

## Making watchdog bodies work: The Thai experience



MUHAMMAD NURUL HUDA

THE importance of watchdog bodies in ensuring the durability and credibility of democratic society could hardly be over-emphasised. It is in the background of such a belief that one may find it relevant and interesting to venture into the experience of Thailand, a country which is not physically very distant from Bangladesh and where the constitution of 1997 has incorporated provisions of a number of watchdog bodies.

A number of diverse groupings, ranging from monk intellectuals to the Democrat Party in Parliament, recognised that Thailand needed to strengthen its internal institutions if it was going to survive and prosper. It was agreed that a new way forward was necessary. The new constitution contained measures designed to guarantee democracy and human rights, exclude military influence in the political process, eliminate corruption in public life. As one commentator puts it: "The 1997 constitution represents a revolution in Thai politics. It was a bold attempt at conferring greater power to the Thai people than had ever been granted before."

### Thai watchdog organisations

A new set of watchdog organisations were set up under the constitution. The Election Commission, the National Counter-corruption Commission, the Anti-Money Laundering Office and the State Audit Commission are each designed to tackle particular aspects of malfeasance and corruption associated with the political process. The Human Rights Commission is intended to deal with abuses of group rights and individual human rights. In the domain of law and administration, a system of administrative courts and an ombudsman are introduced for the first time, to further protect citizen rights by extending the range of remedies available. Finally, the boundary of the entire constitutional scheme is patrolled by a new constitutional court.

### Selection procedure

A great deal of effort was put into securing the independence of the constitutional watchdogs and mechanisms were adopted to secure independence and related issues concerning eligibility for appointment and administrative structure and funding. First, in every case a formal procedure has been set out to secure the appointment of these watchdog bodies. In order to build a system that allows clean elections to take place, an independent Election Commission was formed.

In order to appoint the Election Commission a selection committee

of ten members has been set up. The committee must include: the President of the Constitutional Court as Chairman and the President of the Supreme Administrative Court, four Rectors of state higher education institutions, four representatives of political parties from the House of Representatives. At this stage, there are five qualified and suitable names put forward to the President of the senate. The nomination must then be approved by the least three

mission exercises not only administrative and quasi-judicial powers, but judicial power as well. First the ECT has been given responsibility for running all forms of public elections and referenda. Apart from dealing with the routine administration the ECT has the power to determine the amount of expenditure per candidate and for each party at elections. If these limits are violated the Election Commission has the power to seize cash and/or property belonging to the perpetra-

enter premises. The commission can report that a violation of rights has occurred. However, it only has the authority to recommend remedial action or changes to the law, it is not empowered to act directly.

National Counter Corruption Commission (NCCC): The National Counter Corruption Commission (NCCC) and the Anti-Money Laundering Office (AMLO) mainly perform the role of criminal investigatory bodies with powers to award penalties subject to confirmation

Minister, Ministers and members of parliament submit details of their assets and liabilities to the NCCC. There is a five-year prohibition from office where the NCCC finds that a person has neglected to satisfy this requirement, but the ban must first be approved by the Constitutional Court. The decisions of the Constitutional Court are made explicitly binding on all State institutions and individuals.

### Performance of watch-

Constitutional Court voted narrowly in Thaksin's favour. The failure to act decisively and punish the PM for this manifest breach of the rules severely undermined the credibility of the combined strength of the constitutional watchdogs, and therefore, also of the constitution itself, in the face of political interference and challenge at the highest level.

The Human Rights Commission (NHRC) has been openly critical in its reaction to violations of human rights by the Thai authorities, but this criticism has led to a hostile response from the government which has called into question the efficacy of the commission itself. In 2002 it objected to the treatment of protestors against the Thai Malaysian Gas Pipeline Project in Hat Yai in December 2002. The level of hostility from government was much more pronounced after the NHRC expressed concern over the killing of more than 1,000 suspected drug dealers as part of the three-month 'war on drugs'.

The administrative courts have proved to be the most resistant to external political influence and have gained a reputation for independence. The Thai government was proposing to privatise the Electricity Generating Authority of Thailand (EGAT) PIC. The proposal was contested in the administrative court. It was alleged that there had been an abuse of power, because the government was proceeding with the privatisation without any form of public consultation, although mandatory hearings were required for such a proposal. The court found it in favour of the objectors and issued an injunction which first prevented the privatisation from going ahead before hearing had taken place and following the hearing the Supreme Administrative Court ruled against the government.

The court's decisions were a serious blow to the central plank of government policy. The fact that fundamental principle of legality were upheld by the court, especially given the extremely sensitive issues at stake in the case, provides a clear demonstration that, in this area at least, the new constitution has managed to establish a powerfully independent watchdog body capable of checking abuses of power.

### Lessons learnt

The watchdog bodies in Thailand have not eliminated ubiquitous corruption, and the abuse of power by the Prime Minister, Ministers, politicians and officials continue, and basic human rights have been regularly breached. The fundamental problem has been that the key players have not accepted the rules of constitutionalism. In particular, the credibility of the entire structure has been called into question because the most influential figures who operate the levers of power have blatantly breached the rules. The accountability mechanisms were engaged but the authority of the constitution was dissipated when the PM was allowed by the Constitutional Court to escape with impunity.

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MUHAMMAD HABIBUR RAHMAN

## Plato's nose

Plato died long ago, but he is still alive. Rather lucky, all his thirty works do survive. But unlucky is he, he had a broken nose. How did he break his nose Or who did break his nose And for what, nobody knows.

When he drank his hemlock, did he die in peace? I mean Socrates? A great friend, philosopher and guide A great friend always on Plato's side.

Plato got lost and wandered around The countries of different climate and terrain In and around the eastern and mid Mediterranean

Plato was once sold away into slavery And got freed by knavery and a little bravery. His anti-democratic stance With fascist and communistic nuance Knitted well with a few noble lies. All his political isms Were wonderfully free from syllogisms. But alas! All in vain! None anything did gain. Plato was the tutor to Dionysus the Second He tried to make him a philosopher king But the philosopher miserably failed the king

Plato was lucky and that all his oeuvres Did survive, but alas! In the Louvre His sculpted bust had a broken nose. After long deliberations and discussions verbose, A committee for restoration for his broken nose, Artists and sculptors, decided not to repair or retouch. A note was hung: *defence du touchez*, do not touch.

Plato had a broken nose. How did he break his nose? Or who did break his nose? The members of the Athenian public Or the enemies of The Republic? And for what? Nobody knows. Plato's nose is now beyond all repair or retouch: *Defence du touchez*, please, please do not touch.

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## STRAIGHT LINE

The decision of the ECT to allow the election held on April 2, 2006 has been challenged in the courts and during the election itself there were once again many allegations that votes were being bought on widespread basis. The ECT failed to uphold objections to the results and the Constitutional Court initially conformed individual results which has been called into questions, but in an unprecedented move the King intervened by addressing the judges of the constitutional and administrative courts directly. He suggested that they should assert their authority under the constitution to invalidate the election which had been boycotted by opposition parties.

quarters of members of the Selective Committee. Also, at this preliminary stage, the President of the Senate holds a secret ballot in the Senate to choose from among the ten nominated candidates. The five persons who receive the highest votes are elected as Election Commissioners. Their election is then confirmed by the King.

The selection process for members of the National Counter Corruption Commission involves a similar two stage process but the committee which is of fifteen members includes the president of the Supreme Court of Justice as well as the President of the Constitutional Court and the President of the Supreme Administrative Court and the committee are required to submit a list of eighteen names for a vote to be taken in the senate.

The Human Rights Commission is pre-selected by an even large Senate appointed committee of twenty-seven members which must include President of the Supreme Court and the Supreme Administrative Court, the attorney general, chairman of the law society, 10 representatives of human right NGOs, 5 from political parties, five from academic institutions and three from the media. The committee selects 22 candidates from which the 11 human rights commissioners are elected to serve a single term of six years.

In order to perform its role effectively the Constitutional Court and Administrative Courts depend on a cohort of judges that are insulated from direct influence. They must also be of sufficient calibre to perform their role effectively. Furthermore, commissioners appointed to these bodies can only be removed if a specified procedure is followed which involves the matter being placed before parliament.

### Characteristics of organisations

The Electoral Commission for Thailand: The Electoral Commission for Thailand (ECT) is 'well-equipped with unprecedented and exclusive authority, the com-

mission exercises not only administrative and quasi-judicial powers, but judicial power as well. First the ECT has been given responsibility for running all forms of public elections and referenda. Apart from dealing with the routine administration the ECT has the power to determine the amount of expenditure per candidate and for each party at elections. If these limits are violated the Election Commission has the power to seize cash and/or property belonging to the perpetra-

tor. Second, the ECT has investigatory power. It is required to initiate an investigation and inquiry for finding facts in case there is an objection lodged or convincing evidence of an impropriety or any violation of election laws. If the ECT finds evidence of contravention to the electoral law, it can revoke the candidate's right to stand for a year. Also the candidate will be subject to prosecution under the criminal code. Third, the ECT is empowered to issue a 'red card banning a candidate from engaging in politics for five years.

When evidence of abuse is discovered after the result of an election has been announced, the ECT is empowered to nullify the outcome of the election in that constituency (or throughout the region of nation) and order a rerun. The ECT can order a person to refrain from any conduct tending to undermine the integrity of an election. It will be evident that the ECT has ample powers.

Human Rights Commission: Under Chapter III of the Constitution, entitled 'Fundamental Rights and Liberties of the Thai People,' Thai citizens are afforded a wide range of individual rights. Moreover individuals are empowered to take out actions in the courts to defend their constitutional rights.

The enforcement of such rights has been a matter of great importance when it has come to operationalising the constitution. To facilitate enforcement, the Constitution established an independent National Human Rights Commission as an oversight body responsible for looking into violations of human rights. Where there are alleged human right violations, petitions may be lodged with the commission. Equally, the commission can initiate investigation on its own initiative. In dealing with suspected human rights abuses the commission has an investigatory role for which it is specially equipped. It can require individuals or organisations to respond to charges, issue summons to government officials and private individuals to give testimony, and it can obtain warrants to

and a jurisdiction that ranges over the political and administrative domain. In discharging its duty to eliminate corrupt practices, the NCCC is able to formulate codes of conduct/rules of practice requiring the disclosure of assets which apply to the Prime Minister, Ministers, politicians and public officials at all levels of government. In common with the ECT, the Commission is granted wide ranging powers not only to investigate, but where it finds that a person has failed to disclose assets and liabilities, or has attempted to supply false information it can order that person from office with immediate effect for five years.

### Thai Administrative Court

The new constitution at a formal legal level established a Thai Administrative Court and Supreme Administrative Court. It also introduced a Thai ombudsman. The Administrative Courts are in possession of formidable powers. And many of the remedies they are able to award are tailored to suit an administrative law context. The court can issue a decree revoking a by-law or an order and it can revoke an act in whole or part where it is alleged that an administrative agency or state official has done an unlawful act. Furthermore, the court can direct whether any such decree is going to have retrospective or non-retrospective effect.

The Thai Constitutional Court is designated the final arbiter of constitutional question and, as a result, it has a clearly defined function at the apex of the entire constitutional system. First, in line with many other constitutional courts it is required to decide whether any law, rule and regulation is contrary to or inconsistent with the constitution. This power also extends to the validity of any emergency decree. Second, the court must resolve dispute among constitutional organisations as to their powers and duties and the limits of such powers and duties.

The findings of other watchdogs may require the Constitutional Court's confirmation before they have binding effect. For example, there is requirement that the Prime

### dog bodies

The Performance of the Election Commission has fallen a long way short of the high expectations. In response to claims of malpractice there was very little evidence of positive intervention in the form of full investigations followed by firm action to eliminate continuing abuse. Controversy has continued to surround the ECT. The decision of the ECT to allow the election held on April 2, 2006 has been challenged in the courts and during the election itself there were once again many allegations that votes were being bought on widespread basis. The ECT failed to uphold objections to the results and the Constitutional Court initially conformed individual results which has been called into questions, but in an unprecedented move the King intervened by addressing the judges of the constitutional and administrative courts directly. He suggested that they should assert their authority under the constitution to invalidate the election which had been boycotted by opposition parties.

The limits of the NCCC's effectiveness became increasingly evident after the Constitutional Court failed to uphold the commission's findings in 2001. The case was of great national importance as it involved an investigation of claims that Thaksin Shinawatra before becoming Prime Minister has concealed most of his fortune as part of a dishonest scheme to conceal conflicts of interest which were outlawed under the constitution. The NCCC duly conducted its investigation and passed an 8-1 judgment against him. If the decision of the NCCC had been allowed to stand unchallenged the result would have been a 'red card', namely, an automatic suspension from politics for five years operating with immediate effect, thus depriving Thaksin of the premiership.

The NCCC's decision was challenged before the Constitutional Court where it was argued that the failure to declare these assets was no more than an honest mistake. Although the argument was not accepted, the

## Journey of a father and a son

SYED MUNIR KHASRU

(Concluding part of a two-part series)

SINCE my last article appeared on August 19, 2006 I have been receiving phone calls and queries on different issues related to the Alzheimer disease and my experience on this with my father Syed Amir Khasru. Starting from people's sympathy to their eagerness to learn more about Alzheimer and possible ways to fight it -- the response has been quite overwhelming. In today's concluding part, I will try to capture some of the remaining issues that many have expressed their desire to know about.

As I mentioned in my last article, there are books available based on the research that is being continuously carried out in developed countries like the US. With internet, it is quite convenient to access such resource material and if possible source them from abroad as well since I haven't seen many publications on this subject in Bangladesh. At the onset I, my mother, and our family friend Zahed Bhai had to undergo the basic learning on this illness which helped us much in the years to come as we knew what to expect and how to respond to each situation. The sphere of learning spreads from how to manage the stress resulting from the patience one must have to nurse such patients to how to help the patients continue the socialisation as much as possible with the gradual decline of cerebral abilities.

The second area where we indeed have been fortunate is to have a doctor who is not only well qualified but also a generous human being. During the entire

illness, my father was under the supervision of a doctor who was not only professionally well respected in the US but also one of the most caring physicians one can hope for. I will share one example, once Dr. Abdul Ghori Khan was in Beijing to attend an international conference. He along with his wife came to Dhaka at his own expense just to spend few days in our home to observe the condition of my father himself. During his stay, Dr. Khan met relatives and friends of our family to get a full appreciation of my father's condition and was satisfied that my father seemed to be coping well and the decline was quite slow. Bangladesh I could hardly find anyone qualified enough to give me any guidance when I needed it most. It always had to be my overseas call to Dr. Khan and his counseling, patience, understanding, and courtesy that I could manage the situation much better than those who were not lucky enough to access such services.

Third important area is the morale support the patient needs. When people start getting old and gradually both the body and mind slowly gives away to the natural course of depreciation, it is difficult to accept the frailty no matter what the reality is. It is very important that people around such patient never make them feel any less than what they always have been independent of the reality. We tried to keep his morale high by behaving as if nothing has changed and to us he is the same as before. One should never react, criticise, or lose patience -- it is at times difficult but there is no other way.

One of the effective ways to keep the patient in good spirit is to

continue as much as possible the regular social activities. As I told before, my father very enthusiastically used to go to the Jumma prayers with me in the Dhaka University Mosque. However, two years ago, I noticed his sharp reactions whenever anyone would sit too close to him which is not something unusual to happen in a Mosque. At times, he also used to react if there was too much crowding in our home. This is because a sense of insecurity can result from the inner realisation but outer defiance of the reality by a person like my father who was used to being independent. It was sad to see this happening as my father was well known in his friend circle for his generous hospitality and our house had witnessed so many countless dinners and addas of friends and family. Even when my father used to visit his friends in Calcutta, he would always throw a dinner where at times he cooked himself for the friends and their spouses although it was he who was supposed to be their guests. Since travel was becoming increasingly difficult for him, we managed to have his friends from Calcutta visit him and his joy knew no bounds when he could entertain his friends at his home.

Again, it is the responsibility of the family to find ways to ensure that the illness does not take away the social pleasures to which the person has been used to all through his life. Hence, we continued encouraging the weekly addas at our verandah and arranged the occasional dinners at our place to keep my father's morale high and to make him feel secured within the crowd of friends who have been the best of friends a man can aspire for.

Regarding Hajj, as I have mentioned already it was a risk that I took as such a person can easily get disoriented in a crowd of millions where one is required to change places quite often and eat and dine whenever and wherever convenient. Hence, it is better to undertake such missions sooner than later. Under the watchful eyes of Allah and under the bright sky that covered the Holy Kaaba, the father and son joined hands in seeking eternal mercy and forgiveness from the One Who brought us together in the first place. From performing the Tawaaf to the running between the Safa-Marwa, my father was doing well until a severe dry cough and fever started which significantly weakened him. I got very nervous and from Mecca I called Dr. Khan in the US whose words of assurance calmed me as he explained that a rigorous exercise like Hajj can have such an effect on anyone and more so to an Alzheimer patient like my father and I should not worry much as he would be okay once we return home to his familiar surroundings. My father did recover well on return from Hajj and I am grateful to Allah that I could make my father perform the Hajj which he cherished so much in the remaining days of his life.

Fourth important factor is to help such persons organise their life in a manner that has more elements of continuity, consistency, and familiarity as opposed to putting them into experience which may be completely new or unfamiliar to begin with. For example, the fact that my father could spend thirty-five years of his life in the same house and in the serene neighbourhood of Ispahani Colony helped enormously as he had a clear

perception of the geography and things around him which made things much easier. Any major relocation or displacement can cause difficulties for such patients as their ability to adapt to new surroundings and conditions weakens over time.

Fifth is for the family to give time to the patient so that they can express themselves adequately at a time when the thought process needs activation most. In conversations with my father, I discovered many things which I never knew before. The reason is that a strong willed man of self-respect like my father usually prefers to keep his emotional weaknesses shielded within himself. However, when the emotions start taking over ego, they reveal a side which I wish had surfaced long ago. For example, at the end I came to realise how much my father missed his mother who he lost at the age of six and he used to tell me, "Childhood is a difficult time for someone who does not have a mother." I never realised before that in his heart he wanted to have a daughter so much in addition to the sons he had. Also I was amazed how much he respected my mother from the core of his heart inspite of being born in a male dominated generation. He even had me promise that I will look after my mother as if she were my daughter if someday he is no longer there for her. I hope I can live upto the promise.

Last and not the least is the willingness of the loved ones to sacrifice for the person in difficulty. In my case, faith in God's infinite mercy and my religious values were of enormous strength to help me sail the journey with courage

and conviction. Many of our parents are not perfect nor are we. End of the day, we are here today because they have been there for us when we had none. That is the only reason parents are the only ones on whom God has given unlimited rights and privileges which are second to none. Similarly blessings of parents outlive their own lives and is like an overarching shade in our lives that protects us from many dangers and difficulties, known and unknown. My journey with my father was a swim in the confluence of the joy of the past and embracing the inevitable future, it was a celebration of life for what it achieved and a reflection on what more could have been done.

My father's grave is on the bank of a lake and next to a mosque. People lose father but for me it has been almost like losing both a father and a son at one go. At evening when the stars twinkle in the blue sky with token of misty clouds drifting aimlessly and the gentle breeze kissing the skin as I stand next to his grave, I look upwards and wonder where is he now and what is he doing. From hence onwards we both embark into journeys into uncharted territories that bonds us only in spirit with the hope that someday God will be kind enough to unite us again in the same journey that my father undertook on July 9, 2006 ahead of me. May God rest his soul in peace and give us the strength to carry on until we meet again Inshallah.

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## MICROCREDIT OPERATION Change for better to eradicate poverty

MD. ENAMUL HAQUE

BY now much change has occurred in characteristics and conditions of microcredit operation since its humble beginning decades back. Now it is worldwide recognised that Bangladesh is a pioneer in introducing microcredit to change the fate of the poor and we have received much accolades and praise on this identity. Basically, microcredit originated from the cooperative movement initiated and developed by Dr. Akter Hamid Khan who laid the foundation of Pakistan Academy for Rural Development (PARAD) in Comilla. After the independence of Bangladesh, PARAD was renamed as Bangladesh Academy for Rural Development (BARD). Later on, the concept of microcredit was picked up significantly by Dr. Muhammad Yunus who articulated worldwide that the poor are credit-worthy and bankable. He has also established the fact that microcredit is a powerful tool to fight for eradication of poverty.

From the very inception microcredit has been standing on two fundamental pillars -- microcredit and microsaving. And microcredit is a collateral free group guaranteed lending. However, over the years it has gradually changed from its original, fundamental character, as well as, markets, loan, ceiling, etc. Now micro finance institutions (MFIs) are less interested in depending on donors' supports and are introducing sustainable operations. These MFIs/NGOs have also shifted their goals and missions from temporary services to self-sufficiency. Mode of operational change was initiated by another leader in the field Md. Shafiqul Haque Choudhury, the founder-president of ASA-

Bangladesh, following Dr Yunus. ASA introduced real banking with the poor with lots of innovative ideas which have also been replicated at home and abroad.

The changes brought about in microcredit operation thereof are based on simplicity: shorter loan processing time, reducing overhead cost through simple structure, cost effectiveness, in approaches, high form of decentralisation, standardisation, provision of individual lending instead of on group liability, diversification of products i.e. savings, credit, mini-insurance, health assistance etc., and clients-friendly methodology related to borrowers' capacity and choice.

Based on the borrowers' social strata ASA revised and introduced nine loan products ranging from Tk 1,000 to Tk 2,00,000 allowing withdrawal of any amount by client in group meeting without deducting any amount from the sanctioned loan in the name of force savings or force selling of product or implements. Generally the concepts and key elements of microcredit are discussed and implemented in weekly meetings. Such fundamental changes and flexibility in microcredit delivery highly inspired the poor borrowers to take part in microfinance more and more.

Microcredit Information Exchange (MIX) report, 2005 rated ASA as the best micro finance institution in the world considering its high growth rate (6.4 million members), high return of assets, productivity, operational self-sufficiency, financial sufficiency and low cost for money lent. With such advances in microcredit services there is little doubt that it is an effective tool in the fight for eradicating poverty.

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A microcredit beneficiary