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Military coup a disaster for the rule of law and human rights in Thailand

1. Respect for human rights and the rule of law in Thailand were set back many years with the return to power by the military on September 19. Within hours of taking power, the army abrogated the 1997 Constitution, abolished a superior court, banned political assemblies, restricted movement and authorised censorship. It imposed martial law, which remains in effect in over half of the country's provinces, in addition to the Emergency Decree already operative in the south.

2. The 1997 Constitution marked a great advance in the thinking of people in Thailand on constitutional issues and the management of their society. It enriched the behaviour of millions. It also constituted a great advance in the notion of consensus. Whereas "consensus" had earlier been understood in terms of patronage--what the elite decided on behalf of everyone else--it was now understood as mature agreement among the general public. Ordinary people throughout the country soon demonstrated a better grasp of the true meaning of consensus than had the traditional authorities.

3. By contrast to the 1997 charter, the October 1 interim constitution has returned Thailand to its fictional constitutional order, re-securing power for the military elite while trying to give the opposite impression. The charter granted the remodelled junta authority of appointment and decision making over the heads of any new government. Meanwhile, the interim legislature has been rightly named "the assembly of generals". Out of 242 members, 76 are serving or retired generals and senior officers. Most other members are bureaucrats, businesspeople and some academics. By contrast, there is one labour representative, and four from political parties.

4. In November 2006 the interim prime minister, General Surayud Chulanont, said that his government "is committed to restoring the rule of law" through reforms to administration of justice, the police and anti-corruption agencies. One of the key features of the rule of law is that every person is equal before the law. This notion entails that no person is above the law. It implies that all persons, without regard to rank or other conditions, are subject to the ordinary law under the jurisdiction of the ordinary courts. However, under section 37 of the interim constitution, the September 19 coup leaders and all persons assigned or ordered by them--General Surayud included--are exempt from any form of legal sanction for any actions before, during or after the coup.

5. Section 37 of the interim constitution is a direct contradiction to the rule of law. It places the coup group and its people beyond the reach of the ordinary laws and courts. It also contradicts the junta's commitment to United Nations treaties. The very essence of article 2 of the International Covenant on Civil and Political Rights, to which Thailand is a party, is the even application of law and ending of sweeping impunity for criminal offences. Thailand has already been harshly criticised for shielding soldiers and police who commit human rights violations while operating under emergency regulations. The amnesty therefore flies in the face of the country's obligations and does nothing to abate fears that army officers and police in Thailand are above the law.

6. In the absence of a sovereign parliament, who is making the law in Thailand? Certainly no one answerable to its people: an unelected assembly of military and police officials, bureaucrats and academics is acting on their behalf. No evidence of the rule of law there, either. Nor is there any to be found in the generals' understanding of the meaning of judicial "independence". They appear to think that having abolished the constitution and disbanded one of the country's three highest courts, ordering the establishment and composition of a new tribunal in its stead, judges can be made independent by virtue of saying that it is so.

7. As opposed to the 1997 Constitution, the interim constitution offers no guarantees for judicial independence. Nor does the junta have any genuine interest in such matters. Its appointing of a new constitutional tribunal instead defies the very notion of judicial independence. Its orders to various government agencies to go after members of the former government have revealed that its interests are limited to the exercise of "justice" as justification for its own illegal acts, rather than to uphold any notions of the rule of law.

8. The Asian Legal Resource Centre unequivocally condemns the reassertion of military power and again urgently calls upon the Government of Thailand to pull the country back from the very dangerous point to which it has taken it and lift martial law across the entire country without further delay and retract the Emergency Decree over the southern provinces.

9. Beyond these immediate steps, the overwhelming challenge for the people of Thailand is to restore to the country the seeds for the rule of law and genuine constitutionalism from which the 1997 Constitution emerged, and struggled to grow up to when it was cut down in 2006. That challenge will only be met once military rule is ended. How long that takes depends largely upon how long the public is prepared to endure a cabal of generals who say one thing and do the opposite, disbar abuse of power and enjoyment of corrupt practices by anyone other than themselves, encourage the free sharing of opinions that don't contradict their own, permit public participation in a rigged constitution-writing process, and allow the judiciary to be independent so long as it does what they want.