to put the Shinawatra family out of political action. In January 2015, the NLA retroactively impeached Yingluck for failing to stem losses from her government's rice subsidy, resulting in a five-year ban from political office. Charged with dereliction of duty and criminal negligence in the rice scheme, she also faces up to ten years in prison and civil compensation claims in Administrative Court. On 12 October, the government announced it would order seizure of $16 million of her assets in the civil case. The National Anti-Corruption Commission found her negligent but offered no corruption evidence.

Allegations of corruption in an army project to build a park featuring seven statues of Thai kings have vexed the NCPO. Deputy Defence Minister General Udomdej supervised the 1 billion baht ($28 million) Rajaphakdti Park project while army chief; he retired from that post in September. On 10 November, he acknowledged that a civilian middleman the army employed had demanded 10 per cent commissions from six foundries contracted to cast the statues, but he said no harm was done as the foundries donated the money to the project. On 20 November, army chief General Thirachai Narkvanich announced that an internal investigative panel found no army wrongdoing. This did not quash questions, and three days later Deputy Defence Minister Prawit Wongsuwan assigned the defence permanent secretary, General Preecha Chan-ocha, to name another panel. NCPO insistence that it is not involved with the army project and the army's bungled handling have compromised the regime's self-portrayal as disinterested guardian of the national interest.[87]

[83] Crisis Group interviews, Red Shirts, North East and Upper South, September 2015.

[84] A rights-monitoring organisation counted 33 events on history and politics and twelve on land and community rights cancelled or disrupted by authorities in the year after the 2014 coup. "364 days after the coup: Report on the situation of freedom of expression in Thailand", iLaw, 3 September 2015 (http://freedom.ilaw.or.th/en/node/259).

[85] "If they want to engage in activism or whatever, it's up to them. If they aren't afraid of the laws, it's up to them …. And if someone finds a gun and shoots them, or throws grenades at them, well, they have to live with that. If they aren't afraid, it's up to them". "Prayuth can't guarantee safety of academics who criticize him", *Khao Sod English*, 25 November 2015.

[86] "Activists issue ultimatum to junta over 'single gateway'", *Khaosod English*, 6 October 2015; "Thailand scraps unpopular Internet 'Great Firewall' plan", Reuters, 15 October 2015; Don Sambandaraksa, "Thailand's top spymaster joins CAT", Telecomasia.net, 19 October 2015.

[87] "Former army chief explains royal park project graft", *Khao Sod English*, 10 November 2015; "พท.จี้นายกฯสางทุจริตโครงการอุทยานราชภักดิ์", *โพสต์ทูเดย์*, 13 พฤศจิกายน 2558 ["Pheu Thai pushes PM to clear up Rajaphakti Park project corruption", *Post Today*, 13 November 2015]; "Govt not responsi-

C. *Economic Factors*

The struggling economy is an urgent matter for the military government. Weak demand for exports, especially due to the downturn in the Chinese economy, has hurt, as these equal roughly 75 per cent of Gross Domestic Product (GDP). In October they fell for the tenth consecutive month, off 8.11 per cent from a year earlier. The Bank of Thailand projects a 5.0 per cent contraction of exports for the year, while the World Bank forecasts GDP expansion of 2-2.5 per cent for each of the next two years.[88]

The worst drought in a decade has contributed to slumping farm incomes and increased household debt.[89] The government has told farmers to stop growing a second, off-season rice crop and advised a switch to other crops, though many have been defiant. Water shortages will likely continue next year.[90]

There are also structural problems. The population is fast-aging, with a low fertility rate.[91] The education system emphasises rote learning and conformity; almost one third of fifteen-year-old students are functionally illiterate.[92] Some manufacturing and foreign investment has shifted to neighbouring countries with cheaper, more productive labour.[93]

On 20 August, Prayuth replaced his economic team, appointing Somkid Jatusripitak deputy prime minister for economic affairs.[94] A founding member of Thaksin's TRT party, he pioneered many policies designed to channel money to rural areas that helped make it popular. He has revived, on a modest scale, some of these policies to spur domestic consumption. In September, the government announced 136 billion baht ($3.8 billion) in stimulus funds for the countryside, including signature Thaksin-era programs such as the Village Fund microloans.

Some regard Somkid's appointment as a sign the NCPO recognises that the poor economy could jeopardise its power. Unhappiness with the government's handling

ble for Rajabhakti Park graft, minister says", *Khao Sod English*, 16 November 2015; "Army probe finds traces of corruption in Rajabhakti", *The Nation*, 20 November 2015; "Army must realise statue scandal is not going away", *The Bangkok Post*, 23 November 2015; "Prawit orders new Rajabhakti probe", *The Bangkok Post*, 25 November 2015.

[88] "Exports of Goods and Services (% of GDP)", The World Bank, (http://data.worldbank.org/indicator/NE.EXP.GNFS.ZS); "Exports, imports tumble more than expected in October", Reuters, 24 November 2015; "Economic outlook hinges on domestic demand: BOT", *The Nation*, 26 September 2015; "Staying the Course", World Bank East Asia and Pacific Economic Update (October 2015), p. 26.

[89] "Thai Household Debt Expected to Grow Gradually in 2015 – Market Talk", Bloomberg, 1 October 2015.

[90] "Thailand's drought lets rice farmers' debt grow", *The Isaan Record*, 21 April 2015; "Angry farmers defy drought warnings, plant dry season rice", *The Nation*, 5 October 2015.

[91] The UN Population Fund estimated the fertility rate from 2010-2015 at 1.4 births per woman. Those aged over 60 were roughly 15 per cent of the population from less than 7 per cent in 1994. "Thailand's unemployment rate is a ridiculously low 0.6%. Here's why", Bloomberg, 2 February 2015.

[92] "Thailand: Wanted: A Quality Education for All", World Bank, 21 May 2015, p. 15.

[93] Investment from Japan, the largest single source of foreign investment, declined 14.4 per cent during the first nine months of 2015. During the same period, it rose 23 per cent in Vietnam, 453 per cent in the Philippines and 675 per cent in Malaysia. "Japanese wait for the big picture", *The Bangkok Post*, 26 November 2015.

[94] In this role, Somkid oversees the agriculture and cooperatives, commerce, finance, industry, and science and technology ministries. He distanced himself from Thaksin following the 2006 coup and was appointed to the NCPO when it formed in May 2014.

of the economy cuts across the political divide. Former PDRC activists in the largely rubber-dependent Upper South warned that, without a recovery or subsidies, farmers could turn against the government.[95] One said that unless the economy improves, the NCPO will not last through 2016: "It could be violent. If the farmers are in trouble, they have no choice but to fight".[96] A former minister in the Yingluck government said, "they need Somkid to deliver a miracle, or there will be lots of people [protesting] on the streets".[97]

D. *Dissent*

The NCPO faces only nominal opposition in the form of sporadic, small protests. Student groups have been among the government's most determined public opponents. On the first anniversary of the 2014 coup, for example, seven members of Dao Din, a student-activist group, were arrested while demonstrating at Khon Kaen's Democracy Monument and charged with violating NCPO orders. In central Bangkok, 36 activists were arrested while staging a peaceful protest against the coup.

In June, Dao Din joined with pro-democracy students in Bangkok to form the New Democracy Movement, which on 25 June staged a rally at Bangkok's Democracy Monument to mark the anniversary of the absolute monarchy's end. The following day, police arrested fourteen of the participants.[98] The organisers earlier said they would not seek bail if arrested, as they did not recognise the military government's authority.[99] On 19 September, the ninth anniversary of the 2006 coup, the New Democracy Movement organised a rally of roughly 200 people at Democracy Monument. A government spokesman said the protest aimed to "cause foreigners to misunderstand" the situation in Thailand ahead of Prayuth's trip to New York for the UN General Assembly, but the authorities did not prevent the demonstration.[100]

In view of the massive political demonstrations over the past decade, the paucity of popular resistance to the military government is striking. Most who oppose the NCPO appear resigned to military rule.[101] Thaksin has told his supporters not to ac-

[95] Crisis Group interview, TAO member and PDRC activist, Upper South, 30 September 2015.
[96] Crisis Group interview, PAO member and PDRC leader, Upper South, 1 October 2015. In November, the NCPO approved 13 billion baht ($362 million) in subsidies to support rubber farmers.
[97] Crisis Group interview, Bangkok, 27 August 2015.
[98] "14 activist students arrested", *The Bangkok Post*, 26 June 2015.
[99] "Anti-coup students 'ready for arrest'", *The Nation*, 26 June 2015. The arrest of the "Bangkok 14" for a peaceful protest drew attention to the NCPO's suppression of political rights. The protesters were released on 8 July when the Military Court declined a police request for a further twelve days' detention. Then-army chief and Deputy Defence Minister General Udomdej Sitabutr later denied that army visits to the protesters' parents were intended to intimidate. "Army chief denies students, parents being intimidated", *The Nation*, 10 July 2015.
[100] "Thai activists plan to defy junta ban with more marches", Reuters, 20 September 2015.
[101] On 25 November, police announced arrest of three men who had allegedly planned attacks in Bangkok on NCPO officials and against the "Bike for Dad" event in honour of the king scheduled for 11 December. A subsequent statement said only two had been arrested, and they were connected to a Red Shirt cell in the north-eastern city of Khon Kaen that had planned to take over an army base. They were charged with violating Article 112 and the Computer Crimes Act. Police said they were seeking seven more suspects. Red Shirt leaders dismissed the reports as an NCPO effort to deflect attention from the Rajaphakti Park scandal and justify further military rule on security grounds. One of the nine suspects has been in jail since May 2014. His lawyer filed a suit against an NCPO official and a senior police officer for negligence, defamation and false complaint. "รุก ปม 'ราชภักดิ์'

tively oppose the government.[102] The military's repression of the Red Shirts was swift and effective.[103] A former province-level Red Shirt leader said there was no prospect of organised resistance because the movement lacked leaders willing to spend time in jail.[104] An academic in the North East said, "you have to bleed for democracy .... [M]ost don't want to".[105]

This quiescence also results from a sense that the moment to resist has not arrived, and political change will be more readily achieved in the next reign.[106] Most activists see no advantage in challenging the NCPO now, because the military will immediately detain any who dare to mobilise.[107] Some activists on both sides of the divide have adapted to military rule by focusing on self-reliance and quiet, local networking.[108] A former Red Shirt leader in the North East said, "we need to do for ourselves and not care too much about the government. Let's look after our twenty million people in Isan (the North East) first".[109]

Even as resignation prevails, there is pervasive expectation of further political turmoil.[110] A legal scholar said, "the current calm is an illusion. The elites are living in a world of illusion. In a world where people don't speak the truth to each other, it's easy to fool yourself. It's not sustainable".[111] Many are convinced time is on the side of those who support a constitutional order, while efforts to return to an earlier era of military dictatorship are doomed.[112] They point to recurring popular demands for greater representation and responsive government.[113] But few can envision the military willingly surrendering its veto over elected officials or its grip on the state. Fewer still are able to reconcile these two views without imagining further violence.

Imminent transformation of the monarchy via succession suggests to some that the "unwritten constitution", those norms that govern the actions of unelected au-

รุก 'ขอนแก่นโมเดล' เกม 'ต่อรอง' การเมือง", *มติชน*, 29 พฤศจิกายน 2558 ["Going after 'Rajaphakti' and 'Khon Kaen Model' a political bargaining game", *Matichon*, 29 November 2015]. "อึ้ง! 1 ใน 9 ผู้ต้องหาป่วนงาน Bike for Dad ยังอยู่ในเรือนจำ", ประชาไท, 28 พฤศจิกายน 2558 ["Speechless! 1 of 9 wanted for Bike for Dad disturbance still in jail", Prachatai, 28 November 2015]; "Jailed 'Khon Kaen Model' suspect counter-sues police", *The Bangkok Post*, 30 November 2015.

[102] Saowanee T. Alexander and Duncan McCargo, "Exit, Voice, (Dis)loyalty? Northeast Thailand After the 2014 Coup", unpublished paper, 7 September 2015, p. 9; "Thailand's ex-premier goes on trial for negligence", Reuters, 19 May 2015; "Thaksin tells Thailand's red shirt opposition: 'play dead'... for now", Reuters, 20 September 2015.

[103] Crisis Group interview, senior Pheu Thai Party member, Bangkok, 27 August 2015. See Crisis Group Report, *A Coup Ordained*, op. cit., pp. 17-19.

[104] Crisis Group interview, former Red Shirt activist, North East, 8 September 2015.

[105] Crisis Group interview, political scientist, North East, 8 September 2015.

[106] Crisis Group interviews, Bangkok, North East and Upper South, September and October 2015. A rubber farmer in the Upper South said, "no one will fear [Article] 112 in the next reign".

[107] Crisis Group interviews, democracy activist, North East, 8 September 2015; former Red Shirt leader, North East, 9 September 2015; academic, Upper South, 28 September 2015.

[108] Crisis Group interview, former Red Shirt leader, North East, 9 September 2015.

[109] Crisis Group interviews, Upper South, 30 September 2015 and North East, 8 September 2015.

[110] Crisis Group interviews, democracy activist, North East, 8 September 2015; PAO member and PTP member, North East, 18 September 2015; Red Shirt village headman, rubber farmer, Upper South, 29 September 2015; TAO member and PDRC activist, Upper South, 30 September 2015.

[111] Crisis Group interview, legal scholar, Bangkok, 1 September 2015.

[112] Crisis Group interviews, ibid; PAO member and PTP member, North East, 18 September 2015; academic, Upper South, 28 September 2015.

[113] "The military underestimates the reality of people's experience with democracy". Crisis Group interview, senior Democrat Party member, Bangkok, 7 November 2015.

thority in Thailand, must inevitably be revised. This may present an opportunity to negotiate a new consensus on political legitimacy. At a minimum, such a process will require perception among a critical mass of elites that managing change through compromise is in its interests; national leadership with sufficient vision and legitimacy to organise dialogue; and protection of political rights to allow popular participation. None of this exists now. There is no indication it will emerge even after succession, as elites pursue power as a zero-sum game. The critical juncture could be volatile. The end of the royalist order that has prevailed for half a century could spur intense inter-elite competition. Those who have seen unaccountable institutions repeatedly nullify their votes since 2006 could apply pressure for change from below.

V. Conclusion

The military government insists it is guiding Thailand through a reform process that will permit genuine democracy to flourish. A necessary component of reform is a new constitution. The rejection of a draft by the NCPO's handpicked reform council means the process has started over. That the draft constitution might not pass a national referendum presents a dilemma for the NCPO. It would then need to start the drafting process a third time and continue to govern under the interim charter, or impose an existing constitution. Either option would likely further erode support for the government and test society's tolerance for indefinite military rule. Alternatively, voters might endorse a flawed charter in order to return to elected government, a scenario that would promise renewed political stalemate and turmoil.

According to those who staged and supported it, the 2014 coup was predicated on the need to retreat from normal politics in order to rectify the sources of persistent political turmoil. This claim is familiar from earlier coups, which failed to resolve the country's political pathology, namely, the tension between elected and unelected authority. This will only emerge from a process of inclusive dialogue based on respect for popular sovereignty and political rights aimed at achieving a consensus on a new political order. A new constitution endorsed in a referendum and a general election will not resolve the legitimacy struggle at the core of the political impasse. But they may be the surest path to a dispensation that would permit a more thoroughgoing debate, in which Thais could participate without fear. Until then, there appears no viable alternative to the NCPO's lengthening roadmap.

Bangkok/Brussels, 10 December 2015

Appendix A: Map of Thailand

International Crisis Group/KO/Dec 2015. Based on UN map no. 3853 Rev. 2 (July 2009).

Appendix B: Gloassary

CDC – Constitution Drafting Committee, a 36-member committee formed on 4 November 2014 to draft a new constitution. Following dissolution of the CDC on 6 September 2015, the NCPO appointed a new CDC on 5 October 2015.

DP – Democrat Party, royalist political party founded in 1948. It is opposed to Thaksin Shinawatra and the Pheu Thai Party.

PAD – People's Alliance for Democracy, anti-Thaksin Shinawatra organisation founded in 2005, also known as Yellow Shirts.

PDC – Political Development Council, a council established by the post-2006 coup government to promote ethics and people's participation in politics.

PDRC – People's Democratic Reform Committee, anti-Thaksin Shinawatra organisation founded in 2013 by members of the Democrat Party. Its members staged seven months of protests against the government of Yingluck Shinawatra until the 22 May 2014 coup.

PTP – Phue Thai Party, founded in September 2008, is aligned with Thaksin Shinawatra. It formed a government under Prime Minister Yingluck Shinawatra after winning the 3 July 2011 general election. It was ousted in the 22 May 2014 military coup.

NCPO – National Council for Peace and Order, the military council that staged the 22 May 2014 coup and established the interim government. General (ret) Prayuth Chan-ocha, who is also prime minister, serves as its leader.

NLA – National Legislative Assembly, the 200-member appointed legislative assembly, formed on 31 July 2014. All members are appointed by the NCPO. Half are retired or active-duty military officers.

NRC – National Reform Council, an appointed body of 220 tasked with proposing political and social reforms and voting on a draft constitution, formed on 6 October 2014. It was dissolved on 6 September 2015 after voting to reject the CDC's draft constitution.

NSRRC – National Strategic Reform and Reconciliation Committee, proposed in the draft constitution rejected by the NRC on 6 September 2015. Its 23 members would have been empowered to override the elected government in the event of a crisis.

UDD – United Front for Democracy Against Dictatorship, formed in 2007 as an alliance of anti-coup and pro-Thaksin forces. Its supporters are known as Red Shirts.

Appendix C: About the International Crisis Group

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Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

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Appendix D: Reports and Briefings on Asia since 2012

As of 1 October 2013, Central Asia publications are listed under the Europe and Central Asia program.

North East Asia

Stirring up the South China Sea (I), Asia Report N°223, 23 April 2012 (also available in Chinese).

Stirring up the South China Sea (II): Regional Responses, Asia Report N°229, 24 July 2012 (also available in Chinese).

North Korean Succession and the Risks of Instability, Asia Report N°230, 25 July 2012 (also available in Chinese and Korean).

China's Central Asia Problem, Asia Report N°244, 27 February 2013 (also available in Chinese).

Dangerous Waters: China-Japan Relations on the Rocks, Asia Report N°245, 8 April 2013 (also available in Chinese).

Fire on the City Gate: Why China Keeps North Korea Close, Asia Report N°254, 9 December 2013 (also available in Chinese).

Old Scores and New Grudges: Evolving Sino-Japanese Tensions, Asia Report N°258, 24 July 2014 (also available in Chinese).

Risks of Intelligence Pathologies in South Korea, Asia Report N°259, 5 August 2014.

Stirring up the South China Sea (III): A Fleeting Opportunity for Calm, Asia Report N°267, 7 May 2015 (also available in Chinese).

North Korea: Beyond the Six-Party Talks, Asia Report N°269, 16 June 2015.

South Asia

Sri Lanka's North (I): The Denial of Minority Rights, Asia Report N°219, 16 March 2012.

Sri Lanka's North (II): Rebuilding under the Military, Asia Report N°220, 16 March 2012.

Talking About Talks: Toward a Political Settlement in Afghanistan, Asia Report N°221, 26 March 2012.

Pakistan's Relations with India: Beyond Kashmir?, Asia Report N°224, 3 May 2012.

Bangladesh: Back to the Future, Asia Report N°226, 13 June 2012.

Aid and Conflict in Pakistan, Asia Report N°227, 27 June 2012.

Election Reform in Pakistan, Asia Briefing N°137, 16 August 2012.

Nepal's Constitution (I): Evolution Not Revolution, Asia Report N°233, 27 August 2012 (also available in Nepali).

Nepal's Constitution (II): The Expanding Political Matrix, Asia Report N°234, 27 August 2012 (also available in Nepali).

Afghanistan: The Long, Hard Road to the 2014 Transition, Asia Report N°236, 8 October 2012.

Pakistan: No End To Humanitarian Crises, *Asia Report N°237, 9 October 2012.*

Sri Lanka: Tamil Politics and the Quest for a Political Solution, Asia Report N°239, 20 November 2012.

Pakistan: Countering Militancy in PATA, Asia Report N°242, 15 January 2013.

Sri Lanka's Authoritarian Turn: The Need for International Action, Asia Report N°243, 20 February 2013.

Drones: Myths and Reality in Pakistan, Asia Report N°247, 21 May 2013.

Afghanistan's Parties in Transition, Asia Briefing N°141, 26 June 2013.

Parliament's Role in Pakistan's Democratic Transition, Asia Report N°249, 18 September 2013.

Women and Conflict in Afghanistan, Asia Report N°252, 14 October 2013.

Sri Lanka's Potemkin Peace: Democracy under Fire, Asia Report N°253, 13 November 2013.

Policing Urban Violence in Pakistan, Asia Report N°255, 23 January 2014.

Afghanistan's Insurgency after the Transition, Asia Report N°256, 12 May 2014.

Education Reform in Pakistan, Asia Report N°257, 23 June 2014.

Afghanistan's Political Transition, Asia Report N°260, 16 October 2014.

Resetting Pakistan's Relations with Afghanistan, Asia Report N°262, 28 October 2014.

Sri Lanka's Presidential Election: Risks and Opportunities, Asia Briefing N°145, 9 December 2014.

Mapping Bangladesh's Political Crisis, Asia Report N°264, 9 February 2015.

Women, Violence and Conflict in Pakistan, Asia Report, N°265, 8 April 2015.

The Future of the Afghan Local Police, Asia Report N°268, 4 June 2015.

Revisiting Counter-terrorism Strategies in Pakistan: Opportunities and Pitfalls, Asia Report N°271, 22 July 2015.

Sri Lanka Between Elections, Asia Report N°272, 12 August 2015.

Winning the War on Polio in Pakistan, Asia Report N°273, 23 October 2015.

South East Asia

Indonesia: From Vigilantism to Terrorism in Cirebon, Asia Briefing N°132, 26 January 2012.

Indonesia: Cautious Calm in Ambon, Asia Briefing N°133, 13 February 2012.

Indonesia: The Deadly Cost of Poor Policing, Asia Report N°218, 16 February 2012 (also available in Indonesian).

Timor-Leste's Elections: Leaving Behind a Violent Past?, Asia Briefing N°134, 21 February 2012.

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The Dark Side of Transition: Violence Against Muslims in Myanmar, Asia Report N°251, 1 October 2013 (also available in Burmese and Chinese).

Not a Rubber Stamp: Myanmar's Legislature in a Time of Transition, Asia Briefing N°142, 13 December 2013 (also available in Burmese and Chinese).

Myanmar's Military: Back to the Barracks?, Asia Briefing N°143, 22 April 2014 (also available in Burmese).

Counting the Costs: Myanmar's Problematic Census, Asia Briefing N°144, 15 May 2014 (also available in Burmese).

Myanmar: The Politics of Rakhine State, Asia Report N°261, 22 October 2014 (also available in Burmese).

A Coup Ordained? Thailand's Prospects for Stability, Asia Report N°263, 3 December 2014.

Myanmar's Electoral Landscape, *Asia Report N°266*, *28 April 2015* (also available in Burmese).

Southern Thailand: Dialogue in Doubt, Asia Report N°270, 8 July 2015.

Myanmar's Peace Process: A Nationwide Ceasefire Remains Elusive, Asia Briefing N°146, 16 September 2015 (also available in Burmese).

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