



## CHAPTER 5

### **THE ROLE OF ADVOCACY COALITIONS IN THE ESTABLISHMENT OF THE NATIONAL HUMAN RIGHTS COMMISSION OF THAILAND**

In the preceding chapters, I have outlined the major theoretical framework and principal concepts such as civil society. Following this, we turned our attention to the environment in which beliefs surrounding human rights and the National Human Rights Commission came to be formed, with a focus on Buddhism and the media as key belief-shaping influences in Thai society. We have just completed an examination of the results of the political reform process and the resulting 1997 Constitution and *National Human Rights Commission Act*. In this chapter, we will narrow our focus to the precise application of the Advocacy Coalition Framework on the issue of human rights policy regarding the National Human Rights Commission.

In order to systematically and comprehensively analyse the issue at hand, the following chapter will be divided into sections representing the principal components of the Advocacy Coalition Framework. First, following some background introductory remarks, we will turn to the stable parameters of the Thai human rights policy subsystem. In this section, fundamental cultural values and social structure, basis legal structure, basic attributes of the problem area and the basic distribution of natural resources will be detailed. Following this, we will highlight policy change regarding the National Human Rights Commission in Thailand. This will include identifying the leading advocacy coalitions and their beliefs. In the third section we will specifically apply several of the central hypotheses of the Advocacy Coalition Framework to the case at hand. Finally, we will assess the effectiveness of the advocacy actions and strategies of the pro-commission forces.

## ***5.1 The Stable Parameters of the Human Rights Policy Subsystem in Thailand***

As noted in chapter 2, the Advocacy Coalition Framework recognises four key boundaries within a subsystem in which advocacy coalition actors operate: fundamental cultural values and social structure, basic legal structure, attributes of the problem and distribution of natural resources. We begin by outlining these boundaries in the Thai context so that they may serve to guide us in our analysis.

### **5.1.1 Fundamental Cultural Values and Social Structure**

If we agree with the thesis of the Advocacy Coalition Framework that policy change is guided or influenced by changes in belief systems within and between an advocacy coalitions, it would be reasonable to assume that belief systems are influenced and shaped by a variety of social forces within society. As such, we have already discussed before in chapter 3 some of the most important social and political forces that have an impact upon belief systems surrounding human rights and by extension, the National Human Rights Commission.

It is not necessary here to reiterate the arguments made in chapter 3. Suffice it to say that we can identify three key influential elements at play in Thai society which are relevant to our discussion. The first concerns the historical and contemporary role of patronage systems of social organisation and the impact of such systems on the political sphere. As outlined above, this has resulted in the dominance of elite politics, whether of the civil, military or bureaucratic type. Only recently has there been concerted effort to engage the average citizen and civil society groups in a more participatory fashion through such vehicles as public hearings and questionnaires. However, the persistence of massive power and influence located in various elite

cliques in society and bureaucracy speaks to the deep roots of this phenomenon. Often this elitism takes the form of paternalism, whereby the elite prefer a 'guided democracy' and will go to great lengths to maintain their position of power. The regular occurrence of *coups d'etat* to reassert the role of elites, such as those in '73, '76 and '92 in Sukhumbhand Paributra's words,

'...suggests that the military rejected the underlying ideals and political consequences of Western-style liberal democracy, and preferred bureaucratically guided liberalisation expressed in terms of a limited, controlled participation that emphasised consensus over competition, a minimally active legislature over an active and potent one, appointments over elections, and centralisation over decentralisation of power.'<sup>208</sup>

The second fundamental cultural value is that of Thai notions of freedom. As noted elsewhere in this discussion, the Thai idea of freedom has been cleverly manipulated by the ruling elite to refer not to individual rights and liberties, but rather has been superimposed upon the state and given quasi-mythological status as one of the founding myths of the nation. Positioned as something that the Tai/Thai people have always possessed it therefore also becomes available to those hegemonic and dominant elite forces in society who would seek to use such discourse in order to substantiate, legitimise and promote a nationalist and xenophobic agenda. Coupled with the socially dominant position of Buddhism and its apparent ill-ease with Western concepts of human rights, the universality of human rights becomes easily identifiable with that which is foreign, un-Thai and thereby dismissable. The accompanying cultural distaste for open social conflict, and subsequent recourse to

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<sup>208</sup> quoted in Noda, Makito. "Independent Policy Research Institutions in Thailand from the Viewpoint of Asia Pacific Intellectual Cooperation." in Yamamoto, Tadashi (ed.) *Emerging Civil Society in the Asia Pacific Community*. JCIE. 1995, p. 453

more conciliatory and compromising modes of social interaction have also influenced the interaction between the state and its citizens. The modern Thai state is therefore somewhat of a paradox. On one hand, Western forms of capitalism, democracy, constitutionalism and technology are openly and unquestioningly adopted and accepted, while at the same time the Thai state retains a fiercely independent and nationalist posture.

Third, concerns the historical disparities between the urban-elite and rural-popular segments of society. In also every manner imaginable – politically, economically, socially, the national agenda in Thailand is controlled through a highly centralised bureaucracy located in Bangkok. Although the majority of the population of Thailand's sixty-two million citizens reside in rural areas, their almost complete disenfranchisement and perceived 'backwardness' has real-world implications for politics and policy making decisions in the capital. The rapid growth of the middle class in Thailand has taken place almost exclusively at the urban, mainly Bangkok, level. Yet, there are also notable examples from rural communities. For example, Naruemon would have us believe that grassroots NGOs such as the Forum of the Poor represent the vanguard of civil society. I would caution against such overly optimistic characterisations. The existence of these groups does bear witness to the increasing expansion of political space for civil society actors. Yet, groups such as the Forum of the Poor fall victim to many of the other factors I have highlighted above. They are manipulated by powerful elite forces, (one could even cite the involvement of Bangkok-based intellectual 'advisors' to the Forum as a form of manipulation) they face constant representation in the media as a social disturbance and unruly mob, and

they also hold very differing ideas (compared to the middle classes) about what human rights and freedom mean.

### **5.1.2 Basic Legal Structure**

The Advocacy Coalition Framework argues that the basic legal structure of a country usually remains stable for long periods of time, and that changes in such structures occur only very infrequently and require massive political exertion. It is in this hypothesis where we find that perhaps the Advocacy Coalition Framework is not entirely the most conducive to the study of Thai politics. As noted before, Thailand has had sixteen regular and interim constitutions since 1932. How then, can Thailand be said to have a stable legal structure?

I argue that if we look closely, we will find that Thailand does indeed have a fundamentally stable, almost glacial, legal system. Ironically, this is precisely because the legal system in Thailand is not unconditionally wed to the Constitution. Rather, a complex system of codified laws, a rigidly hierarchical bureaucratic system and the generally unchanging character of most Thai constitutions make for a legal structure that we may arguably call stable. In Thai constitutional history, because the constitution has never (until now) been accorded ultimate supremacy, but has been qualified by lesser laws, regulations and orders, it would be therefore erroneous to locate the Thai constitution as the ultimate source of legal legitimacy in the nation. Perhaps this is a fault of the Advocacy Coalition Framework which, in its Western bias, places an unwarranted level of significance on constitutional forms of legal organisation. However, the recent past has seen a significant level of stability in terms of constitutional structure in Thailand. The Constitution of 1978 was in place

for twelve years until the coup of 1991, second only to the 1932 Constitution which was in place for thirteen years. This, in a country, where the average lifespan of a constitution can almost be measured in months, rather than years, reflects a certain degree of stability.

Despite the fragility of Thai constitutions, McDorman refers to some central political tenets which remain untouched by constitutional change.<sup>209</sup> For example, one such 'constitutional imperative' is the supremacy, legitimacy and unquestioned position of the King as the head of state. With respect to rights, the prevailing constitutional pattern in Thailand has been to articulate rights but to counterbalance those rights with concomitant duties. Thus, the reciprocal nature of patron-client relations has been incorporated into Thai constitutional and legal traditions. Rather than representing a document which constrains the actions and limits the power of the state, the Thai constitution simultaneously mandates what the role of the state is and also states explicitly what is required of citizens.

### **5.1.3 Basic Attributes of the Problem**

One of the constraining factors that characterises debates on human rights and the National Human Rights Commission in Thailand concern the uneasiness with which Thai people embrace the concept of human rights as being a local, indigenous one. As mentioned earlier, even the terminology of human rights is considered rather new and foreign. When coupled with the general perception of NGOs in Thai society as

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<sup>209</sup> McDorman, Ted., *op. cit.*, p. 4

being confrontational and aggressive, by association, human rights is therefore often considered as representing politics of conflict and by extension, un-Thai.<sup>210</sup>

Another limiting factor with respect to human rights is the highly centralised nature of the Thai government. Although there are provincial and district levels of government within the nation, they are highly controlled by the national government through the powerful Interior Ministry. With respect to laws and policies regarding human rights, the discourse has taken place almost entirely at the national level. As such, there are no conflicts of jurisdiction within this policy subsystem.

Any examination of the policy process surrounding the National Human Rights Commission must necessarily concern the general situation of human rights in the country. Thailand has had a patchy human rights record punctuated with periods of extreme violence and repression. Major concern areas in Thailand include extrajudicial killings, torture, impunity, refugee and asylum seekers and fair trials.<sup>211</sup> Notwithstanding this, Thailand has attempted to maintain its international image by acceding to various international human rights mechanisms. Beginning with the Universal Declaration of Human Rights in 1948, Thailand has ratified many other major international conventions related to human rights such as<sup>212</sup>:

1. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949

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<sup>210</sup> Pravit Rojanaphruk., op. cit., p. c1

<sup>211</sup> Amnesty International. *Thailand: A Human Rights Review based on the International Covenant on Civil and Political Rights*. London: AI Index: ASA 39/01/99, 1999

<sup>212</sup> กุลพล พลวัน. *พัฒนาการสิทธิมนุษยชน*. วิญญูชน กรุงเทพฯ 2538, p. 254 and Office of the United National High Commissioner for Human Rights. *Status of Ratifications of the Principal International Human Rights Treaties* Geneva: UNHCHR, 2002, p. 9

2. Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949
3. Geneva Convention relative to the Treatment of Prisoners of War, 1949
4. Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949
5. Convention on the Political Rights of Women, 1952
6. Convention on the Elimination of All Forms of Discrimination Against Women, 1985
7. Convention on the Rights of the Child, 1992
8. International Covenant on Civil and Political Rights, 1996
9. International Covenant on Economic, Social and Cultural Rights, 1999
10. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, 2000

The reader will note a serious gap in ratifications of major international human rights instruments between 1952 and 1985, representing a time of considerable political conflict and contestation. Several major treaties which have explicitly not been acceded to include the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, and the 1951 *Convention relating to the Status of Refugees* and its 1967 *Protocol*.<sup>213</sup> Then a flurry of ratifications following (May) 1992, which will become clearer later in our discussion. There have been some revisions to various domestic legislation to bring it in line with international commitments, such as the amendments to the *Nationality Act* to extend greater benefits to women and the children of female Thai nationals. Human rights education has only recently been introduced into the curriculum of law enforcement officers, military personnel and schoolchildren.

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<sup>213</sup> Amnesty International. *Kingdom of Thailand: Human Rights in Transition*. London: AI Index: ASA 39 002 1997, 1997



#### 5.1.4 Basic Distribution of Natural Resources

The Advocacy Coalition Framework proposes that a nation's natural wealth and its distribution influences economic sector growth, culture and the 'feasibility of options in many policy areas.'<sup>214</sup> Thailand is blessed with an abundance of natural resources distributed across the nation. In the South, there are ample tin deposits as well as rubber. In many other parts of the nation, there is dense forest. Coastal areas are well situated to take advantage of natural resources from the sea including seafood, oil and pearls. The Central plains are highly fertile and produce an abundance of cash crops such as rice, fruit and palm. Moreover, tourism is a huge industry, with natural attractions such as trekking and diving providing huge revenues.

Although Thailand is an extremely wealthy nation in terms of its natural resources, there are great disparities in wealth distribution in the country. This had led to widespread political conflict over the control of natural resources. Naruemon suggests that since 1987, because of government policy focusing on three key areas: exports, tourism and agribusiness, there has been massive disruption in land ownership and subsequent wide-scale dispossession.<sup>215</sup> These disparities in distribution have further exacerbated the elite-urban and rural-popular divide. As a result, many NGOs and GNGOs have emerged to address these issues of economic exploitation. These NGOs have subsequently attempted to manipulate the growing human rights climate in Thailand by pointing to economic and social rights and by formulating positions based upon other so-called 'third generation' rights such as the right to development.

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<sup>214</sup> Sabatier, P. and Jenkins-Smith, H., *op. cit.*, p. 21

<sup>215</sup> Naruemon Thabchumpon., *op. cit.*, p. 16

I reiterate my earlier comment regarding the Advocacy Coalition Framework that although natural resources and their distribution likely do influence culture, economic growth and policy options, I feel the inclusion of this stable parameter favours policy analysis of subsystems involving natural resources or issues. As such, it is perhaps less relevant to our discussion, save for the influence upon the growth of NGOs and their growing recourse to human rights in the pursuit of their policy agenda as mentioned above. The distribution of wealth affects the human rights situation on the ground, but does not present any significant constraints upon the government in terms of policy with respect to the National Human Rights Commission.

## ***5.2 Policy Change in Thai Human Rights since 1986***

There are differing opinions about the origin of the National Human Rights Commission in Thailand. Some place the origin with the Cabinet order of Prime Minister Anand Panyarachun in September, 1992.<sup>216</sup> Others trace its origins further back to 1984 for unknown reasons, citing NGO advocacy efforts.<sup>217</sup> Most likely this was in response to the 1983 attempt by the military to amend the 1978 Constitution to increase their power. Whatever the origin, it is safe to say that indeed the most readily identifiable and concerted effort to establish a National Human Rights Commission began following the May events and the Anand cabinet resolution. Prior to this, there had been some advocacy on the part of civil society organisations to

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<sup>216</sup> Sarawut Pratoomraj of CCHROT, personal interview, and ลัดดาวัลย์ คັນดิวิทยาพิทักษ์ และ ๑๑๑. อ้างแล้ว, p. 203

<sup>217</sup> ไพโรจน์ โพธิ์ไชย. อ้างแล้ว, p. 27

promote some form of human rights mechanism. However, this mostly took the form of calls for Parliamentary committees to deal with human rights.<sup>218</sup>

As noted in Table 3 (page142), the 1990's was a politically turbulent time in Southeast Asia. Regionally, the most significant human rights event was the 1991 Paris Peace Accord which promised a resolution to the Cambodian conflict. This conflict had put Thailand in a very difficult situation politically and economically, and burdened the nation with hundreds of thousands of refugees. Makito Noda notes two key shifts in Thailand's external relations during this period. First, foreign policy became released from the military with saw almost every issue through its narrow interpretation of national security. The Thai military and other elite's obsession with national security over personal security is a hallmark of Thai society. Reference to national security has been one of the major reasons cited for curtailing human rights in Thai history, both in practice and in law. Secondly, Thailand largely dropped its 'ideological obsession' with anti-communism, especially with relation to Cambodia and Vietnam.<sup>219</sup> This led Thailand to a greater realisation and acceptance as a major player in regional, multilateral issues within ASEAN.

It is unnecessary here to engage in a detailed discussion of the minutiae surrounding the establishment of the National Human Rights Commission, as this has been extensively covered elsewhere.<sup>220</sup> Furthermore, such is not the approach taken by the Advocacy Coalition Framework. Instead we should be more concerned with belief

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<sup>218</sup> Sarawut Pratoomraj, personal interview.

<sup>219</sup> Noda, Makito., op. cit., p. 449

<sup>220</sup> see Klein, James. Asia Foundation. forthcoming; ไพโรจน์ โพธิ์ไสย. อ้างแล้ว; สัปดาห์ที่ ๖ คณิตวิทยา  
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systems within policy subsystems. The following sections draw heavily upon hearing transcripts, minutes of commission/committee meetings, minutes of the Constitution Drafting Assembly, NGO publications and media reports in painting a picture of the human rights subsystem in Thailand

### **5.2.1 The Development of an Elitist Policy System**

As mentioned before, the issue of human rights and the National Human Rights Commission are almost inexorably linked to issues of democratisation and political reform. This does pose some problems in the identification of discreet policy subsystems. Yet, the Advocacy Coalition Framework does provide for the emergence of a new subsystem out of a pre-existing one, in this case, the political reform subsystem.

The Thai human rights policy subsystem is structured by a hybrid Parliamentary system inherited from various Western nations, framed by certain unwritten constitutional imperatives, and hindered by a system of social organisation which favours patronage and elitism, and corrupted with money politics and greed. Indeed, in this rigidly hierarchical system with the monarch at the top (now constitutionally relegated to a ceremonial role, but possessing significant moral authority), the nexus of power in fact rests with the Prime Minister and Cabinet who wield exceptional power and authority. With recourse to such measures as Prime Ministerial/Cabinet Orders and Ministerial regulations, Parliament often becomes a side-show of limited importance. A majority of the serious decision making and administrative orders do not originate in Parliament. Throughout recent history, this highly centralised nexus

of power has been in the hands of a mainly urban, Sino-Thai grouping of technocrat, military and business elites. Interestingly, this group is a social minority, when compared to the largely rural, poor ethnic Thai, Lao and Malay majority.

We can trace the consolidation of power and centralisation of the bureaucracy back to the time of King Chulalongkorn (r. 1868-1910.) As noted above, the 1932 coup did little to transfer power from the monarch to the people, but instead merely transferred absolute power to an elite group of military and civil bureaucrats. Similar to Mawhinney's discussion of Canadian education policies in the province of Ontario<sup>221</sup>, the Thai state in the period from 1932-1997 has been overly concerned with building an integrated state, with a standardised and highly centralised education, religious, and bureaucratic administrative system. This system has had as its goal the reduction of social strife and conflict through the promotion of an 'official' Thai identity grounded in a denial, rather than a recognition of difference and social inequity. This extremely naïve belief, cloaked in fervent nationalism gives rise to belief systems such as those expressed by Police Captain Chan Ratanatham, a member of the Constitutional Drafting Assembly, when he spoke against the National Human Rights Commission by claiming that,

'Thai people are kind, grateful, and compassionate...Thai people aren't cruel or ruthless in the least...not cruel or evil like you find overseas...to legislate [the National Human Rights Commission] is to recognise that cruelty exists in Thailand.'<sup>222</sup>

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<sup>221</sup> Mawhinney, Hanne., op. cit., p. 64

<sup>222</sup> 'รายงานการประชุมสภาาร่างรัฐธรรมนูญ ครั้งที่ ๒๒ (เป็นพิเศษ)' ใน มุคมนตรีอาเซียน และสถาบันพระปกเกล้า อ้อมเกล้า .

Field Marshal Sarit Thanarat further consolidated power in the hands of the few by enacting Article 17 of the 1959 Constitution, which gave leaders the power to rule by military decree.<sup>223</sup> Although he did institute some economic reforms, this only served to further atomise the bureaucracy, divide it from the people and encourage a ‘fiefdom mentality’ among the bureaucrats.<sup>224</sup> Key to our examination here is Klein’s assertion that this created a supply-driven government which created institutions and provided services to the public that were not demanded by or designed to serve the public.<sup>225</sup> Subsequent decades saw the rise of the business elites, and the ensuing struggle for power between new money and the traditional military/civil bureaucrats.

The result of all this is a system which is completely unresponsive to public policy needs. The system instead serves to perpetuate old-style graft, corruption and personal gain on the part of the ruling elite clique. It is no wonder that avenues for public political participation have come so late to Thai ‘democracy.’ A quick look at any Thai political party which confirm this assertion, revealing a party system based on personal interest and almost completely lacking in a defined, well-reasoned public policy platform. Again, the importance and influence of the traditional patronage system cannot be understated here.

Another of the factors which has been considerably hindering to the development of democratic beliefs in Thailand is the extent to which those beliefs have not penetrated

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<sup>223</sup> Klein, James., *op. cit.*, p. 7

<sup>224</sup> *Ibid.* p. 8

<sup>225</sup> *Ibid.* p. 8

the countryside. Vitit and Taylor argue that Thai democracy is weak precisely because it is not widely understood or accepted in the countryside, where the majority of the population lives.<sup>226</sup> Furthermore, they surmise that all movement for constitutional democracy and political reform has come from new elite groups, rather than a more egalitarian, popular movement. Thus, even within those sectors of society that are pushing for democratic political reform there exists an element of elitism. This relates to my earlier 'NGO Mafia' assertion. On a somewhat positive note, for Vitit and Taylor, this new elite civil society is more pluralistic, less tolerant of political interruption (coups) and fearful of a negative international image.<sup>227</sup>

Any early signs of a growing understanding and acceptance of human rights were to be found in the formal, legalistic lip-service paid to international instruments. Ever since the Siamese were forced by the British to accept the Bowring Treaty, the Thai state has been painfully aware of the power of international forces, and therefore hyper-conscious of its position and image in the eyes of the international community. The massive economic boom of the 80' and 90's further bolstered Thailand's confidence, but could not appease the centuries-old inferiority complex of the Thai elite. In their drive to be seen as 'one of the gang,' the elites imported *en masse*, Western models of economics, politics and law. This included becoming party to various international human rights treaties such as the UDHR at the United Nations following World War II. I however would claim that this began a trend of what might be viewed as progressive or democratic moves following serious incidents which might have a direct impact on the image of Thailand on the world stage. The fascist

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<sup>226</sup> Vitit and Taylor., op. cit., p. 62

<sup>227</sup> Ibid., p. 60

oriented regime of Luang Phibunsongkram (1938-1944) and its alliance with the Japanese against the Allies became a rather embarrassing affair for Thailand following the defeat of the Japanese.

### **5.2.2 A Conservative Reform Coalition**

Elitism in one form or another has been a dominant hallmark of the Thai political scene. However, upon specific application of the topic at hand during the period 1990-2000, we find there to be some considerable support for the idea of political reform across the broad spectrum of policy advocacy coalitions. The dominant elite coalition, which I call the conservative reform coalition, publicly supported political reform. However, before one begins to cheer the victory of a pluralist, democratic, reform programme, one should consider the underlying beliefs of the dominant elite actors. As noted in Table 2 below (page 141), the conservative reform coalition, comprising large segments of the bureaucracy, military, elite, conservative MPs and senators and the Interior ministry to name some of the key players, was in favour of reform. Yet, when we examine their beliefs, we find that in fact they are more concerned with electoral reform and the reduction in power of corrupt elected officials. In fact, almost the entire political reform debate was an exercise reminiscent of a tug of war, with various competing groups in Thai society seeking to increase their personal political power.<sup>228</sup> The critical component however is that this reduction of power did not involve the devolution of power to the electorate and pluralist institutions, but rather recentralises power in the hands of a few 'clean' technocrats (like Anand) who would be above the fray of everyday, common electoral and party politics.

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<sup>228</sup> McCargo, Duncan.. op. cit. (1998), p. 13



A clear representation of the conservative reform advocacy coalition can be found in the person of Dr. Prawes Wasi. Following the Black May events, considerable political pressure continued to be exerted on the Chuan government by pro-democracy forces, the media, academics, the Palang Dharma party and the like to secure progressive amendments. In June of 1994, in response to the escalating crisis, and Chalard's (second? third? fourth?) hunger strike, Chuan decided to establish the Democratic Development Committee to investigate and draft proposals for political reform. With Prawes as its head, the DDC in early 1995 returned with an complex proposal for cleaning up Thai politics. According to Prawes, there were eight key areas of concern that were preventing stable, representative democracy in Thailand:

- (1) the dominance of money
- (2) the monopolisation of politics by a minority
- (3) the difficulties faced by good and able people in entering politics
- (4) dishonest and improper behaviour
- (5) parliamentary dictatorship
- (6) political conflict and instability
- (7) poor quality of administrative and legislative functions
- (8) lack of political leadership<sup>229</sup>

Disturbingly, the reference to parliamentary dictatorship made by the so-called DDC, echoed the reasons given by military leaders for the 1991 coup d'état. One will also note the lack of any reference to the lack of people power or participatory politics. Many of Prawes' points also share similarities to another elite conservative whose

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<sup>229</sup> Ibid., p. 12

publication *Constitutionalism: the Way Out for Thailand* had just been published as Prawes assumed the chair of the DDC.<sup>230</sup> Amorn Chantasomboon, a former Secretary General of the hyper-conservative Council of State, set the tone of the reform discourse for years to come. Not an entirely original document, its importance was to be found in its belief in ‘constitutionalism’ – not the type of constitutionalism which had precipitated the current political crisis – but a more rational constitutionalism on par with the mystical reverence accorded the American Constitution. The first interesting part of the work which strikes those who read Thai is the use of the word ‘constitutionalism’ in its original English form – transliterated into Thai. This immediately accords the work an utterly unwarranted aura of respectability in Thai elite and academic circles.<sup>231</sup> Remaining parts of his treatise are no less elitist, with Michael Kelly Connors calling it the epitome of ‘a conservative, bureaucratic critique of parliamentary democracy.’<sup>232</sup> In addition to citing the inability of many Thai scholars to read foreign languages as a weakness affecting their academic capacity to solve the problems of the country<sup>233</sup> (note the contrast to his obvious superior intellect – hence the proliferation of English terms in his paper), Amorn also proposes constitutional reform to be carried out by a special committee composed of former prime ministers, selected academics and advisors such as the current sitting prime

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<sup>230</sup> อมร จันทรสุมบุรณ์. ร่างรัฐธรรมนูญแก้ไขเพิ่มเติมเพื่อการปฏิรูปทางการเมืองตามแนวทาง คอนสติติวชันแนลลิสม์ (Constitutionalism.) สถาบันนโยบายศึกษา กรุงเทพฯ 2537

<sup>231</sup> Thai academics and social ‘thinkers’ are apt to litter their works with English words. Rather than creating new Thai words, or explaining the concept in Thai, these writers prefer to use English terminology. I maintain that it is an elitist device designed to project an image of superiority and intelligence. A favourite technique of Thai intellectuals, very often a reader will find an English word immediately followed by the perfectly respectable Thai word given in parentheses.

<sup>232</sup> Connors, Michael Kelly., op. cit., p. 208

<sup>233</sup> ‘สภาพวิชาการของประเทศไทย (การประเมิน “ศักยภาพทางวิชาการ” ในการแก้ปัญหาประเทศ ปัญหาเรื่องภาษา “นักวิชาการโดยทั่วไปของไทยไม่สามารถเข้าถึงตำราทางวิชาการที่ดีที่เขียนเป็นภาษาอังกฤษ” ใน อมร จันทรสุมบุรณ์. อ้างแล้ว แผ่นที่ 14 (Ironically, Amorn frequently uses English terms incorrectly in his publication)

minister and leader of the opposition.<sup>234</sup> Finally, in true elitist fashion, Amorn poses two key questions which he claims are the final two problems in *true* political reform in Thailand. He asks ‘who is the national leader’, and ‘what is the role of elites.’<sup>235</sup> His obvious distaste for the uneducated masses, which he claims represent one of the weaknesses of the Thai parliamentary system is reminiscent of the attitudes of the ‘People’s Party’ following the 1932 revolution. Should he not be asking ‘what is the role of the people?’ Although there are some notable differences between Amorn and Prawes, their combined conservative leanings, coupled with (especially Prawes’<sup>236</sup>) high level of respectability and position in society, meant that their ‘radically conservative’ beliefs were ultimately very influential in the period immediately preceding and during the political reform debates of 1993-1997.

### 5.2.3 Emergence of Pro-Human Rights (Paris Principles) Coalition

In reality, the emergence of pro-democracy and pro-reform civil society elements can be traced further back than 1992 as mentioned earlier. Intense civil unrest and political repression by elite factions in the 1970s and 1980s, coupled with an astounding economic growth rate, led to the formation of various NGO groups to deal with issues ranging from political reform to human rights to development. Several of these organisations were formed to deal specifically with human rights and justice issues such as the Union for Civil Liberty and the Coordinating Committee for

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<sup>234</sup> Ibid., p. 19

<sup>235</sup> Ibid., p. 22

<sup>236</sup> Prawes Wasi is closely connected to the National Cultural Commission, the Royal Family, many NGOs and is a Magsaysay laureate

Human Rights Organisations of Thailand.<sup>237</sup> Following the ideological shift mentioned above where the military were ordered to change their strategy of dealing with the so-called 'communist threat' from a military to political track, many activists, social critics/thinkers, students, etc. began to return from the jungle and reintegrate into Thai social life, rapidly swelling the ranks and expanding the stage for political reform debate.

These fledgling civil society groups began flexing their muscle on an increasingly wide political playing field. Having been subjected to considerable government repression and control in early years, the relatively new-found liberal atmosphere accorded these organisations the space necessary to begin articulating their vision for a more democratic society. However, this early advocacy for political reform and greater respect for human rights did not necessarily include the call for a National Human Rights Commission. In fact, many leading organisations were content with smaller-scale initiatives which accorded greater rights protection to their particular constituency or were mere extensions to already existing institutional structures. For example, efforts to secure amendments to the 1991 Constitution to recognise women's rights were spearheaded by the Gender and Development Research Institute and the GenderWatch Group. This campaign involved both technical legal strategies as well as shaping the beliefs and attitudes of lawmakers with the goal of having an amendment explicitly stating the equality of men and women in the constitution.<sup>238</sup>

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<sup>237</sup> Founding members of the CCHROT were the Centre for Protection of Children's Rights Foundation, the Friends of Women Foundation, the Justice and Peace Commission of Thailand, The Asian Cultural Forum on Development, the Union for Civil Liberty and the Coalition for Peace and Development. In CCHROT. *The Coordinating Committee of Human Rights Organisations of Thailand (CCHROT)*. Brochure (English and Thai) Bangkok: CCHROT, (n.d).

<sup>238</sup> Suteera Thompson and Maytinee Bhongsvej. *Putting Women's Rights in the Constitution:*

Here we see an example of human rights advocacy based upon a specific, limited constituency. In another example, early advocacy by the CCHROT focused on the establishment of a Standing Committee on Human Rights in parliament. This became a complicated process as amendments to the parliamentary procedures to increase the number of committees were required, and with the government calling for it to be a sub-committee of the Ministry of Foreign Affairs.<sup>239</sup> Only after 1992 did CCHROT begin calling for a National Human Rights Commission.

While the notion of a National Human Rights Commission had been discussed in some circles prior to 1992, it was not the central platform of pro-reform advocates or the human rights subsystem actors. This may be attributed to the recent codification of the Paris Principles in 1991. During the early years of the decade, pro-reform and human rights advocates were involved on many fronts in challenging the anti-democratic policies of the National Peace Keeping Council. It is therefore understandable that, with so many issues under consideration, a strategic plan on the establishment of a National Human Rights Commission was not given adequate attention or priority. In fact, I would argue that most civil society groups were caught by surprise by the cabinet decision of Anand Panyarachun to establish a national mechanism for the promotion and protection of human rights. Following directly on the heels of the Black May events, Anand quickly made it known that he wanted to avoid any similar confrontation between civilians and the military from occurring ever again. Educated in the United Kingdom, and representing the upper elite in Thai society, Khun Anand was acutely aware of the repercussions for Thailand that the

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*An Experience of Thailand* Bangkok: Gender and Development Research Institute, 1996, p. 27

<sup>239</sup> Sarawut Pratoomraj, personal interview.

Black May events would have on the nation's reputation. Thailand could not expect that investors, so integral to the kingdom's incredible economic growth, would not be troubled by such repressive measures. Thailand again risked being seen as backward and uncivilised – an image that the Thai elite has so desperately attempted to shed since the time of the first contact with Western powers.<sup>240</sup> Also, with the World Conference on Human Rights of the United Nations slated for 1993, Thailand had to do something about its human rights record, and it had to do it fast.

One of the notable features of the 1992 May events was the new alliance of progressive forces including NGOs, academics, labour leaders and the media in pushing for reform. However, according to both Connors and Suchit, this alliance was unable to mobilise sufficient sectors of society in support of its goals. Its attempt to use public forums and media campaigns to garner support among the progressive middle class was largely unsuccessful.<sup>241</sup> The result was that the pro-democracy movement espoused by the NGO community became subordinate to the political reform movement of the elite. In addition to many active NGO groups such as the CCHROT and the WCN, the period following the 1991 coup saw the emergence of new political reform-oriented NGOs such as the Campaign for Popular Democracy.

One of the results of the 1992 Anand cabinet order to establish a national level mechanism was the immediate awareness of lack of expertise and capacity on this

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<sup>240</sup> See comments by Worapoj Wongsanga in *ประชุมคณะกรรมการพิจารณาร่างรัฐธรรมนูญแห่งราชอาณาจักรไทย ครั้งที่ 20*, วันที่ 19 มิถุนายน, 2540, p. 17/3 where he claims the National Human Rights Commission should be included to show to the world that Thailand is a civilised nation (เป็นการประกาศเจตนารมณ์ว่าประเทศไทยเรา นั้นศิวิไลซ์แล้ว)

<sup>241</sup> Connors, Michael Kelly, op cit, p. 206 and Suchit Bunbongkarn, op cit, p. 98

subject among human rights activists. Although human rights groups were beginning to warm to the idea of a National Human Rights Commission, rather than an Ombudsman or Parliamentary standing committee, they did not have any idea of how to actually go about it. This led to a period of three years between 1992 and 1995 which Ken Bhattacharjee of CCHROT called the 'quiet period.'<sup>242</sup>

#### **5.2.4 Impacts from Other Subsystems**

The 1990s saw great developments in human rights in the region and internationally. Thailand too was undergoing great internal instability and change. The most significant other policy subsystem that exerted influence upon the human rights policy subsystem is the political reform subsystem. This influence cannot be underestimated. Because many of the supporters of a National Human Rights Commission and those supporting democracy and civil society shared similar belief systems regarding pluralism, democracy, freedom and human rights, it was only natural that the two subsystems would overlap. This correlates with Sabatier's argument that, in the Advocacy Coalition Framework, subsystems are 'only partially autonomous' and that 'the decisions and impacts from other policy sectors are one of the principal dynamic elements affecting specific subsystems.'<sup>243</sup>

Similarly, Thailand's increasingly engaged foreign policy position within ASEAN also impacted upon the human rights subsystem. Moving from a position of non-interference to one of 'constructive engagement' entailed foreign policy positions being articulated that were critical of repressive regimes in Burma, Laos and

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<sup>242</sup> Personal interview May 2000

<sup>243</sup> Sabatier, Paul and Jenkins-Smith, Hank, *op cit*, p. 23

Cambodia. Speaking at the Vienna World Conference on Human Rights in 1993, then Foreign Minister Prasong Soonsiri outlined the government's foreign policy position on human rights, stating that '[t]he pillars of the relationship between democracy, development and human rights are mutually supportive....,' and that, 'Thailand believes that both sets of rights (civil/political and economic/social/cultural) have to be achieved progressively in a balanced and simultaneous manner in order for democracy, development and the full realisation of human rights to be sustainable.'<sup>244</sup> However, in calling on the international community for assistance when violations of human rights take on an international character, he also warned that 'this concern should in no way be translated into interference in domestic affairs or serve as a pretext for encroachment on the national sovereignty of a state.'<sup>245</sup>

### 5.2.5 Belief Systems of Advocacy Coalitions

An examination of public hearing transcripts, minutes of government committee meetings, publications of civil society organisations and media reports have been analysed to chart the belief systems of the primary advocacy coalitions relevant to our discussion.<sup>246</sup> Table 2 presents a synthesis of the major advocacy coalitions, leading actors, key figures and beliefs for the period 1990-2000. The period of 1990-1993 was dominated by the political reform subsystem, with human rights functioning as a subset of that subsystem. During this period, the debate on a National Human Rights Commission was just being formed as a result of the Paris Principles which had been

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<sup>244</sup> 'Prasong: Govt taking steps on rights covenant.' Bangkok Post, 17 June, 1993

<sup>245</sup> Ibid.

<sup>246</sup> Examples include, Coordinating Committee of Human Rights Organisations of Thailand., op. cit., 1997. มูลนิธิเอเชีย และสถาบันพระปกเกล้า. *อ้างอิงแล้ว* (ม.ป.ป.); พนา จันทรวินิจ (บก.) *อ้างอิงแล้ว* 2541; คณะกรรมการประสานงานองค์กรสิทธิมนุษยชน. *อ้างอิงแล้ว* 1999b, 1997; et.al. Please see references for more details.



put forward in 1991. The Vienna Conference of 1993 provided further opportunity for the debate to continue, and more importantly, focused the spotlight on Thailand, as Bangkok hosted the Asia Pacific preparatory meeting. The period of 1993-2000, following the 1992 cabinet decision to establish a national-level mechanism, is the period in which most of the debate took place around the National Human Rights Commission. Although the political reform debate continued, a clear policy subsystem emerged during the constitutional drafting process and subsequent drafting of the *National Human Rights Commission Act*, centred on the Paris Principles.

**Table 2 -- Advocacy Coalitions in Political Reform and Human Rights****PROGRESSIVE REFORM COALITION 1990-1993**

- Actors: NGOs (WCN, CCHROT, CPD, CFD, et.al.), academics, most media, many business leaders, student activists, urban middle-class, progressive MPs and senators, Democracy Development Committee, majority of CDA members
- Key figures: Anand Panyarachun, Prawes Wasi, Chalard Vorachard, Chamlong Srimuang, Uthai Phimchaichon
- Beliefs: Political reform is necessary in Thailand. The primary purpose behind political reform is to increase democratisation and devolve power to the people. This is best achieved with Constitutional reform favouring decentralisation and empowerment of civil society.

**CONSERVATIVE REFORM COALITION 1990-1993**

- Actors: Conservative MPs and senators, large segments of the bureaucracy, many police and military officers, Interior Ministry, village chiefs, minority CDA members
- Key figures: Sanoh Thienghong, Chuan Leekpai(?)
- Beliefs: Political reform is necessary in Thailand. The primary purpose behind political reform is to reduce 'Parliamentary dictatorship' and reduce the dominance of corrupted electoral politics. This is best achieved with selective Constitutional reform favouring a strong national executive led by 'clean' technocrats.

**PRO-PARIS PRINCIPLES COALITION 1993-1999**

- Actors: NGOs (CCHROT, WCN, UCL, CPD), progressive academics and media, House Committee on Justice and Human Rights, Anand, Chuan, Banharn administrations, international NHRCs, United Nations, Democrat, Chart Thai, New Aspiration, Chat Pattana Parties
- Key figures: Anand Panyarachun, Sunee Chaiyarose, Suchit Bunbongkarn, Dr. Pradit Charoenthaitawi, Suthas Ngoenmuen, Bowornsak Uwanno
- Beliefs: The promotion and protection of human rights is central to democratic development. The promotion and protection of human rights should happen through a national mechanism. Mechanism should be based upon Paris Principles. Civil society groups should be guaranteed representation and/or selection power. Institutionalisation could result in either National Human Rights Commission, Ombudsman or both.

**ANTI-PARIS PRINCIPLES COALITION 1993-1997**

- Actors: Council of State, conservative MPs and senators, government Whips
- Key figures: Chan Ratnatham, Jurin Laksanavisit, Preecha Suwannathat, Achaporn Charuchinda
- Beliefs: No clear core principles emerged but there were two primary beliefs. The first was that human rights is an imported concept, incongruent with Thai culture. The second posits that development must come before human rights. Institutionalisation should not be pursued as existing laws and regulations already protect human rights. Civil society groups and NGOs should have no power/influence over what should be a state agency.

Table 3 -- Chronology of Events Leading to Passage of NHRC Act, 1999

<b>Phase I – (1986-1992) Period of almost complete absence of government policy on human rights. Social unrest and seeds of reform.</b>		
<b>Date</b>	<b>Government/Policy Initiatives</b>	<b>Civil Society Initiatives/Response</b>
1986	House Affairs Committee conducts study on human rights violations. (focuses on social and economic rights) Khunying Supatra Masdit (Chair of House Affairs Committee) holds hearings to consider establishment of House Committee on Human Rights.	Foundation for Studies of Democracy and Development at Thammasat University is partner.
Jun. 1987	Resulting from these hearings, Piyanut Vajraporn, Secretary-General of Ruam Thai Party, submits motion to President of House of Representatives to establish House Committee on Human Rights.	
Apr. 1988	House dissolved, resolution dies on order paper.	
1990	House Committee on Justice and Human Rights established by Chatchai Choonhavan Government.	
Feb. 1991	Military coup topples civilian government of Chatchai Choonhavan, suspends 1978 Constitution, calls for constitutional reform to deal with 'parliamentary dictatorship' and 'unusually rich' politicians.	
Mar. 1991	Anand Panyarachun appointed Prime Minister by National Peace Keeping Council.	
Dec. 1991	Legislature passes newly drafted Constitution of the Kingdom of Thailand, 1991, restoring bicameral legislature.	Institute for Public Policy Studies launches Study for the Reform of the Thai Constitution Project, led by Amon Chantasombun (former Secretary General of Council of State)
1992		Coordinating Committee for Human Rights Organisations in Thailand begins lobbying for creation of Standing Committee on Human Rights in the House of Representatives.
Mar. 1992	General elections held.  PM Anand accedes to the Convention on the Rights of the Child.	
Apr. 1992	General Suchinda Kraprayoon assumes premiership.	Captain Chalard Vorachat begins hunger strike in protest.
May 1992		Chamlong Srimuang begins hunger strike in protest, 100,000 join protest.  Formation of Confederation for Democracy, led by Chamlong sympathisers. Mass demonstrations continue in the capital.
	17-18 May. Soldiers open fire on demonstrators killing at least 52, and wounding hundreds.	His Majesty the King calls upon Suchinda and Chamlong to end confrontation

	Suchinda steps down, Anand reassumes premiership.	
Sep. 1992	Anand announces at final cabinet meeting that Thailand will ratify International Convention on Civil and Political Rights, orders human rights education be incorporated into training programmes for military and police and orders Ministry of Foreign Affairs and Attorney General's Office to undertake study and draft legislation to create a national human rights mechanism.  General Elections held. Chuan Leekpai becomes Prime Minister.	
<b>Phase II – (1993-1997) Political reform and human rights (national and regional) are debated. Major Constitutional reform results along with birth of National Human Rights Commission.</b>		
Mar. 1993	Asia-Pacific Regional Preparatory Meeting prior to Vienna World Conference on Human Rights. Produces 'Bangkok Declaration.'	Shadow NGO meeting to discuss human rights strategy, call on government to establish national-level mechanism (such as administrative court) to protect human rights.
July 1993	26 <sup>th</sup> ASEAN Ministerial Conference agrees on idea of regional human rights mechanism	
Mar. 1994	The Attorney General's Office (AGO) organises seminar on the topic "The development of national rights promotion mechanisms" to gather ideas before drafting its proposals.	
May 1994	The Attorney General's Office orders the establishment of a draft legislation scrutiny committee, incorporating members of the AGO, representatives from international organisations and representatives from the Treaties and Law Department of the Ministry of Foreign Affairs.	
June 1994	Government establishes Democratic Development Committee (DDC), chaired by Prawes Wasi.	Chalard Vorachat goes on a hunger strike (again) to press for political reform.
Sep. 1994	A meeting on the subject "National Level Mechanisms in the Promotion and Protection of Human Rights" is held at the Parliament.	The Coordinating Committee of Human Rights Organisations of Thailand (CCHROT) organises a seminar on the subject "National level mechanisms for the protection of human rights in Thailand" among its member organisations.
Mar. 1995	The AGO forwards completed draft Promotion and Protection of Human Rights Act to the Cabinet for agreement in principle, upon which it will be forwarded to the Council of State for scrutiny. Document is not accepted in principle and is effectively shelved.	
Apr. 1995	DDC releases report identifying 8 major areas requiring reform. Core	

	recommendation calls for Constitutional Drafting Assembly.	
July 1995	Chuan Leekpai coalition government falls amid land reform scandal.  General Elections held. Banharn Silpa-Archa places political reform at centre of election platform, wins.	
Nov. 1995	Prime Minister Banharn Silpa-Archa establishes the Political Reform Commission (PRC), chaired by Chumpol Silpa-Archa. PRC taps Gothom Arya (then Director of the Union for Civil Liberties) to draft a bill for the creation of a NHRC.	Dr. Gothom works directly with the CCHROT (and the House Committee on Justice and Human Rights) to organise seminars, study the problem and draft the new law.
Dec. 1995		CCHROT organises meeting on "National-level Human Rights Commissions" and establishes a working plan for drafting the new law, including: 1. Study the role and establishment of NHRCs in other countries. 2. Bring the results of such study to representatives of CCHROT by January 16, 1996 who would draft the law. 3. Organise a seminar to sound out opinion on the draft with the House Cmte. on Justice and Human Rights and the Political Reform Commission on March 1, 1996.
Oct. 1996	Third constitutional amendment changes Article 211 on the amendment of the Constitution and establishes Constitution Drafting Assembly.	Civil society groups propose candidates for CDA. Notable is Women's Network for Constitution.
Nov. 1996	Banharn Government collapses. Elections held, Chaovalit Yongchaiyuth becomes Premier.	
Dec. 1996	Recruitment of candidates begins.  Parliament selects CDA members.	
Early 1997	The newly operational Constitutional Drafting Assembly (CDA) establishes a Constitutional Drafting Committee (CDC) to author the new draft Constitution. Requires committee to take public opinion into careful consideration. Three-point framework established: 1. Rights, Freedoms and Citizen Participation; 2. Scrutinising the use of State Power, and 3. Political Institutions and Relations between them. A NHRC was not considered under point 2. Instead, office of the Ombudsman was given prominence.	CCHROT publishes position paper entitled 'National Human Rights Commission' outlining the importance of the National Human Rights Commission, international experiences, a comparison between the commission and ombudsman. Distributes to MPs, senators and interested parties.
Feb. 1997	CDA accepts in principle the Drafting Committee's report on frame 1.  CDA agrees in principle to Drafting Committee's report on frame 2.	

Mar. 1997	CDA agrees in principle to Drafting Committee's report on frame 3.	CCHROT lobbies CDA for inclusion of human rights and commission in charter.
Apr. 22 – 28 1997	<p>CDC organises meeting to discuss the draft proposals as forwarded from its various working committees for the consideration of the CDA members. (First Reading)</p> <p>Drafting Committee accepts Sunee Chaiyarose's proposal in principle to establish a National Human Rights Commission, requests Woraphoj Wisarutpich to draft the proposal in writing.</p> <p>Woraphoj disregards intent of the proposal by making the National Human Rights Commission merely a one-person part of the Ombudsman office under Chapter 4, Part 7.</p> <p>Sunee Chaiyarose requests sub-committee reject Woraphoj's draft and consider an even more radical proposal which would have made the commission an independent agency, called for heavy NGO participation in the selection of commissioners, etc. Committee rejects this proposal.</p> <p>After intense debate, an agreement was reached on a proposal drafted by Dr. Suchit Bunbongkarn which would create a National Human Rights Commission under a separate Chapter 4, Part 8.</p> <p>Drafting Committee agrees to establishment of National Human Rights Commission by vote of 19 for, 0 against, and 4 abstentions.</p>	<p>NGOs and civil society groups organised a meeting on the draft constitution and the NHRC. They expressed concern that the NHRC might be cut out of the constitution altogether and therefore called for the independence of the NHRC, a clear mandate and duties, and an independent office to oversee the NHRC's work.</p>
May 1997	Several Senators, led by Senate Speaker Meechai Ruchuphan, speak out against National Human Rights Commission.	
June 1997	Scrutiny Committee of Draft Constitution debates issue. Major issues include funding and conflict between National Human Rights Commission and Ombudsman.	
July 1997	CDA examines Draft Constitution in Second Reading. Resolution by opponents to delete Chapter 6, Part 8 is defeated. Debate centres on powers and duties. After significant compromise, CDA passes Articles 199 and 200 by a majority.	CCHROT organises seminar with various Thammasat University faculties on subject of human rights and draft constitution and to gather public opinion, draws only 70 participants.
Aug. 1997	CDA endorses final draft and submits to Parliament.	National Commission on Women's Affairs, House Committees and NGOs organise seminar on 'Human Rights in Thailand.'

Sep. 4 - 10, 1997	Parliament debates draft charter.  Group of young Senators, led by Wallop Tangkananurak, support National Human Rights Commission.	
Sep. 27, 1997	Parliament approves draft Charter.	
Nov. 28, 1997	Chuan agrees to create working group to prepare draft <i>National Human Rights Commission Act</i>	
<b>Phase III – (1997-2000) Government begins drafting Constitutionally-mandated organic laws. Opposition to National Human Rights Commission intensifies.</b>		
Apr. 1998	Deputy Prime Minister Pichai Rattakul, establishes drafting committee led by Attorney General	NGOs participate
June – Nov, 1998	House Justice and Human Rights Committee co-organises with NGOs a series of 15 public hearings  New Aspiration Party submits draft <i>National Human Rights Commission Act</i>  Prime Minister orders establishment of National Policy and Master Plan of Action on Human Rights Commission to commemorate 50 <sup>th</sup> anniversary of UDHR	NGOs gather public opinion
Oct. 13, 1998	Cabinet approves draft Act and sends to Council of State for examination.	
Oct. 16, 1998		NGOs call for government to hold public hearing on the proposed draft Act
Nov. 11, 1998	Prime Minister orders establishment of public hearing committee headed by Dr. Pradit Charoenthaitawi	
Nov. 30 – Dec. 16, 1998	Public Hearing Committee holds hearings in all regions of the country.	
Dec. 8, 1998	Chart Thai Party submits draft <i>National Human Rights Commission Act</i>	
Dec. 26, 1998	Public Hearing Committee submits report to Prime Minister	
Feb. 16, 1999	Cabinet approves draft Act which has been substantially rewritten by Council of State	
Feb. 1999		NGOs question legality of Council of State version of Act, citing authority only to revise, not rewrite. Call on Prime Minister to review matter.  CCHROT leads 14 organisations to call for review  Dr. Pradit meets Prime Minister to express concern over Council of State revisions and rejection of public input.
Mar. 4, 1999	Democrat members of House Justice and Human Rights Committee agree with challenge.	

Mar. 8, 1999	Government Whips agree to revise draft Act to accord with Constitution	
Mar. 10, 1999	Democrat Party submits draft <i>National Human Rights Commission Act</i>	
Mar. 11, 1999	Prime Minister's Office submits draft following cabinet approval, to House for consideration	
Mar. 18, 1999	Chat Pattana Party submits draft <i>National Human Rights Commission Act</i>	
Mar. 31, 1999	Draft <i>National Human Rights Commission Act</i> passes first reading, sets up extraordinary committee to study bill	
July 8, 1999	House begins second reading of NHRCA	
July 12, 1999		Senate Committee on Human Rights, along with NGOs organises seminar on National Human Rights Commission
July 14, 1999	Suthas to take draft out of House so that committee can revise draft to ensure independence.  Prime Minister rejects proposal to put National Human Rights Commission under his office.  House scrutiny committee and government Whips compromise to place National Human Rights Commission under Senate for first 5 years.	NGOs meet with Justice Minister Suthas Ngoenmeun
Aug. 24, 1999	Draft passes third reading, sent to Senate	
Sep. 3, 1999	Senate passes bill in first reading, establishes scrutiny committee	NGO delegates secure unique opportunity to participate in committee.
Sep. 23, 1999	Scrutiny committee finishes task and sends revised bill to Senate	
Oct. 1, 1999	Senate passes bill in second and third readings with revisions, sends back to House	
Oct. 6, 1999	Bill is passed by House	

### 5.3 *Advocacy Coalition Approach to Policy Change*

Table 3 above traces the emergence of the National Human Rights Commission from its beginning stages in the late 80s to its realisation in law in 1999. In this section we consider four key hypothesis of the Advocacy Coalition Framework related to coalition stability, the stability of belief systems, policy-oriented learning and the impact of changes external to the subsystem.



### 5.3.1 Coalition Stability

Perhaps the most fundamental hypothesis of the Advocacy Coalition Framework is Hypothesis 1 which states that:

‘On major controversies within a policy subsystem when core beliefs are in dispute, the lineup of allies and opponents tends to be rather stable over periods of a decade or so.’<sup>247</sup>

Within this hypothesis we see several of the main elements of the Advocacy Coalition Framework. First, the primary unit of analysis is the policy subsystem, where advocacy coalition actors are ‘held together’ by their shared beliefs. Shared core beliefs are highly resistant to change and thus may be examined over a time period of a decade or more.

In the case of the National Human Rights Commission, this hypothesis is indeed confirmed. The progressive reform coalition cum pro-human rights coalition showed a fairly high level of cohesion over time, with fundamental core principles of reform based on a pluralistic, democratic and progressive vision of freedom and human rights. Organisations such as CCHROT established in the early 80s became allied with various other politically oriented NGOs which had grown out of the student-led revolts in ’73 and ’76. Indeed, the upper level strata of NGO elites and leaders is drawn largely from precisely these student activists who led the pro-democracy movement.

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<sup>247</sup> Sabatier, Paul and Jenkins-Smith, Hank., *op. cit.*, p. 27

The 1991 coup was the breaking point for many of these activists. Although many had been involved in pro-democracy activities prior to this incident, it was precisely the attack on the power of the people that was intensely disturbing to many activists. Essentially, this whole debate about political reform and the National Human Rights Commission is about power: who gets it, how much do they get, and over whom do they wield that power? If the 1991 coup had removed the corrupt elected government from power, and the military had immediately turned the parliament back over to the people through general elections, a lot of violence could have been avoided. However, the military's deliberate attempt to shrink the political space available through the denial of public participation in the election of the Prime Minister was a direct blow to the principles of democracy held so dear by these activists.

Moreover, the mobilisation of reform-minded elites to the political reform and human rights cause was a critical component of the progressive reformists success. The likes of Anand Panyarachun and Prawes Wasi project a image of timeless elder statesmen, grounded in Thai culture, history and wisdom. In fact, not only is the actual stability of advocacy coalitions an issue, but sometimes the manipulation of actors to engender the *impression* of stability, can be in itself a valuable tool. In addition, as I argued earlier, the NGO community is itself an elite structure, with low levels of membership participation, undemocratic practices, little accountability, lack of strategic planning and deficient management skills all contributing to the maintenance of the status quo. In other words, there is very little change within the Thai NGO community. Very often, people become associated with a particular NGO and remain there indefinitely so that their name becomes almost synonymous with the organisation's name. This

creates for a stable but stagnant NGO community which, albeit less-than-perfect in democratic terms, contributes to subsystem stability over a long period of time.

Mention here of the principle human rights subsystem actor in the establishment of the National Human Rights Commission is warranted. The Coordinating Committee of Human Rights Organisations of Thailand (CCHROT) was founded in 1983 and claims to be a coordinating body which pools the resources of its member organisations working at the grassroots level, to promote and protect human rights at the national level. Interestingly, in its introductory brochure, its aims and principles in Thai and English are not the same. These could be considered akin to the organisations core policy principles. In Thai, the first principle is listed as ‘To campaign to resolve human rights problems both in Thailand and internationally.’ The following three concern disseminating human rights knowledge, to educate about human rights and democracy and to promote the growth of a human rights network both in Thailand and overseas. However, what is conspicuous in its absence is any mention of a national human rights mechanism, which gets mentioned later in its campaign activities section. However, in the English version, the first aim is, ‘to promote the creation of independent and effective human rights promoting and protection mechanism in Thailand.’<sup>248</sup> It is probable that the Thai version is the more official version dating from the time prior to the CCHROT decided to campaign for the National Human Rights Commission, showing an evolution in thinking within the organisation. In addition, the CCHROT states that it works on the following key areas, monitoring and reporting, policy advocacy, training, public education, and international solidarity.

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<sup>248</sup> CCHROT. *The Coordinating Committee of Human Rights Organisations of Thailand*. Bangkok: CCHROT, (n.d.) brochure. (English and Thai)

Although less structured and more amorphous than the progressive coalition, the conservative and anti-Paris Principles coalitions also remained rather stable over the period in question. In reality, it's not always the individual actors who are important here, but rather the organisations or institutions which continue to display a degree of continuity in belief systems over time. This is all the more likely when the subsystem involves actors which are state institutions, as these institutions are more resistant to change, being bogged down in bureaucratic mechanisms and seek to perpetuate core values in order to maintain stability. Of particular note is the Council of State and the bureaucracy, which attest to the continuation of the dominant elite ideology. This was supplemented by a variety of conservative allies including MPs, senators and police/military officers who stood to lose a significant portion of their power, or worse still, become the target of investigations, should a National Human Rights Commission be created. The principal belief to be found within this coalition would be one of attempting to prevent the redistribution of power, especially where that power would be devolved to communities or civil society organisations. Yet, by no means was there a cohesive advocacy coalition where members shared consistent core beliefs. Rather, various groups and individuals gave varying reasons for opposing policy on this issue, ranging from cost to cultural factors to national security.

### **5.3.2 Stability of Belief Systems**

Another key hypothesis of the Advocacy Coalition Framework is that advocacy coalition actors who share similar core beliefs will try to translate their beliefs into government policy. Secondary beliefs, including strategies and 'guidance

instruments' can change according to the situation, negotiation or policy-oriented learning. As such, Sabatier and Jenkins-Smith argue that:<sup>249</sup>

Hypothesis 2: Actors within an advocacy coalition will show substantial consensus on issues pertaining to the policy core, although less so on secondary aspects.

Hypothesis 3: An actor (or coalition) will give up secondary aspects of a belief system before acknowledging weaknesses in the policy core.

For the pro-National Human Rights Commission coalition, although there was some disagreement on secondary aspects such as the debate over what form the national mechanism should take, (ombudsman or human rights commission) the commitment to democratic political reform through constitutional amendment was viewed as the primary policy core goal. This coalition clung almost rigidly to the Paris Principles as the basis for its belief system, including adequate funding, independence and a broad mandate.<sup>250</sup> The CCHROT campaigned earlier for a parliamentary committee but came late to the National Human Rights Commission idea. It only began seriously advocating for this particular mechanism in 1995.<sup>251</sup> Yet this represents the policy core belief, being grounded in the core belief that the promotion and protection of human rights is paramount in a democratic society.

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<sup>249</sup> Sabatier, Paul and Jenkins-Smith, Hank., op. cit., pp. 32-33

<sup>250</sup> Pusadee Tamthai. "Thailand." in *Approaches to Human Rights in Southeast Asia*. Asian Perspectives Series. Washington: The Asia Foundation, 1999, p. 9

<sup>251</sup> Personal interview with Sarawut Pratoomraj, Ken Bhattacharjee and Khun Anjalee of CCHROT

The idea of a national human rights mechanism grounded in a constitutional provision first began to form following the dismay expressed by members of the coalition following the draft *Promotion and Protection of Human Rights Act* drafted by the Attorney Generals Office. This draft was unacceptable to the majority of activists as it placed the commission under the Prime Ministers Office – a serious blow to independence. Some activists recognised that their lobbying efforts had thus far been lacking.<sup>252</sup> The coalition thus swung into action, and recognised the opportunity for constitutional inclusion of human rights articles during the drafting process.

The Women's Constitutional Network was the first organisation to try to take advantage of this opportunity and launched a campaign to get its members, or people sympathetic to its cause on the CDA. The Constitution Drafting Assembly was seen as a compromise to the contentious issue of who should control the process. In the end, a combination of indirect election and parliamentary selection prevailed. Under this system, candidates over 35 years of age, with a Bachelors degree could register in their home province. If more than 10 candidates registered, they were to decide among themselves who would be the 10 nominees. These 10 nominees were sent from all 76 provinces to Parliament which would choose 1 final delegate from each province. In addition to this, 23 'experts' in political science, law and public administration were to be nominated by various educational institutions. The WCN spearheaded the drive to get 'blocks' of candidates registered so they could secure the nominations. Unfortunately, due to the effectiveness of the strategy, it was soon copied by other groups and was also diluted by reports of vote buying. In the end, a total of 19,335 people registered, of whom 6,774 or 35% were women – an

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<sup>252</sup> Ken Bhattacharjee, personal interview

impressive achievement. Not surprisingly, due to the influence of the dominant patriarchal and elite ideology in Thai politics, only 64 won nomination and later only 6 women eventually became members of the CDA.<sup>253</sup> Press reports also claimed that the government had circulated a list of ‘approved’ candidates to MPs and senators, a claim that was strenuously denied. However, the final results so closely resembled the ‘approved’ list, with over one quarter coming from former MPs and many civil servants, that the elite coalitions hand in the matter could hardly be denied. As such, the CDA, while appearing to go through the motions of public input, etc., Connors argues that such ‘public relations’ exercises were an appeasement tool and that NGO concerns were only considered by CDA when they fit the elitist ‘blueprint.’<sup>254</sup> The one exception is the section on the National Human Rights Commission which was successfully advocated for by members sympathetic to the NGO cause. Thus, the CDA remained largely an elitist structure with a top-down process, headed by the key elite players such as Anand and Uthai.

The first realisation of the National Human Rights Commission in the constitution drafting process occurred when the CDA accepted Sunee Chaiyarose’s<sup>255</sup> proposal in principle to establish a National Human Rights Commission, and directed Woraphoj Wisarutpich to draft the text.<sup>256</sup> However, Woraphoj disregarded the intent of the

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<sup>253</sup> Ockey, James. “Thailand: the Crafting of Democracy.” In *Southeast Asian Affairs*, Singapore: Institute of Southeast Asian Studies, 1997, p. 314

<sup>254</sup> Connors, Michael Kelly., op. cit., p. 217

<sup>255</sup> Khun Sunee is a former student activist who fled to the jungle, with ties to NGOs. She was identified as one of the ‘inside’ people activists could count on to push the human rights commission.

<sup>256</sup> ‘ข้อเสนอเพิ่มเติม มีข้อเสนอให้มีการจัดตั้งคณะกรรมการส่งเสริมและคุ้มครองสิทธิมนุษยชนผู้เสนอได้อย่างเหตุผลสนับสนุนด้วย แนวความคิดที่ว่าคณะกรรมการส่งเสริมและคุ้มครองสิทธิมนุษยชนจะเป็นองค์กรที่เชื่อมระหว่างรัฐกับประชาชนอีกทั้งยังเป็น องค์กรซึ่งจะช่วยให้การปฏิบัติงานของศาลรัฐธรรมนูญเป็นไปอย่างสะดวกและรวดเร็วขึ้น เช่น การที่คณะกรรมการส่งเสริม และคุ้มครองสิทธิมนุษยชนมีอำนาจในการประนอมข้อพิพาทแทนศาล ประเด็นที่ได้รับพิจารณา คือ ควรจะมีการจัดตั้งคณะ

proposal by making the National Human Rights Commission merely a one-person part of the Ombudsman office under Chapter 4, Part 7. Sunee Chaiyarose then requested that the sub-committee reject Woraphoj's draft and consider an even more radical proposal which would have made the commission an independent agency and called for heavy NGO participation in the selection of commissioners. The committee rejected this proposal. After intense debate, an agreement was reached on a proposal drafted by Dr. Suchit Bunbongkarn which would create a National Human Rights Commission under a separate Chapter 4, Part 8 which would have 11 commissioners, 5 of whom would be from NGOs.

The issue of which kind of national mechanism to advocate for became a point of some contention within the coalition. This became highly apparent during the Constitutional Drafting Assembly debates, where pro-national institution coalition members such as Bowornsak Uwanno favoured placing human rights promotion and protection duties with the parliamentary Ombudsman.<sup>257</sup> Significant number of CDA drafting members stuck to their core values as well, trying to prevent the inclusion of the National Human Rights Commission in the draft constitution. Led by Police General Chan Rattanatham and approximately 27 other CDA members, a challenge

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กรรมการส่งเสริมและคุ้มครองสิทธิมนุษยชนหรือไม่ถ้าเห็นควรอำนาจหน้าที่ของคณะกรรมการส่งเสริมและคุ้มครองสิทธิมนุษยชน ตามข้อ เสนอข้างต้นเป็นการเหมาะสมแล้วหรือไม่ และควรมีองค์ประกอบอย่างไร ความเห็นฝ่ายแรกเห็นว่า เห็นควรให้มีการจัดตั้งคณะกรรมการส่งเสริมและคุ้มครองสิทธิมนุษยชนเนื่องจากมีการจัดตั้งองค์กรดังกล่าวช่วยทำให้การคุ้มครองสิทธิของประชาชนมีประสิทธิ ภาพมากขึ้น ดังเช่นในประเทศฟิลิปปินส์ แอฟริกาใต้ ฯลฯ ในส่วนของโครงสร้างของคณะกรรมการ ส่งเสริมและคุ้มครอง มนุษยชน นั้น องค์กรดังกล่าวจะต้องเป็นองค์กรอิสระ โดยรัฐต้องไม่เข้ามาแทรกแซงในการดำเนินการใด ๆ ของคณะกรรมการ ส่งเสริมและคุ้มครองสิทธิของมนุษยชน ดังเช่น ในแอฟริกาใต้ ซึ่งรัฐธรรมนูญได้จัดตั้งคณะกรรมการส่งเสริม และคุ้มครองสิทธิมนุษยชน เป็น องค์กรอิสระโดยไม่มีองค์การใดแทรกแซง และขึ้นกับรัฐธรรมนูญและกฎหมาย ซึ่งองค์กรของ รัฐทุกองค์กรมีหน้าที่ที่จะต้องคุ้มครองและช่วยเหลือองค์กรดังกล่าวด้วย' ในสรุปผลการประชุมกร่างรัฐธรรมนูญ ของ คณะ กรรมการยกร่างรัฐธรรมนูญ สภาร่างรัฐธรรมนูญ วันที่ 22 เมษายน 2540', p. 30 in มูลนิธิเอเชีย และสถาบันพระปกเกล้า. อ้างแล้ว

<sup>257</sup> Personal interview with Sarawut Pratoomraj and *ประชุมคณะกรรมการยกร่างรัฐธรรมนูญแห่งราชอาณาจักรไทย ครั้งที่ 20*, วันที่ 19 มิถุนายน, 2540, p. 17/5



was mounted to proposed articles 199 and 200 citing three key reasons: national security, Thai traditions and customs and existence of other laws. However, while these three reasons do show the core beliefs of a sizeable number of people in Thailand, they were also used as smoke and mirrors to prevent the real threat to this coalition's political security – the inclusion of civil society actors in the affairs of the state.<sup>258</sup> Khun Seree Suwannapanon countered that even though existing laws were in place, the people were still oppressed, that a National Human Rights Commission would be the organisation directly responsible for the promotion and protection of human rights, that in fact having such an institution would be a proud achievement for Thailand and favourably viewed by the international community, and that the National Human Rights Commission posed no threat to national security.<sup>259</sup> Following extensive debate, the CDA voted to reject the proposed deletion of Chapter IV, part 8. Thus, the National Human Rights Commission was born (pending passage of the draft by Parliament.) Then the debate turned to the ‘meat’ of the articles 199 and 200 which have been discussed above. At stake was the composition of the commission, its duties and powers and role of NGO actors. This proved highly contentious and in the end two compromises were reached. First, section 199 was amended to call for the participation of representatives from private human rights organisations, rather than allotting a specific quota for NGOs.<sup>260</sup> Similarly, under section 200, the powers of the commission were reduced leaving it without the power to hold inquiries or impose binding resolutions. Instead, it would serve an

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<sup>258</sup> ‘องค์กรเอกชนนั้นไม่น่าที่จะนำเข้ามาเกี่ยวข้องกับเรื่องของรัฐ’ ในสรุปผลการประชุมยกร่างรัฐธรรมนูญ ของ คณะกรรมการยกร่างรัฐธรรมนูญ สภาร่างรัฐธรรมนูญ, อ้างแล้ว., p. 72

<sup>259</sup> Ibid., p. 74

<sup>260</sup> ‘รายงานการประชุมสภาร่างรัฐธรรมนูญ ครั้งที่ ๒๒ (เป็นพิเศษ)’ ใน มุขนิธิอาเซีย และสถาบันพระปกเกล้า. อ้างแล้ว. .

'examination and reporting' function only. This cleared the way for the passage of sections 199 and 200.

The example above shows clearly the polarisation of belief systems within the CDA. It also reaffirms the hypotheses of the Advocacy Coalition Framework that coalition actors will give up secondary aspects of their beliefs rather than acknowledge flaws in their core. As such, pro-Paris Principles actors were willing to trade their quota participation for a general statement and lessen the powers of the commission in order to keep the issue alive. Had they refused to budge on these matters, it is unclear whether the National Human Rights Commission would have found a place in the Constitution. This comes into sharp relief when we view the voting results. After removing the provisions calling for a strong investigatory commission and compulsory NGO positions on the commission, the CDA agreed to the establishment of a National Human Rights Commission by vote of 19 for, 0 against, and 4 abstentions. This points to considerable residual elite concern regarding the enforceability (justicability) of human rights and the role of civil society actors. In the end, the CDA voted to create a system based on the South African model where an Ombudsman and a National Human Rights Commission with powers in the area of promoting respect for human rights, promoting the enjoyment of human rights, and would follow and evaluate, examine and report on human rights violations would work side by side.<sup>261</sup>

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<sup>261</sup> สรุปผลการประชุมยกร่างรัฐธรรมนูญ. อ้างแล้ว, p. 54

Throughout the constitution drafting process, and the drafting of the *National Human Rights Commission Act*, we can identify six key issues or major arguments against a strong, Paris Principles-based National Human Rights Commission:

1. competition or duplication with existing or future agencies
2. interference in national sovereignty
3. problem of NGO involvement
4. power of commission to investigate
5. powers and duties of commission, location, independence
6. applicability to Thai cultural/social setting<sup>262</sup>

These beliefs persisted and continued to force the pro-Paris Principles coalition to engage in a variety of advocacy efforts to ensure the realisation of their goals throughout the drafting of the *National Human Rights Commission Act*.

Certainly, the drafting process of the *National Human Rights Commission Act* was infinitely more complicated than the CDA exercise. This was for three reasons. First, in lobbying efforts directed at the CDA, activists were working with a small group (99) of drafters who possessed enormous power in deciding the future constitutional makeup of the country. The inclusion of many highly educated academics and experts only made lobbying easier as most were sympathetic to democratic, pluralistic ideals. Secondly, the CDA was external to and set apart from the normal parliamentary system with its confusing array of electoral bargaining, non-confidence motions and partisan party politics. As such, it was a highly superficial environment, and the inclusion of articles 199 and 200 can not technically be said to represent government policy. Thirdly, although some have argued that the CDA was a hot

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<sup>262</sup> ถัสดาวัลย์ จันทวิภาชพิทักษ์, *ข้างแล้ว*, pp 92-94

patronage opportunity, permitting various individuals the stage needed to launch or relaunch a political career<sup>263</sup>, it can be said that the drafters had a lot less to lose by the creation of a National Human Rights Commission than did the masses of criminal and semi-criminal people sitting in the Parliament.

During the drafting of the Act, almost everyone involved in politics had to put their two cents worth into the debate. No fewer than 6 official versions were presented by political parties to the Parliament. Other NGOs (some suspiciously and conveniently new) forwarded their own proposals for consideration. On top of all this was a flurry of comparisons being made after examining similar legislation from Asian, European American, and even African countries.

Beginning in February, 1999 the debate began to turn ugly as competing coalitions coalesced and clashed on central policy core and secondary beliefs such as the independence of the commission, its duties and powers, involvement of private human rights organisations, the location of the commission, the budget, and the salaries of commissioners. When the cabinet accepted the draft *Act* in principle that had been butchered by the Council of State, pro-Paris Principles coalition actors sprang into action, mobilising the support of elite key figures (policy brokers) such as Dr. Pradis (who had chaired the Public Hearings Commission).<sup>264</sup> The attempt by the Council of State, and later the House in second reading, to dramatically scale back the powers, duties and involvement of civil society actors in the commission, served to demonstrate the clash on core beliefs.

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<sup>263</sup> McCargo, Duncan . op. cit, 1998, pp. 24-25

<sup>264</sup> 'Challenge mounted on human rights bill.' Bangkok Post, March 4, 1999

This attempt to reduce the commission to a ‘paper tiger’ is precisely the crux of this thesis. I argue that this not only confirms the Advocacy Coalition Framework’s premise as outlined in hypothesis 4 below, that policy change is unlikely to occur when the dominant coalition that instituted the policy remains in power, but that in fact, very little policy change occurred, if at all. The inclusion of the National Human Rights Commission in the Constitution took place under highly unusual circumstances. The opposing coalition was unable to mount an effective response as it was pre-occupied with buttressing its power on multiple fronts including responding to constitutional provisions calling for the establishment of an anti-money laundering committee, a new powerful election commission, a strong national counter-corruption commission, an elected senate, and a new system of electoral guidelines. In essence, the conservative coalition was too busy and besieged to mount an effective defence during the debates in the CDA. However, later, when the debate returned to the proper legislative area that is its playing field, the opposition struck back with a vengeance, stripping the National Human Rights Commission of much of its power, relegating its commissioners to unpaid, part-time staff, preventing the involvement of NGO representatives, and placing the commission under the Justice Ministry. The further interference by the government Whips, and later the Council of State (again) resulted in the House returning the draft to virtually the same as had been proposed by the Council of State.

Only with the help of a pro-commission Justice Minister (Suthas Ngoenmeun) and the unprecedented inclusion of civil society representatives on the Senate Scrutiny Committee, did the pro-Paris Principles coalition succeed in restoring some of its

policy goals.<sup>265</sup> However, these did come at a cost, with several compromises being made to appease conservative senators. The end result is as noted above in section 4.4

### 5.3.3 Policy-oriented Learning

Policy oriented learning is one of the defining characteristics of the Advocacy Coalition Framework. It posits that:

Hypothesis 6: Policy-oriented learning across belief systems is most likely to occur when there is an intermediate level of informed conflict between the two. In such a situation, it is likely that:

- (1) Each coalition has the technical resources to engage in such a debate; and
- (2) The conflict is between secondary aspects of one belief system and core elements of the other, or alternatively between important secondary aspects of the two belief systems.<sup>266</sup>

Hypothesis 9: Policy-oriented learning across belief systems is most likely to occur when there exists a forum that is:

- (1) Prestigious enough to force professionals from different coalitions to participate; and
- (2) Dominated by professional norms<sup>267</sup>

As a result of the topic at hand, the establishment of the National Human Rights Commission, and its focus on social and political issues, another hypothesis also comes into play:

Hypothesis 8: Problems involving natural systems are more conducive to policy-oriented learning than those involving purely social or political

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<sup>265</sup> Sriprapha Petcharamesree, personal interview.

<sup>266</sup> Sabatier, Paul and Jenkins-Smith, Hank., *op. cit.*, p. 50

<sup>267</sup> *Ibid.*, p. 54

systems because in the former many of the critical variables are *not* themselves active strategists and controlled experimentation is more feasible.<sup>268</sup>

The extent of the conflict between the competing advocacy coalitions was such that policy-oriented learning across belief systems was very difficult. Indeed, because of the novelty of the issue to both parties, a great deal of policy-oriented learning had to first take place within various coalitions. Interestingly, in seeking to find a model conducive to the promotion and protection of human rights, no empirical data was forwarded to support the assumption that a National Human Rights Commission reduces violations of human rights. Indeed, several meetings, seminars and early drafting committees merely examined already existing human rights commission acts from other countries. There was no attempt to rationalise this or attempt to test the theory by either party. While it is understandable that to measure human rights violations is a complex affair, the fact that it was not even mentioned is interesting. Instead of asking the question, 'do national level mechanisms serve to reduce human rights violations,' parties instead chose to focus on a battle over the scope of the powers and duties. Therefore, while the discussion became 'bounded' by newly emerging international norms, no experimentation or original research was forwarded to contribute to policy-oriented learning. Coupled with the Constitutional mandate for the establishment of the institution, the debate necessarily focused on defining the scope of the body. No longer could debate on the actual merits of such a body take place.

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<sup>268</sup> Ibid., p. 52

Several important meetings and conferences did take place during the drafting process, bringing together parties from both coalitions, sometimes even involving the United Nations or representatives from National Human Rights Commissions in other countries.<sup>269</sup> Similarly, there were some significant academic contributions to the debate. Key examples include Suthin Noppaket<sup>270</sup> and Laddawan (et.al.)<sup>271</sup>. However, these works largely focused on a descriptive account of what happened and a comparison of various drafts of the *National Human Rights Commission Act*, rather than focusing on *why* policy change happened. Parts of the Laddawan report were used at the Senate meeting mentioned above. Thus, policy-oriented learning was not a significant factor in policy change in this case for three reasons: the topic, by its political nature, does not lend itself to empirical measurement (low analytical tractability), there was relatively little expertise on the issue within both advocacy coalitions, and because the forum for debate was largely restricted. By this I mean that the CDA was a closed, elite, top-down process. While acknowledging that there were some opportunities for public input, in the end the CDA members had the final say. Public input and opinion gathering is also not technically policy-oriented learning. Just because 90% of the population believes that a National Human Rights Commission would reduce human rights violations, does not make it scientifically so. Thus, there was little stimuli for change in coalition policy core beliefs. Furthermore,

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<sup>269</sup> see คณะกรรมการสิทธิมนุษยชนศึกษาปัญหาสิทธิมนุษยชน วุฒิสภา. เอกสารประกอบการประชุมระหว่างประเทศ เพื่อเสวนา ปัญหาสิทธิมนุษยชน เรื่อง กฎหมายว่าด้วยคณะกรรมการ สิทธิมนุษยชนแห่งชาติ: แนวคิดและ ประสบการณ์, จัดวันที่ ๑๒ กรกฎาคม 2542, อาคารรัฐสภา ๒: กรุงเทพฯ 2542

<sup>270</sup> สุธิน นพเกตุ. โครงการจัดตั้งคณะกรรมการสิทธิมนุษยชนแห่งชาติ: กลไกคุ้มครองและส่งเสริมสิทธิมนุษยชนในประเทศไทย สถาบันทักษิณคดีศึกษาและพัฒนาสิทธิมนุษยชน กรุงเทพฯ 2542

<sup>271</sup> ศศสววัฒน์ คำนวณวิทยาพิทักษ์. อ้างแล้ว



the draft charter, after having been passed was sent to Parliament who could only reject or accept it *without revisions*.

#### 5.3.4 Impact of Changes External to the Policy Subsystem

Because of the manner in which people hold on to their core beliefs, the Advocacy Coalition Framework hypothesises that only very rarely will changes in those beliefs occur from within a policy subsystem. It is therefore argued that we must look to more external events to explain policy change.

Hypothesis 4: The core of a government programme in a specific jurisdiction will not be significantly revised as long as the subsystem advocacy coalition that initiated the programme remains in power within that jurisdiction – except when the change is imposed by a hierarchically superior jurisdiction.<sup>272</sup>

Hypothesis 5: The core of a government programme is unlikely to be changed in the absence of significant perturbations external to the subsystem, that is, changes in socioeconomic conditions, system-wide governing coalitions, or policy outputs from other subsystems.<sup>273</sup>

Policy formation around the National Human Rights Commission is testament to the hypotheses given above. Indeed, without several external perturbations, it is highly unlikely that Thailand would have a National Human Rights Commission today. The first of these occurred in 1991 with the articulation by the world community of the Paris Principles. Suddenly, there existed an internationally recognised set of

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<sup>272</sup> Sabatier, Paul and Jenkins-Smith, Hank, op cit, p 217

<sup>273</sup> Ibid, p 24

guidelines for the establishment of a National Human Rights Commission against which could be measured. Although it is not binding and is subject to constraints imposed by the sovereign nature of the nation-state, this international standard setting, coupled with Thailand's desire to be seen to be 'civilised' and 'modern' could be said to have exerted a hierarchically superior jurisdictional pressure on Thailand.

Second, and most fundamental was the perturbations caused by the intense political and social turmoil that occurred following the 1991 coup and the May 1992 massacre. Amid intense international criticism and coming so soon before participation in the World Conference on Human Rights, then Prime Minister Anand was forced to act to restore confidence and 'face' in the eyes of the international community.

The third perturbation occurred with the establishment of the CDA. In essence, this setup, (excluding the selection of members) removed the entire political process from within Parliament to an external venue. This circumvented all the normal processes, pros and cons of electoral politics, and ensured that those who had the most to lose were not involved in the process. It was this highly centralised exercise in political reform, and its marginalisation of traditional conservative elite opponents, which led to the inclusion of the National Human Rights Commission in the draft Constitution.

The fourth and final external factor concerned the massive economic crisis that was to occur just as the draft charter was being debated by Parliament. Lawmakers could not amend the draft, but only pass it or defeat it. Were it defeated, it would have been sent to a public referendum. Even Senate Speaker Meechai Ruchapun, a conservative, changed his position and supported the draft due to the economic crisis

claiming, 'if it didn't pass, the problems would break out then and the country would not survive.'<sup>274</sup> Chavalit Yongchaiyut, then prime minister, was also acutely aware, given the massive support the public had shown for the draft in the Green Flag campaign, that should the draft fail, it would spell the end of his government. Thus, needing to avert both a political crisis and a further worsening of the economic crisis due to political instability, he reluctantly endorsed the charter. The mandate for the creation of a National Human Rights Commission therefore became a constitutional imperative, having been passed by a mere majority of a select 99 people, rather than the result of a bottom-up initiative. The new Constitution also placed a two year time limit on the drafting of the *National Human Rights Commission Act*, ensuring that opponents could not just let it sit on the order paper indefinitely.

#### 5.4 *Evaluation of Advocacy Strategies*

In attempting to translate their beliefs into government policy, civil society groups mobilised the full membership of their constituency and resorted to a myriad of strategies or 'guidance instruments.' Before speaking about specific types of advocacy, it is important to reiterate what has been shown by the analysis above. During the CDA process, NGO activists became aware that they could not muster the numerical force that had so rapidly dissipated following the initial reaction to the 1991 coup and during the May events. As a consequence, the NGOs aligned themselves with elite reformists in the CDA in order to secure their goals. Because of the shallowness of the democratic experiment, the lack of appeal of the abstract goals

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<sup>274</sup> Connors, Michael Kelly., op. cit., p. 219

(constitutional reform) for rural people, and the fickle nature of the middle class, the progressive reform coalition found it necessary to play 'personal politics' and resort to many of the backroom dealings which many find so abhorrent in the electoral system.<sup>275</sup> I would caution the reader from assuming that such a coalition is one which is very forced and distasteful to the majority of NGO leaders. On the contrary, I would argue that many of the most prominent NGO leader in fact thrive in this environment. In Thailand, personal connections are paramount, and the civil society sector is no exception. Given the nature of the 'NGO Mafia' which I have spoken about earlier, and the propensity for the very organisations calling for democratic institutions to be, themselves, highly undemocratic, the representations of political reform as being a 'people's movement' are quite misleading.

Moreover, when we examine some of the core policy beliefs of the NGO activists we find that one of their most fundamental goals was to secure placement on, or at least power in the selection process of the National Human Rights Commission. This raises some serious issues. If the leaders of some NGOs are unelected leaders, heading organisations which falsely claim to be grassroots organisations, and can secure positions of power such as on the National Human Rights Commission, where is the accountability? To whom are they accountable? Their membership? The general public? These questions require greater examination by scholars.

Because of the plethora of activities, the timespan of over a decade and the multiplicity of actors, a substantial evaluation of all the advocacy strategies utilised during the period 1990-2000 is beyond the scope of this thesis. Instead here we focus

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<sup>275</sup> Personal interview with Sarawut Pratoomraj and Sriprapha Petcharamesree

on several key strategies used by the pro-commission coalition and assess their efficacy.

First we should outline some of the key ‘guidance instruments’ used by the coalition. Generally, these included, but were not limited to: lobbying, media campaigns, demonstrations, electioneering, providing research reports, altering the make-up of political committees etc. From annual reports of organisations such as CCHROT we can get a more detailed picture of what kind of activities took place. In the 1996 report on human rights, the CCHROT cited the lack of independence for the commission in the Attorney Generals draft as being the biggest problem. They also criticised the government for not considering ‘lessons from other countries’ and pointed to the fact that the Philippines, Indonesia and India all already had National Human Rights Commissions.<sup>276</sup> Shockingly, in 1997, the year of the promulgation of the new Constitution at the height of the political reform movement, no mention was made of the National Human Rights Commission.<sup>277</sup> In the following year, 1998, the CCHROT interestingly polarised the debate and reduced the scope for discussion by claiming that there were only two drafts of importance – the Attorney General’s version and the ‘people’s’ version of the CCHROT. While the first version focused on the promotion of human rights, the second emphasised an investigative and enforcement function with penalty powers.<sup>278</sup> In sum, the primary activities during

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<sup>276</sup> คณะกรรมการเผยแพร่และส่งเสริมงานพัฒนา. สรุปลานการณ้สังคมไทย 2539: มุมมองและขอเสนอจากเครือข่ายองค์กรพัฒนาเอกชน. กรุงเทพฯ 2540, p. 9

<sup>277</sup> คณะกรรมการเผยแพร่และส่งเสริมงานพัฒนา. สรุปลานการณ้สังคมไทย 2540: มุมมององค์กรพัฒนาเอกชน. กรุงเทพฯ 2541

<sup>278</sup> คณะกรรมการเผยแพร่และส่งเสริมงานพัฒนา. สรุปลานการณ้สังคมไทย 2541. มุมมององค์กรพัฒนาเอกชน. กรุงเทพฯ 2542

the period of 1996-2000 of the CCHROT involved translating and producing human rights documents, drafting position papers for distribution to key decision makers, giving interviews to the media, coordinating activities with other coalition members, and above all, organising seminars.<sup>279</sup>

#### 5.4.1 The media as partner

The first advocacy strategy of note is the use of the media to advance the belief system and goals of the pro-commission coalition. Occasionally this took the form of cultivating or utilising existing personal relationships with members of the media. However, more often than not, senior journalists and especially editors are of an elite class of their own. Wielding great influence, often highly educated, these personalities were highly likely to support the goals of the progressive coalition. Additionally, because any consideration of rights and freedoms would necessarily touch upon freedom of expression, the media itself had a large personal interest in wresting power away from the state. Personalities such as Kavi Chongkittavorn, Sutichai Yoon, Thongbai Thongpao and Boonlert Changyai were among the most prominent journalists who used their columns to support the coalitions goals.<sup>280</sup> This advocacy technique was critical in shaping public opinion and opening up the political

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<sup>279</sup> Between June 97 and November 98 CCHROT organised at least 15 seminars for member organisations and others. CCHROT. *Human Rights in Thailand Report 1996*. Bangkok: CCHROT, 1997

<sup>280</sup> See กองบรรณาธิการ มติชน. *ผลงานมติชนด้านสิทธิมนุษยชนรอบ 3 ปี 2538-3541*. มติชน: กรุงเทพฯ 2541; พนา จันทวิโรจน์ (บก.) *บทความ บทบรรณาธิการด้านสิทธิมนุษยชน ปี 2541 โดยหนังสือพิมพ์เดอะเนชั่น*. Nation Multimedia Group: กรุงเทพฯ 2541; and บริษัท ยู แอนด์ ไอ คอร์ปอเรชั่น และบริษัท ที.ไอ.เอน. เเรดิโอ. *ผลงานด้านสิทธิมนุษยชน ประจำปี 2542 เรื่องที่ 3 พ.ร.บ. คณะกรรมการสิทธิมนุษยชนแห่งชาติ (1 มีนาคม 2542 -)*. สถานีวิทยุเพื่อผู้หูฟัง FM 99.5MHz. กรุงเทพฯ 2542

space for dialogue that was not confined to the meeting rooms of committees or seminars. Sarawut points to the success of Channel 11 programmes in disseminating the issues to a nation-wide audience.<sup>281</sup>

#### **5.4.2 Linking debate to international standards**

The second critical strategy employed by the coalition was the linking of the debate to international human rights promotion and protection norms and standards, namely the Paris Principles. This they did through the translation of critical international human rights documents and by inviting international figures such as the special representative of the United Nations and commissioners from other national human rights commissions to participate in seminars held with key lawmakers. As a result, it became increasingly difficult for the Thai state to distance itself from these norms. Related to this was the portrayal of Thailand as somehow lacking or slow when compared to other nations in the region. With other nations, which Thai elites considered less economically and socially developed, already having established national commissions, Thailand was at risk of being viewed as behind in this area and could lose some of its new found leadership clout within ASEAN. The holding of the Asia Pacific preparatory meeting in Bangkok only served to intensify the pressure upon the Thai government to produce a clear plan of action. Immediately following the May 92 massacre, the Thai government was seeking to improve its image prior to the conference. The internationalisation of the conflict within this subsystem also played upon centuries-old insecurities of the Thai elite as discussed elsewhere in this

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<sup>281</sup> Sarawut Pratoomraj, personal interview.

paper. This is confirmed by comments made by CDA members who pointed to international standards and the need for Thailand to appear ‘civilised.’

Interestingly, even those who represented the elitist nationalist-xenophobic school of thought, became reluctant allies, being forced to support the idea of the establishment of a commission in order to balance and check the power of foreign influences. In other words, the ‘us’ versus ‘them’ mindset played into the hands of the pro-commission coalition, as the nationalists sought to establish a strong Thai human rights institution which would assist in countering what they perceived to be foreign interference. According to one CDA member, Lt. Somneuk Chuwichien ‘...Thailand is facing an increasing burden in a variety of areas imposed by foreigners who claim to be acting on various human rights principles...’<sup>282</sup> This even extended to arguments being made against the inclusion of Thai NGOs in any commission structure because they were mere puppets of foreign interests. Danarit Watcharaporn, a New Aspiration Party MP for Sisaket claimed that many Thai NGOs ‘were receiving financial aid from some countries which were using human rights issues to wage a trade war with Thailand.’<sup>283</sup> One clear example of this hyper-nationalist sentiment occurred when the Senate, in final reading on the *National Human Rights Commission Act*, made it compulsory that commissioners not only hold Thai citizenship, but hold Thai citizenship *by birth*.<sup>284</sup> This obviously flies directly in the face of non-discrimination provisions of the Constitution which the National Human Rights Commission is sworn to uphold.

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<sup>282</sup> ประชุมคณะกรรมการพิจารณาร่างรัฐธรรมนูญ. อ้างแล้ว. p. 17/3

<sup>283</sup> ‘Senator group backs national rights body’ Bangkok Post, September 10, 1997

<sup>284</sup> ‘Rights bill passed by upper house.’ Bangkok Post, October 4, 1999



One significant point which flows from the NGOs choice to explicitly and rigidly link their campaign to international standards is the effect that it had upon public input opportunities. Effectively, such linking pre-empted any real debate and made public input hearings a moot exercise. When the NGOs took their draft proposals (wedded to the Paris Principles) to the people, it served to reinforce elite top-down forms of consultation. In essence, the blueprint (Paris Principles) was already in place. If a majority of those who attended the public hearings called for the commission to be attached to the prime minister's office, can we really believe in all seriousness that the NGO community would have accepted such a proposal? It is extremely unlikely as it would conflict with their core policy beliefs on independence. Therefore, the public hearings served little purpose other than a public relations exercise. attempting to persuade listeners to share the NGO view on the international norms. My comments here run directly against the NGO view that the public hearings were a victory for civil society and showed the new openness in Thai politics. On the contrary, I argue they only served to further entrench the elitist mentality of many in the NGO and academic community, and further deny true public participation in policy development and formation. Even elite conservatives such as Prawes bemoaned the lack of true public input and participation during the constitution drafting process.<sup>285</sup>

#### **5.4.3 An unholy alliance**

Another major strategic move that the progressive reform and pro-commission coalition made was to align itself closely with the dominant conservative elite

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<sup>285</sup> 'Constitution special.' Bangkok Post, March 27, 1997

reformists. This was mentioned earlier in the paper. This represented a strategic break from the traditional confrontational politics of the NGO community. Knowing their numbers to be insufficient and their radical agenda to be unacceptable to the vast majority of conservative opponents, the coalition found itself supporting elitist positions such as those put forward by Prawes, Amorn and Anand. This also served to bolster support among progressive elements of the powerful Bangkok business community who were keen to limit the influence of what they perceived to be a corrupt, unfair provincial business clique.<sup>286</sup> One writer has praised the successful tactic used by the Campaign for Popular Democracy. In seeking to bridge the urban-rural divide the CPD worked very hard to translate economic problems (the concrete) into the amendment of the constitution (the abstract.)<sup>287</sup>

According to Connors, the alliance of bureaucrats, intellectuals, NGOs, press, and progressive politicians was brought together not because of shared core ideology, but rather out of shared opposition to money politics, poor planning, unresponsive government, human rights violations and corruption.<sup>288</sup> This is in conflict with the Advocacy Coalition Framework's proposition that explicitly rejects short term interest and 'coalitions of convenience' being able to dominate policy making over time.<sup>289</sup> Yet, I would counter that all the aforementioned problems fall within the scope of near core policy beliefs, rather than core beliefs. I believe most did share the core belief that political reform was necessary, based on general democratic principles.

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<sup>286</sup> McCargo, Duncan., op. cit., 1998, pp. 18-19

<sup>287</sup> Suthy Prasartset., op. cit., p. 123

<sup>288</sup> Connors, Michael Kelly., op. cit., p. 211

<sup>289</sup> Sabatier, Paul and Jenkins-Smith, Hank., op. cit., p. 27

Where they differed was on just how those reforms should take place and what form they should take.

#### **5.4.4 Into the lions den**

One of the most startling and exciting developments to result from the entire National Human Rights Commission drafting process was the success of civil society organisations in breaking through previously impervious barriers, and secure influential places on various government committees such as the Public Hearings Committee and the House Scrutiny Committee. This strategy was pursued on two main fronts. First, personal contacts with elite policy brokers were cultivated and exploited. For example, Dr. Pradis Charoenthaitawi who had chaired the public hearings and was former Rector of Mahidol University, pulled Dr. Sriprapha of the masters degree programme in human rights at Mahidol University into the public hearing process. It has been also reported to me that Dr. Pradis was the personal physician to Chuan Leekpai's mother. Later, commission-friendly and former student activist, Justice Minister Suthas as chair of the Extraordinary House Scrutiny Committee appointed Dr. Pradis as first Deputy Chair, Dr. Phusadee Tamthai of the WCN as third Deputy chair and Dr. Sriprapha First Assistant Secretary. On another front, pro-commission forces such as the WCN extensively lobbied political parties for their allotment of external experts allowed during scrutiny meetings. The New Aspiration Party, seeing an opportunity to exploit the situation (it was at that time the central party of the opposition) gave two of its seats to representatives of the WCN. The Democrats, not wanting to be outdone, reciprocated. In the ensuing tit-for-tat, the end result was that over half of the 35 member scrutiny committee was comprised of non-MPs. Later, this strategy was again exploited when the Senate Scrutiny Sub-Committee appointed four non-senators to the committee, including Minister Suthas,

two WCN representatives and Bowornsak Uwanno. This achievement marked a considerable maturation of civil society organisations, and provided valuable experience for what is sure to be increasing opportunities for public policy input under the new Constitution.

#### **5.4.5 Overall evaluation**

The above discussion does not begin to touch on all the various advocacy techniques that were utilised by various coalition actors. Others such as gathering petition signatures of celebrities and influential members of society, and lobbying opponents such as the Council of State, were also pursued. Dr. Sriprapha acknowledges that the advocacy coalition incorrectly gauged the level of support among MPs, thinking that if they reached a select number of influential lawmakers, that this would cause a ripple effect.<sup>290</sup> This had a disastrous effect when the powerful government Whips, who were opposed to the National Human Rights Commission, ordered MPs to strip the commission of its independence and power. Another failure concerns the lack of interest that civil society groups were able to engender among the general population. During the public hearings period, 110,000 questionnaires were sent out to various groups and individuals for input. Only 1,730 were returned within the deadline, with an additional 580 turning up later. This adds up to a mere 2.1% of the total. A further 1,380 people attended the hearings to give input.<sup>291</sup>

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<sup>290</sup> Sriprapha Petcharamesree, personal interview.

<sup>291</sup> Seree Nonthasoot (Council of State) 'Misleading article on the human rights bill.' *The Nation*, March 3, 1999

All of these factors contributed to the final result of the *National Human Rights Commission Act* being a compromise and imperfect document. Although generally conforming to the spirit of the Paris Principles, the *Act* is also tempered by provisions which represent the beliefs of conservative elites. This does not bode well for the future work of the Commission. Those opposed to the Commission remain opposed, and will likely attempt to influence the work of the Commission through the selection process, the budget, and other avenues. The diversity of belief systems surrounding human rights as shown above in Chapter 3, increases the potential for conflict as values and issues in such areas as urban versus rural, civil/political versus social/cultural/economic, and universalist versus relativist all come into play within the new Commission.