

Thailand: The Calm before Another Storm?

I. OVERVIEW

Nearly a year after the crackdown on anti-establishment demonstrations, Thailand is preparing for a general election. Despite government efforts to suppress the Red Shirt movement, support remains strong and the deep political divide has not gone away. Prime Minister Abhisit Vejjajiva's roadmap for reconciliation has led almost nowhere. Although there have been amateurish bomb attacks carried out by angry Red Shirts since the crackdown, fears of an underground battle have not materialised. On the other side, the Yellow Shirts have stepped up their nationalist campaigns against the Democrat Party-led government that their earlier rallies had helped bring to power. They are now claiming elections are useless in "dirty" politics and urging Thais to refuse to vote for any of the political parties. Even if the elections are free, fair and peaceful, it will still be a challenge for all sides to accept the results. If another coalition is pushed together under pressure from the royalist establishment, it will be a rallying cry for renewed mass protests by the Red Shirts that could plunge Thailand into more violent confrontation.

The Red Shirt demonstrations in March-May 2010 sparked the most deadly clashes between protestors and the state in modern Thai history and killed 92 people. The use of force by the government may have weakened the Red Shirts but the movement has not been dismantled and is still supported by millions of people, particularly in the North and North East. Arresting their leaders as well as shutting down their media and channels of communication has only reinforced their sense of injustice. Some in the movement's hardline fringe have chosen to retaliate with violence but the leadership has reaffirmed its commitment to peaceful political struggle. The next battle will be waged through ballot boxes and the Red Shirts will throw their weight behind their electoral wing, the Pheu Thai Party.

The protracted struggle between supporters of the elite establishment – the monarchy, the military and the judiciary – and those allied with ousted Prime Minister Thaksin Shinawatra began with the formation of the "yellow-shirted" People's Alliance for Democracy (PAD) in 2006. The September 2006 coup removed Thaksin from power but prompted the emergence of a counter movement: the United Front for Democracy Against Dictatorship (UDD) or Red Shirts. The PAD's campaigns to close down Bangkok airports in 2008

created deadlock that was resolved by a court ruling that removed Thaksin's "proxy" party – People Power Party – from power. This led to the formation of the Democrat-led coalition government, backed by the military. Two years later, the ultra-nationalist Yellow Shirts have apparently split from their former allies and are protesting outside Government House against Abhisit's alleged failure to defend "Thai territory" in the Preah Vihear border dispute with Cambodia. The PAD's call for a "virtuous" leader to replace the prime minister has raised concerns that it is inviting the military to stage a coup.

Abhisit has stated he will dissolve parliament in the first week of May after expediting the enactment of legislation to revise key electoral rules. He is moving quickly towards the elections amid rumours of a coup. With the new rules and pre-poll largesse, the Democrat Party hopes to secure more seats and position itself to lead another coalition. Thaksin is still popular with much of the electorate and there is a strong possibility that his de facto Pheu Thai Party could emerge as the largest party. The formation of the government is likely to be contentious. The UDD has threatened to return to the streets if Pheu Thai wins a plurality but does not form the government. Obvious arm bending by the royalist establishment to this end is a recipe for renewed protests and violence. Should the opposite occur, and Pheu Thai has the numbers to lead a new government, the Yellow Shirts might regain momentum; they are unlikely to tolerate a "proxy" Thaksin government.

While elections will not resolve the political divide and the post-election scenarios look gloomy, Thailand nevertheless should proceed with the polls. A well-publicised electoral code of conduct and independent monitoring by local and international observers could help enhance their credibility and minimise violence during the campaign. If installed successfully, the new government with a fresh mandate will have greater credibility to lead any longer term effort to bring about genuine political reconciliation.

II. THE RED SHIRT MOVEMENT AFTER THE CRACKDOWN

The UDD has been in disarray since the May 2010 crackdown with its leaders detained or on the run.¹ Millions are still believed to support the movement that brought tens of thousands onto the streets of Bangkok to oppose what they called *Amathayathipatai* (the rule of the traditional elites). In February 2011, the Criminal Court released seven Red Shirt leaders after detaining them for nine months; more than 120 of their supporters remain in detention. In the months since the protesters were dispersed, there has been much speculation but no solid evidence that the UDD is able or plans to organise an armed wing. Several amateurish bombings carried out by a handful of supporters are a dangerous sign that those who feel their voices are unheard might resort to violence. Outside of Thailand, this political struggle has been waged through the filing of a lawsuit against the prime minister for “crimes against humanity” at the International Criminal Court (ICC).²

A. THE STATE OF PLAY

Since the May crackdown, fifteen leaders have been charged with terrorism – an offence punishable by death.³ Thaksin, whom the government accused of pulling the strings, was charged with the same offence. Seven Red Shirt leaders were detained and five others went into hiding to evade arrest.⁴ Leaderless and restricted by the state of emergency imposed in 24 provinces, the Red Shirts temporarily lost momentum.⁵

¹ For previous Crisis Group reports on Thailand’s political crisis, see Asia Report N°192, *Bridging Thailand’s Deep Divide*, 5 July 2010; Conflict Risk Alert, *Conflict Risk Alert: Thailand*, 30 April 2010; and Asia Report N°82, *Thailand: Calming the Political Turmoil*, 22 September 2008.

² See Section C below.

³ Public prosecutors filed a criminal lawsuit against ten UDD leaders and nine rank-and-file members on 11 August 2010 for several charges, including inciting unrest and terrorism. The authorities believe the lower-ranking supporters worked for the late Gen. Khattiya Sawasdiapol, aka Seh Daeng, who was accused of leading the armed “men in black” who attacked government forces during the UDD demonstrations. Prosecution against the five other leaders, who escaped after the crackdown, has been put on hold. In March 2011, four of them, except Arisman Pongrueangrong, turned themselves in to the authorities. See fn 20.

⁴ Of the other three leaders, one was granted bail and two were not detained because they are members of parliament and have immunity.

⁵ The state of emergency was first imposed in all or part of five central provinces on 7 April 2010 following the UDD’s occupation of streets around Rachaprasong intersection in Bangkok’s business district. By 19 May, it had been extended to 24 prov-

in the strongholds in northern and north-eastern provinces, those heading the movement were either arrested, prosecuted, or went into hiding. In the northern city of Chiang Mai, several leaders of the Rak Chiang Mai 51 group went underground, including Phetchawat Watthanaphongsirikul, Kanyaphak Maneejak (aka DJ Oam) and Aphichart Insorn (aka DJ Uan).⁶ In the North East, political activities in Udon Thani were hampered by the arrest, in Bangkok, of popular radio host Khwanchai Phraiphana who had become part of the UDD’s leadership.⁷ In Ubon Rachathani, activism slowed down after Phichet Thabutda, who led the largest Red Shirt group in the province, was detained. Phichet appears to be the only local leader who faces terrorism charges.⁸

Sombat Boonngam-anong, a well-known Red Shirt activist who remained free, defied the state of emergency and spearheaded several “symbolic” gatherings. Without the trappings of formal rallies, such as a stage or political speeches, supporters tied red ribbons to remember their comrades killed during the crackdown.⁹ In late June, police detained Sombat for about two weeks for violating the emergency decree but later released him without charge.¹⁰ These gatherings were held on Sundays for months and the number of participants rapidly grew from dozens to several thousands.

It appears that anti-monarchy sentiment has become more pronounced among the Red Shirts.¹¹ In the North and the

inces – one third of the country. The Draconian law granted the authorities powers to ban demonstrations, detain suspects without charge for up to 30 days, and shut down media perceived as a threat to national security. This excludes Pattani, Yala and Narathiwat, the Malay Muslim insurgency-hit provinces where the emergency decree has been in place since 2005.

⁶ Phetchawat, owner of the Grand Warorot Hotel in Chiang Mai, is said to have close ties with Thaksin. Kanyaphak and Aphichart were well-known radio hosts for Red Shirt-aligned 92.25 FM community radio station. The authorities consider the Rak Chiang Mai 51, the first Red Shirt group in the province, hardline as it often mobilised crowds to block roads or shut down certain areas in the city. In November 2008, they clashed with a group of Yellow Shirts and killed the father of the group’s leader. Crisis Group interviews, Chiang Mai, 17-22 November 2010.

⁷ Crisis Group interviews, Red Shirts, Udon Thani, 28-29 December 2010.

⁸ Crisis Group interview, Phichet Thabutda, Red Shirt leader, Ubon Rachathani, 21 December 2010. Phichet (aka DJ Toi), led the Chak Thong Rop group (Hoist Flag to Fight) and ran a community radio station.

⁹ Crisis Group observed the symbolic gatherings at Rachaprasong intersection and Democracy Monument, October and November 2010.

¹⁰ “Mirror Foundation head nabbed under emergency decree”, *Bangkok Post*, 27 June 2010; “Sombat, Reds stage ‘flash protest’”, *The Nation*, 12 July 2010.

¹¹ Two UDD leaders in hiding interviewed by *The Straits Times* admitted that there was a growing anti-monarchy vein among the Red Shirts and suggested that up to 90 per cent of their sup-

North East, a few Red Shirts admitted they no longer had the pictures of the King and the Queen displayed in their houses.¹² Public expression of resentment against the widely revered monarchy has become more explicit, though still expressed in coded language. Some graffiti found during these gatherings criticised the role the country's highest institution is believed to have played in the crackdown.¹³ The newly appointed military commander-in-chief, Gen. Prayuth Chan-ocha, threatened in October to take legal action against those supposedly insulting the monarchy.¹⁴ The *lèse majesté* law carries heavy penalties of between three to fifteen years in prison for defaming, insulting or threatening the King, the Queen, the Heir-apparent or the Regent. Protestors then opted for more subtle and ambiguous messages, knowing the authorities were watching for anti-monarchy remarks.

Some Red Shirts are disappointed with the palace's silence on the May crackdown. For example, in *The Nation*, Samang Saithongthien-ngam, a 63-year-old UDD supporter and soft-drink vendor, said, "many of my comrades died and you want me to forget about it? These people killed people with impunity like nothing we did was right. How can we live like this in the future? ... Where was the King? If His Majesty came out to speak at the time, nobody would have been killed".¹⁵ The 83-year-old monarch had previously stepped in to resolve serious political crises, but has not spoken about the 2010 crackdown.¹⁶ He has been in poor health in recent years and has made few public appearances since he was hospitalised in September 2009.

In late November, the UDD filled its leadership vacuum by announcing Thida Thavornseth as the new acting leader.¹⁷ Veera Musikaphong had de facto ceased acting as UDD

porters might have become anti-monarchy. Nirmal Ghosh, "Red shirts 'taking hardcore stance'", *The Straits Times*, 18 November 2010.

¹² Pictures of the King and the Queen are often displayed to express affection and respect for the monarchy. Crisis Group interviews, Red Shirts, Chiang Mai and North East, November-December 2010.

¹³ Crisis Group observed Red Shirt gatherings at Rachaprasong intersection, November 2010.

¹⁴ "พ.ท. ย้ำห้ามชุมนุม แต่คนเสื้อแดงมีสิทธิยื่นหนังสือต่อเลขาฯ ยูเอ็นได้", สำนักข่าวไทย, 25 ตุลาคม 2553 ["Army chief stresses demonstration disallowed, but Red Shirts could submit letters to UN sec-gen", Thai News Agency, 25 October 2010].

¹⁵ "Red shirts mark May 19 crackdown", *The Nation*, 20 November 2010.

¹⁶ King Bhumibol previously stepped in to stop bloodshed in the 1973 student-led movement against the military regime and the 1992 uprising against the military-backed government.

¹⁷ Although Thida was not a familiar face in the media, she is no stranger to the UDD. She is the wife of Red Shirt leader Weng Tojirakarn and had an important role in running the UDD political schools set up in September 2009 to educate supporters. Some 16,000 Red Shirt supporters attended such trainings.

president because he was unable to speak publicly as a condition of being released on bail in July.¹⁸ Thida's first move was to demand the release of the movement's members. The Criminal Court's refusal to grant bail to many Red Shirts has reinforced the perception that the judiciary is applying double standards; Yellow Shirts have been treated more leniently.

On 22 February 2011, the Criminal Court released seven UDD leaders and one supporter on bail after nine months in detention on condition they would not "incite unrest" or leave the country without the court's permission.¹⁹ Most fugitive leaders turned themselves in after their comrades had been released.²⁰ As of 9 March 2011, 127 Red Shirts remain in prison, 56 of whom are in Bangkok and 71 in various prisons in the North, North East and Central region.²¹

B. SIGNS OF VIOLENCE

As a loose network with dozens of Red Shirt groups across the country, it has always been challenging for UDD leaders to control and communicate with all the movement's supporters. Driven by anger, a sense of injustice, and a feeling that peaceful options have failed, some Red Shirts have felt compelled to take matters into their own hands and resort to violence.

1. "Men in black"

The identity of the so-called "men in black" and their connection with the Red Shirt leadership remains unclear. The term was first used to describe the black-clad gunmen who appeared during the clashes on 10 April 2010, in which five soldiers and 21 civilians were killed. The government blamed them for the violence. The label was later used loosely to refer to all those involved in violence during UDD protests in 2010. Their presence raised questions about the movement's commitment to non-violence.

¹⁸ "Veera granted bail, other red leaders get additional 12 days", *Bangkok Post*, 31 July 2010.

¹⁹ "Court grants UDD terror suspects bail", *Bangkok Post*, 23 February 2011.

²⁰ Seven UDD leaders surrendered to the authorities. Adisorn Phaengket, Phayap Panket, Vaipot Apomrat, and Suporn Atthawong (aka Rambo Isan) are among the nineteen UDD activists whom the public prosecutors charged with terrorism, among other crimes, in August 2010. Two defendants in that case who have yet to surrender are Arisman Phongrueangrong and Thaksin Shinawatra. Aree Krainara and Shinnawat Habunphat were charged with terrorism in a separate case filed against thirteen other Red Shirt activists in October. The two cases have been combined. Crisis Group telephone interview, DSI investigation officer, 4 April 2011.

²¹ Statistics gathered by National Human Rights of Thailand's Subcommittee on Civil and Political Rights and made available to Crisis Group.

The Department of Special Investigation (DSI), an investigative agency under the justice ministry, is handling all UDD protest-related cases. It has revealed some information about certain individuals accused of directly participating in attacks on government and Yellow Shirt-aligned targets. Surachai Thaewarat, whom the DSI identifies as one of the key black-clad gunmen, was arrested on 15 July 2010. Also known as “Rang”, Surachai is alleged to have admitted that he was an aide to Gen. Khattiya Sawasdiapol, aka Seh Daeng, a renegade officer assassinated on 13 May 2010.²² The authorities believe that Seh Daeng was a key commander of an armed group allied with the Red Shirts. The DSI accused Surachai of being involved in eight attacks against government targets and anti-Red Shirt protesters in Bangkok between March and May 2010 and later in illegal arm trades.²³ He has denied the charges but is said to have confessed to firing an assault rifle at the Dusit Thani Hotel in a fit of anger after Seh Daeng was shot dead in front of the building.²⁴

Manop Chanchangthong, a 48-year-old scavenger and UDD guard, was caught on camera carrying an assault rifle while wearing a balaclava during the 10 April incident. The DSI accused him of being one of the “men in black” attacking government troops that day. The Red Shirt leaders explained in a press conference held shortly after the incident that Manop was carrying assault rifles that protesters had snatched from soldiers and later stored behind the protest stage.²⁵ Nevertheless, the DSI arrested Manop in January 2011 and charged him with terrorism for allegedly killing soldiers and stealing their weapons.²⁶

27-year-old Wanlop Phithiphrom is the only suspected “man in black” who has confessed to the DSI. Arrested on 22 November 2010, Wanlop reportedly admitted that he had fired M-79 grenades in various areas in Bangkok during the protests, including several branches of Bangkok Bank. He is said to have confessed to firing more than 100 grenades at security forces during the tense stand-off around the protest site in May 2010; and to have admitted involvement in four grenade attacks in Chiang Mai, including an incident at the construction company of the father-in-law of Thaksin-turncoat politician Newin Chidchob.²⁷ Wanlop later told a news conference that he acted alone out of “anger” after seeing soldiers firing live bullets at Red Shirt protesters in 2009 and disguised himself as a UDD guard during the 2010 demonstrations. Wanlop said that he learned to use a grenade launcher as a conscript in the military and the weapons were illegally bought from a border province.²⁸ In an interview with Crisis Group, Wanlop said he was forced to confess. He said he was detained for two days before being taken to the Bangkok press conference, during which he was not allowed to receive calls from his relatives.²⁹

Much is still unknown about these gunmen and it is unclear the DSI has captured the real culprits. It remains to be seen whether the DSI’s findings will hold up in court. If they are true, the path from peaceful protest to violence appears to be a worryingly short one. Volatile politics and loose gun control can be a deadly mix in Thailand.

2. Bombings after the crackdown

Following the May crackdown, there were concerns that the excessive use of force might prompt some Red Shirts to go underground and resort to violence. There is no evidence that the UDD as an organisation has adopted or aspires to guerrilla tactics. But recent bombings carried out by individual Red Shirts, apparently on their own initiative, are a dangerous development. The use of violence to advance an otherwise legitimate political agenda should be condemned by all those committed to peaceful democratic expression.

²² Although the UDD leadership had disowned Gen. Khattiya in the early days of the protests, he often appeared at the protest site and gave instructions to security guards before his assassination. For an account of his death, see Crisis Group Report, *Bridging Thailand’s Deep Divide*, op. cit., pp. 15-17.

²³ “หวังได้ – ไมเคย์รับ อ่วม 8 คดี เมียอุ้มลูกน้อยโย”, *ข่าวสด*, 18 กรกฎาคม 2553 [“Rang says he never confessed to eight cases, his wife carrying kid cries”, *Khao Sod*, 18 July 2010]. The eight cases include seven grenade attacks at the 11th Infantry Regiment on 28 March; Kok Wua intersection on 10 April; oil depot in Prathumthani on 21 April; elevated train station on Silom Road on 22 April; checkpoint near Lumpini Park on 8 May; Dusit Thani Hotel on 17 May; Lumpini police station on 19 May; and the shootings of two police officers at Saladaeng intersection on 7 May.

²⁴ “ปริศนาหวังแรมโบ๊ เก้งคั่นกรบ นปช.มือขวาเสธ.แดงของจริงหรือเพะ”, *ข่าวสด*, 25 กรกฎาคม 2553 [“Mystery about Rang: Seh Daeng’s real right-hand man or scapegoat?”, *Khao Sod*, 25 July 2010].

²⁵ “นปช.คืนพื้นที่ผ่านฟ้าฯ ชัยรวมราชประสงค์ ต่อสู้ยกสุดท้าย”, *มติชน*, 15 เมษายน 2553 [“UDD returns Phan Fa area, moves to Rachaprasong to wage a final battle”, *Matichon*, 15 April 2010].

²⁶ “จับการ์ดคนปช. เด็กเสธ.แดงยิงปะทะทหารแยกคอกวัว”, *มติชน*, 21 มกราคม 2554 [“UDD guard close to Seh Daeng arrested for gunfight at Kok Wua intersection”, *Matichon*, 21 January 2011].

²⁷ Police assert that Wanlop was involved in eight grenade attacks in Bangkok between 16 March and 19 May. He is said to have fired grenades at three branches of the Bangkok Bank, as he believed it supported the PAD. He was involved in a grenade attack at Government House on 10 April. He reportedly fired over 100 grenades at security forces during the tense stand-off around the protest site between 14 and 19 May. In Chiang Mai, Wanlop also reportedly admitted firing grenades at the car park of a discount store and a furniture factory on 4 April and a military base on 6 September. “จับมือ M79 ป่วนเมือง”, *ไทยรัฐ*, 24 พฤศจิกายน 2553 [“M-79 grenade attackers arrested”, *Thai Rath*, 24 November 2010].

²⁸ *Ibid.*

²⁹ Crisis Group interview, Wanlop Phithiphrom, Chiang Mai, 7 April 2011. He vowed to fight the case in court.

At least six Red Shirts were arrested in connection with an explosion near the headquarters of the Bhumjaithai Party on 22 June 2010.³⁰ The explosion damaged cars and injured one bomber. Apparently poorly trained, he touched the device after the remote control failed to trigger the bomb. Detphon Phutthachong, one of the six alleged offenders, said his motive was ideological: “I did not want to kill anybody but only wanted to create an incident to call for the government’s attention to the Red Shirts’ plight”. Detphon said that he and his co-conspirators originally wanted to plant their bomb at the Democrat Party headquarters but it was too tightly guarded. He said the attack was their own idea.³¹

Two other alleged offenders – Warisriya Boonsom and Kobchai Boonplod – were arrested in Cambodia and extradited in early July 2010. The DSI believes that Kobchai, a gemstone seller, and Warisriya, a jewellery designer, were involved in the planning.³² Kobchai said the three bombers stayed overnight at his house but denied being involved himself. He said that he supported the UDD cause and viewed the *ammarts* (traditional elites) as an obstacle to progress.³³ All six are on trial for terrorism and other charges.

On 5 October 2010, a powerful explosion ripped through a five-storey apartment in Nonthaburi’s Bangbuathong district, a province north-west of Bangkok, instantly killing four people and extensively damaging the building and nearby houses.³⁴ One of the victims, Samai Wongsuwan, whose severed arm was found at the site, was a Red Shirt from Chiang Mai. Police believe the bomb, made from ten kilograms of TNT, exploded while Samai was assembling it. They have said the bomb bore the signature of at least four other explosions in Bangkok.³⁵

Samai’s wife said her husband was staunchly loyal to Thaksin and “he wanted to bring back democracy”. He joined the UDD demonstrations in Bangkok and was shot in the cheek during the 10 April 2010 incident. After leaving home shortly after the May crackdown, he never returned. She was

“proud” that her husband died for his cause.³⁶ Samai apparently had a history of violence: an arrest warrant had been issued for his alleged involvement in an attack during the opening ceremony of the office of Yellow Shirt-aligned “We Love the King” group in Chiang Mai in August 2009.³⁷

In another unsuccessful bomb attack, Red Shirt guard Thawatchai Eiamnak was arrested on 24 January 2011 while riding a motorcycle around the PAD’s protest site to look for a location to plant a bomb. The incident took place while the Yellow Shirts were gathering for a sit-in to protest the government’s handling of the disputed Preah Vihear temple. Police later arrested three other men in possession of a rocket-propelled grenade launcher, grenades and ammunition at an apartment.³⁸ Similar to the other bombers, Thawatchai did not have sophisticated knowledge about bomb-making. He explained he wanted to see “change” in the country, and said he did not mean to harm anyone.³⁹ His aim was to frighten the Yellow Shirts so they would cancel their demonstration. He said he had resorted to violence after he concluded that peaceful protests had failed and saw fellow Red Shirts killed by government forces. He asked: “Wouldn’t you do it if you have a chance?”⁴⁰

3. An armed wing?

Despite some allegations, there is no solid evidence that the UDD leadership is organising an armed wing, although the idea may have support from more radical Red Shirt elements. Arisman Pongrueangrong, a UDD leader widely seen as a hardliner who has fled the country, said in an interview that “nowhere on earth has achieved democracy without some kind of armed rebellion against those who suppress democracy. Therefore, the struggle for democracy must join together [an] armed rebellion and a mass movement”. He also said “it’s pretty clear that the government want[s] to get rid of us because they believe that the Red Shirts are moving towards being armed. In reality, we don’t have any arms”. Arisman, a popular pop singer-turned-political activist, said while he did not believe rank-and-file Red Shirts were

³⁰ The party, led by Newin Chidchob, was originally a faction of the Thaksin proxy, the PPP; after the Constitutional Court disbanded the PPP in 2008, Newin and dozens of MPs switched sides to join the Democrat Party-led coalition and founded the Bhumjaithai Party.

³¹ “ปชป. โข่งผู้สังหารเคียวกัน วินาศกรรม 4 จุด”, *มติชน*, 27 มิถุนายน 2553 [“Democrat Party says masterminds planned bombings in four places”, *Mati-chon*, 27 July 2010].

³² Crisis Group interview, DSI official in charge of Red Shirt-related cases, Bangkok, 4 February 2011.

³³ Crisis Group interview, Kobchai Boonplod, Bangkok, 21 January 2011; “แฉสูตรระเบิดอื้อ-ร้ายพบผลิตจำนวนมาก”, *ไทยรัฐ*, 8 กรกฎาคม 2553 [“Revealing Or-Ai’s bomb formula used to produce big bombs”, *Thai Rath*, 8 July 2010].

³⁴ “Blast rocks Nonthaburi”, *The Nation*, 6 October 2010.

³⁵ “Blast toll climbs to four”, *Bangkok Post*, 7 October 2010.

³⁶ “พลิกปูมสมัยมือปืนบางบัวทอง อดีตทหารคลังแสง-เลือดแดงเข้ม”, *คมชัดลึก*, 8 ตุลาคม 2553

[“Samai, the Bangbuathong’s bomber: Former conscripted soldiers guarding arsenal - thick red blood”, *Kom Chad Luek*, 8 October 2010].

³⁷ “Blast toll climbs to four”, *Bangkok Post*, 7 October 2010.

³⁸ “มือระเบิดขอมรับมีเป้าหมายเปลี่ยนบ้านเมือง”, *ไทยรัฐ*, 26 มกราคม 2554 [“Bomber admits he aspires to change the country”, *Thai Rath*, 26 January 2011]. Police said Thawatchai admitted being involved in three other incidents, including the 25 July 2010 explosion outside the Big C discount store near Rachaprasong intersection that killed one and injured eight people.

³⁹ *Ibid.*

⁴⁰ Crisis Group interview, Thawatchai Eiamnak, Bangkok, 24 January 2011.

capable of organising themselves into an armed units, he hoped soldiers and police officers would join their struggle.⁴¹

The arrest of eleven men at a resort in Chiang Mai on 2 October 2010 revealed that some Red Shirts may have attempted to organise small scale weapons training outside Thailand. The men admitted that they and 28 other Thais had gone to Cambodia in June for training, where they attended lectures on politics and were taught to use weapons by Cambodians.⁴² Three of those arrested are known to have joined the Red Shirt demonstrations and two had been injured in the clashes.⁴³ The DSI said six Red Shirt leaders had organised the training.⁴⁴ However, after the DSI initially said the group planned to attack prominent politicians after their return in August 2010, it surprisingly did not prosecute the eleven men, saying that the accused were cooperative.⁴⁵ Instead, the men were placed in a witness protection program. This turn of events casts some doubt on the accuracy of the information the DSI initially disclosed. Phnom Penh responded angrily to the DSI's revelation about the weapons training and accused Bangkok of playing "the dirty games of concocting evidence" to divert public attention away from the government's political problems.⁴⁶

One of the arrested men gave a different account, admitting he had gone to Siem Reap in northern Cambodia for weapons training believing it was preparation for a job as a security guard for politicians. During the training, three UDD leaders gave lectures on politics and discussed "oppression by the Thai state" and the problem of "double standards". He said he attended a week-long course given by Cambodian soldiers on how to use assault rifles and grenade launchers. The training acquainted him with these weapons but, in his view, was too short to expect anyone to be skilful users.

While driven to join the UDD in 2010 because of what he saw as "injustice" and "double standards", he believed it would be counterproductive for the movement to pursue an armed struggle.⁴⁷

C. INTERNATIONAL CAMPAIGN

Thaksin and the UDD have launched an international campaign to hold the Abhisit government accountable for the death of 92 people and injury of nearly 2,000 during the 2010 demonstrations and resultant government crackdown. While most of the dead were protesters, eleven soldiers were also killed.⁴⁸ On 31 January 2011, Amsterdam & Peroff LLP, the firm of Thaksin's lawyer Robert Amsterdam, filed a petition with the ICC Office of the Prosecutor on behalf of the UDD, calling for an investigation into what it argued amounted to "crimes against humanity".⁴⁹

It remains unclear if the ICC has jurisdiction. Thailand has signed the Rome Statute but has not yet ratified it.⁵⁰ Amsterdam argues that the ICC has jurisdiction because the British-born Prime Minister Abhisit is a citizen of the United Kingdom, which is a state party to the statute.⁵¹

⁴¹ Andrew Spooner, "Interview with Thailand's most wanted – Arisman Pongruengrong", *asiacorrespondent.com*, 9 December 2010.

⁴² Crisis Group interview, DSI official in charge of Red Shirt-related cases, Bangkok, 4 February 2011; Crisis Group telephone interview, one of the eleven arrested men, February 2010.

⁴³ "เปิดเผยลับ 11 นักรบแดงภารกิจป่วนเมือง ลอบสังหารผู้นำ", *โพสต์ทูเดย์*, 8 ตุลาคม 2553 ["Disclosing confidential file: Eleven Red Shirt warriors plan to assassinate leaders", *Post Today*, 8 October 2010].

⁴⁴ Crisis Group interview, DSI official in charge of Red Shirt-related cases, Bangkok, 4 February 2011. According to the DSI, three are UDD leaders and the other three are leaders of the Rak Chiang Mai 51 group.

⁴⁵ "ลือสโงเลล้างสมอม สัมสงานัน นักรบแดงฝึกถ่ายเขมร กันพูชาอ้อคไทยปายสิ", *คมชัดลึก*, 12 ตุลาคม 2553 ["DSI reveals Red Shirt warriors trained in Cambodian camp, taught to overthrow monarchy; Cambodia claims unfair accusation", *Kom Chad Luek*, 12 October 2010] and "11 arrested fighters cooperating", *The Nation*, 5 October 2010. The supposed targets were Deputy Prime Minister Suthep Thaugsuban and Newin Chidchob.

⁴⁶ "Thawatchai slams DSI over terror report", *Bangkok Post*, 14 October 2010.

⁴⁷ Crisis Group telephone interview, one of the eleven arrested men, February 2010.

⁴⁸ Information from Erawan Emergency Center, the Bangkok Metropolitan Authority's official centre recording casualties relating to the Red Shirt rallies, dated 1 June 2010.

⁴⁹ "Application to Investigate the Situation of the Kingdom of Thailand with Regard to the Commission of Crimes against Humanity", The United Front for Democracy Against Dictatorship, 31 January 2011, p. 83. The ICC is governed by the Rome statute which entered into force on 1 July 2002. It is the first international permanent court with jurisdiction to prosecute individuals accused of the most serious crimes of international concern, namely genocide, crimes against humanity, war crimes and the crime of aggression. The ICC is a court of last resort and acts only if the national judicial system is unable or unwilling to investigate or prosecute. See "About the Court", ICC website, www.icc-cpi.int/Menus/ICC/About+the+Court/.

⁵⁰ The ICC can accept cases through three channels: from a state party of the statute, the UN Security Council or the ICC prosecutor. The channel available for individuals or groups aspiring to make direct complaints is through the prosecutor, which was used by Amsterdam to submit the case against the Thai prime minister. The ICC does not have universal jurisdiction. It could only exercise jurisdiction if: 1) the accused is a national of a state party or a state otherwise accepting the Court's jurisdiction; 2) the crime took place on the territory of a state party or a state otherwise accepting its jurisdiction; or 3) the UNSC had referred the situation to the prosecutor, irrespective of the nationality of the accused or the location of the crime. For more information, see "Jurisdiction and Admissibility", ICC website, www.icc-cpi.int/Menus/ICC/About+the+Court/ICC+at+a+glance/Jurisdiction+and+Admissibility.htm.

⁵¹ "Red shirt lawyer targets PM in petition lodged with ICC", *Bangkok Post*, 1 February 2011. Abhisit was born in Newcastle

Abhisit admits he has never renounced his UK citizenship, but says the fact that he has never derived any benefit from being a British national should be enough evidence to prove that he chooses to be a Thai citizen⁵²

As of publication, the ICC prosecutor has not decided whether to take up the case and the prospect of a British-born Thai prime minister standing trial before the ICC is distant.⁵³ Even if the ICC does not take up the case, the UDD has used the campaign to tell its side of the story and tarnish the Abhisit government's image internationally.

III. THE YELLOW SHIRTS AND THE PREAH VIHEAR DISPUTE

In its latest campaign, the PAD appears to have broken with the Democrat Party, raising the spectre of a serious split within establishment forces. In 2008, the PAD's protracted demonstrations and the Constitutional Court ruling to disband the governing PPP helped tip the political balance and allowed the formation of the Democrat-led coalition government. Two years later, the Yellow Shirts are attacking Abhisit for failing to defend "Thai territory" in the disputed area near the Preah Vihear temple and are calling for his resignation.

The International Court of Justice unequivocally ruled in 1962 that the Preah Vihear temple was "situated in territory under the sovereignty of Cambodia" but ownership of the surrounding area has been the subject of a long-running dispute.⁵⁴ The PAD used this issue to whip up nationalist sentiment against the Thaksin-backed government in 2008. It accused then foreign minister Noppadon Patama of "selling out the country" after he expressed support for Phnom Penh's efforts to list the temple as a World Heritage site.⁵⁵

upon Tyne in 1964 and under the 1948 Nationality Act is a British citizen. "Trampling on the Truth the PM Mark Abhisit Way", 7 February 2011, robertamsterdam.com/thailand/?p=564.
⁵² "PM admits holding dual nationality", *Bangkok Post*, 25 February 2011.

⁵³ Prominent Thai legal scholar Visit Muntarbhorn argues that, in international law, an "effective link" with a country needs to be proved, such as the person's residency, rather than the mere claim that a person has the nationality of a second country. See Vitit Muntarbhorn, "The International Criminal Court and Thailand", *Bangkok Post*, 27 February 2011.

⁵⁴ "Case Concerning the Temple of Preah Vihear" (Cambodian v. Thailand) Merits, International Court of Justice's Judgment of 15 June 1962. A summary is available at www.icj-cij.org/docket/index.php?sum=284&code=ct&p1=3&p2=3&case=45&k=46&p3=5.

⁵⁵ Foreign Minister Noppadon signed a joint statement on behalf of the government on 22 May 2008, expressing Thailand's support for Cambodia's bid to list the Preah Vihear temple as a World Heritage site. He argued that the statement made it clear

Noppadon resigned in July that year after being criticised for his statement. In the same month, Cambodia succeeded in having the temple added to the list and then was required to submit a management plan for the site. The PAD's nationalist campaigns have complicated and delayed negotiations over the development of the area.

In August 2010, the PAD held rallies in protest of Phnom Penh's submission of a management plan to the World Heritage Committee. The Thai government also objected to Cambodia's plan at the committee meeting, claiming it involved the disputed area that had not been clearly demarcated. The committee decided to postpone discussion until 2011.⁵⁶

On 29 December 2010, Cambodia arrested seven Thais, including leader of the Yellow Shirt-aligned Thai Patriots Network Veera Somkhwamkid and lawmaker Panich Vikitseth of the ruling Democrat Party, for allegedly encroaching into its territory near the Preah Vihear temple.⁵⁷ Five of them, including Panich, were freed in mid-January 2011 after a Cambodian court handed down suspended sentences for trespassing.⁵⁸ At the time, Veera and his secretary Ratre Phiphatthanaphaibul were still on trial.

On 25 January 2011, the Yellow Shirts launched a major demonstration in Bangkok. As it began, they made three demands from the government: the cancellation of the 2000 Memorandum of Understanding with Cambodia on border demarcation near Preah Vihear, Thailand's withdrawal from the World Heritage Committee, and the removal of any Cambodian presence on "Thai territory".⁵⁹

Soon after the rally began, the situation at the border heated up. Hostilities between Thai and Cambodian soldiers broke out near the Preah Vihear temple between 4 and 7 February, killing three Thais and eight Cambodians and forcing thousands of Thai villagers to evacuate.⁶⁰ The deadly clashes worried the international community and prompted Indonesia, as ASEAN's current chair, to intervene. The UN Security Council convened a meeting in New York on 14 February, attended by the foreign ministers of both countries

that the site proposed for the listing did not include the disputed area and that both countries would continue to demarcate the area through the Joint Border Commission. Interview with Noppadon Patama on the "Intelligence" program, Voice TV, 22 February 2011, available at <http://shows.voicetv.co.th/intelligence/4629.html>.

⁵⁶ "Ministry praises delay of temple decision", *Bangkok Post*, 30 July 2010.

⁵⁷ "Democrat MP Panich among seven Thais arrested in Cambodia", *The Nation*, 30 December 2011.

⁵⁸ "Five Thais get suspended terms", *The Nation*, 22 January 2011.

⁵⁹ "Hello, we're back", *The Nation*, 26 January 2011.

⁶⁰ "Cambodia to ask Thailand sign ceasefire deal", Reuters, 17 February 2011.

opinions”.⁷³ However, the party is unlikely to be a pivotal force in parliamentary politics, judging from its poor performance in the Bangkok elections for municipal and district councillors in August 2010. It failed to win a single seat.

IV. THE “ROADMAP” TO RECONCILIATION

Under pressure to break the deadlock and clear the Red Shirt protesters from Bangkok’s business district, Abhisit announced on 3 May 2010 a “roadmap” to national reconciliation and proposed to dissolve parliament within five months. The offer prompted serious disagreement among the UDD leaders. While moderates welcomed the compromise, hardliners refused to end the protest. After inconclusive negotiations, the military cleared the streets by force. After the crackdown, the offer of an early election was retracted but the roadmap stayed in place. Four committees were established to work on fact-finding with regard to the violence, constitutional amendments, socio-economic disparity and media reform. While there has been some modest progress, none of the committees has made concrete and significant steps that will defuse the protracted conflict in the short term.

1. Fact-finding

The Truth for Reconciliation Commission of Thailand (TRCT) was formally established on 15 July 2010. This committee was mandated to investigate and establish facts about violent incidents in April and May 2010, compensate victims of violence, and suggest measures to reduce conflict and prevent further violence. At the end of its two-year term, it will submit a final report to the government that will be made public at the same time.⁷⁴ This provides some reassurance that the TRCT will not repeat the mistake of the investigation of the 1992 May uprising, the findings of which were never publicly released.⁷⁵

The TRCT has struggled to get information from the various parties involved. Somchai Homla-or, head of its subcommittee on fact-finding, admitted that some Red Shirt supporters view the commission as a government tool, while

authorities have been slow to cooperate. While the DSI has shared some information with the TRCT, the commission has a hard time getting military and police officers to speak.⁷⁶ The commission has no authority to subpoena witnesses and can only invite them to testify.⁷⁷ In mid January 2011, the commission was scheduled to release the first of a series of progress reports due every six months but has yet to do so. At that time, Somchai instead publicly complained that the TRCT had not received responses to its requests to interview army officers on the ground and for autopsies from the government forensic agency; private telephone companies had also refused to provide information.⁷⁸ In early April, he said the military had become more willing to cooperate, sending key commanders to testify at public hearings on violent incidents. Police officers are still reluctant to cooperate and those who do testify are sometimes not the most knowledgeable.⁷⁹

Although it gathers information from all relevant parties, the TRCT relies heavily on government agencies for data. The DSI’s reversal of its initial findings in the investigation of the death of Japanese cameraman Hiro Muramoto illustrates how controversial seeking the truth about the April-May 2010 violence has become. Muramoto was shot on 10 April 2010 while covering the clashes for Reuters television. The Japanese government attaches great importance to this case.⁸⁰ Reuters has also been vigorous in pursuing and reporting the investigation. Tharit Pengdit, the DSI secretary-general, at a 20 January 2011 press conference said that an initial investigation had concluded that twelve out of 89 victims killed during the April-May demonstrations were attributed to the UDD and thirteen to government forces.⁸¹

⁷⁶ Crisis Group interview, Somchai Homla-or, head of the TRCT’s subcommittee on fact-finding, Bangkok, 1 February 2011.

⁷⁷ Clause 9.5 in “Regulation of the Office of the Prime Minister on the Truth for National Reconciliation”, op. cit.

⁷⁸ Thomas Fuller, “Thai inquiry into violence falters”, *The New York Times*, 24 January 2011.

⁷⁹ Crisis Group telephone interview, Somchai Homla-or, head of the TRCT’s subcommittee on fact-finding, 4 April 2011. The TRCT has organised a series of public hearings on several violent incidents during the 2010 demonstrations since January 2011 so as to allow all relevant parties to present their side of the story, interact and share their opinions.

⁸⁰ During an official visit to Thailand in August 2010, Japanese Foreign Minister Katsuya Okada laid flowers at the site where Muramoto was killed before meeting the Thai prime minister. “Rights groups demand it reveal some findings”, *Bangkok Post*, 24 August 2010.

⁸¹ The DSI did not include three victims killed in the provinces on 19 May 2010. Two men were shot dead during the clashes at the governor’s office in Udon Thani and another man was shot dead as Red Shirts surrounded the house of an MP in Khon Kaen who had defected from Pheu Thai to the Bhumjaithai Party. A DSI investigator said that the case in Khon Kaen is considered unrelated to the demonstration, while police did not for-

⁷³ “สัมภาษณ์พิเศษ: เรายังมีสติ... ไม่คิดฆ่าตัวตาย”, *โพสต์ทูเดย์*, 2 เมษายน 2554 [“Exclusive interview: We are still in our right mind ... we won’t commit suicide”, *Post Today*, 2 April 2011].

⁷⁴ “Regulation of the Office of the Prime Minister on the Truth for National Reconciliation”, *Royal Gazette*, 16 July 2010.

⁷⁵ Somchai Homla-or, head of the TRCT’s subcommittee on fact-finding, spoke at a briefing for diplomats and international organisations, Bangkok, 9 December 2010. The government-appointed committee that investigated the 1992 demonstrations was headed by Kanit Na Nakorn, also the TRCT’s chairman.

Muramoto was among the latter.⁸² The DSI said it would forward its initial findings to police for further investigation.

In the DSI's leaked report, investigators stated there was solid evidence leading them to believe that Muramoto had been killed by the security forces. They cited two witnesses, a police officer and a UDD protestor, who testified that the shot was fired from the direction of soldiers. They also argued that the footage shot by Muramoto just before he was killed showed protestors standing on the side, indicating that Muramoto was facing the soldiers. The report noted that the autopsy supported this analysis because it showed that the bullet pierced through the left side of his chest and his upper right arm.⁸³

A month after this announcement, the DSI chief reversed the preliminary findings based on an examination by a police forensic expert Lt. Gen. Amporn Jaruchinda. He said that the wound was inconsistent with the type of bullet used by soldiers and that Muramoto was unlikely to have been shot by government forces.⁸⁴ The *Bangkok Post* cited an army source that the military was unhappy with the DSI's preliminary finding and reported that army chief of staff Gen. Daphong Ratanasuwan had visited the DSI chief to make a complaint, although Tharit denied such a meeting had taken place.⁸⁵

In addition to determining what happened in April-May 2010, the perpetrators of violence must be brought to justice for genuine reconciliation to be possible. Unfortunately, the TRCT has no mandate to prosecute and when combined with the lack of cooperation, a compromised fact-finding process is unlikely to support larger reconciliation efforts.

ward the cases in Udon Thani to the DSI and the circumstances of their deaths were unclear. Crisis Group telephone interview, DSI investigator, 24 March 2011.

⁸² "25 protest deaths explained", *Bangkok Post*, 21 January 2011. According to the DSI's initial findings, the security forces were also involved in the deaths of an employee of Dusit Zoo on 10 April, a soldier who was killed during a clash near Don Muang airport on 28 April, and three civilians at Pathumwanaram Buddhist temple on 19 May 2010.

⁸³ DSI's investigation report dated 15 November 2010 obtained by Crisis Group. Also see Jason Szep and Ambika Ahuja, "Exclusive: Probe reveals Thai troops' role in civilian deaths", Reuters, 10 December 2010.

⁸⁴ Amporn, formerly the chief of the police office of forensic science, argued that Muramoto was shot by a 7.62-mm bullet, which could have been fired from an AK-47 or another rifle using a similar size of ammunition. The military said that its soldiers were armed with U.S.-designed M-16s or its Israeli-made equivalent Tavor TAR 21 on that day. Both types of rifles use 5.56-mm bullets. "Thailand to further probe killing of Reuters journalist", Reuters, 28 February 2011.

⁸⁵ "DSI changes ruling on cameraman's death", *Bangkok Post*, 27 February 2011.

2. Constitutional amendments

The main achievement of the constitutional amendment committee, led by political scientist Sombat Thamrongthanyawong, has been to change electoral rules. In November 2010, the cabinet decided to follow up on two out of five proposed amendments: Article 190 on parliamentary approval for international treaties and Articles 93-98 on the electoral system. The government declined to review controversial provisions, such as Article 237 on party dissolution and Articles 111-121 on the selection process for senators, which were also put forward for amendment by the committee.⁸⁶

The parliament passed the amendment of Article 190, stipulating that an organic law be enacted within one year to specify types of international treaties that require parliamentary approval as well as to lay out the negotiation framework and procedures for signing. The PAD has been able to use the existing provision to draw out Thailand and Cambodia's negotiations on the Preah Vihear dispute. The foreign ministry has submitted the minutes of the Joint Border Committee's meetings to the parliament for approval. Given strong nationalist sentiments during the past three years, determining which international treaties have possible impact on Thai territory has become highly politicised.⁸⁷ The PAD blocked approval of the three previous meetings' minutes, which has led to long delays in the bilateral talks. The parliament deliberated on the minutes in late March 2011 but MPs cannot agree if parliamentary endorsement is required.⁸⁸ It remains unclear if the organic law would resolve the problem.⁸⁹

⁸⁶ "ประเด็นแก้ รธน. ฉบับสมัชชาประชาชน" , *มติชน*, 26 ตุลาคม 2553 ["Six points for constitutional amendment proposed by Sombat Thamrongthanyawong", *Matichon*, 26 October 2010].

⁸⁷ This follows an Administrative Court ruling on 28 June 2008 that found the PPP government of Samak Sundaravej to have violated this provision because it did not seek parliamentary approval on an issue that could affect Thai territory before signing a joint statement with Phnom Penh. The court issued an injunction banning the cabinet resolution that expressed support for Cambodia's effort to list the Preah Vihear temple as a World Heritage site.

⁸⁸ Democrat Party MP Surichok Sopha submitted a request to the Constitutional Court to decide whether the minutes are to be considered as treaties under Article 190. On 30 March, the court rejected the case, stating it could rule on the matter only if the constitutionality of the parliament-approved documents was at stake. At this stage, it is up to the executive and legislative branches to decide. "Court sends JBC minutes issue back to parliament", *The Nation*, 31 March 2011.

⁸⁹ "รัฐธรรมนูญแห่งราชอาณาจักรไทย แก้ไขเพิ่มเติม (ฉบับที่ 2) พุทธศักราช 2554", *ราชกิจจานุเบกษา*, 4 มีนาคม 2554 ["Amendment of the Constitution of the Kingdom of Thailand (Number 2) 2011", *Royal Gazette*, 4 March 2011].

As for the electoral system, the committee proposed a new formula of 375 constituency-based members of parliaments (MPs) and 125 party list seats, a change from the previous 400:80 ratio. Sombat argued that the increasing numbers of party list MPs would strengthen political parties.⁹⁰ The committee also recommended a change to the voting system from multi-MP to single-MP constituencies. After several rounds of heated parliamentary debate, the amendments were approved in February 2011 and will be in effect during the forthcoming elections.⁹¹ The changes may give an edge to the ruling Democrat Party (see below). By his own admission, Sombat said that he agreed with criticisms that, overall, the amendment was “trivial” and had done little to reform the political system or address the protracted conflict.⁹²

3. Socio-economic reforms

The government set up two separate committees on nationwide socio-economic reforms dubbed “country reform” in June 2010; former Prime Minister Anand Panyarachun heads a nineteen-member National Reform Committee to lay out strategies and Prawes Wasi, a medical doctor-cum-social activist, chairs a 27-member National Reform Assembly to engage civil society in this effort. The committees have identified fourteen areas for reform, including land use, social welfare, education, decentralisation, the justice system, health care and water management.⁹³

In February 2011, the National Reform Committee made its first concrete proposal on land reform, which included suggesting restricting land ownership through a progressive tax system. The committee found that many poor farmers

had no land and a few wealthy landlords owned a large amount of unused land. It proposed that those holding more than 50 *rais* of land (19.7 acres) shoulder the burden of a 5 per cent tax per *rai* calculated on the value of the land.⁹⁴ The government has been reluctant to push forward the proposal, which could affect large businesses and other powerful groups, including financiers of the parties. It is likely to drag its feet on the issue until the parliament is dissolved.

In March 2011, Anand announced that he would resign as the chair of the National Reform Committee shortly before the election, surprising even the prime minister. Anand said that he wanted to give the new government the freedom to decide if it needed the committee.⁹⁵ While the two committees both have a three-year term, Anand’s resignation suggests they may not continue to push for the implementation of their proposals or work on other issues after the election.

4. Media reform

Media reform has been an issue in Thailand for many years. This committee, headed by Yubol Benjarongkit, dean of Chulalongkorn University’s Faculty of Communication Arts, held consultations with various groups and made its recommendations to the government in December 2010. First, it called for the government to make official information more accessible to the public in accordance with the 1997 Information Act. Second, it urged the government to expedite the enactment of the long-delayed legislation – known as the Frequency Allocation Law – to govern the establishment of the National Broadcasting and Telecommunications Commission (NBTC). This body is to allocate broadcasting, radio and telecom frequencies and regulate their operation. The law was promulgated around the same time that the recommendations were submitted but new mechanisms need to be established to make the NBTC fully functional.⁹⁶ Third, it proposed the government allocate funds to establish independent bodies to monitor and handle complaints about the media.⁹⁷ Abhisit agreed to follow up on the recommendations but has not come up with any concrete plan for their implementation.

⁹⁰ “ดร.สมบัติ ประธานแก้ไขรัฐธรรมนูญ... เราไม่ได้สนใจใครจะได้ประโยชน์”, ประชาชาติธุรกิจออนไลน์, 29 สิงหาคม 2553 [“Head of constitutional amendment committee Dr. Sombat: We don’t care who will benefit”, Prachachart Thurakit Online, 29 August 2010].

⁹¹ “รัฐธรรมนูญแห่งราชอาณาจักรไทย แก้ไขเพิ่มเติม (ฉบับที่ 1) พุทธศักราช 2554, ราชกิจจานุเบกษา, 3 มีนาคม 2554 [“Amendment of the Constitution of the Kingdom of Thailand (Number 1) 2011”, Royal Gazette, 4 March 2011].

⁹² In February 2011, the committee proposed that the political party that wins the most seats in the party list system form the government. The idea was seen to favour the ruling Democrat Party, perhaps because the committee floated the suggestion at the same time that Kobsak Sabhavas, head of the Democrat Party’s election campaign team, publicly voiced a similar idea. However, no other constitutional amendment will be considered by this government and it remains only a proposal for the time being. “สัมภาษณ์พิเศษ: สมบัติ ชำรงธัญวงศ์ สุตรรบ. ปาร์ตี้ลิสต์แก้วงจรอุบาทว์”, ข่าวสด, 2 มีนาคม 2553 [“Exclusive interview with Sombat Thamrongthanyawong: Government from party list helps breaks vicious circle”, *Khao Sod*, 2 March 2011].

⁹³ For details on the work of the National Reform Committee and National Reform Assembly, see www.reform.or.th.

⁹⁴ “Anand’s land reform proposals approved in principle”, *The Nation*, 15 February 2011; “ข้อเสนอปฏิรูปการจัดการที่ดินเพื่อการเกษตร”, คณะกรรมการปฏิรูปประเทศ, 7 กุมภาพันธ์ 2554 [“Proposal on land reform of agriculture”, National Reform Committee, 7 February 2011], available at www.reform.or.th.

⁹⁵ “PM asks for clarity on NRC resignations”, *Bangkok Post*, 28 March 2011.

⁹⁶ “Transition to NBTC begins”, *Bangkok Post*, 21 December 2010.

⁹⁷ “จุฬาฯ ขึ้นข้อเสนอปฏิรูปสื่อ-ชี้เร่งมี กสทช”, *เดลินิวส์*, 16 ธันวาคม 2553 [“Chula submits media reform proposal, calls for enactment of NBTC law”, *Daily News*, 16 December 2010].

V. UNEVEN APPLICATION OF THE LAW

If genuine reconciliation is to take place, one central issue that needs to be addressed is the uneven application of the law. The UDD has questioned the role of the judiciary in politics and believes that discrepancies in rulings related to the Red Shirts and Yellow Shirts are evidence of a double standard. This fuels a sense of injustice. The government's handling of media affiliated to colour-coded groups has also raised concerns.

A. THE ROLE OF THE JUDICIARY

The judiciary has played a pivotal role in politics since 2006, following King Bhumibol Adulyadej's recommendation that judges use their authority to resolve the political crisis. While some believe their intervention has been necessary to break deadlocks, the judiciary's credibility is at stake. In late 2010, a series of video clips was posted on YouTube that further cast doubt on the impartiality of the Constitutional Court. The clips emerged at the same time that the Democrat Party was being tried for electoral fraud, which could lead to the court disbanding the party. The party had allegedly misused the 29 million baht (\$943,600) provided by the Election Commission of Thailand (ECT) for campaigning. Another case of electoral fraud against the Democrat Party that was before the Constitutional Court revolved around the legality of a 258 million baht donation (\$8.3 million) from the cement giant TPI Polene, whose owner Prachai Liewphairat is a staunch opponent of Thaksin.⁹⁸

One of the video clips purports to expose a private talk between Phasit Sakdanarong, secretary of the Constitutional Court's president, and Wirat Romyen, a Democrat Party MP who was in the party's legal team.⁹⁹ The meeting took place at a restaurant in Bangkok during the trial for the alleged misuse of funds. After the clips had been circulated, the court dismissed the case on a technicality.¹⁰⁰ It found the ECT had failed to submit the case to the court within fifteen days of being notified. About two weeks later, it dismissed the second case, involving TPI Polene on similar grounds, finding that the ECT had failed to initiate litigation properly.¹⁰¹

The Constitutional Court rulings reinforced the perception that "double standards" were being applied. Thai Rak Thai, a political party formed by Thaksin, was dissolved by the court in 2007 for violating election laws and its successor, the PPP, was subsequently disbanded on similar grounds in December 2008.

The Red Shirts have long complained that no legal action was taken against Yellow Shirts who seized the two Bangkok airports in 2008, while UDD leaders are facing trial and were detained for nine months before being granted bail. There has been some progress in legal cases against the PAD in early 2011. The police finalised its long-delayed investigation into the PAD's airport seizure and forwarded the case to the prosecutors on 18 March 2011. National Police Commander Gen. Wichien Photphosri recommended that fifteen PAD leaders be prosecuted for terrorism, including Sondhi and Chamlong Srimuang.¹⁰² This case has been highly politicised as reflected in the frequent change of investigation teams. Also in March, the Civil Court ordered thirteen PAD leaders to pay 522 million baht (\$17.2 million) plus interest to compensate Airports of Thailand for the damage caused by their closure.¹⁰³ These latest developments may somewhat reduce perceptions of the uneven application of the law held by many Red Shirts.

The court's treatment of rank-and-file protestors is also problematic. In a widely-cited case, a Criminal Court judge sentenced 51-year-old Yellow Shirt supporter Pricha Trijaroon to three years in prison on 16 August 2010 for attempted murder. Pricha was among thousands of Yellow Shirt protestors who clashed with police outside the parliament on 7 October 2008. He was found guilty of delib-

¹⁰² Investigation on the airport seizure has been carried out under the leadership of three national police chiefs. The head of the investigation team changed three times in 2008 and 2009 under Police Chief Gen. Phatcharawat Wongsuwan. The two previous heads of investigation – Gen. Jongrak Juthanond and Lt.Gen. Wutthi Phuavej – resigned, saying they were under severe pressure from the PAD and the UDD. In November 2010, the investigation team led by Lt.Gen. Somyot Phumphanmuang finalised its investigation and submitted recommendations to national police commander that 113 individuals and the satellite television ASTV station, owned by a PAD leader Sondhi, be prosecuted. The investigation team recommended 25 PAD leader be charged with terrorism. The police chief dropped terrorism charges against ten leaders, including Foreign Minister Kasit Piromya. These ten will still be charged, along with 94 others, for violating aviation law during their alleged raid on Suvarnabhumi Airport's control tower. Crisis Group interview, Lt.Gen. Somyot Phumphanmuang, head of the investigation team, Bangkok, 1 April 2011; "อัปเดตคดีพันมิตรยึดสนามบิน สอบมาราธอน 3 ปี ส่งอัยการ", *มติชน*, 20 มีนาคม 2554 ["Update PAD's airport seizure, case forwarded to the prosecutors after three years of investigation", *Matichon*, 20 March 2011].

¹⁰³ The PAD plans to appeal the verdict. "PAD leaders told to pay B552m airport damages", *Bangkok Post*, 26 March 2011.

⁹⁸ On 12 April 2010, the ECT commissioners recommended the two cases be forwarded to the Office of the Attorney-General, starting the legal proceedings against the Democrat Party. "Democrats under fire after ruling", *Bangkok Post*, 13 April 2010.

⁹⁹ See the clip of the conversation at www.youtube.com/watch?v=k4095iNv-gY.

¹⁰⁰ "Democrats off the hook", *Bangkok Post*, 30 November 2010.

¹⁰¹ "Democrat case thrown out", *Bangkok Post*, 10 December 2010.

erately driving a pickup truck into five police officers, some of whom were seriously injured. The court gave him a suspended sentence of two years.¹⁰⁴ The same court sentenced several Red Shirts to jail terms of six months to one year for such less serious offences such as violating the emergency decree by attending protests.¹⁰⁵

In December 2010, the Criminal Court handed down an important ruling which appears to be the first case in which Yellow Shirt protesters were sentenced to jail for criminal acts. The court sentenced 84 PAD guards, dubbed “Sriwichai warriors”, who raided the state-run NBT television station in August 2008, to jail terms ranging from nine to 30 months.¹⁰⁶ This ruling could send a signal that the law applies to everyone, regardless of their political affiliation.

Another concern is the use of the *lèse majesté* provisions of the Criminal Code. Article 112 prescribes penalties from three to fifteen years in prison for those who defame, insult or threaten the King, Queen, the Heir-apparent or the Regent. This law has affected freedom of expression and stifled debate on the role of the monarchy in politics. There has been a significant increase in these cases in recent years. A scholar of Thai studies who has carried out extensive research on the issue noted that prosecutions climbed dramatically after the 2006 coup. There were 30 new *lèse majesté* cases in 2006, 126 in 2007, 77 in 2008 and 164 in 2009 (the highest numbers ever recorded in one year). From 1992 to 2005, the average number of new cases each year was a little over five. Prior to 2005, the conviction rate for *lèse majesté* cases in Lower Court in Thailand was 94 per cent. If this rate holds for decisions handed down between 2006 and 2009, it would mean that there may have been, or still are, hundreds of Thais in jail for such an offence, serving terms that may range from one and a half to eighteen years.¹⁰⁷

¹⁰⁴ “ศาลสั่งจำคุกพรม.พยายามฆ่าตำรวจนคร. 3 ปีไม่เคยรับโทษรองอาญา 2 ปี”, มติชนออนไลน์, 16 สิงหาคม 2553 [“Court hands two-year suspended sentence for PAD attempting to kill police”, Matichon Online, 16 August 2011].

¹⁰⁵ Crisis Group telephone interview, Anond Nampha, lawyer defending criminal cases for Red Shirts, 4 April 2011. Also see “เปิดจดหมาย นปช. ถึงผู้พิพากษาทั่วประเทศ”, ประชาไท, 31 มกราคม 2554 [“Disclosing UDD letter to judges across the country”, Prachatai, 31 January 2011]. Phongthep Thepkanchana, a former judge and justice minister under the Thaksin administration, wrote about the court’s treatment of the UDD and PAD on his Facebook page on 24 August 2010.

¹⁰⁶ “84 PAD guards jailed for 2008 NBT television raid”, *Bangkok Post*, 31 December 2010.

¹⁰⁷ Statistics gathered by David Streckfuss, an independent scholar based in Khon Kaen, made available to Crisis Group. Also see David Streckfuss, “The Intricacies of Lese-Majesty: A Comparative Study of Imperial Germany and Modern Thailand”, in Soren Ivarsson and Lotte Isager (eds.), *Saving the Unsay-*

Thaksin and the Red Shirts have been accused of trying to overthrow the monarchy, a charge they have repeatedly denied. Several Red Shirt supporters have been prosecuted for *lèse majesté*. Surachai Danwathananusorn, leader of the Red Siam – a faction disowned by the UDD – was arrested in February 2011 for allegedly making an anti-monarchy remark on 18 December 2010 in front of thousands of people in Bangkok.¹⁰⁸ *Lèse majesté* charges can also be pressed for internet postings – at times holding online forum moderators responsible – using the 2007 Computer Crimes Act.¹⁰⁹ In March 2011, a person who designed a Red Shirt-aligned website was convicted and sentenced to thirteen years in prison for a *lèse majesté* offence.¹¹⁰ Jiranuch Premchaiporn, director of Prachatai news website, is accused of ten different violations under the Computer Crimes Act for allegedly failing to remove messages criticising the monarchy. Each count carries a maximum penalty of five years in prison.¹¹¹

The vagueness of the law allows it to be easily misused. The charge can be filed by anyone against anyone. In some cases, it is used to discredit political opponents. The law should be amended, severe penalties reduced and authority to accuse an individual of violating the law limited to prosecutors. Such an amendment would create an atmosphere more conducive to open and sincere discussion about the monarchy’s role in a democratic society.

Thai civil society groups have campaigned for the abolition of Article 112. Prominent legal scholar Worajet Phakirat, who teaches law at Thammasat University, argues that,

able: *Monarchy and Democracy in Thailand* (Copenhagen, 2010), pp. 123-124; and David Streckfuss, *Truth on Trial in Thailand: Defamation, treason and lèse majesté* (London and New York, 2011), pp. 111-112 and 205.

¹⁰⁸ “จับสุรชัย แซ่ด่าน หมิ่นกษัตริย์”, ข่าวสด, 23 กุมภาพันธ์ 2554 [“Surachai Saedan arrested for *lèse majesté*”, *Khao Sod*, 23 February 2011].

¹⁰⁹ On the use of the Computer Crimes Act in relation to *lèse majesté* offences, see “Situational Report on Control and Censorship of Online Media, through the Use of Laws and the Imposition of Thai State Policies”, iLaw Project, 8 December 2010.

¹¹⁰ On 15 March 2011, the court sentenced Thanthawut Thaweewarodomkul, web designer of Nor Por Cho USA (UDD USA), to ten years in jail for posting a message that violated Article 112. He was also given another three years’ imprisonment for not removing a *lèse majesté* comment posted on his website – an offence under the Computer Crime Act.

¹¹¹ Prachatai estimates that in 2008, an average of 2,500 new comments were posted each day on the site. Jiranuch was arrested and charged in March and April 2009 for comments posted on Prachatai between April and August 2008. Prachatai later closed down its webboard due to its inability to monitor new comments. Amnesty International has called on Thai authorities to drop charges against Jiranuch, arguing the prosecution infringes on freedom of expression. See “Thailand: Trial of Web Forum Moderator Jeopardises Freedom of Expression”, press release, Amnesty International, 10 February 2011.

apart from the actual law, the judiciary's interpretation of the provision is a problem because of their views of absolute monarchy, which was abolished in 1932, and the current regime of constitutional monarchy. He argues that while a law that protects the dignity of the head of state is still needed, this particular provision should be amended to make it more compatible with the principles guiding a democracy. The current application of this law prevents open discussion of the role of the monarchy in Thai politics.¹¹²

B. GOVERNMENT HANDLING OF MEDIA

The difference in the government's treatment of the media aligned with the UDD and the PAD is stark. Community radio stations, satellite television and the internet have been used by both the PAD and the UDD to communicate, educate (or indoctrinate) and mobilise supporters. The government has severely cracked down or harassed the media aligned with the Red Shirts. During the state of emergency, the Centre for the Resolution of Emergency Situations (CRES), an ad hoc body set up to oversee the state of emergency and run by the military, was granted sweeping powers to shut down media deemed a threat to national security.¹¹³ It pulled the PTV satellite station, which live broadcasted the UDD protest, off the air. The CRES also imposed blanket censorship on thousands of Red Shirt-affiliated websites.¹¹⁴ At least 38 community radio stations, which were crucial to communication and mobilisation in the provinces, were shut down.¹¹⁵ Shortly after the crackdown four Red Shirt-aligned magazines – *Voice of Taksin*, *Truth Today*, *Thai Red News*, and *Wiwatha [Debate]* – were banned.

Some Red Shirt media outlets have since reopened but continue to face harassment. Another satellite station called "Asia Update" was set up in July 2010 to replace PTV.¹¹⁶ New Red Shirt magazines resurfaced on newsstands a couple of months after the crackdown although the authorities have tried to stop their publication. Harassment of the printers of the new *Red Power* magazine by the authorities forced it to relocate printing to Cambodia.¹¹⁷ With the end of the state of emergency, the authorities can no longer impose blanket censorship on websites but they continue to block individual sites using the 2007 Computer Crime Act.¹¹⁸

Authorities have tried to stop community radio stations from reopening or have pressured them to tone down their content. In Chiang Mai, the community radio station of the Rak Chiang Mai 51 group was allowed to resume broadcasting in November 2010 after agreeing to follow instructions from the military; the hosts have noticeably toned down their language.¹¹⁹ In the North East, the Red Shirts have played cat and mouse with the authorities by concealing the radio-frequencies of the new stations or broadcasting from a mobile location.¹²⁰ Even absent the emergency decree, the authorities exploited legal loopholes to shut down the Red Shirt radio stations. One tied to the Red Shirt Khon Kaen 51 group was shut down weeks after the state of emergency was lifted on grounds that it had no temporary license.¹²¹

While the Red Shirt media has been suppressed, no action has been taken against its Yellow Shirt equivalent. Legal action should be taken against those disseminating hate speech or instigating violence. But the law should be applied evenly, regardless of political affiliation and basic rights to freedom of information and expression must be upheld without

¹¹² See วรเจตน์ ภาคีรัตน์, "ปัญหาของกฎหมายหมิ่นประมาทพระมหากษัตริย์", ประกาศนิตราสาร ฉบับที่ 16, 13 มีนาคม 2011 [Worajet Phakirat, "The problem of lèse majesté law", Nitiraj statement Number 16, 13 March 2011], available at www.enlightened-jurists.com/blog/24.

¹¹³ The emergency decree's section 9 (3) stipulates that the government is allowed to prohibit any publications and means of communication that could affect state stability and public order.

¹¹⁴ The emergency decree allowed the CRES to bypass normal procedures for blocking websites as stipulated in the 2007 Computer Crime Act. See "Situational Report on Control and Censorship of Online Media, through the Use of Laws and the Imposition of Thai State Policies", iLaw Project, 8 December 2010.

¹¹⁵ After the May crackdown, dozens of armed soldiers raided offices of community radio stations in several provinces and seized their transmitters. According to the Committee to Campaign for Media Reform, at least 38 community radio stations in thirteen provinces were closed down and nine stations were pressured to stop broadcasting in four months after the government declared the state of emergency on 7 April 2010 and 49 people were charged. See "ประเทศไทย 'ความเห็นต่าง' คือ อาชญากรรม", คณะกรรมการรณรงค์เพื่อการปฏิรูปสื่อ, 19 กันยายน 2553 ["Thailand: Where thinking differently is a crime", Campaign for Popular Media Reform, 19 September 2010].

¹¹⁶ "เอเชียอัปเดต" แนวนรบใหม่เพื่อไทย, *ข่าวสด*, 6 กรกฎาคม 2553 ["Asia Update: Pheu Thai's new fighting tactic", *Khao Sod*, 6 July 2011].

¹¹⁷ After authorities ordered the printer to close down, claiming the site did not meet requirements of the Factory Act, other Thai printers were reportedly too scared to print the magazine. Crisis Group interview, Somyot Prueksakasemsuk, *Red Power's* editor, 26 February 2011.

¹¹⁸ Under the 2007 Computer Crime Act, officials from the ministry of information and communication technology can block websites, subject to court approval.

¹¹⁹ Crisis Group interviews, members of Rak Chiang Mai 51 group, Chiang Mai, 18 November 2010.

¹²⁰ Crisis Group interviews, army officer and Red Shirts, Khon Kaen, 23-25 December 2010.

¹²¹ Crisis Group interview, Red Shirt radio host, Khon Kaen, 24 December 2010. Some 6,600 community radio stations have been granted temporary licenses for trial broadcasting periods from the National Telecommunications Commission. While more than 1,000 community stations are believed to be operating without the licenses, authorities appear to have singled out Red Shirt stations. The Red Shirt Khon Kaen 51 group later re-opened after buying a station with a temporary license.

discrimination. In any circumstance, shutting down media violates the 2007 Constitution.¹²²

VI. FORTHCOMING ELECTIONS

The general election, expected in June or July, is an opportunity for Thailand to use its parliamentary system to address some of the political differences behind the mass demonstrations that ended in violence in 2010. The Red Shirts took to the streets to protest against what they perceived to be an “illegitimate” government. They charged that after the PPP was disbanded in December 2008, the military had twisted the arms of smaller parties to switch sides and join with the second largest party, the Democrat Party, to form a coalition government. Amid persistent coup rumours, Abhisit is likely to dissolve parliament and advance to general elections as quickly as possible. How the next government is formed will likely be contentious and critical to the stability of the country. Many analysts and observers of Thai politics are pessimistic and predict that either UDD or PAD supporters will soon return to the streets, whatever the outcome of the polls.

A. GEARING UP FOR THE RACE

In early March 2011, Prime Minister Abhisit, after consulting with the ECT, announced that he expected to dissolve the parliament in the first week of May.¹²³ By law, elections must be conducted within 45 to 60 days. As a result of the amendment of the Constitution, there are several changes to the polls. Compared to the 2007 election: 1) the number of MPs elected from party lists has increased from 80 to 125; 2) votes for party list seats will be counted nationally and no longer divided into eight regions; 3) there is now no minimum threshold of 5 per cent of votes to be eligible for party list seats; 4) the numbers of constituency MPs have been reduced from 400 to 375; and 5) legislators will be elected from single-member constituencies rather than multi-member ones.¹²⁴

The Democrat Party stands to gain most from the new rules. In the last general election, it was a close race between it

and the PPP for the party list seats. The Democrat Party won 33 party list seats, while the PPP gained 34. In the then multi-member constituencies, the PPP won 199 seats and the Democrat Party 131.¹²⁵ If the previous election’s result is any indication, increasing the number of party list MPs could maximise the ruling party’s seats in the overall polls. The reduction of constituency seats is likely to be to the disadvantage of the Pheu Thai Party. Calculations based on the population ratios and the numbers of incoming MPs show that sixteen of the 25 seats being cut from the constituencies are in the North and the North East and only four seats are scrapped in the Democrat Party’s stronghold of the South.¹²⁶

The Democrat Party has also tried to win over the poor by implementing its own “populist” policy, dubbed “Pracha Wiwat” (progress of the people). In January 2011, the government announced a nine-point policy that included the expansion of the social security scheme to cover a total of 24 million workers in the informal economy; low-interest loans for taxi and motorcycle taxi drivers and street vendors; registration of motorcycle taxi drivers to stamp out the mafia’s influence; and free electricity to low-use households.¹²⁷ These schemes aim to meet the day-to-day needs of the poor, who have been Thaksin’s base. The taxi and motorcycle taxi drivers targeted by these programs are among the staunchest supporters of the ousted prime minister.

The return to single member constituencies, first introduced with the 1997 Constitution, will make small and medium-sized parties more competitive. As the electoral districts will be smaller, candidates will be more able to run effective door-to-door campaigns. The reputation of individuals seeking office rather than just their party’s popularity could carry more weight with voters. This will be particularly critical in the North East, where the Bhumjaithai Party, led by Thaksin-turncoat politician Newin, will be in cut-throat competition with the Pheu Thai Party. Since Thaksin’s popularity in the impoverished region remains strong, a smaller constituency will boost the chances of Bhumjaithai candidates defeating their Pheu Thai rivals.¹²⁸ If Bhumjaithai does well in the North East, this could also contribute to strengthening the Democrat Party’s victory.

While Thaksin and his de facto party remain popular, Pheu Thai has long faced difficulties finding a strong leader.

¹²² Article 45 of the 2007 Constitution allows the government to block the media from presenting information or expressing opinions if a special law is imposed for the purpose of maintaining national security and public order. However, it states that media shall not be closed down under any circumstances.
¹²³ “PM announces dissolution in early May”, *Bangkok Post*, 12 March 2011.

¹²⁴ See “รัฐธรรมนูญแห่งราชอาณาจักรไทย แก้ไขเพิ่มเติม (ฉบับที่ 1) พุทธศักราช 2554”, ราชกิจจานุเบกษา, 3 มีนาคม 2554 [“Amendment of the Constitution of the Kingdom of Thailand (Number 1) 2011”, *Royal Gazette*, 4 March 2011].

¹²⁵ ECT website (www.ect.go.th/newweb/th/election/index4.php).

¹²⁶ Crisis Group telephone interview, senior member of Pheu Thai Party, 14 March 2011.

¹²⁷ “มอบ 9 ประชาวิวัฒน์เป็นของขวัญปีใหม่”, *คมชัดลึก*, 9 มกราคม 2554 [“Give nine ‘prachawiwat’ policies as new year’s gift”, *Khom Chad Luek*, 9 January 2011].

¹²⁸ Crisis Group interview, senior politician of Bhumjaithai Party, Udon Thani, 29 December 2010.

Mingkhwan Saengsuwan, a public relations strategist who has long worked for Thaksin, is believed to have the best chance to head the party for the forthcoming polls. Mingkhwan was a deputy prime minister for economic affairs in the Samak government. Yingluck Shinawatra, Thaksin's youngest sister is also mentioned as a potential candidate for the party's top job. Whoever becomes the official leader, Thaksin will certainly remain as a back-seat driver. He continues to design overall strategies for the election campaign, while Mingkhwan and the party's economic team are working on its economic policies.¹²⁹ Thaksin is reaching out directly to serving MPs and prospective candidates without going through faction leaders as he had done in the past. He seems to have learned a bitter lesson when Newin defected with a whole faction of the party.¹³⁰

The Red Shirts will throw their weight behind Pheu Thai, although its relationship with the activists has not always been harmonious.¹³¹ Thida, the acting UDD leader, said during a rally in March 2011 that the movement is using a two-pronged strategy; fighting on the street and in the parliament.¹³² The seven UDD leaders recently released on bail have expressed their intention to run as candidates under Pheu Thai.¹³³ The party has made room for ten UDD leaders to run on its party list and another ten as constituency candidates.¹³⁴

As the stakes are high, the forthcoming elections could be violent. Three separate attacks against local politicians on 2 March 2011 that killed one and left two seriously injured, served as an early warning and prompted the national police chief to set up special units nationwide to prevent violence

in the forthcoming polls.¹³⁵ While the initial investigation indicated that the attacks were likely to be linked to local rather than national politics, these incidents showed some may use violence to settle their disputes or eliminate their political rivals. Those who have studied election violence in Thailand note that local politics have often been more brutal partly because of the low-level of public scrutiny.¹³⁶ The constitutional amendment that created smaller constituencies with more door-to-door canvassing could expose candidates and canvassers to greater risks of violence.

Red Shirts and Yellow Shirts may obstruct the campaigns of politicians they oppose, as they have done in the past. Having called for a fresh election, Red Shirts may have less compelling reasons to try to derail the polls. The Yellow Shirts seem more inclined to cause disruption. The UDD and PAD should publicly commit to supporting a peaceful election and work towards this goal by toning down their rhetoric and restraining those within their ranks who might try to obstruct the polls. In other countries at risk of electoral violence, the voluntary signing of agreed electoral codes of conduct, often brokered by the electoral management body or other third parties, has helped moderate the behaviour of candidates and their supporters.¹³⁷ If used in Thailand, voluntary pacts will be more effective if they are backed by the two mass movements.

Domestic, regional and international monitoring of the campaign and on election day could also encourage civil behaviour and enhance the credibility of the polls.¹³⁸ Foreign

¹²⁹ Crisis Group interview, Phichet Chueamuangphan, senior member of Pheu Thai Party, Bangkok, 25 February 2011.

¹³⁰ Crisis Group interviews, journalist and political scientist, Bangkok, 22 February and 1 March 2011. On the defection, see fn. 30.

¹³¹ An election strategist expressed concerns that fielding Red Shirts as candidates in large numbers could cause problems with Pheu Thai supporters who do not see eye to eye with the movement. Red Shirts often complain about Pheu Thai MPs whom they accuse of being distant and of rarely supporting their struggle. Thaksin reportedly intervened to mend fences and told the party's executives to recognise the contributions of the Red Shirt leaders. Crisis Group interviews, Red Shirt leaders in Chiang Mai and the North East, November-December 2010; and Pheu Thai senior member, Bangkok, 9 February 2011; "Pheu Thai certain to restrict role of red shirts", *Bangkok Post*, 3 March 2011.

¹³² "Red Shirts urged to give their vote to Pheu Thai", *Bangkok Post*, 13 March 2011.

¹³³ "มติ 7 แกนนำปช. ลงสัตย์ส่วน พท. หัวใจเอกสิทธิ์ไม่ถูกคุมขัง", *กรุงเทพธุรกิจ*, 24 กุมภาพันธ์ 2554 ["Seven UDD leaders agree to run as Pheu Thai's party list candidate, hoping to be granted immunity from detention", *Krungthep Thurakit*, 24 February 2011].

¹³⁴ Nattaya Chetchotiros, "Red Shirts get green light to enter politics", *Bangkok Post*, 28 February 2011.

¹³⁵ On that day, the mayor of Bangbuathong district in Nonthaburi was shot dead, a bomb blew off the legs of the head of the Tambon (sub-district) Administrative Organisation (TAO) in Prachinburi, and a shooting seriously injured a canvasser of the Bhumjaithai Party in Rachaburi. The elder brother of the slain mayor was slated to run as a Pheu Thai candidate in the upcoming polls. "ฆ่าคนตาย บ้างอาจถึงมือล้มหัวคะแนน ตั้ง จก.ปราบมือปืนรับศึก ลีอกตั้งเลือด", *ข่าวสด*, 13 มีนาคม 2554 ["From killing of Bangbuathong's mayor to death of canvassers; police set up special force to oversee bloody polls", *Khao Sod*, 13 March 2011].

¹³⁶ Crisis Group interview, Thai political scientist, Bangkok, 1 March 2011.

¹³⁷ See Electoral Code of Conduct Second Round Presidential Election Haiti, 2011. An English translation of this code is available at www.ndi.org/files/Haiti-code-of-conduct-eng.pdf. Similar codes of conduct have been signed in countries including Namibia, South Africa, Macedonia, the occupied Palestinian territories, Ethiopia, Kenya and Cambodia.

¹³⁸ However, observation of the first post-coup elections in 2007 was not highly effective. The Asian Network for Free Elections (ANFREL), a regional election monitoring group, observed the 2007 elections and concluded that local NGOs were more focused on monitoring on election day itself rather than assessing the fairness of the pre- or post-election environment. Local monitors were often inexperienced and inadequately trained. While the ECT has a substantial amount of budget for local monitors, ANFREL noted that some election commissioners

assistance could be helpful in this regard. International monitoring should also be encouraged and the ECT should not block it as did during the previous election. In 2007, the European Union was unable to deploy the observation mission it had offered because the ECT refused to sign the necessary agreement for fear that it would impinge on national sovereignty.¹³⁹ In the interests of enhancing the legitimacy of the polls, all sides should support election observation. Xenophobic reaction to electoral observation by foreigners is counter-productive.

Irregularities in vote counting and the ECT's adjudication of complaints in disputed constituencies could affect the formation of the new government. The ECT has the authority to issue "yellow cards" and "red cards" to candidates against whom there is evidence of vote-buying.¹⁴⁰ If the ECT is not even-handed and impartial, it could reinforce the belief, particularly among Red Shirt supporters, that "double standards" are being applied. Electoral fraud and vote-rigging could also trigger protests.¹⁴¹

Despite the prime minister's announcement of the timeframe for elections, there is speculation that a military coup or a more subtle "silent coup" could derail the polls. There has been some speculation that if election commissioners were pressured to resign, creating political deadlock, Article 7 of the constitution might then be invoked to form a royally-appointed government.¹⁴² The ECT currently comprises five commissioners and requires at least three commissioners to have quorum. In March 2011, election commissioner Sodsri Satayatham expressed her desire to resign.¹⁴³ Sodsri later said she would likely stay on, but the prospect of her

did not have positive attitude toward them. "Thailand: Elections to the House of Representatives 23rd December 2007", The Asian Network for Free Elections, March 2008, pp. 34-35.¹³⁹ Ibid, p. 33.

¹⁴⁰ The yellow card is issued when there is no evidence that the candidates were directly involved with, or aware of, the electoral fraud. The EC would annul the result and allow the person to run again in a by-election. Those candidates found to have directly participated in fraud would be given a red card and disqualified.

¹⁴¹ Crisis Group interview, political scientist at Thammasat University, Bangkok, 1 March 2011.

¹⁴² Article 7 states that if no provision in the constitution is applicable, a decision may be taken in accordance with traditional practice in a democratic regime with the king as head of the state. When the 2006 snap elections yielded an inconclusive result because of the opposition parties' boycott, the PAD and its allies proposed petitioning the king to appoint an interim prime minister under the terms of Article 7. At the time, the Democrat Party supported the PAD proposal. In an April 2006 speech to Administrative Court judges, King Bhumibol stated that Article 7 did not empower him to appoint a prime minister.

¹⁴³ "Jaded Sodsri says she wants to find new job", *Bangkok Post*, 25 March 2011. Sodsri said she was exhausted and concerned about being targeted in lawsuits. She had applied for a job at the government's Legal Reform Commission.

resignation increased speculation that the PAD would call for Article 7 to be invoked to "clean up" politics.¹⁴⁴ In a media interview, Sodsri confirmed that she had heard from some army officers of a plan to form a royally-appointed government.¹⁴⁵ Senior army commanders deny they will stage a coup and dismiss the idea that they want the king to appoint a prime minister.¹⁴⁶

B. POST-ELECTION SCENARIOS

Anger or any sense of injustice over how the new government is formed could be the rallying cry for renewed mass protests. The legitimacy of Abhisit's coalition government was one of the UDD's key issues during their demonstrations. Independent observers, opinion surveys as well as politicians themselves suggest another coalition is likely.¹⁴⁷ How the coalition is formed will be crucial to the new government's legitimacy. Pheu Thai senior members expect the party to win no less than 233 seats, the number that the disbanded PPP received in the 2007 election. It would still be an uphill struggle for the party to win an outright majority.¹⁴⁸ The Democrat Party hopes to get between 200 and 230 seats.¹⁴⁹ ABAC Poll, an opinion survey conducted by Assumption University, found that the election would be a close race between the two major parties. It predicted Pheu Thai Party would beat the Democrat Party in Bangkok and in the North East, while the ruling party's

¹⁴⁴ "EC's Sodsri vows to stay for upcoming election", *The Nation*, 28 March 2011. "สนธิ สามงศ์การเมืองสัตว์รอก-มดี พทม. โน โหวด ให้ กมม. จดลงเลือกตั้ง", ASTV ผู้จัดการออนไลน์, 24 มีนาคม 2554 ["Sondhi – abolishing politics of hellish monsters – PAD agrees on 'no-vote' and calls for New Politics Party to boycott polls", ASTV Manager Online, 24 March 2011].

¹⁴⁵ "สัมภาษณ์พิเศษ: สดศรีสวมบทตัวประกอบ คละขยเปิดโปงแผนลับ... ปฏิวัติเงียบ", *มติชน*, 4 เมษายน 2554 ["Exclusive interview: Sodsri plays supporting actress, revealing secret plan to stage silent coup", *Matichon*, 4 April 2011].

¹⁴⁶ Supreme Commander Gen. Songkitti Jaggabatar made these remarks at a 6 April 2011 press conference in the presence of the commanders of the army, navy and air forces. "Military leaders unified against a coup", *Bangkok Post*, 6 April 2011.

¹⁴⁷ Crisis Group interview, Kiat Sittheeamorn, Thailand Trade Representative, Bangkok, 3 March 2011; and Phaijit Sriworakhan, Pheu Thai senior member, 9 February 2011. Kiat is expected to run as a party list candidate for the Democrat Party. Also see, "โพลชี้กรุง-ปชป. วูบ พท. แข่งนำคะแนน รวมทั้งปท", *ข่าวสด*, 4 เมษายน 2554 ["Poll suggests Democrat's popularity in Bangkok dropped, Pheu Thai gains more support; close race at national level", *Khao Sod*, 4 April 2011].

¹⁴⁸ Thai newspaper *Matichon* cited Pheu Thai sources as saying that Thaksin told party members in a teleconference that he expected the party to get more than 270 seats. "4 ทศมเท้าคั้นไม่ ปฏิวัติ", *มติชน*, 6 เมษายน 2554 ["Army assures no coup", *Matichon*, 6 April 2011].

¹⁴⁹ Crisis Group interview, Sathit Pitutaecha, Democrat Party's executive member and deputy spokesman, Bangkok, 3 April 2011.

stronghold in the South remained solid and it would likely gain more votes in the Central region.¹⁵⁰

The most contentious scenario is if Pheu Thai has a plurality of seats but not an absolute majority. The smaller parties' roles would then be pivotal in determining the government. Bhumjaithai and Chart Thai Pattana, two medium-sized parties, were quick to recognise their potential leverage in building a coalition; combined, the two parties are likely to win more than 100 seats. They signed an electoral pact on 14 March, agreeing to jointly decide their post-election future.¹⁵¹

The UDD leaders say they will respect the results even if the Democrat Party wins, provided the polls are free and fair. However, the Red Shirts have expressed serious doubts regarding the ECT's impartiality and believe the military will try to manipulate voters as has happened during previous elections.¹⁵² If the Pheu Thai Party emerges as the largest party but does not form the government, it could be grounds for the Red Shirts to return to the streets in full force. Although there is no specific provision in the constitution barring the second largest party from forming a coalition government, its democratic credentials and legitimacy would be readily challenged.

Another possibility is that Pheu Thai wins enough seats to lead a new government. Though the Preah Vihear dispute has failed to garner wide public support, one should not underestimate the possibility of the Yellow Shirts regaining momentum and returning to the streets if this happens. They would oppose a "proxy" Thaksin government.

The government that emerges from the horse-trading needs to have sufficient legitimacy in the eyes of the Thai public to reduce the likelihood of mass protests. There are no fixed rules for coalition-making – nor should there be – but it might be possible to head off post-election disputes if political parties try to build a consensus on how a coalition could be formed in full view of the public. Some suggest

the way to make the process more transparent is to encourage parties to openly state their positions ahead of time.¹⁵³

VII. CONCLUSION

The prospects of resolving the protracted political conflict in Thailand anytime soon are dim. Little has been done to bring about genuine reconciliation. The Red Shirts do not believe that a government that was party to the conflict can ensure accountability for the bloody crackdown in April-May 2010. While elections are not a magic wand to resolve these problems, Thai citizens deserve the opportunity to indicate their wishes at the ballot box. The polls should not be derailed.

How the forthcoming elections are conducted and how the new government is formed will be pivotal to determining the post-election political landscape. Manipulation of the polls and formation of the new government by the royalist establishment could again trigger mass demonstrations. All efforts should be made to ensure that the elections take place and are free, fair and peaceful so as to minimise disputes over the results. The PAD and UDD supporters should not obstruct the campaigns of their political opponents.

Even if the elections are deemed generally credible, it will be a challenge for all sides to accept the results. The UDD says it is willing to accept the results of a free and fair election even if the Democrat Party emerges as the largest party. The PAD and traditional elites are unlikely to tolerate a "proxy" government led by Thaksin-supported Pheu Thai Party. Thailand is likely to face continuing mass protests, which have become increasingly violent, until the establishment and elected politicians agree on a new social contract on power sharing as well as the place of traditional elites in a democratic country. Without compromise, the protracted conflict will continue, only deepening polarisation.

Bangkok/Brussels, 11 April 2011

¹⁵⁰ The ABAC poll surveyed opinions of some 5,200 respondents in seventeen provinces between 25 March and 2 April 2011. See "โพลชี้กรุง-ปชป. วุฒ. แข่งนำคะแนนรวมทั้งปท", *ข่าวสด*, 4 เมษายน 2554 ["Poll suggests Democrat's popularity in Bangkok dropped, Pheu Thai gains more support; close race at national level", *Khao Sod*, 4 April 2011].

¹⁵¹ "สัดขยับัน กท - ชทพ. ก้าวแรกของขั้วใหม่?", *มติชน*, 16 มีนาคม 2554 ["Bhumjaithai-Chart Thai Pattana pact signing- first step of new political camp?", *Matichon*, 16 March 2011].

¹⁵² Crisis Group telephone interview, Kokaew Phikunthong, UDD leader, 6 April 2011. ANFREL documented attempts by the military to pressure voters and instruct its own personnel not vote for the PPP. See "Thailand: Elections to the House of Representatives 23rd December 2007", The Asian Network for Free Elections, March 2008, pp. 29-31.

¹⁵² *Ibid.*, p. 33.

¹⁵³ Crisis Group interview, Thai political scientist, Bangkok, 3 March 2011.