

Wreck/Conciliation? The Politics of Truth Commissions in Thailand

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*More than ninety people died in political violence linked to the March–May 2010 “redshirt” protests in Bangkok. The work of the government-appointed Truth for Reconciliation Commission of Thailand (TRCT) illustrates the potential shortcomings of seeing quasi-judicial commissions as a catch-all solution for societies struggling to deal with the truth about their recent pasts. The 2012 TRCT report was widely criticized for blaming too much of the violence on the actions of rogue elements of the demonstrators and failing to focus tightly on the obvious legal transgressions of the security forces. By failing strongly to criticize the role of the military in most of the fatal shootings, the TRCT arguably helped pave the way for the 2014 coup. Truth commissions that are unable to produce convincing explanations of the facts they examine may actually prove counterproductive. Following Quinn and Wilson, we argue in this article that weak truth commissions are prone to politicization and are likely to produce disappointing outcomes, which may even be counterproductive. **KEYWORDS:** truth commission, fact-finding, reconciliation, transitional justice, investigation, recommendations, Thailand*

FROM MARCH 14 TO MAY 19, 2010, TENS OF THOUSANDS OF RED-shirt wearing protesters, aligned with former prime minister Thaksin Shinawatra (2001–2006), held mass demonstrations on the streets of Bangkok. In total, around ninety-two people were killed in violence associated with the protests (TRCT 2012b, 91), mainly—though not entirely—unarmed civilians, apparently shot dead by members of the security forces. In July 2010, then prime minister Abhisit Vejjajiva established a number of high-level committees to address a range of contentious issues in the wake of the recent violent crackdown on

redshirt protesters in Bangkok. The most enduring and important of these committees was the TRCT, headed by ex-attorney general Kanit na Nakorn. The core mission of the TRCT was to engage in fact-finding concerning the bloodshed during April and May 2010. On September 17, 2012, the TRCT issued a long-awaited report on the violence.

A nongovernmental organization, the People's Information Center (PIC), had already published an alternative report the previous month. The PIC team of researchers comprised academics and activists who were broadly sympathetic to the protesters. Their report, produced on a shoestring budget, used a lot of mapping and visual evidence, in contrast to the text-based style of the TRCT. Their emphasis was on telling the story of the crackdown from the perspective of the victims of violence.

In this article we explore a number of critical questions about truth commissions, using Thailand's 2010–2012 TRCT and People's Information Center processes as a primary illustration. Following the violent suppression of the 2010 political protests in Bangkok, two rival investigative reports were produced: one by the TRCT, the other by the PIC, an unofficial group. In this article we examine the work of the two bodies, offering an exploration of elite perspectives and stakeholder responses to the processes and politics of the two commissions and their reports.

Typically, truth commissions emerge following democratic transitions in which the outgoing authoritarian incumbents have been defeated. But the circumstances in which the Thai commissions emerged were quite different: forces still operating in the political system, notably the military, were strongly implicated in their findings. In such settings, the potential for politicization is clearly higher.

The existence of competing truth commissions, as in this case, makes it virtually impossible to establish *the* truth. The Thai case also illustrates the limits of what a truth commission can do with respect to possible prosecution of the culpable parties, linked both to the mandate of the commission and the political forces in operation. In these circumstances truth commissions may have the effect not of promoting reconciliation, in the form of greater agreement about the past, but of fueling broader polarization as differences become exaggerated. The political upheavals Thailand faced from November 2013 onward, culminating in the military coup of May 22, 2014 (see Montesano 2014), illustrate not just a failure of reconciliation, but an intensification of conflict to which the reconciliation process con-

tributed. We argue that the Thai case reveals the potential for politicization that is inherent both in truth commissions and in the associated discourse of “reconciliation.”

Truth Commissions

Truth commissions are a growth industry; Patricia Hayner (2011), a leading proponent, lists forty such commissions established to date. These commissions have offered a way forward for numerous societies struggling to cope with a history of mass violence, a middle way between a simple committee of inquiry and a fully fledged judicial process. Hayner defines a truth commission as dealing with a pattern of past events, rather than a single event or an ongoing issue (Hayner 2011, 11–12). Ernesto Verdeja (2009, 112–113) suggests that truth commissions may

1. Produce an accurate public record of a country’s past crimes.
2. Provide therapeutic benefits for victims.
3. Incriminate perpetrators, shaming and publicly stigmatizing them.
4. Contribute to societal reflection and healing in society itself.
5. Provide policy recommendations for institutional reform and restructuring, as well as reparations programs for victims.

Recent trends among truth commissions include a growing emphasis on the fourth of these goals—“reconciliation” (Hayner 2011, 182), and an increasing tendency to examine “historical and societal factors and consequences” underlying a pattern of violence or abuse, rather than simply finding out exactly what happened (Hayner 2011, 235–236).

The literature on truth commissions can be broadly divided into two camps: one that stresses the desirability of ideal-type “strong” commissions, and another camp that focuses on the failings of “weak” commissions, which seem rather more common. On the one hand we have a literature that suggests the conditions under which truth commissions will succeed; on the other hand, we have ample circumstances where these conditions simply are not met.

Strong commissions—Hayner places South Africa, Guatemala, Peru, Timor-Leste, and Morocco in this category—have enjoyed some combination of a strong sense of purpose, considerable public engagement, and well-crafted recommendations that resonated widely.

Like Verdeja's upbeat checklist, Hayner's arguments about truth commissions are based on an ideal-type strong commission, against which other commissions may be measured. Indeed, Hayner helpfully includes a table in which she highlights the ideal features of strong commissions, which include substantial material resources:

- A budget in excess of \$5,000,000.
- At least 101 staff.
- An operating period of between two and three years.
- Powers of investigation (subpoena, search and seizure, witness protection).
- Power of reporting (naming perpetrators and making mandatory recommendations).
- A broad mandate of substantive inquiry (Hayner 2011, 285–286).

To these might be added a number of other features: a tight focus on a “closed,” historical pretransition episode or epoch;¹ a high degree of public buy-in; extensive, broadly sympathetic media coverage; significant domestic political support; limited overt interference or politicization; robust international backing; and a monopoly in the truth-seeking business locally. Strong commissions ought to be well placed to support successful consolidation following political transitions, to help achieve consensus about what the country has experienced, and to promote reconciliation.

But what about weak commissions, which possess few, if any, of these ideal features? Hayner acknowledges that truth commissions are now being created too rapidly, with poor procedures for selecting commissioners or badly crafted terms of reference (Hayner 2011, 236–237). Yet as a cheerleader for transitional justice, she seems reluctant to ask whether weak commissions might actually be harmful, exacerbating conflict and facilitating further rounds of violence. Is any truth commission really better than no truth commission at all?

Joanna Quinn has developed a detailed normative model for assessing truth commissions, based on the extent to which they foster a politics of acknowledgment. Such a politics involves “coming to terms with the past, emotional response, and memory and remembering” (Quinn 2010, 16). She is optimistic that if acknowledgment can be achieved, “deep rooted conflicts that have served to paralyse that society” can be defeated (Quinn 2010, 33). But after applying her model to actual commissions in Uganda and Haiti, she concludes that

“truth commissions may not be the vehicle they are hoped to be” (Quinn 2010, 11). On Uganda, she wrote, “As a testament to the ineffectual performance of the Commission, all of its documents now resided in a locked, bug-infested cabinet, forgotten by everyone” (Quinn 2009, 366). She argues that the commissions she studied failed to foster a politics of acknowledgment, fell far short of the normative bar, and raised questions about how appropriate the mechanism of a truth commission was for these cases (Quinn 2010, 144–147). Simply put, both commissions illustrated a serious lack of political will. Unlike Hayner, Quinn does not hesitate to term some truth commissions “successes” and others “failures.” David Mende-loff goes further, urging transitional justice experts to “curb their enthusiasm” for truth commissions: “truth-telling may have value, but it is likely limited” (2004, 376).

“Reconciliation,” which appears in the title of at least fifteen different truth commissions to date, is a particularly problematic concept. David Bloomfield refers to it as a “grossly overpacked term” (2006, 4), while Argentinian human rights activist Juan Mendez argues that reconciliation is a “code word for those who wanted nothing done” (cited by Hayner 2011, 188). Andrew Schaap (2008) has argued that reconciliation privileges the existing order and enforces commonality. Adding the word *reconciliation* to the title of a truth commission means the bar of expectations is raised higher, and so the possibility of failure is arguably greater.

By closely scrutinizing a weak truth commission that failed to live up to its own mandate, this article adds to the growing body of more realist literature that is highly critical of truth commission proliferation in practice. We argue that ultimately the TRCT shared too many features of weak commissions, failed to gain the trust of key actors on different sides of the political divide, and appeared unwilling to confront the military directly over its role in the 2010 violence. This *de facto* exoneration of the military had the perverse effect of helping create the conditions for the coup.

The TRCT

The TRCT was established by the Abhisit government in the aftermath of the April–May 2010 violence. TRCT chair Kanit was a distinguished jurist with a German doctorate, the author of numerous books on the Thai legal system, who had served as a deputy party leader of Thaksin’s Thai Rak Thai Party—only later to part ways

with the former premier.² In 2007 Kanit chaired an investigation into Thaksin's "war on drugs" policy, which he declared was undoubtedly a "crime against humanity" (Kanit 2012, 2). His drug war committee produced only a preliminary report before being wound down by the incoming administration in early 2008.³

At the core of the TRCT was the Fact-Finding Committee, which aimed to produce a definitive account of the bloody events of April–May 2010. Kanit provoked controversy early on by saying that he was not intending to apportion blame to particular individuals—a statement that led critics to question both his own sincerity and the value of the TRCT process.⁴ Kanit, however, insisted privately that his statement had been part of a strategy to secure cooperation from a range of informants, especially those from the military and security forces. Kanit strongly believed that violent incidents needed proper investigation. He was bitter that the May 1992 report he had helped write never saw the light,⁵ and only agreed to chair the TRCT on condition that the commission's report be published.

Kanit personally selected the eight other commissioners, including Dr. Kittipong Kittiyarak, permanent secretary of the Ministry of Justice, and Somchai Homla-or, chair of the Campaign Committee for Human Rights and Thailand's most prominent human rights lawyer.⁶ Most of the commissioners had long-standing interests in issues of legal reform. None represented or was even personally sympathetic to the United Front for Democracy Against Dictatorship (UDD), the main redshirt organization (Haberkorn 2011, 4). As Somchai Homla-or admitted, the commissioners were essentially "people who don't like Thaksin."⁷ Several prominent figures close to the redshirt and yellowshirt movements had declined to serve.⁸

The fact-finding subcommission of the TRCT, chaired by Somchai Homla-or, received information primarily from field reporters, low-ranking members of the military, medical professionals, and victims and relatives of victims from the 2010 protests, rather than from redshirt leaders—some of whom mistrusted both the commission and Somchai's own role in the fact-finding process. Very little victim testimony was used in the final report. Even though the commission was set up under Abhisit, former members of the Committee for the Resolution of Emergency Situation (CRES, the organization that coordinated the official response to the protests) and the Royal Thai Police provided little cooperation until Yingluck Shinawatra's government came to power in August 2011, after which the TRCT gained better access to information.⁹

Tyrell Haberkorn was critical of the way the TRCT worked, especially the commission's location in an inaccessible bureaucratic complex:

In addition to the issue of distance, although the TRCT presents itself as an independent agency, holding the hearings at the Government Complex means that those who attend the hearings, who may be survivors of state violence, must enter a state space in order to give testimony about the violence they experienced. Although the name of the TRCT makes it sound like the South African Truth and Reconciliation Commission (TRC), the TRCT offers few of the protections for those who share information or the promises about truth-sharing and accountability with Thai society in a broader sense that the TRC offered South Africans. (Haberkorn 2011, 5)

The very title of the TRCT was a source of controversy; while sounding rather similar to the South African TRC, the phrase “truth *for* reconciliation” suggested that the purpose of finding out truth was to achieve reconciliation. In practice, as Somchai acknowledged, there was a structural tension between these two objectives.¹⁰ Richard Wilson has strongly criticized the South African TRC for trying to incorporate the notions of human rights into a nation-building project in which the discourse of reconciliation helped foster a culture of amnesty and impunity (2001, 230). The challenge for the TRCT was to avoid the same danger: nurturing a climate in which impunity could continue to thrive.

Plagued with controversy from the outset, the commission struggled to obtain evidence and testimony from key actors, and especially from the military. The TRCT pushed the envelope much further than previous bodies, such as the Black May 1992 investigation committee on which Kanit had served;¹¹ or the 2005–2006 National Reconciliation Commission (NRC) set up to examine the conflict in the south of Thailand. The NRC's report had contained a muddled analysis and few workable recommendations (McCargo 2010). But while its report was largely forgotten, the main legacy of the NRC was to help foster a discourse of reconciliation.

Thaksin's creation of the NRC in 2005 had failed to head off a growing conflict with the country's traditional elite. The ebullient telecommunications magnate's polarizing approach to politics had alienated key players among the monarchy, military, and judiciary. Nineteen months later he was ousted in the September 19, 2006, military coup, a seismic event that unleashed tensions between pro-

Thaksin and anti-Thaksin factions played out by color-coded demonstrators (red and yellow shirts, respectively) that reverberate to the present day. The military crackdown of 2010 and the subsequent heavy-handed use of the justice system to harass and even incarcerate those of redshirt sympathies created unprecedented levels of social conflict.

In its wake, the Truth for Reconciliation Commission of Thailand was given the following mandate:

1.3.1 Investigate and determine the truth about the violence that occurred during April and May 2010. In addition, determine the root causes and precedents of the conflict and violence in the country.

1.3.2 Recommend both short- and long-term restoration measures for individuals, groups, organizations, and institutes that were affected by the violence.

1.3.3 Recommend measures to reduce social conflict and prevent future violence and loss from occurring. (TRCT 2011, 2)

The official mandate of the TRCT addressed only Verdeja's points 1 and 5; points 2 and 4, with their emphasis on reconciliation, were technically beyond the TRCT's remit, as was the "naming and shaming" suggested in point 3. Verdeja also noted that a truth commission needs to generate public debate to be effective, and must not be "normatively overburdened" with the responsibility for a process of reconciliation (Verdeja 2009, 119). But despite its narrow formal mandate, the TRCT "overburdened" itself by engaging in the rhetoric of reconciliation, though not in its substance.

The TRCT asserted "the importance of implementing a system of transitional justice which is a mechanism for promoting the principles of justice in special situations" (TRCT 2011, 24). But in what sense exactly was Thailand a "transitional" regime? The government responsible for the 2010 crackdown created the TRCT, and power only changed hands following the 2011 elections (for a relevant discussion, see Sriram 2004, 202–212). Thailand's political conflict was still ongoing,¹² so Thailand was not at a "post-accord" stage (Borer 2006, 5–10). From the outset, there was a mismatch between the language of transitional justice appropriated by the TRCT and the political realities the commission faced. Abhisit and his government were swept from power in the July 3, 2011, elections, replaced by a new administration fronted by Thaksin's sister Yingluck Shinawatra. The Yingluck government, ironically, often seemed more supportive of the TRCT than the administration that had created it.¹³

The Reports

Unusually, the 2010 violence in Thailand resulted in two contrasting reports, one produced by the TRCT, another by the People's Information Center. The PIC was established by a group of academic and social activists who broadly sympathized with the protesters; their report, issued in August 2012, was entitled *Truth for Justice*—a deliberate play on the name of the TRCT (PIC 2012).¹⁴ At the heart of the differences between the two reports lay disagreements about the kind of agency underpinning the violence. Just as importantly, they illustrated contrasting approaches to the task of truth-telling.

The TRCT had a total budget of nearly \$2.7 million (77 million baht), of which they had used just over \$2.27 million (65 million baht) by September 2012 (TRCT 2012b, 15–16). Approximately \$870,000 (25 million baht) had been spent on fourteen research projects into “root causes.”¹⁵ By contrast, the PIC had a total budget of around \$41,000 (1.2 million baht),¹⁶ from which they had produced a far longer and more detailed report than the TRCT—though their report was assembled by a team of volunteer chapter authors, and its quality was uneven.

In its first interim report, the TRCT opened by highlighting five key objectives of its mission, including the following:

2.1.3 To prove to the international community that despite such a serious dispute, Thailand is capable of solving this problem through developing their own impartial arbitration in the form of “an independent commission” while not rejecting appropriate and necessary forms of cooperation with friendly countries, particularly in the area of academic cooperation. (TRCT 2011, 4)

The image-building dimension of the commission's work was made surprisingly explicit here—a desire to “prove to the international community” that Thailand was capable of creating a genuinely independent commission. This was both an ambitious and a troubling objective, given widespread skepticism that an independent commission could be created, and that some of the commission members were genuinely impartial. The emphasis on image creation also raised questions about the extent to which the TRCT was approaching its task of truth recovery with the necessary conceptual clarity (Smyth 2007, 23). Proving something to the international community was hardly a plausible rationale on which to build a truth commission. Apparently to this end, the TRCT invited a number of prominent foreign experts on transitional justice, including Priscilla

Hayner and Howard Varney, to provide input on questions of process. Of less obvious relevance were subsequent high-profile international guest speaker invitations—for example, to former UN secretary-general Kofi Annan.

Rather than calling for reform of the Thai justice system as a whole, the TRCT suggested the exceptional conditions of intense political conflict meant that variations in normal practice might be adopted with respect to certain kinds of legal cases. The question of compensation loomed large in the work of the TRCT. After the Yingluck government announced that the relatives of all those who died would receive 7.5 million baht, most settled for this amount rather than pursue any further claims through the courts.¹⁷ The military expressed dissatisfaction: widows of soldiers killed in action received far less. The 7.5 million baht figure did not originate from the TRCT, but was popularly associated with the work of the commission in the public imagination. Such a compensation policy could serve as a shortcut response by the government, literally buying off criticism, notably from among its own grassroots supporters. This was reminiscent of Thaksin Shinawatra's hasty promises as a prime minister to compensate the families of those killed by the military in the botched 2004 Tak Bai arrests, payments that were never followed up by a credible investigation or any punishment of those responsible. Compensation without accountability—or what Hayner termed “reparations without truth-telling” (2011, 178–179)—was a troubling response by the Thai state.

The creation of the Laksi special detention center in Bangkok for those charged with politically related offenses was a significant feather in the TRCT's cap. Opened in January 2012, the new detention center initially housed around fifty redshirts who had been charged with security-related offenses—but no yellowshirts, and despite Kanit's requests, no prisoners who had been remanded or convicted under Article 112 of the TRCT (*lèse majesté* cases). The authorities insisted that those charged under Article 112 were not “political,” unlike those accused of committing arson under emergency legislation. Kanit's call for reform of Article 112 was not echoed by all of his fellow commissioners;¹⁸ Kittipong, for example, argued that the time was not yet right to amend the *lèse majesté* law.¹⁹ Some of the inmates reported that physical conditions were significantly better than in normal Thai jails;²⁰ guards were sympathetic, and visiting regimes liberal, although there was no exercise yard at ground level. Both the compensation policy and the creation of the special prison

showed the willingness of the Yingluck government to cherry-pick suggestions for reconciliation, favoring headline-grabbing special initiatives over real structural reforms. Here lay the downside of invoking the politics of exceptionalism and the rhetoric of transitional justice—what precisely was Thailand transitioning to, or from?

After repeated delays, the TRCT published its 276-page report in September 2012.²¹ Pages 44–195 summarized its fact-finding process concerning the violent incidents of April–May 2010. The rest of the report comprised an introduction discussing mandate and methods and chapters on the root causes of the violence (TRCT 2012b, 198–217), compensation and the treatment of victims (TRCT 2012b, 218–238), plus a set of recommendations (TRCT 2012b, 239–275).

The fact-finding section was divided into seven subsections: introduction; chronology of political situations and violence; details of violent incidents between April and May 2010; the actions of “men in black” (henceforth MIB) using military weapons during the demonstrations; the behavior of demonstrators between March and May 2010; the use of the armed forces and military deployments to control and disperse the demonstrations; and findings on disappearance, torture, and rape cases (TRCT 2012b, 47).

The TRCT used various sources and methods, including documentary evidence and video clips, as well as in-depth interviews, inquiry hearings, focus group meetings, forensic science investigations,²² and statement-taking from victims and those affected by the violence. Nevertheless, there were problems. International forensic teams were only able to access partial medical reports and police investigation reports. Out of ninety-two deaths, for example, the TRCT received only sixty-two postmortem reports, with very few autopsy pictures. Only fifty police investigation reports on the fatalities were supplied to the TRCT, as black and white photocopies, and without pictures of the victims’ bodies; no actual bullet or ammunition fragments from victims’ bodies were provided (TRCT 2012b, 50). The TRCT had no subpoena powers to ask military and government officers to testify;²³ there was a lack of trust from UDD members; no witness protection program existed; material evidence had vanished or been destroyed; there were difficulties verifying photos and video clips, especially those posted on social media; and there were problems reconciling contradictory witness statements (TRCT 2012b, 51–52).

The TRCT asserted that the root causes of the conflict were linked to the Constitutional Court verdict of 2001, which had politicized then prime minister Thaksin Shinawatra’s assets declaration

case.²⁴ The TRCT's preoccupation with Thaksin seems at best tangential to the central questions surrounding the 2010 fatalities. There was relatively little focus on the reasons why Thailand's military has never been subject to real civilian control—surely another important root cause of the violence.

The report went on to examine particular cases from among the ninety-two deaths and 1,500 injuries.²⁵

The first controversial section of the TRCT report concerned its discussion of five incidents on April 10, 2010, in which 26 people died (21 civilians and 5 members of the armed forces), and 864 were injured (including more than 300 soldiers). According to the report, the incidents in front of Satree Wittaya school and Kok Wua intersection were escalated by the MIB, who shot an AK-47 at an army helicopter and launched M-67 and M-79 grenades into a military bunker, resulting in the deaths of five soldiers (TRCT 2012b, 96). This episode intensified violence between civilian redshirt guards and the military. Matters became worse in a backlash following the M-79 attack that resulted in five civilian deaths including the fatal shooting of Hiroyuki Muramoto, a Japanese Reuters journalist, using high-velocity bullets. In the report, the fact-finding team used visual imaging and an anonymous interview to support their argument that the MIB in Kok Wua and Dinso, associated with Seh Daeng and other UDD leaders, were responsible for the death of Colonel Romklao Thuwatham, for serious injuries to other soldiers, and for provoking an aggressive response from the military (see TRCT 2012b, 99–104, figures 8 and 9). This argument, however, was rejected by UDD leaders who questioned why no MIB had been apprehended, while TRCT information came only from state officials and foreign journalists.²⁶ Progressive academics argued that the discourse of MIB reflected a “license to kill” mentality adopted by the state toward the demonstrators.²⁷

The PIC report offered a very different picture of the April 10, 2010, incidents (PIC 2012, 66–117), arguing that the day's violence was caused largely by inexperienced and overconfident military officers, who tried unsuccessfully to disperse the demonstration using the principle of “regaining territory.” Their hardline tactics over many hours caused more confrontation and led to violence from both sides. While the PIC did not deny the existence of the MIB, they insisted that a number of people were killed on April 10 before the MIB appeared, obviously by members of the security forces (PIC 2012, 565). Blaming all the violence on the MIB would let the gov-

ernment and the military off the hook too easily (*Prachatai* 2012). The PIC report went on to argue that after April 10, the demonization of the redshirt protesters as terrorists infiltrated by armed militias exacerbated tensions and fueled further heavy-handed government responses (PIC 2012, 120).

The most controversial deaths in May 2010 occurred at Wat Pratumwanaram, a temple adjoining the Siam Paragon shopping mall. According to the TRCT report, six people were killed by high-velocity bullets fired either from the vicinity of Siam BTS station or the BTS tracks above the temple, which were under the control of the military. Using evidence from a Department of Special Investigations (DSI) report, both the PIC and TRCT concluded that the shootings were probably carried out by the military [TRCT 2012b, 149, 152; cf. PIC 2012, 352–374].²⁸ The reasons given for the shooting, however, were different. While the PIC argued that this shooting was a blatant example of the army's firing upon unarmed demonstrators and volunteer medics in defiance of the temple's having been declared a sanctuary zone, the TRCT asserted that this shooting was a result of continuing battle between the military and UDD security guards, as well as the MIB. The TRCT claimed this exchange of fire began at the Chalermphao intersection, and later continued with another round of shooting inside the temple grounds that night after the curfew started (see TRCT 2012b, 148–154; compare PIC 2012, 352–374).

The PIC argued that the Thai state did not adhere to the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement, when the military used deadly force rather than non-lethal weapons to control the protests (2012, 551). By contrast, the TRCT recognized the state's right to use force, but criticized the disproportionate and excessive use of force by the military (TRCT 2012b, 174–179). Although the TRCT was critical of the MIB, it also argued that CRES needed to take responsibility for the excessive use of force against civilian protesters during the April–May 2010 crackdown. Nevertheless, the theme of state and military responsibility did not loom large in the TRCT's report or recommendations.

Another issue concerned the definition of “peaceful demonstrations.” The PIC argued, by referring to international human rights standards, that peaceful protests could be defined very broadly (PIC 2012, 549–550); the fact that minority elements of the demonstrators had resorted to physical violence at certain junctures did not invalidate the overall character of the redshirt demonstrations as a peaceful protest, and did not justify the indiscriminate use of lethal

force by the authorities. The TRCT, by contrast, seemed to adopt a strictly Gandhian notion that the only peaceful protest was one that completely and totally rejected all forms of violence—a high standard for protesters to adhere to (TRCT 2012b, 262). While the TRCT viewed the 2010 crackdowns as examples of excessive use of force, the PIC viewed them as massacres, or as a series of extrajudicial killings.

The “Kanit Report”

The TRCT report was published in conjunction with a booklet-length “Message from the President and Commissioners,” featuring a thirty-nine-page personal statement by Kanit, written completely separately from the main report (Kanit 2012). Kanit argued that his experience with the May 1992 and drug war investigations gave him an understanding of the importance of “public accountability” (Kanit 2012, 11). At the same time, he also acknowledged his initial agreement with then deputy premier Suthep Tueksuban that “[he] will not take part in the process of identifying criminals” (Kanit 2012, 4).²⁹ In other words, naming names was ruled out from the very beginning of the TRCT’s work by the politicians who created it.

Kanit compared the legal conditions that led to Thaksin’s rise with those that facilitated the rise of Hitler in Germany during the 1930s. Comparing Thaksin with Hitler was extremely problematic, and Kanit seemed rather unaware that pushing this linkage was hardly conducive to promoting reconciliation.³⁰ The comparison was bound both to antagonize the redshirt movement, from whose ranks most of the victims of the 2010 violence had come, and to blind the TRCT’s critics to the value of its work—not to mention undermine the TRCT’s international credibility. Kanit concluded his report with six of his own recommendations to the government:

1. Thaksin must cease his political role.
2. The truth concerning abuses and violations of the legal system by Thaksin and the constitutional court must be divulged.
3. The Thai government must deal with past crimes against humanity.
4. The Thai government must deal with cases where criminals from Thailand, especially politicians and state officials, escaped to live abroad.

5. Improve laws that deal with foreign warrants for Thai citizens.
6. Introduce “trial in absentia” (Kanit 2012, 27–37).

All six recommendations were clearly directed at Thaksin, and none addressed the TRCT’s ostensible focus, the violence of April and May 2010. Kanit’s personal message served mainly to reinforce earlier misgivings about his impartiality.

Reactions and Public Debate

Responses to the TRCT report reflected continuing bitter divisions concerning how people saw, read, and interpreted the events of April and May 2010. The TRCT report’s launch event was a rancorous affair, at which commissioners were repeatedly challenged by a series of hostile questioners. The event encapsulated the controversies surrounding the commission’s work. Kanit opened the meeting by declaring that the TRCT report would be made available in full to the public—in sharp contrast with previous reports. He asserted that the commissioners, who were unpaid, had not wasted public money: “All of the work that we do here, we do on the basis of sacrifice.”³¹ Kanit then handed the floor over to Somchai, who gave an extended presentation on the work and main conclusions of the fact-finding subcommission. Somchai stressed that the TRCT commissioners were not “investigative officials” (*panakngansopsuan*); they were not seeking to bring wrongdoers to trial, but to get to the truth (*khwambenjing*) of what happened, and had produced the most credible and accurate report of its kind to date.

Of the ninety-two deaths examined by the TRCT, Somchai summarized that they comprised eight soldiers, two policemen, two journalists, and some ordinary citizens, while the great majority were redshirt protesters. The TRCT believed that nine deaths (including six soldiers and two policemen) were caused by the MIB, armed groups apparently aligned with the redshirt side. Many civilians were killed by bullets shot from areas where state officials were positioned. Somchai characterized one intense phase of killings—from May 13 to 18, when some forty-two people were killed—as an episode of “political violence.” He referred to the crackdown on May 19 not as “crowd dispersal” (*kansalaikanchum-num*), but the more euphemistic “clearing the area” (*kankrachap-pheunthi*), the term preferred by state security officials at the time. His presentation placed a lot of emphasis on the MIB, and criti-

cized the redshirt leadership for failing to ensure that their protest was truly nonviolent:

Though protesting is one of the rights in a democratic system, the leaders of protestors must make sure that the protest is within the legal and constitutional boundary. This requires that they work with the officials to ensure that the protest is peaceful and without weapons. . . . The right to protest is not a complete one; the state may circumscribe those rights as deemed fit to the situation. From April 10 onward, we observe that some protestors have resorted to violence and the stage speeches further incited violence. . . . The redshirt leaders did not try hard enough to stop violence. They did not cooperate enough with state officials; officials had to be disarmed before they could enter the protestors' zone.³²

Somchai concluded with some criticisms of the military: they should not have been brought in to control the protestors, should not have used weapons, and should not have fired live rounds. However, he ended on a conciliatory note:

The report does not intend to bring anyone to trial nor accuse or blame anyone. Rather, it seeks to reveal the truth that has been consolidated from all sides to the public. We want everyone to look forward, especially by considering the recommendations that we offer.

Many questioners argued that the TRCT was laying too much blame on the protest leaders, implying that they brought the violent crackdown upon themselves by their failure to ensure that the demonstrations were entirely peaceful. Somchai's injunction to "look forward" went down rather badly with much of the audience. Kanit's responses to their barrage of critical questions were rather brief, dismissing most of the criticism as counterarguments, which he did not have time to rebut. He urged Thaksin to follow the same "statesman"-like path as Pridi Banomyong, the towering political leader of the 1930s and 1940s who ultimately died in exile. Kanit said that he welcomed the responses, which were a good sign for the future progress of democracy, but despite his emphasis on the principle of public accountability, he seemed unwilling to account for anything further: the fact that the report had been published was apparently enough.

Some initial media coverage of the TRCT report was rather positive: one laudatory editorial hailed it as a "major and progressive

development from the past” (*Bangkok Post* 2012). The TRCT had made their findings public and had produced a very objective study, while criticisms of the report were themselves criticized as “self-interested.” But even the *Bangkok Post* acknowledged that the report was incomplete. Human Rights Watch researcher Sunai Phasuk described the TRCT report as “balanced” and “impartial,” but also noted the failure of the commission to build trust with all sides and the need for more communication with the public (see Pravit 2012; Poypiti and Fuller 2012).

On September 23, the PIC organized a discussion of the TRCT report at Thammasat University, in a room heaving with redshirt supporters.³³ Chulalongkorn University politics lecturer and PIC member Puangthong Pawakapan argued that the TRCT had a predetermined, formulaic narrative, which it used for the episodes of violence: the MIB provoked the military, causing them to lose control and shoot at protesters. Why did the TRCT not more explicitly condemn the state for the use of excessive force? Indeed, Somchai Homla-or had actually equated the violence to “an argument between a husband and wife,” which trivialized and downplayed what had taken place.³⁴ Sawatree Saksri³⁵ criticized the core approach adopted by the commission, a failure to engage in systematic analysis:

The analysis of what caused the political violence in these past years is bound to be subjective. If we are to find the truth, why certain things happened and developed as they did, one of the things that the TRCT should do to a great extent is to interview as many people involved as possible in order to learn what their perspectives are of the different institutions. The report however lacks such interviews and analyses. It lacks any analysis of perspectives and is instead filled with the perspectives of board members.

She argued that the report’s view of the redshirts as troublemakers who should cease their activities in order to end the problem reflected a core problem with the TRCT’s stance.

Most criticisms of the TRCT report could be summarized in the following claims:

1. The report offered a narrative in which the main victims—the redshirt protesters—were themselves blamed for the violence they experienced, largely because the redshirt movement was not an entirely peaceful one, but was supported by the MIB.

2. The report failed directly to examine whether the state's use of violence was proportionate to the circumstances, with reference to well-established international standards.
3. The report contained little criticism of state actors, especially the military commanders behind the crackdown and their political masters.
4. Even allowing for the fact that "truth" in this context might inevitably be plural and partial, the version of truth espoused by the commission was too incomplete or biased to be of any real value in promoting reconciliation.

The TRCT did make one passing, footnoted reference to the UN Basic Principles on the Use of Force and Firearms, which state that only minimum force can be deployed even in dealing with illegal and violent protests (TRCT 2012b, 189, fn 381), but these principles were not discussed at length. In an interview, Somchai insisted that they had consulted both domestic and international experts and convened a focus group to assess how far the redshirts had engaged in peaceful protests, and discuss what the TRCT ought to recommend.³⁶ The TRCT also clearly specified in its recommendations that the government should refrain from using the military to manage demonstrations. It stated that "officials in charge of crowd control must proceed according to recognised international principles and respect the rights and freedom of the people." However, these points were not always clearly made in the body of the report, which was read by critics as offering justifications for the use of state violence. There was no explicit recommendation concerning the deployment of weapons by the state, nor was the precise UN language about minimum force spelled out. The report's recommendations concerning the military were at a high level of generality. While the recommendations of the report were better received than the fact-finding chapter, they suffered from the same basic shortcoming as the report itself: they were too hard on the protesters and too soft on those who did most of the killing.

Instead of trying to counter these criticisms, TRCT members ascribed them to political partisanship on the part of their critics, loftily dismissing the numerous complaints. Using exactly the same formulation with which Somchai had opened his comments at the report launch, Kanit argued in an interview that most of the criticisms reflected a basic misunderstanding: people believed that the TRCT commissioners were investigators, when in fact they

were not.³⁷ A problem with Kanit's rejoinder lay in the original mandate of the commission, point 1 of which began with the words *truatsop lae khon khwamjing* (investigate and determine the truth).³⁸ Kanit insisted that the TRCT commissioners were not *phanakngansopsuan* (investigative officials, which is a legal term). In practice, his distinction between *truatsop* and *sopsuan* was rather legalistic; whatever the precise term to be used, most people wanted the TRCT to study the violence and indicate who was broadly responsible for what took place, whether or not actual names were named.

Ironically, the original letter from deputy premier Suthep Theuksuban to Abhisit Vejjajiva dated June 8, 2010, recommended setting up a commission chaired by Kanit and charged with "examining the truth and material evidence from all sides" (*sopha kho thaejing lae phayan lakthan jak tuk fai*) relating to the violent incidents. The term "material evidence" suggested that those who set up the commission did envisage a serious interrogation of the facts (TRCT 2012b, Appendix 1). That Suthep—who, as the director of CRES, was widely demonized by the redshirt side as the main figure behind the crackdown—had proposed such a thorough investigation was quite surprising. Yet the unwillingness of TRCT commissioners to engage in serious discussions with their critics meant that there was little fruitful debate concerning the report, which received only limited media interest.

The TRC and PIC were not the only bodies to issue reconciliation-themed reports and proposals in 2012. In late March 2012, King Prachadipok's Institute (KPI), a conservative parliamentary think tank best known for its bureaucratic research and training projects, issued a draft report on the prospects for sustainable reconciliation in Thailand, which was presented to a parliamentary committee (KPI 2012). The document was presented to a parliamentary committee chaired by former army chief and 2006 coup leader General Sonthi Boonyaratkalin. It contained a number of controversial proposals, notably a call for amnesty to be granted to all those involved in recent mass protests, both protesters and security personnel. The Sonthi report created uproar in parliament, and was eventually withdrawn by the KPI: by conflating reconciliation with a policy of general amnesty, it implied that fact-finding and truth-seeking were irrelevant to a lasting political solution.

In August 2013, the National Human Rights Commission of Thailand (NHRCT) issued a long-overdue eighty-eight-page report

on the 2010 violence (NHRCT 2013). The report was criticized for supporting the government crackdown on the demonstrators and failing to address the plight of victims (Achara 2013; Prach 2013). The NHRCT's report was much more problematic than that of the TRCT, embracing "rule by law" rather than "rule of law." Yet the troubling NHRCT report generated little public attention, a further indication of waning popular interest in the 2010 crackdown.

Conclusion

Political tensions during mid-2012 testified to the ambiguous condition of Thai politics, which appeared on the one hand deeply troubled, and on the other hand not yet at breaking point. Attempts to place proposed reconciliation bills at the top of the parliamentary agenda resulted in fisticuffs within the chamber on May 30, 2012; the move provoked antigovernment demonstrations by yellowshirt and pro-Democrat groups, which prevented legislators from attending parliament on June 1. After being shelved for over a year, reconciliation and amnesty remained on the parliamentary agenda; heated parliamentary debate on proposals began again in August 2013.

While the TRCT report (like its PIC counterblast) was an important document, it did not prove a game-changer in Thailand's troubled political order. By 2012, for many Thais, the question was no longer about uncovering the facts concerning the suppression of the redshirt demonstrations. The most salient issue concerned on what terms elite and social cohabitation could be brokered. Many Thais seemed ready to engage in the same kind of collective amnesia that had prevailed following previous violent crackdowns on protesters in October 1973, October 1976, and May 1992. Brokering cohabitation was not necessarily made any easier by accounting for the past. Cohabitation finally collapsed in late 2013, when attempts by the Yingluck government to push through a comprehensive amnesty bill helped trigger a protest movement that culminated both in her own judicial ouster on May 7, 2014, and in a military coup d'état two weeks later. The anachronistic return of the military was an extremely disappointing development, testifying to the complete failure of the national reconciliation process after 2010. Ironically, the military adopted the term *reconciliation* as one of its major themes, issuing summonses for redshirt supporters and other political activists to join so-called reconciliation meetings in a massive crackdown on dissent. The term had now become utterly debased.

The TRCT was ill-prepared to carry out the core task of fact-finding concerning the 2010 violence in Bangkok. The commission was simply too partial, and made little serious attempt to distance itself from a hardline anti-Thaksin position. Kanit's comments about Thaksin, both in interviews and in his personal report, served to fuel doubts about his suitability to chair the commission. This was not a normal truth commission, measuring violence and abuses against internationally agreed criteria, and cataloging violations by the Thai state. The TRCT was not really in the transitional justice business. The Abhisit government had asked for a classic national investigation committee. The TRCT was essentially an investigation committee created by the government, but one that appropriated some of the rhetoric of transitional justice without the tools, resources, or backing to engage in such a process very substantively. Given that it was essentially concerned with one issue—the 2010 violence—and that conflict around this issue was actively ongoing, the TRCT arguably failed to meet standard definitions of a truth commission.

Too much emphasis was placed on criticizing the demonstrators for their behavior, while the TRCT's recommendations had little to say about how to deal with the uniformed officers responsible for the great bulk of the fatalities. Although the TRC did address the improper role of the military in using violence to disperse the red-shirt demonstrations, the issue was raised only indirectly, and so misled many of the report's readers. Hayner describes the most common problem she found as "weak implementation of the often very strong recommendations of truth commissions" (2011, 6); in the Thai case, the recommendations themselves were mainly either weak or misdirected. Like the Ugandan and Haitian commissions studied by Quinn, the TRCT raised questions about whether a truth commission made sense for the Thai case. The stated goal of proving to the international community that Thailand could solve its own problems was certainly not met, especially in light of the TRCT's failure to publish a full English translation of its report.³⁹

In many respects, the PIC report was closer to the work of a typical truth commission, placing strong emphasis on the perspectives of victims, and on violations by state actors. Arguably, the PIC fell into the "category of unofficial inquiries that result in broad truth-telling" and proved at least as valuable as official commissions, something Hayner observes in other contexts such as Brazil and Guatemala (Hayner 2011, 16–17).

It goes without saying that the TRCT was not successful in promoting reconciliation; indeed, the controversy surrounding the TRCT report and the very effective counterblasts by the PIC demonstrated that even those in the fact-finding and truth-telling business were not at all reconciled. At the same time, promoting reconciliation is a tall order, and Tristan Anne Borer is surely right to argue that the presence or absence of reconciliation cannot be the touchstone by which the success of a truth commission is measured (2006, 30). But Borer's further caution that "it makes little sense to pronounce such attempts a failure" would let the TRCT off the hook too easily. Following the publication of the TRCT report, the PIC made various requests for a joint meeting or seminar to pool their ideas, perspectives, and resources. TRCT commissioners were completely unwilling to engage with them, arguing that they had already done their duty by producing their report.

The second of the TRCT's recommendations supported an amnesty in principle, while urging that caution should be exercised in the passing of any amnesty law, and arguing that any amnesty must be tightly delineated—a blanket amnesty would not be appropriate (TRCT 2012b, 245–246). By failing loudly to demand accountability for the 2010 violence, the TRCT paved the way for the government's disastrous 2013 moves to introduce a reconciliation bill, which was essentially an amnesty law. By failing to challenge military impunity over their violent abuses in 2010, the TRCT helped facilitate Thailand's return to military rule four years later; the army's claims to have been acting simply as a neutral enforcer of order went unquestioned. Far from promoting a culture of accountability, the TRCT effectively backed both impunity and amnesty. Ironically, in the short term the major beneficiaries of this pro-impunity stance were the Yingluck government and the pro-Thaksin forces, forces to which leading TRCT members were deeply opposed. The TRCT was doubly politicized: first by helping the Democrats to deflect attention from their government's culpability for the 2010 violence, and then by indirectly legitimizing the Puea Thai Party's efforts to push through amnesty legislation. As Wilson has argued, "The most damaging outcome of truth commissions is a result of their equation of human rights with reconciliation and amnesty" (Wilson 2001, 228). This was precisely the outcome of the TRCT, whatever the intentions of the commissioners.

Despite Borer's suggestion to the contrary, critically scrutinizing truth commissions is important if their shortcomings are to be iden-

tified and potentially avoided in the future. By adopting much of the language and rhetoric of truth commissions, and especially by employing the even more exalted discourse of reconciliation, the TRCT raised expectations that it was never equipped to meet. Without full-time, paid commissioners who had much broader societal backing, along with far more extensive cooperation from state agencies and greater acceptance from the victims, the TRCT was doomed from the start. With the benefit of hindsight, the commissioners might have focused tightly on their core fact-finding mission—setting aside “root causes” and “reconciliation”—and worked harder to bring key figures aligned with the redshirt movement on board. Without gaining trust from either the military or the protesters, the TRCT was in an impossible position. Unfortunately, provocative statements by leading members of the commission served only to exacerbate the TRCT’s difficulties.

The Abhisit government never wanted a truth commission,⁴⁰ and, in the TRCT, Thailand did not really get one. By failing to confront properly the issue of military impunity, the TRCT indirectly helped to prepare the ground for the 2014 coup. The limitations and biases of the TRCT helped to reproduce a culture of impunity and so pave the way for another military intervention, which might lead to further episodes of violence in the future. When a truth commission validates an existing impunity culture, history becomes more likely to repeat itself. The TRCT had a real opportunity to call Thailand’s powerful military to account, but it failed to use that opportunity effectively. At least in the Thai case, a weak truth commission has proved actively counterproductive as a means of reducing the prospects of future mass violence.

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Notes

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1. Rotberg saw truth commissions as playing a key role when “created after a totalitarian/authoritarian regime has been succeeded by a democratic one” (Rotberg 2000, 3).

2. Kanit na Nakorn, interview, October 3, 2012.

3. An English version of the drug war report has been published as *Extra-Judicial Killings of Drug Suspects in Thailand: Lawful or Willful?* (n.d.).

4. Kanit stated that his inquiry “is not aimed at finding who should be held responsible and to punish, but to establish the facts and educate Thai society.” *Straits Times* (2010).

5. Kanit interview.

6. The others were Dr. Jutharat Ua-amnoey, criminologist and assistant professor of sociology, Chulalongkorn University; criminologist Dr. Decha Sungkawan, dean of the faculty of social administration, Thammasat University; Manich Sooksomchitra, senior editor at *Thai Rath* newspaper; Dr. Ronnchai Kongsakon of Ramathibodi Hospital; Sappasit Kumprapan, director of the Childrens' Protection Foundation; and Dr. Surasak Likasitwatanakul, associate professor of law and vice-rector, Thammasat University.

7. Somchai Homla-or, interview, May 26, 2012.

8. Kanit (2012, 5–6). Those who declined included Chaturon Chaisaeng, Veera Musikapong, and Sonthi Limthongkul.

9. Somchai interview.

10. Somchai interview.

11. This committee examined the violent deaths of more than fifty people in prodemocracy protests in 1992.

12. Kittipong Kittiyarak interview, July 20, 2012; Somchai interview.

13. Somchai interview.

14. The 1,390-page PIC report offers much more detailed and accessible information about the incidents of violence than the TRCT report; it is copiously illustrated with materials drawn from video clips and news clippings, drawings, timelines, and area-mapping of the incidents and locations of fatalities. The illustrations in the report are based mainly on eye-witness interview accounts, primarily from victims and their relatives (see PIC 2012, 41).

15. The expensive and elaborate “root causes” research took up just nineteen pages of the final TRCT report, which were almost entirely ignored by the media and the public.

16. Kwanrawee Wangudom, informal interview, September 29, 2012.

17. The 7.5 million baht comprised 4 million in actual compensation and 3.5 million for “psychological compensation” from the Social Development and Human Security Ministry. Ninety-two families received these payments, while more than 1,600 people who were injured received lesser sums (TRCT 2012, 235, table 1).

18. The call appeared in a rambling eight-page letter to the prime minister dated December 30, 2011, which formed an appendix to TRCT (2012a).

19. Kittipong interview.

20. Fieldnotes, visit to Laksi, October 5, 2012.

21. At the time of writing, a promised English translation of the report has yet to appear.

22. The TRCT report included twelve references to an excellent unpublished study commissioned from Swiss ballistics experts (Riva and Glardon 2012).

23. On desirability of subpoena and other quasi-judicial powers for truth commissions, see Freeman (2006, 304–306).

24. See more details of the 2001 verdict in TRCT (2012b, 54–55).

25. The PIC listed ninety-four deaths, two more than TRCT (see PIC 2012, 673–716; TRCT 2012b, 91).

26. Letter of Dr. Weng Tojirakan to the House Speaker, dated September 18, 2012, posted on Thida Thavornseth’s Facebook page, www.facebook.com/permalink.php?story_fbid=427077267355602&id=199256233471041 (accessed April 26, 2013).

27. For a critique of the TRCT along these lines, see Pipop (2012).

28. The PIC report also drew on interviews. See an English translation of the DSI’s report into this case at <http://asiapacific.anu.edu.au/newmandala/wp-content/uploads/2011/05/watpathum2.pdf> (accessed April 11, 2013).

29. “*Truatsop pheua ha khon phit.*”

30. Kanit interview.

31. TRCT report launch event, September 17, 2012. For full video coverage see www.youtube.com/watch?v=W1NX2M5ILic (accessed April 20, 2013). The report did offer an outline summary of the budget (see TRCT 2012b, 15–16).

32. Somchai Homla-or, TRCT report launch, September 17, 2012.

33. For full video footage of the PIC session, see www.youtube.com/watch?v=I2CfAGYnjtg&feature=youtu.be (accessed April 20, 2013).

34. This phrase came from an interview given by Somchai to *Matichon*, February 22, 2012; www.matichon.co.th/news_detail.php?newsid=1329883344&grpId=no&catid=no. He subsequently explained at the start of an interview on Voice TV that his comment had been misunderstood, www.youtube.com/watch?v=lnTaGVJstg0 (accessed April 21, 2013).

35. Sawatree Suksri, lecturer and member of Nitirat group, Thammasat University Law Faculty.

36. Somchai interview.

37. Kanit interview.

38. The original source is provided in Appendix 2 of the TRCT report, “Order from the Office of Prime Minister Setting Up the Commission,”

dated July 16, 2010. The same phrase is incorporated into the formal Thai title of the TRCT.

39. An executive summary and the commission's recommendations were translated to English. (The PIC also failed to publish a translation.)

40. Kittipong interview.

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