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**The Thai Coup Cycle: Why the National Council for Peace and Order's  
Authoritarian Reforms are Unlikely to Bring Political Stability to Thailand**

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## I. Introduction

In May of 2014, the Royal Thai Armed Forces—led by General Prayuth Chan-ocha—ousted Thailand’s elected government and installed a military junta, the National Council for Peace and Order (NCPO).<sup>1</sup> In some ways, the 2014 coup represented business as usual, the culmination of years of harsh political tensions and decades of recurring military intervention in Thai government. When the NCPO promulgated a new constitution in 2017, it was the *twentieth* such document to govern Thailand, due in large part to the cycle of military coups which has beset Thailand since the first constitution was issued in 1932.<sup>2</sup> On the other hand, the NCPO’s seizure of power also represented a stark backslide from Thailand’s earlier democratic aspirations, demonstrated most notably by the promulgation of its 1997 Constitution.

Thailand’s 1997 Constitution—a document lauded by international law scholars<sup>3</sup>—represented a remarkable embrace of the ideals of democratic governance. In the face of a severe economic downturn and domestic turmoil, Thailand chose to buck the trends of history<sup>4</sup> and issued a strikingly progressive governing text. Dubbed the “People’s Constitution” due to the openness of the drafting process,<sup>5</sup> the 1997 text embodied a full-throated commitment to political rights and human rights more broadly. The text, moreover, established a number of important new institutions,

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<sup>1</sup> Khemthong Tonsakulrungruang, *Entrenching the Minority: The Constitutional Court in Thailand’s Political Conflict*, 26 PAC. RIM L. & POL’Y J. 247, 263 (2017).

<sup>2</sup> See Jonathan Head, *Thailand’s Constitution: New Era, New Uncertainties*, BBC WORLD NEWS, April 7, 2017, <https://www.bbc.com/news/world-asia-39499485>.

<sup>3</sup> See, e.g., Tom Ginsburg, *Constitutional Afterlife: The Continuing Impact of Thailand’s Postpolitical Constitution*, 7 INT’L J. CONST. L. 83, 91 (2009) (noting the “extensive list of rights” and “innovative” institutional framework of the 1997 Constitution).

<sup>4</sup> See William E. Scheuerman, *The Economic State of Emergency*, 21 CARDOZO L. REV. 1869, 1870–75 (2000) (noting a historical trend of authoritarian expansion of executive power during economic crises).

<sup>5</sup> Michael K. Connors, *Framing the People’s Constitution*, in REFORMING THAI POLITICS, 37 (Duncan McCargo ed., 2002).

including the Constitutional Court and a parliamentary legislature modeled on Germany's electoral system.<sup>6</sup>

However, the 1997 Constitution was no panacea. The newfound political freedom allowed tensions between urban and rural Thais to play out bitterly in the halls of government. And, indeed, the 1997 Constitution was officially supplanted when, in 2006, the military ousted controversial populist Prime Minister Thaksin Shinawatra.<sup>7</sup> In the years that followed, so-called Red Shirts—Thaksin's rural supporters—and opposing Yellow Shirts—largely consisting of Bangkok-based anti-Thaksin urbanites—became a common sight in street protests.<sup>8</sup> Political tensions continued to roil the nation until 2014 when the government of Thaksin's sister Yingluck Shinawatra, lifted into the office of Prime Minister by the same rural power base that had elevated Thaksin, was similarly overthrown by the NCPO.<sup>9</sup> The NCPO has evinced a desire to succeed where it believes the 2006 military government failed: instituting deep reforms to cut back against the influence of corrupt political parties.<sup>10</sup> In doing so, the NCPO asserts, it will finally bring stability to Thailand's turbulent political system.

This paper assesses these reforms—embodied chiefly by the NCPO's 2017 Constitution—in light of the junta's self-professed goals: do recent changes offer hope for putting an end to Thailand's cycle of coups? For the purpose of this analysis, this paper first offers an overview of Thailand's recent political history, which will provide necessary context. Next, a comparative analysis of the 1997, 2007, and 2017 constitutional texts highlights the sorts of changes the NCPO is instituting in

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<sup>6</sup> Borwornsak Uwanno & Wayne D. Burns, *The Thai Constitution of 1997: Sources and Process*, 32 U. BRIT. COLUM. L. REV. 227, 242–43 (1998).

<sup>7</sup> Bertil Lintner, *The Battle for Thailand: Can Democracy Survive?*, 88 FOREIGN AFF. 108, 111 (2009).

<sup>8</sup> *Id.* at 110–12.

<sup>9</sup> Tonsakulrungruang, *supra* note 1, at 263.

<sup>10</sup> See Richard C. Paddock, *Voters in Thailand Endorse Military's Proposed Constitution*, NEW YORK TIMES, Aug. 7, 2016, <https://www.nytimes.com/2016/08/08/world/asia/thailand-constitution-referendum.html> (noting the junta's attempt to “shift power away from political parties”).

Thai government. Finally, this paper submits three central reasons to doubt that these changes will set the stage for long-lasting political stability:

- (1) First, the new governing framework does not substantially address the underlying cultural tension between urban and rural Thais, which has driven recent hostility between the Yellow Shirt and Red Shirt factions.
- (2) Second, by law and in practice on the ground, the military is asserting ever-greater influence in Thai political life. However, trading the influence of wealthy populists for military power is unlikely to satisfy many key political actors.
- (3) Third, the Thai regime has proven reticent to address substantive concerns regarding its human rights record and international pressures will likely do little to incentivize healthy democratic governance or discourage future coups.

Ultimately, this paper argues that the 2017 Constitution represents an act of authoritarian lawmaking unlikely to put an end to the cycle of military coups in Thailand.

## **II. The Recent Political History of Thailand**

### A. 1997–2006: Commitment to Democratic Governance and the Rise of Thaksin Shinawatra

1997 marked a hopeful moment for Thai democracy. The previous year, Thailand ratified the International Convention on Civil and Political Rights, demonstrating an international commitment to self-governance by the Thai people.<sup>11</sup> Moreover, Thailand promulgated a new 1997 Constitution which embodied strong democratic values and was drafted with broad input from the Thai population, earning the moniker of the “People’s Constitution.”<sup>12</sup> The 1997 Constitution created several important institutions, including the Office of the Ombudsman, the National Human Rights

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<sup>11</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (signatories enumerated online at: <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-4.en.pdf>).

<sup>12</sup> Connors, *supra* note 5, at 37.

Commission, and the Constitutional Court.<sup>13</sup> It also established a bicameral parliamentary legislature, devised with reference to Germany's parliamentary scheme.<sup>14</sup> As part of the drafters' effort to inculcate a national spirit of democratic participation and alleviate vote buying concerns, the 1997 text included a compulsory voting provision.<sup>15</sup>

The first official elections under the new Constitution were not held until 2001. In the intervening time, the Democrats ruled as part of a multi-party coalition, appointing Chuan Leekpai to the Prime Minister's office.<sup>16</sup> The Chuan government presided over Thailand in the wake of the 1997 Asian Financial Crisis, a regional economic downturn sparked initially by the collapse of the Thai Bhat.<sup>17</sup> Although Thailand's economy had stabilized by the end of Chuan's term in 2001 (with substantial assistance from the International Monetary Fund<sup>18</sup>), many rural farmers in Northern Thailand continued to suffer the lasting effects of the financial collapse.<sup>19</sup> Thus, it was little surprise when rural voters handed the Democrats a resounding defeat in the 2001 parliamentary elections.

In 2001, these rural voters turned to an unlikely champion: billionaire telecommunications executive Thaksin Shinawatra.<sup>20</sup> Thaksin's newly constituted Thai Rak Thai (TRT) party won a parliamentary majority on a populist platform of economic development, universal healthcare, and debt forgiveness, elevating Thaksin to the Prime Minister's office.<sup>21</sup> Thaksin carried with him no small share of controversy; almost immediately, he drew the intense ire of urban Democrats. He was also plagued by accusations of corruption, and very nearly removed from office by the Constitutional Court

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<sup>13</sup> Ginsburg, *supra* note 3, at 93.

<sup>14</sup> Uwanno & Burns, *supra* note 6, at 242.

<sup>15</sup> See *id.*

<sup>16</sup> Borwornsak Uwanno, *Economic Crisis and Political Crisis in Thailand: Past and Present*, 4 NTU L. REV. 141, 144–46 (2009).

<sup>17</sup> *Id.* at 143–44.

<sup>18</sup> See Kevin Hewison, *Thailand after the "Good" Coup*, 14 BROWN J. WORLD AFF. 237, 238 (2008) (noting that Thailand accepted an IMF bailout in exchange for an agreement to institute neoliberal economic reforms).

<sup>19</sup> See *id.*

<sup>20</sup> *Id.* at 239.

<sup>21</sup> See *id.* (detailing the Thai Rak Thai policy platform).

on charges of hiding millions of dollars' worth of telecommunications shares during the 2001 elections.<sup>22</sup>

Anti-Thaksin sentiment among the urban middle class reached a boiling point by 2006. Specifically, the massive untaxed sale of Thaksin's Shin Corporation to a Singaporean investor sparked calls for Thaksin's resignation.<sup>23</sup> In response, Thaksin dissolved parliament and called for new elections. At the behest of the Thai King, the Constitutional Court handed down a close vote throwing out the election results and Thaksin promised to step down after the next round of elections.<sup>24</sup> The military, however, did not wait for Thaksin to keep his word, given intense street protests organized by the Democrat-aligned People's Alliance for Democracy (PAD).<sup>25</sup> Instead, it seized power in a September 2006 coup, officially ending nine years of democratic governance under the 1997 Constitution.<sup>26</sup> The military's rule was short-lived—by 2007, the military government promulgated a new Constitution and held new elections<sup>27</sup>—but the first major blow against the spirit of 1997 had been struck.

#### B. 2007–2014: The Conflict of the Colors and Thaksin's Continued Influence

The 2006 junta took steps to formally defang Thaksin's political influence—including barring Thaksin from political office and disbanding his TRT party<sup>28</sup>—but Thaksin's larger-than-life presence continued to loom over Thai politics. Thaksin's allies reconstituted themselves as the People's Power Party (PPP), which served as a de facto proxy for Thaksin's himself.<sup>29</sup> Moreover, for all the anger Thaksin engendered in metropolitan Thailand, rural Thais remained loyal to his political allies, lifting

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<sup>22</sup> Dan Slater, *Democratic Careening*, 65 World Pol. 729, 741–42 (2013).

<sup>23</sup> Hewison, *supra* note 18, at 241.

<sup>24</sup> *Id.* at 241–42.

<sup>25</sup> See Lintner, *supra* note 7, at 110.

<sup>26</sup> Tonsakulrungruang, *supra* note 1, at 263.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 251–252.

<sup>29</sup> Ginsburg, *supra* note 3, at 102.

the PPP to victory in an early 2008 election. With a parliamentary plurality in hand, the PPP appointed Samak Sundaravej to serve as Prime Minister.<sup>30</sup>

The reign of the PPP entailed no less controversy than the rule of TRT. In September of 2008, Prime Minister Samak was removed from office for a decidedly more modest offense than Thaksin: receipt of payment for appearances on a televised cooking program.<sup>31</sup> In his place, the PPP appointed Somchai Wongsawat, Thaksin's brother-in-law, to the premiership.<sup>32</sup> This move cemented critics' charge that the PPP was a thinly-veiled proxy for Thaksin. Supporters of the Democrats once again took to the streets with PAD, earning the moniker "Yellow Shirts" for the regal yellow<sup>33</sup> colors that the PAD protestors sported. Most notably, PAD demonstrators seized and occupied Bangkok's Suvarnabhumi Airport.<sup>34</sup> By the end of 2008, the Thai Constitutional Court put a temporary end to the political turmoil by dissolving three major Thaksin-aligned political parties, including the PPP.<sup>35</sup> Thaksin himself fled Thailand in 2008 to avoid arrest for corruption charges and has never returned.<sup>36</sup>

The disbandment of the PPP set the stage for the Democrat Party to form a majority coalition for the first time since Thaksin seized power in 2001. The Democrats selected Abhisit Vejjajiva, the leader of the party, to serve as Prime Minister.<sup>37</sup> And, with the Democrats in power, Thaksin's supporters took to the streets. Abhisit assumed office in the immediate wake of the 2008 Global Financial Crisis, but—beyond slowed economic growth—the nation avoided "suffering directly" from the 2008 downturn.<sup>38</sup> However, Abhisit's economic record proved no silver bullet for electoral

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<sup>30</sup> *Id.* at 102–03.

<sup>31</sup> Lintner, *supra* note 7, at 111–12.

<sup>32</sup> *Id.* at 112.

<sup>33</sup> Kate Klonick, *The New Governors: The People, Rules, and Processes Governing Online Speech*, 131 HARV. L. REV. 1598, 1623 n. 172 (2018) (noting that yellow is the symbolic color of the Thai monarchy).

<sup>34</sup> Kate Greenfield, *The Runaway Lese Majeste Train: How Thailand's Lese Majeste Law Must Be Reformed in Order to Stop Its Abuse*, 19 SW. J. INT'L L. 377, 384 (2013).

<sup>35</sup> *Id.* at 387–88.

<sup>36</sup> Samuel Issacharoff, *Constitutional Courts and Consolidated Power*, 62 AM. J. COMP. L. 585, 608 (2014).

<sup>37</sup> Lintner, *supra* note 7, at 112.

<sup>38</sup> See Bhanupong Nidhipr, 27 ASEAN Econ. Bulletin 121 (2010).

success. The so-called United Front for Democracy against Dictatorship—more commonly known as the “Red Shirts” in recognition of the colors supporters donned during protests—formed in the wake of Thaksin’s ouster and took on ever-greater vigor during anti-Abhisit protests (which were often met with violent crackdowns).<sup>39</sup> By 2011, the resistance to Democrat rule grew so robust that Prime Minister Abhisit agreed to hold a new round of elections.<sup>40</sup>

In the 2011 election, Thailand replayed a number of familiar themes. The victorious political faction—the Pheu Thai Party (PTP)—styled itself as the successor to the legacy of the Thai Rak Thai and People’s Power Parties.<sup>41</sup> PTP swept into office on a wave of support from rural, northern Thai voters. And, when the PTP majority needed a Prime Minister to lead, it turned to Yingluck Shinawatra, Thailand’s first female premier and sister of the now-exiled Thaksin Shinawatra.<sup>42</sup> Predictably, Yingluck’s election roused the same virulent ire among Democrat Yellow Shirts as her brother had elicited half a decade earlier. Yingluck and the PTP faced particularly harsh criticism for a proposed bill to extend amnesty to Thaksin, and much of Yingluck’s tenure was marked by similar perceptions of corruption.<sup>43</sup> By 2014, political tensions had again reached a boiling point.

### C. 2014–Present: The Military Seizes Control

When the military seized power in 2014, shortly after Yingluck Shinawatra was unseated by the Constitutional Court<sup>44</sup>, it offered well-trodden justifications. The junta pointed to the Yellow Shirt protestors in the streets, the blatant corruption of Thailand’s recent leaders, and the need to offer stability to an anxious nation.<sup>45</sup> The NCPO further asserted that it hoped to remedy the critical flaw

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<sup>39</sup> Lintner, *supra* note 7, at 110, 116.

<sup>40</sup> Greenfield, *supra* note 34, at 388.

<sup>41</sup> See Tonsakulrungruang, *supra* note 1, at 263.

<sup>42</sup> Greenfield, *supra* note 34, at 388.

<sup>43</sup> See Issacharoff, *supra* note 36, at 609.

<sup>44</sup> *Id.* at 610.

<sup>45</sup> See, e.g. Panarat Thepgumpanat & Patpicha Tanakasempipat, *Three Years after Coup, Junta is Deeply Embedded in Thai Life*, REUTERS, May 20, 2017, <https://www.reuters.com/article/us-thailand-military/three-years-after-coup-junta-is-deeply-embedded-in-thai-life-idUSKCN18G0ZJ>.

of the 1997 and 2007 Constitutions: allowing party bosses like Thaksin to have an outsized role in the Thai political sphere.<sup>46</sup> There is little doubt that Thailand's post-1997 democratic scheme experienced growing pains. When the Democrats took power, Red Shirts took to the streets. When Thaksin and his allies took power, Yellow Shirts took to the streets. It is also undoubtedly true that post-1997 Thai governance often failed to live up to the promise of the 1997 Constitution. A number of rights abuses were reported under both Thaksin-aligned and Democrat administrations. Human rights watchdogs took Thaksin to task for a violent war on drugs<sup>47</sup>; others critiqued Abhisit for internet censorship and anti-protest crackdowns.<sup>48</sup> Thus, in assessing the NCPO's actions, it is important to take care not to view the preceding years of Thai governance with rose-tinted glasses.

On the other hand, it is also true that the NCPO has implemented a number of authoritarian, anti-democratic measures since seizing power. A host of NCPO-sponsored political rights abuses have been reported by watchdog groups. For instance, in the lead-up to a national referendum vote on the NCPO's 2017 draft constitution, the junta implemented an outright ban on anti-draft campaigning.<sup>49</sup> The NCPO also abridged the right of free assembly, effectively banning political gathering in any substantial numbers (ostensibly to cut back against the machinations of political parties).<sup>50</sup> In the penal system, rights watchdogs have reported severely overcrowded prisons and

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<sup>46</sup> See *id.* (“The 2014 coup was partly the military’s way of trying to make right what it viewed as the mistakes of the 2006 coup, including a failure to get rid of Thaksin’s allies.”).

<sup>47</sup> See, e.g., Human Rights Watch, *Thailand’s ‘War on Drugs’*, Mar. 12, 2008, <https://www.hrw.org/news/2008/03/12/thailands-war-drugs> (noting “some 2800 extrajudicial killings”).

<sup>48</sup> See, e.g., Human Rights Watch, *World Report 2012: Thailand*, 2012, <https://www.hrw.org/world-report/2012/country-chapters/thailand> (noting over one thousand websites and other media outlets shut down by Abhisit’s government).

<sup>49</sup> Amy S. Lefevre & Pairat Temphairojana, *Thai Junta Passes Ballot Box Test with Referendum Win*, REUTERS, August 6, 2016, <https://www.reuters.com/article/us-thailand-politics-idUSKCN10H0TG> (noting that the NCPO “banned debate about the constitution and campaigning ahead of the vote”).

<sup>50</sup> See Sutawan Chanprasert, *Thailand: The New Public Gathering Bill Poses a Serious Threat to Freedom of Expression*, GLOBAL FREEDOM OF EXPRESSION (COLUMBIA UNIVERSITY), May 6, 2015, <https://globalfreedomofexpression.columbia.edu/updates/2015/05/thailand-the-new-public-gathering-bill-poses-a-serious-threat-to-freedom-of-expression/>.

civilians tried in military court proceedings.<sup>51</sup> Finally, although the junta has recently committed to hold elections in early 2019, proposed election dates have been pushed back a number of times.<sup>52</sup> Thus, it remains to be seen if the NCPO will follow through with this promise and, if so, whether these elections will be conducted in a free and fair manner.

Other events have added a measure of a drama to the NCPO's tenure in power. In 2016, Thailand's beloved and long-serving King Rama IX died, clearing the way for his less-engaged son to ascend to the Thai throne as Rama X.<sup>53</sup> Since, Rama X has had a bristly relationship with the junta, requesting revisions to the draft constitution to wrest some degree of power from the junta and into the monarchy's hands.<sup>54</sup> The NCPO also faced a surprisingly rocky road to promulgating its 2017 draft constitution. An early attempt to pass the draft constitution through the junta-stacked legislature resulted in an embarrassing rebuke.<sup>55</sup> When, ultimately, the NCPO was able to promulgate a new constitution in 2017, it was the *twentieth* Thai constitution in about 80 years. Should the NCPO cede control to Thai voters, many commentators suspect that the junta has arranged a governing structure such that its leader—General Prayuth Chan-ocha—will nonetheless remain in the Prime Minister's office.<sup>56</sup> Whatever the future holds for Thailand, it seems certain that the NCPO has struck a decisive blow against the spirit of democratic rule embodied by the 1997 Constitution.

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<sup>51</sup> See Human Rights Watch, *Thailand: End Military Detention of Civilians*, Feb. 13, 2015, <https://www.hrw.org/news/2015/02/13/thailand-end-military-detention-civilians>.

<sup>52</sup> *Thailand's Junta Targets Opposition for Criticizing Election Delays*, REUTERS, May 17, 2018, <https://www.reuters.com/article/us-thailand-politics/thailands-junta-targets-opposition-for-criticizing-election-delays-idUSKCN1IJ0AW>.

<sup>53</sup> Danielle Belopotosky, *What the Death of Thailand's King Means, and What's Next*, NEW YORK TIMES, Oct. 13, 2016, <https://www.nytimes.com/2016/10/14/world/asia/thailand-king-death.html>.

<sup>54</sup> David Streckfuss, *In Thailand, a King's Coup?*, NEW YORK TIMES, Apr. 9, 2017, <https://www.nytimes.com/2017/04/09/opinion/in-thailand-a-kings-coup.html>.

<sup>55</sup> Oliver Holmes, *Thailand Elections Delayed as Draft Constitution is Rejected*, THE GUARDIAN, Sept. 6, 2015, <https://www.theguardian.com/world/2015/sep/06/thailand-elections-delayed-as-draft-constitution-is-rejected>.

<sup>56</sup> See Streckfuss, *supra* note 54 (“The Constitution seems designed to ensure that even if an election does take place, the military will remain in control.”).

### III. Comparative Analysis of the 1997, 2007, and 2017 Constitutions

#### A. Key Rights Provisions

Even a cursory perusal of Thailand's 1997 Constitution reveals the breadth of the drafters' commitment to enshrining human rights in the text. The document is rather lengthy, encompassing hundreds of provisions, but much of the early text is devoted to enumeration of various rights. For instance, Section 30 of the 1997 text offers equal protection language, guaranteeing that all Thai citizens "shall be equal before the law and shall enjoy equal protection under it."<sup>57</sup> A slate of other important political rights are interspersed through the provisions that follow: Sections 44 and 45 provide for freedoms of assembly (including peaceful protest) and association, Section 47 guarantees the right to form or be a member of a political party, and Section 60 broadly sets forth citizens' right to "participate in decision making process of State officials."<sup>58</sup> Notably, in apparent recognition of Thailand's historical coup cycle, the drafters also included Section 65, which implements the right to "*resist peacefully* the acquisition of power to rule" in any extra-constitutional, non-democratic manner.<sup>59</sup> The aforementioned provisions represent only a small handful of the dozens of civil and economic rights set forth in the 1997 text.

Moving forward, the 2007 Constitution introduced only small, marginal changes to the 1997 rights framework. Indeed, much of the rights-granting language set forth in the 1997 text returned in almost identical form in the 2007 document. 2007's Section 30, for example, includes the same equal protection language as 1997's Section 30.<sup>60</sup> Sections 63 and 64 of the 2007 Constitution promulgate very similar rights to peaceful assembly and association.<sup>61</sup> Furthermore, although the 2006 military

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<sup>57</sup> CONST. OF THE KINGDOM OF THAI. (1997) § 30 [hereinafter 1997 CONST.].

<sup>58</sup> *Id.* §§ 44, 45, 47, 60.

<sup>59</sup> *Id.* § 65 (emphasis added).

<sup>60</sup> *See* CONST. OF THE KINGDOM OF THAI. (2007) § 30 [hereinafter 2007 CONST.].

<sup>61</sup> *Id.* §§ 63, 64.

government's interim constitution omitted the 1997 provision granting the right to protest coups,<sup>62</sup> that provision ultimately made it into Section 69 of the final 2007 text.<sup>63</sup> Rollbacks of substantive rights, where they occur in the text, seem only marginal. For instance, like Section 37 of the 1997 Constitution, Section 36 of the 2007 text includes “freedom of communication” but omits the earlier version's explicit bar on “censor[ing]” of communications by government actors.<sup>64</sup>

Comparatively, the NCPO's 2017 Constitution marks a much more substantial departure from the 1997 Constitution. Undoubtedly, a significant amount of rights-granting language is still included in the text, but the NCPO has also included more escape hatches for government actors. For instance, Section 25 of the 2017 text arguably includes the broadest rights-granting language of any of the recent constitutional iterations, stating that the Thai people shall have “rights and liberties to perform any act which is not prohibited or restricted by the Constitution or other laws.”<sup>65</sup> However, this broad language is immediately qualified by the statement that this provision only applies “insofar as the exercise of such rights or liberties *does not affect or endanger the security of the State or public order or good morals.*”<sup>66</sup> The generic language of the qualifying statement provides a generous loophole which government actors might use to justify abridgment of rights. A similar qualifying statement exists in Section 34 of the 2017 Constitution, which purports to protect “[a]cademic freedom.”<sup>67</sup> However, per the text, “[T]he exercise of such freedom *shall not be contrary to the duties of the Thai people or good morals, and shall respect and not obstruct the different views of another person.*”<sup>68</sup>

Other provisions omit rights granted in earlier iterations of the constitution. Most notably, while Section 49 of the NCPO's Constitution includes generic anti-coup language, this iteration does

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<sup>62</sup> See generally THAI. INTERIM CONST. (2006).

<sup>63</sup> 2007 CONST. § 69.

<sup>64</sup> See 1997 CONST. § 37; 2007 CONST. § 36.

<sup>65</sup> CONST. OF THE KINGDOM OF THAI. (2017) § 25 [hereinafter 2017 CONST.].

<sup>66</sup> *Id.* (emphasis added).

<sup>67</sup> *Id.* § 67.

<sup>68</sup> *Id.* (emphasis added).

not include the right to “peacefully resist” such military takeovers.<sup>69</sup> On the other hand, the 2017 Constitution does nonetheless include a wide swathe of rights provisions. Political rights provided for in the text include equal protection, freedoms of assembly and association, the right to vote, and several others.<sup>70</sup> Indeed, compared to other aspects of the 2017 Constitution (such as the structure of the Thai legislature), there is a relatively high degree of parity between the 2017 text and the 1997 and 2007 texts with regards to inclusion of rights provisions. The wide gulf between the 2017 textual rights language in theory and widespread rights restrictions and abuses in practice accords with empirical evidence demonstrating that rights-based constitutional provisions are the least tightly correlated with actual on-the-ground practice.<sup>71</sup>

#### B. Structure of Government

There are, first of all, a number of structural commonalities present in each of the 1997, 2007, and 2017 Constitutions worth noting here. For one, with regards to the right to vote, each iteration specifies that voting is compulsory, with the penalty for failure to vote being disenfranchisement from future democratic participation.<sup>72</sup> Moreover, a number of important institutions established by the 1997 Constitution persist through the present day. These include, for example, Thailand’s Constitutional Court, the Office of the Ombudsmen, and the National Human Rights Commission (NHRC).<sup>73</sup> There is some evidence that these institutions have been curtailed under the rule of the NCPO (the Constitutional Court is barred from adjudicating the permissibility of NCPO decrees<sup>74</sup>; the NHRC has been downgraded by the UN-partnered Global Alliance of National Human Rights

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<sup>69</sup> *See id.* § 49.

<sup>70</sup> *See id.* §§ 4, 42, 44, 95.

<sup>71</sup> *See* Zachary Elkins, Tom Ginsburg & James Melton, *THE ENDURANCE OF NATIONAL CONSTITUTIONS*, 53–55 (2010).

<sup>72</sup> 1997 CONST. § 68; 2007 CONST. § 72; 2017 CONST. § 95.

<sup>73</sup> *See, e.g.*, 2017 CONST. §§ 200, 228, 246.

<sup>74</sup> *See id.* § 279 (stating that NCPO decrees are “considered *constitutional*, lawful and effective under this Constitution”) (emphasis added).

Institutes accreditation<sup>75</sup>). Nonetheless, this institutional endurance—notwithstanding two coups and years of political unrest—highlights the 1997 Constitution’s lasting legacy.

Conversely, the structure of national government has remained constant only in the most general terms. Each recent constitution, most broadly sketched, lays out a bicameral legislature (the National Legislative Assembly) and an appointed Prime Minister, but the specific details have evolved in a number of critical ways since 1997. As noted above, the 1997 Constitution established a legislative framework modeled after the scheme implemented in Germany. The National Assembly consisted of two bodies: a House of Representatives and a Senate. Per the 1997 text, the five-hundred-member House of Representatives employed a mixed electoral scheme, with four hundred Representatives elected individually by district and another one hundred selected proportionally from party lists.<sup>76</sup> In turn, the two-hundred-member Senate consisted of directly-elected but nonpartisan Senators.<sup>77</sup> Finally, the Prime Minister was required to be a member of the House of Representatives and appointed by a vote of at least one-half of the House.<sup>78</sup> To remove the Prime Minister, a vote of no-confidence could be initiated by two-fifths of the House and ultimately required one-half of the House to assent.<sup>79</sup>

Following a familiar trend, the 2007 Constitution marginally tweaked but did not drastically alter this governmental framework. For instance, the House of Representatives was slightly reduced in size to 480 members, with eighty selected from party lists and the rest elected by constituent districts.<sup>80</sup> Similarly, the procedure for appointing a Prime Minister remained largely intact. A motion for removal by no-confidence now required only one-fifth of the House, but ultimately one-half of

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<sup>75</sup> Human Rights Watch, *Thailand: Don’t Weaken Rights Commission*, August 23, 2017, <https://www.hrw.org/news/2017/08/23/thailand-dont-weaken-rights-commission>.

<sup>76</sup> 1997 CONST. §§ 98–102.

<sup>77</sup> *Id.* §§ 121, 126.

<sup>78</sup> *Id.* §§ 201, 202.

<sup>79</sup> *Id.* § 185.

<sup>80</sup> 2007 CONST. § 93.

the House would still need to assent to removal of the Prime Minister.<sup>81</sup> The most substantial changes were implemented with respect to the Senate, now a 150-member body. Under the 2007 framework, only half of the Senate was elected (with one Senator for each of Thailand's seventy-five provinces).<sup>82</sup> The other seventy-five members were appointed by a "Selection Committee" comprised of members of various government boards and the judiciary.<sup>83</sup> This hybrid Senate structure represents a half-step between the 1997 model and the 2017's entirely undemocratic Senate.

Not surprisingly, the 2017 Constitution sets forth a substantially more radical departure from the 1997 framework. First of all, under the 2017 text, the House of Representatives is a five-hundred-member body, with 150 members derived from political party lists and 350 elected members.<sup>84</sup> Unlike past iterations, these elected members will now be selected on an individual basis within voting districts. Thus, while parties are free to nominate candidates, voters will no longer select political parties on ballots and instead will only vote for candidates (theoretically weakening the influence of political parties).<sup>85</sup> In turn, the Senate is now an entirely unelected, two-hundred-member body.<sup>86</sup> A later organic act specified the composition of the Senate, allocating some seats to a number of important sectors in Thai society but leaving most to be hand-picked by the junta.<sup>87</sup> Furthermore, the 2017 Constitution also instituted changes with respect to the Prime Minister, who will still be selected by the House of Representatives but will no longer be required to be a member of the House.<sup>88</sup> Thus, the structural framework of the 2017 Constitution wrests power from Thai voters and transfers it to military leadership, potentially pathing the way for an outsider Prayuth Chan-ocha premiership.

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<sup>81</sup> *Id.* § 158.

<sup>82</sup> *Id.* §§ 111, 112.

<sup>83</sup> *Id.* § 113.

<sup>84</sup> 2017 CONST. § 83.

<sup>85</sup> *See id.* §§ 83–92.

<sup>86</sup> *Id.* § 107.

<sup>87</sup> Kas Chanwanpen, *MP and Senate Organic Bills Sail Through the NLA*, THE NATION (THAILAND), Mar. 9, 2018, <http://www.nationmultimedia.com/detail/politics/30340519>.

<sup>88</sup> *See* 2017 CONST. §§ 158–160.

### C. Supremacy of NCPO Orders and Other Authoritarian Provisions

Additional provisions of the NCPO's constitution have raised concerns regarding potential rights violations. One such provision was promulgated by the NCPO within its interim constitution. Section 44 of that document renders the actions of the NCPO's leader, General Prayuth, effectively unreviewable by the judiciary. Per the text of that provision, any order enacted by Prayuth would, by definition, be "deemed to be *legal, constitutional and conclusive*."<sup>89</sup> Ultimately, the 2017 Constitution superseded the NCPO's interim document. However, pursuant to Section 279 of the 2017 Constitution, the NCPO granted interim Section 44 continuing force, declaring that all orders enacted prior to the date of promulgation have ipso facto constitutional status.<sup>90</sup> By issuing Sections 279 and 44, the NCPO placed itself out of the reach of the Constitutional Court, a heretofore powerful institution which had toppled multiple Thai Prime Ministers.

To continue, Professor Narongdech Srukhosit of Chulalongkorn University has pointed to Sections 98, 144, and the 235 as provisions ripe for rights abuses.<sup>91</sup> Like many of the NCPO's authoritarian overtures, these provisions are clothed in the language of anti-corruption measures, addressing vaguely-defined violations such as "serious contravention[s] or non-compliance with [ ] ethical standards."<sup>92</sup> Per these provisions, violators face the penalty of lifelong disenfranchisement from political office and participation.<sup>93</sup> Thus, in Professor Narongdech's estimation, these purportedly ethics-forcing provisions might instead be used by autocratic leaders to banish political rivals from elected office. In light of the provisions detailed here and documented rights abuses on the ground, it is clear that the NCPO's tenure at the helm of Thai government has been overtly anti-democratic to a degree unparalleled since the promulgation of the 1997 Constitution.

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<sup>89</sup> THAI. INTERIM CONST. (2014) §44 (emphasis added).

<sup>90</sup> See 2017 CONST. § 279.

<sup>91</sup> Narongdech Srukhosit, Lecture at Chulalongkorn University (Mar. 15, 2018).

<sup>92</sup> 2017 CONST. § 235.

<sup>93</sup> See *id.* § 98.

#### IV. Why the NCPO's Authoritarian Reforms are Unlikely to Introduce Stability

From the preceding analysis, it is clear that many of the NCPO's reforms, both as promulgated in the 2017 Constitution and as put into practice during the junta's reign, are fundamentally authoritarian. However, the NCPO has alleged that these reforms were set forth with the goal of creating long-sought political stability in Thailand. The following analysis will assess this asserted justification on its merits. Presuming that the NCPO eventually allows elections to proceed and Thailand returns to at least a more limited form of democratic rule, will the NCPO's changes to the Thai political framework promise a more stable system? Or, stated otherwise, has the NCPO decreased the likelihood of a military coup ousting yet another democratically-elected government? The following analysis—which draws upon both recent Thai history and my own conversations with a variety of governmental and non-governmental actors during a March 2018 trip to Thailand—posits that, contrary to the NCPO's claims, recent authoritarian reforms are unlikely to put an end to the Thai coup cycle.

##### A. Red versus Yellow: The Reforms Fail to Address the Urban/Rural Divide at the Heart of Recent Political Conflict

The so-called “Conflict of the Colors” has remained at the heart of Thai political life for over a decade. Broadly defined, the Red Shirt versus Yellow Shirt conflict can be framed in terms of the long-standing tension between rural and urban Thai voters.<sup>94</sup> To be sure, the factional divide has more nuance than that simple sketch suggests. In addition to rural Thaksin voters, the ranks of the Red Shirts include young left-wing activists and those broadly opposed to perceived meddling by Thai elites in democratic governance.<sup>95</sup> In turn, the Yellow Shirts include not only urban, middle-class Democrats but also ardent Thai royalists (yellow serves as the regal color of the Thai monarchy).<sup>96</sup>

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<sup>94</sup> See, e.g., Slater *supra* note 22, at 750.

<sup>95</sup> See Greenfield, *supra* note 34, at 388–87.

<sup>96</sup> *Id.* at 387.

Regardless, there clearly exists a deep-seated divide between the sorts of northern Thai voters that lifted Thaksin and his subsequent allies into office and the urban voters who support Abhisit and the Democrats.

It would be a mistake, moreover, to frame the urban/rural divide as purely political. Rather, this divide has both cultural and economic roots. For instance, much of the resentment which elevated Thaksin and the Thai Rak Thai party to power fomented in the wake of the Asian Financial Crisis, which left many rural Thais deeply indebted.<sup>97</sup> In turn, many well-to-do Bangkok urbanites view Thailand as “Bangkok and everything else.”<sup>98</sup> In 2008, a *New York Times* reporter spoke to Yellow Shirt protestors who espoused the view that rural voters are “misguided and ignorant” and who hoped to shift the balance of political power by “put[ting] forward a reform plan that would weaken rural voices.”<sup>99</sup> On the other side, the *Times* described farmers in Ban Huay Chan who “spun violent fantasies of mayhem against the [Yellow Shirt] protesters.”<sup>100</sup> These cultural tensions remain fraught today. Many middle-class urbanites decry rural voters as too “poor” and “stupid” to be responsible voters and, moreover, believe that their recent votes have only been won through vote-buying by wealthy Thaksin-esque politicians.<sup>101</sup> Thus, it seems likely that this deep-rooted tension will continue to manifest itself in future Thai elections.

To continue, the first reason to doubt that the NCPO’s reforms will induce greater stability in Thai governance is that these reforms do little to bridge this defining cultural divide. Some have

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<sup>97</sup> Hewison, *supra* note 18, at 238.

<sup>98</sup> Seth Mydans, *In Thai Protests, a Divide Between Urban and Rural*, NEW YORK TIMES, Oct. 12, 2008, <https://www.nytimes.com/2008/10/13/world/asia/13thai.html>.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> This common perception of rural voters was noted by several individuals I spoke with during my time in Thailand. For instance, the Spokesman of the Constitutional Drafting Committee noted that this view is prevalent among Bangkok Democrats. Interview with Norachit Sinhaseni in Bangkok, Thailand (Mar. 15, 2018).

asserted that military leaders in both 2006 and 2014 used this conflict to effect a craven power grab.<sup>102</sup> However, even presuming that junta leaders earnestly hope to put an end to the recent turmoil, it seems likely that the NCPO has misdiagnosed the underlying problem. Comments by NCPO seem to lay the blame for the vitriolic tenor of recent Thai politics entirely at the feet of the major political parties and party bosses. For instance, in conversation with the Spokesman of the NCPO's Constitutional Drafting Committee, the Spokesman framed rural voters' ardent support of Prime Minister Thaksin as a case of voters duped into electing a "corrupt" politician by his grand promises.<sup>103</sup> However, in a counterfactual world where rural Thai farmers had no Thaksin to rally behind, it seems implausible to presume that impoverished voters, culturally-disconnected from Bangkok, would quietly accept the reign of a Bangkok technocrat like former Prime Minister Abhisit. Thus, although political leaders certainly have incentives to inflame supporters' passions and wield the energy of protest movements against rivals, it strains credulity to suggest that weakening political parties would have erased the divide between urban Yellow Shirts and rural Red Shirts.

Therefore, whichever government takes the reins of power in the wake of the planned elections will very likely face the fundamental cultural divide that has bedeviled all recent Thai administrations. Recent Thai history illustrates then when one party rises to power, its rivals take to the streets, driven to protest by these very tensions. Certainly, for reasons outlined above, it is possible that a military leader (most likely General Prayuth Chan-ocha) will attain the office of Prime Minister. However, should the new Prime Minister be perceived to align himself or herself more closely with either the urban Democrats or the rural Thaksinites, the opposing faction is likely to be incensed. Attempting to chart a neutral third way between these factions will likely leave both unsatisfied. And, of course, recent history has also illustrated that the Thai military's response to political unrest is to

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<sup>102</sup> One human rights activist I spoke to in Bangkok espoused this perspective. Given a recent history of reprisals against anti-junta activists, I have elected not to include this individual's name here.

<sup>103</sup> Interview with Norachit Sinhaseni, *supra* note 101.

suspend democracy and seize control. Because future Thai governments will be forced to chart a course between a sociocultural Scylla and Charybdis, and the result is likely to be political unrest and perhaps a revival of recent protests movements, future military coups will remain a distinct possibility.

B. The NCPO's Reforms Trade Political Party Influence for Military Political Power, a Move Likely to Spark Widespread Dissatisfaction

As noted above, the NCPO's constitutional drafters targeted reforms at undercutting the influence of political parties in Thai politics. Indeed, the NCPO views the central mistake of the 1997 Constitution as permitting an outsized role for parties in the political regime.<sup>104</sup> The Spokesman for the Drafting Committee, for instance, alleged that the 1997 Constitution allowed Thaksin to buy the loyalty of a number of legislators under the Thai Rak Thai umbrella and thereby cling to power despite overt corruption.<sup>105</sup> To that end, the 2017 Constitution certainly contains a number of anti-party provisions. For one, the Thai Senate will have a permanent and substantial number of military seats.<sup>106</sup> Second, the Prime Minister will no longer be required to be an elected member of the House of Representatives.<sup>107</sup> Finally, Representatives will now be voted for on an individual basis (in other words, voters will not select a preferred party on their ballots)<sup>108</sup>, and thus will be plausibly less likely to skate by on party affiliation. With a less partisan, less influential House of Representatives, it stands to reason that political parties will have substantially less institutional sway in the new government. At the same time, the NCPO has elected to trade the diminished influence of parties for a significantly-expanded role for the military in the new government.

In light of this trade-off, the NCPO's political stability justification is further suspect because the new arrangement is likely to be unsatisfying to several key political players. First of all, elites within

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<sup>104</sup> See, e.g. Thegumpanat & Tanakasempipat, *supra* note 45.

<sup>105</sup> Interview with Norachit Sinhaseni, *supra* note 101.

<sup>106</sup> See Chanwanpen, *supra* note 87.

<sup>107</sup> See 2017 CONST. § 160.

<sup>108</sup> *Id.* §§ 83–92.

the Democrat Party have expressed serious frustration with the junta's recent actions. For instance, I had the chance to sit down and speak with former Prime Minister Abhisit (who remains head of the Democrats), who bemoaned at length the practical roadblocks the NCPO had laid down for party organization.<sup>109</sup> For instance, Mr. Abhisit described the strict and burdensome party registration requirements that the NCPO had laid out in advance of an April 2018 party registration window. According to Abhisit, the NCPO granted parties just eighteen days to re-confirm their national party member lists. Further requirements included collection of photocopied identification, cash fees, and physical signatures, all of which necessitated the painstaking process of physically tracking down members. There is no small measure of irony in Abhisit's late consternation, given the ardent support he and other Democrats gave the 2014 protests to unseat Yingluck Shinawatra.<sup>110</sup>

On the other hand, the situation is less clear with respect to Thaksin's allies. Given the steep barriers to entry the NCPO has laid down to party organization, reviving Pheu Thai or establishing a successor may prove difficult. Furthermore, it remains to be seen how rural, Red-Shirt-aligned voters will respond if and when elections are held. However, there is reason to suspect that there is little love lost between Thaksin voters and the junta. The initial Red Shirt protest movements sprung up in the wake of the military's 2006 ouster of Thaksin. The military has now twice ousted governments elected by rural voters in recent history. These factors set the stage for a tense relationship between rural voters' chosen representatives and a potential Prime Minister Prayuth.

To continue, the NCPO's argument that rendering political parties ineffectual will increase political stability rests on the dubious presumption that denying political elites formal power denies them influence. Recent Thai history illustrates that influential political figures can be effective thorns

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<sup>109</sup> Interview with Abhisit Vejjajiva in Bangkok, Thailand (Mar. 20, 2018).

<sup>110</sup> See, e.g., *Profile: Suthep Thaugsuban and Thailand's Protesters*, BBC WORLD NEWS, Nov. 28, 2013, <https://www.bbc.com/news/world-asia-25116427> (noting that Abhisit's deputy served as the leader of the anti-Yingluck Yellow Shirt protests).

in the side of sitting governments despite a lack of legislative power. Moreover, the NCPO's legislative scheme also has the potential to prove deeply frustrating to Thai voters. Given an unelected Senate and a potential "outsider" Prime Minister, elected officials will have less power in a future Thai regime. Thus, one plausible scenario is that rural voters may seat a substantial portion of Representatives in the House, only to have these Representatives thwarted by a hostile Senate and Prime Minister. As a result, it still remains quite possible for serious frustration to foment among Thai voters and for political elites to stoke this anger to their advantage.

One potential counter to the above arguments is that Thai citizens may be more reluctant to rally against military officials who, for reasons outlined above, will likely have a significant role in future Thai governments. To be sure, the Thai military is a broadly-respected facet of Thai society. Although the military does not hold the same lofty, incontestable status as the monarchy, it is nonetheless able to command a great deal of deference<sup>111</sup> (although not universally so, given Red Shirt anger at military officials who overthrew their elected governments). However, such respect may be diluted by attempts to wield it in the political sphere. For example, although General Prayuth has served as the de facto head of Thai government during his tenure as the leader of the NCPO, his relationship with an elected legislature is likely to be fundamentally different than his relationship with a friendly, NCPO-appointed legislature. Prayuth or another military Prime Minister will inevitably be drawn into the political fracas, a potential ally or foe to voters' chosen legislators. Therefore, it is improbable that a potential Prime Minister Prayuth would be spared voters' ire simply by virtue of his association with the military.

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<sup>111</sup> This was a common outlook expressed by many individuals with whom I spoke in Thailand, including Siriphon Kusonsinwut, a Royal Thai Police official, who noted that Thai police must show absolute deference to Thai military officials. Interview with Siriphon Kusonsinwut in Bangkok, Thailand (Mar. 16, 2018).

### C. International Pressures Are Unlikely to Discourage Future Coups

In assessing the future of the Thai political system, it is also worth considering how international pressures might interact with the domestic scheme. For instance, the 1997 Constitution was promulgated in an era of renewed openness to international relations. That same year, Thailand ratified the International Covenant on Civil and Political Rights,<sup>112</sup> signifying a commitment to international democratic norms. Thailand had also increasingly opened itself up to international economic partnerships. Indeed, in the wake of the 1997 Asian Financial Crisis, Thailand called upon the aid of the International Monetary Fund in reviving its beleaguered economy.<sup>113</sup> Thus, in 1997, domestic and international pressures aligned to produce a robust, rights-friendly governing text.

Conversely, it is unlikely that current international pressures will prove productive in promoting healthy democratic norms in Thailand, for two central reasons. First, key international players have abdicated their previous roles as advocates for democracy.<sup>114</sup> For instance, the United States has transitioned from an icy, distant relationship with Prayuth and the NCPO under the Obama Administration to an embrace of the Thai junta by the Trump Administration.<sup>115</sup> Previous American pushback against military intervention in Thailand's democratic governance was arguably rather tepid.<sup>116</sup> Both the Bush and Obama State Departments issued relatively toothless statements following

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<sup>112</sup> International Covenant on Civil and Political Rights, *supra* note 11.

<sup>113</sup> Hewison, *supra* note 18, at 238.

<sup>114</sup> The Trump Administration's recent decision to withdraw from the United Nations Human Rights Council offers a potent example of this retreat. See Gardiner Harris, *Trump Administration Withdraws U.S. From U.N. Human Rights Council*, NEW YORK TIMES, June 19, 2018, <https://www.nytimes.com/2018/06/19/us/politics/trump-israel-palestinians-human-rights.html>.

<sup>115</sup> Sofia L. Persio, *President Trump Meets Thailand's Military Ruler, an Autocrat Shunned by the Obama Administration*, NEWSWEEK, Oct. 2, 2018, <http://www.newsweek.com/president-trump-welcomes-thailands-military-ruler-yet-another-autocrat-white-675634>.

<sup>116</sup> See, e.g. Congressional Research Service, *Thailand: Background and U.S. Relations*, CRS Report No. RL32593, 3 (July 31, 2015) (noting the view that the United States response to the 2006 coup was "relatively mild").

the 2006<sup>117</sup> and 2014<sup>118</sup> coups respectively, declaring in each case the United States’ “disappointment” with the intervention and that the military had “no justification.” The Obama Administration also withdrew a small amount of foreign aid.<sup>119</sup> However, the Trump Administration is clearly unlikely to offer even this modest level of pushback.

Second, Prayuth and the NCPO have proven unwilling to address substantive criticism from international bodies such as the United Nations. This is not to say, however, that junta leaders are utterly unconcerned with their international image. For instance, in our interview, the Spokesman of the Drafting Committee spoke at some length regarding the NCPO’s desire to address a downgrading of Thailand’s National Human Rights Commission from A to B in the Global Alliance of National Human Rights Institutes (GANHRI) accreditation.<sup>120</sup> However, this accreditation does not measure a nation’s substantive human rights record; rather, grading of NHRIs reflects compliance with the “Paris Principles,” a set of generic mandates and procedural requirements.<sup>121</sup> Indeed, a number of nations with poor human rights records earn an “A” grade in NHRI accreditation.<sup>122</sup> Thus, the Thai regime could conceivably commit to improving its accreditation without addressing any of the substantive, anti-democratic rights abuses it has engaged in since 2014.

On the other hand, the NCPO has shown little interest in addressing substantive critiques of its rights records. Both non-governmental watchdogs and international governing agencies, including

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<sup>117</sup> *Thai Army Pledges Return to Democracy*, Al Jazeera, Sept. 20, 2006, <https://www.aljazeera.com/archive/2006/09/2008410151947442331.html> (noting State Department spokesman Tom Casey’s statement following the 2006 coup).

<sup>118</sup> *Thailand: Background and U.S. Relations*, supra note 116, at 2 (noting Secretary of State John Kerry’s statement following the 2014 coup).

<sup>119</sup> *Id.* at 2–3.

<sup>120</sup> Interview with Norachit Sinhaseni, supra note 101.

<sup>121</sup> Global Alliance of National Human Rights Institutes, *Paris Principles*, available online at: <https://nhri.ohchr.org/EN/AboutUs/Pages/ParisPrinciples.aspx>

<sup>122</sup> The GANHRI ranking awards Egypt and the Russian Federation with “A” grades; Freedom House ranks both of these nations as “Not Free.” See Freedom House, *Populists and Autocrats: The Dual Threat to Global Democracy* (2017), <https://freedomhouse.org/report/freedom-world/freedom-world-2017>; Global Alliance of National Human Rights Institutes, *Status of National Institutions* (May 26, 2017), [https://www.ohchr.org/Documents/Countries/NHRI/Chart\\_Status\\_NIs.pdf](https://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf);

the UN, have taken the NCPO to task for its poor rights records. For instance, the Office of the United Nations High Commissioner for Human Rights has issued a number of reports critical of the NCPO, alleging “draconian” use of powers and describing “severe restrictions” of the rights to freedom of assembly and association, civilian trials in military courts, and the jailing of critics.<sup>123</sup> Similar accusations were leveled against Thailand in a meeting of the United Nations Human Rights Council. In response, Thailand’s representatives defended the junta’s actions, asserting that measures were put into place only to address those who seek to “stir up violence.”<sup>124</sup> Thailand vaguely committed to implementing some of the Council’s recommendations, but there is little evidence that the leadership of the NCPO has taken steps to improve its human rights record.

Thus, although Thailand’s regime does show some concern for its international reputation, there is little proof that military leadership is concerned about substantive critiques of its rights records. As a result, international pressures will do little to thwart the creeping authoritarianism of the military regime. This trend has important ramifications in the context of Thailand’s historical coup cycle. As illustrated above, there remains a substantial chance for turbulence in future Thai politics. Given military leaders’ lack of concern for the international human rights community’s critiques, there is little reason to suspect that the military will think twice about cracking down and ousting yet another democratically-elected government. The confluence of factors illustrated above thus casts serious doubts on the NCPO’s claims that its reforms will introduce newfound stability in Thai governance. Should Thailand finally return to democratic governance, future military coups will remain a distinct possibility.

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<sup>123</sup> See, e.g. *Thailand: UN Rights Chief Warns against Government’s ‘Draconian’ Powers*, Apr. 2, 2015, <https://news.un.org/en/story/2015/04/495102-thailand-un-rights-chief-warns-against-governments-draconian-powers>; *Thailand: UN Rights Office Calls for ‘Prompt Return to Civilian Rule,’* Aug. 19, 2016, <https://news.un.org/en/story/2016/08/537052-concerned-curbs-free-expression-thailand-un-rights-office-calls-prompt-return>.

<sup>124</sup> Amy S. Lefevre & Patpicha Tanakasempipat, *Thailand Defends Rights Restrictions at U.N. Review*, REUTERS, May 10, 2016, <https://www.reuters.com/article/us-thailand-un-rights-idUSKCN0Y2095>.

## V. Conclusion

As this paper has argued, there are significant reasons to doubt that the junta's 2017 Constitution will put an end to Thailand's coup cycle, presuming the NCPO in fact allows elections to proceed. First, the urban/rural divide at the heart of recent political turmoil will very likely persist. If either voter base gains substantial power in the new government, the other side will be likely to take to the streets. Second, the military is trading the authority of political parties (and theoretically party bosses like Thaksin) for the influence of military leaders in the legislature and perhaps the Prime Minister's office. The Democrat Party is already unhappy about this arrangement. It remains to be seen whether rural Thais—the PTP/PPP/TRT power base—will be any more amenable, but there is sure to be lingering resentment over the ouster of Thaksin and Yingluck. Finally, international pressures are unlikely to be productive for two reasons. First, players on the international stage (especially the United States under the Trump Administration) have retreated from advocacy for democratic norms. Second, the NCPO government has paid little more than lip service to international pressure while focusing on superficial measures like the GANHRI grading.

It is worth remarking, in closing, that Thailand is not alone in its retreat from democratic ideals. A trend of authoritarian backsliding in recent years has been observed and remarked upon by scholars of international law.<sup>125</sup> Thailand's late illiberalism may be particularly disheartening in light of the nation's recent full-throated endorsement of democratic ideals, but it is not unique. Moreover, should Thailand return to the spirit of the 1997 Constitution, difficulties will likely persist. The long-standing tension between the Red Shirt and Yellow Shirt factions will almost certainly spill over into electoral politics. Bridging the divide will, at the minimum, require addressing the economic disparity

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<sup>125</sup> See, e.g., Jeff D. Colgan & Robert O. Keohane, *The Liberal Order Is Rigged: Fix It Now or Watch It Wither*, 96 FOREIGN AFF. 36 (2017) (noting a global trend towards illiberal populism).

between the nation's urban and rural sectors as well as outreach from urban political elites to the rural Thai voter base.

And yet, it is also worth revisiting the remarkable 1997 moment. In the face of an uneasy populace and drastic regional economic decline, factors often associated with descent into autocracy, Thailand choose to launch a bold experiment in democratic governance. Like all others before it, this experiment proved messy. Even the hopeful vision of the People's Constitution could not overcome nearly a century of military interference in government. Thus, democracy in Thailand will have a difficult road ahead—undoubtedly exacerbated by the authoritarian overtures of the NCPO—despite the residual 1997 institutions that continue to endure. However, in my time in Thailand, I met numerous passionate scholars and ardent activists yearning for a return to self-determination by the Thai people. In an era of swelling illiberalism, their voices, and the example of the 1997 People's Constitution, will continue to provide hope for a resurgence of democratic ideals in Thailand and across the globe.