



CHAPTER 1

INTRODUCTION

1.1 Background to the Question

Very few words or phrases in Thai political and academic circles have succeeded in commanding such attention in recent times as the terms ‘civil society’ and ‘democratic development’. Although there is no one clear definition of these terms, what they mean, how they are articulated, how they are used, etc., their value, worth and importance is seemingly taken for granted. It seems a forgone conclusion that ‘democracy’ is undergoing ‘development’ of some sort in Thailand, and that that development’s logical conclusion will result in something identifiable as a ‘civil society.’ While these terms possess inherent complexities, nuances, contradictions and problems of definition, one key component of democratic development and civil society upon which most people can agree is the requisite promotion and protection of human rights.¹ Yet, just to debate *how* human rights are to be promoted and protected is to enter into a political minefield littered with potentially explosive issues ranging from national security and sovereignty to cultural imperialism and the very essence of democratic political participation.

In the latter part of this decade, Thailand has witnessed an unprecedented degree of social change, most notably in the area of political reform. With the promulgation of

¹ Thede, Nancy. *The Democratic Development Exercise Terms of Reference and Analytical Framework*. Montreal: Rights & Democracy: International Centre for Human Rights and Democratic Development, 1996

the 1997 “people’s” constitution², a new climate has been created, favouring civil society, human rights and democratic ideals. New mechanisms to counter corruption, cronyism, authoritarianism and election fraud were mandated. While Thailand has been variously referred to as a “stable semi-democracy³”, “threshold state⁴” or “emerging bourgeois democracy⁵”, it was clear that civil society groups were seeking to ensure mechanisms which would curtail any attempts to reassert the power and influence of the civil and military bureaucrats. During the drafting process, civil society groups surprisingly managed to secure the inclusion of provisions for a national human rights commission in the constitution. While the idea of both a national and regional human rights mechanism had been the subject of some debate at the national and ASEAN level, it was a debate in its infancy, and one which had not received sufficient attention so as to permit a high level of policy understanding on the issue. Yet, during the constitution drafting process, the issue of the national human rights commission became perhaps the most controversial, at least among the so called ‘organic’ laws. The question that arises is then, how did provision for a national human rights commission manage to secure the ultimate in legal legitimacy – the status of a constitutional article. This thesis seeks to explore and explain this important development and the subsequent debates regarding the form, powers and

² Office of the Council of State. Constitution of the Kingdom of Thailand B.E. 2540(1997).

³ Chai-Anan Samudavanija (1989)

⁴ Gothom Arya (formerly of the National Election Commission) observed by the author speaking at a conference entitled, “Engaging National Human Rights Commissions: The Role of Civil Society” Nakorn Nayok, Thailand, December 17-19, 1999.

⁵ Suchit Bunbongkarn. *State of the Nation. Thailand*. Singapore: Institute of Southeast Asian Studies, 1996, p. 106

scope of the Commission using the relatively new Advocacy Coalition Framework theory (ACF) of Sabatier and Jenkins-Smith⁶.

With the growth of civil society in Thailand, and the rapidly growing plurality of individuals, groups and communities seeking to flex their new-found political voice(s), we must begin to look beyond traditional analyses of the ‘iron triangle’ of interest groups, administrative agencies and legislative committees which characterised earlier models of public policy analysis and view policy advocacy from the broader perspective of ‘advocacy coalitions’, encompassing the above actors plus researchers, journalists, activists, politicians and business. Recent research on policy advocacy and interest groups in Thailand (Chutima Sumon⁷ and Yodchai Chutikamo⁸) has largely focused on these ‘iron triangles’ and are primarily based on Western public policy analysis theories dating from the 1970s and 80s. Although the Advocacy Coalition Framework was also developed in the West, it is also the purpose here to test the ACF theory outside the area in which it was formulated (predominantly the United States) and apply it to a newly industrialising Asian nation.

⁶ Sabatier, Paul and Jenkins-Smith, Hank (eds.) *Policy Change and Learning: An Advocacy Coalition Approach*. Boulder: Westview Press, 1993

⁷ ชุตินา สุมน. กลุ่มพลังประชาธิปไตยในประชาสังคม: บทบาทใ การผลักดัน โยบายปฏิรูปการเมือง พ.ศ. 2536 – 2538. วิทยานิพนธ์ จุฬาลงกรณ์มหาวิทยาลัย 2541

⁸ ยอดชาย ชุติกามอ. กระบวนการร่างรัฐธรรมนูญแห่งราชอาณาจักรไทยในพุทธศักราช 2540: ปฏิสัมพันธ์เชิง อำนาจ ระหว่างกลุ่มผลักดัน และชนชั้นนำทางการเมือง. วิทยานิพนธ์ จุฬาลงกรณ์มหาวิทยาลัย 2541

1.2 *Research Question*

What were the advocacy roles of civil society actors in the public policy process leading to policy formation on the establishment of the National Human Rights Commission of Thailand?

1.3 *Purpose of the Research*

1. Identify and analyse the role of human rights advocacy coalitions in Thailand during the period of 1990-2000. What did they do?
2. Identify dominant belief systems and measure longitudinal change over time. Why did they do it?
3. Highlight the key advocacy strategies and assess their efficacy. How did they do it?
4. Identify the key factors that led to policy formation on the National Human Rights Commission. What were the results?

1.4 *Hypothesis*

It is hypothesised that to attribute the success of the constitutional provisions for a National Human Rights Commission to a strong and sophisticated civil society coalition would be to confer an overly significant level of maturity and efficacy to these coalitions and their public policy advocacy performance. This author assumes, that upon closer inspection, we will find that, not only is human rights policy advocacy in Thailand in its infancy, but that it is also heavily controlled by an urban, intellectual elite.

1.5 *Scope of Research*

The Advocacy Coalition Framework holds as one of its hypotheses that, in order to avoid the theoretical weaknesses of ‘stages heuristic’ models which focus on policy formation as consisting of discreet, linear stages, we must view policy formation as a process taking place over a period of time.⁹ It is recommended that at least a decade of observation is preferable in order to capture the full picture of policy formation and to identify changes in policy trends over time. As such, this thesis will focus on the development of policy regarding the national human rights commission over the period of 1990-2000. In the year 1999, the *National Human Rights Commission Act* B.E. 2542 was enacted, marking the final legislative hurdle in its formal establishment. However, the origins of the commission are deeply intertwined with the process of general political reform which began in the early 1990s and which was accelerated following the Black May massacre of 1992¹⁰.

Because this thesis is concerned with the establishment of the national human rights commission in terms of public policy formation, it will necessarily focus on the development of the commission in two key areas. First, the legal establishment of the commission in the so-called “people’s” constitution of the Kingdom of Thailand promulgated in 1997. Second, the legislative establishment of the actual commission through the enactment of the *National Human Rights Commission Act* B.E. 2542 (1999). Thus our examination here ends with the date the *Act* came into effect, and does not extent to cover the period following the enactment of the *Act* which deals

⁹ Sabatier, Paul and Jenkins-Smith, Hank (eds.), 1993, p. 16

¹⁰ The mass demonstrations of pro-democracy citizens opposed to General Suchinda Kraprayoon's assumption of the premiership, and subsequent crackdown by state forces resulting in the death and disappearance of hundreds of people are collectively referred to as the “May Events.”

with the formal, institutional establishment of the Office of the National Human Rights Commission. Although the period following 1999 is of importance in examining the implementation of the *Act* and is illustrative of political manoeuvring and advocacy, it is primarily concerned with the selection of individual commissioners and the setting up of the office of the commission. Therefore, the scope of this thesis will focus solely on the establishment of the commission in its legislative and legal components, and will not concern itself with the structural/administrative establishment of the office of the commission.

1.6 Methodology

Due to the complexity of the question, the synthesis of both English and Thai language documentary materials, the massive amount of material covered and the expertise of the researcher, this thesis will lean heavily on qualitative methods of analysis. Primary importance will be given to analytical description of documentary materials within the theoretical framework outlined above. This will include comparative analysis and some limited qualitative content analysis of belief systems.

Data collection will be carried out with simultaneous document gathering and interviews of key personalities. Sources include:

- 1) Documentary Materials
 - a) Primary sources of data will be compiled consisting of government documents, hearing/meeting transcripts of various committees (such as drafting committees, scrutiny committees, etc.), NGO publications, reports of NGO activities, reports of various academic seminars and reports of public hearing procedures.

- b) Secondary sources will include pre-existing research materials, news clippings, media reports and other assorted publications.
- 2) Interviews
- a) A limited number of interviews will be conducted in an informal interview style, following a set small number of questions as an interview guideline tool. Importance will be given to key informant interviews, or those individuals who are leaders, influence-wielders, and/or active participants in the issue at hand.
- 3) Non-Participant Observation
- a) Where possible, the researcher will attempt to gather relevant data from the observation of advocacy coalition actors in action, i.e. meetings, seminars, conferences, etc.

1.7 Theoretical and Analytical Framework

The Advocacy Coalition Framework (ACF) of Sabatier and Jenkins-Smith has been chosen as the theoretical framework for this discussion for several reasons. First, just for the challenge of it. As far as this researcher is aware, the ACF has not yet been applied to any industrialising or newly industrialised Asian nation. Second, because of the complexity of the issue at hand, it should become clear later in this discussion that the ACF's focus on aggregate 'advocacy coalitions' give us an illuminating panoramic view of the emerging civil society landscape in Thailand. It would be too arduous a task to focus on the all the individual institutions, committees, politicians or organisations involved in the human rights commission issue. Nor would it do the topic justice to solely focus on any one individual coalition actor. Because we are

simultaneously attempting to explore the apparent rise and coming to age of Thai civil society, it also behoves us to equip ourselves with a tool capable of capturing the full spectrum of advocacy activities and impetus behind those activities. Moreover, because the ACF places a heavy emphasis upon learning and its impact on policy change, it seems appurtenant that we focus its lens on the nascent human rights policy subsystem in Thailand, a subsystem undergoing (often scrambling) to acquire and implement its new-found knowledge. It is unclear as to whether this undertaking will be successful, but such is the excitement of academic endeavour. The ACF will be outlined in greater detail in Chapter 2.

In analysing the efficacy of advocacy coalitions in achieving their policy objectives, it is suggested here that the Paris Principles be used as a guide, supplemented by comments from individual interviews. The Paris Principles have been chosen as the major measure here for two key reasons. First, they are constantly referred to by pro-human rights commission advocacy coalitions as representing the preferred paradigm for the establishment of national mechanisms. As such, they thereby become the central measure against which we may compare the final policy outcomes. Secondly, because the Paris Principles enjoy international recognition as the leading blueprint for the establishment of national mechanisms, which have been accepted and recognised as such by the General Assembly of the United Nations¹¹, they thus contribute to what is known as analytical tractability.¹² This refers to a situation where there is a common, shared set of concepts, theories or standards against which

¹¹ GA 48/134 of December 20, 1993, quoted in Centre for Human Rights. "National Human Rights Institutions: Background and Overview." in *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights*. Geneva: United Nations. 1995, p. 5

¹² Sabatier, P. and Jenkins-Smith, Hank. (eds.), 1993, p. 50

scientific examination and future learning can take place. In other words, the Paris Principles can be said to represent the 'rules of the game' of which all players are aware, and by which (or against which) they frame the debate.

1.8 Usefulness of Research

The Advocacy Coalition Framework to date has only been applied to case studies of policy development in Western, industrialised nations. One study, dealing with the formation of smoking policy in Japan, is the only study to deal with an Asian nation. However, because of the high level of development and political/constitutional heritage inherited from the United States, Japan may also be considered to represent a Western, industrialised nation. Thailand is representative of an 'emerging democracy' or 'quasi-democracy' which is on the brink of becoming a 'newly industrialised' economy. Therefore this research seeks to contribute to debates on the Advocacy Coalition Framework theory and test its applicability to a newly industrialised Asian society.

Very little has been written regarding human rights in Thailand in general, with almost a complete absence of literature on policy advocacy on human rights issues. Therefore this thesis seeks to enhance the understanding of policy advocacy, formation and implementation with respect to human rights in Thailand.

Furthermore, this study will attempt to illuminate and evaluate the effectiveness of advocacy strategies whereby civil society groups can engage state actors with the aim of contributing to capacity building of civil society organisations advocating for national human rights commissions in Asia.