

THE ASIA FOUNDATION
WORKING PAPER SERIES



THE CONSTITUTION OF THE KINGDOM OF
THAILAND, 1997:
A BLUEPRINT FOR PARTICIPATORY
DEMOCRACY

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Working Paper #8 • March 1998

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Introduction

On October 11, 1997, Thailand promulgated its latest constitution, and being that Thailand has a history of military coups followed by the drafting of yet another constitution to adjust power among the ruling elite, to many international observers, promulgation of this charter, the fifteenth in 65 years, was therefore nothing new, nothing to get excited about. Yet, serious attention should be given to this charter because the 1997 Thai Constitution is far from business as usual. It establishes the ground rules for transforming Thailand from a bureaucratic polity prone to abuse of citizen rights and corruption, to a participatory democracy in which citizens will have greater opportunities to chart their destiny. For the first time in Thai history, this charter establishes constitutional mechanisms to secure accountability of politicians and bureaucrats to the public.

Thai constitutions have served to demarcate the rules of the game in Thai politics. The primary purpose of successive constitutions and amendments has been to facilitate and maintain the power and advantage of whichever bureaucratic, military, or political clique happened to be dominant at the time of promulgation. Thai constitutions have not traditionally been designed to protect individual liberties or to restrict the power of the state to infringe on such liberties. Other than through elections, the drafters of Thai constitutions have not sought to provide mechanisms which would promote accountability of the state to citizens or provide for citizen participation in public policy. Thai constitutions have not functioned, nor have they been considered by the body politic, as the cardinal law of the land. As a result, Thailand has been a nation under rule “by” law rather than a society premised on rule of law.

The 1997 Constitution, in stark contrast, was specifically designed to end the reign of the bureaucratic polity in favor of a system more conducive to the needs of a pluralistic society integrating itself into a global economy. To recast Thai politics and administration, Thai democracy advocates understood a new charter would have to change the fundamental principles under which the Thai body politic functioned. The paternalistic state standing above and regulating society, would have to be transformed into a state which is a partner of the civic sector serving the needs and interests of society. This would require revolutionary changes to force greater transparency in the making and implementation of public policy. It would require effective mechanisms to regulate the abuse of power and patronage, endemic under the old system.

The transformation of Thai politics and administration will require at least a generation for the reforms to become the dominant influence on the Thai body politic and take firm root in Thai constitutional law. If successful in its constitutional evolution, Thailand will significantly differentiate itself from its ASEAN partners in terms of accountability, transparency, rule of law, and political stability. This differentiation will be a significant factor in sustaining foreign and domestic investor confidence and establish the fundamentals which will enable Thailand to outpace its neighbors in economic recovery and future growth.

Resistance to these reforms will remain significant but Thailand has no other option than to move forward. It is important to remember that Thailand's reform efforts began well-before the Asian economic crisis. The constitution drafting and debate processes proceeded even as the boom economy crumbled. Many Thai believed the reforms imposed by the new constitution would reduce the corruption and lack of transparency which they believe to be the root cause of the economic crisis. While many nations in the region continue to struggle with denial, Thailand has already established the framework for a new agenda.

Background

Thailand's Guided Democracy: 1932-1997

King Chulalongkorn (r. 1868-1910) is credited with establishing a modern Thai bureaucracy and military force at the end of the nineteenth century which consolidated the power of the throne, centralized administration and revenues, and defended Thailand against European colonization. The 1932 Revolution, which established a constitutional monarchy, did little to change the political and administrative systems created by King Chulalongkorn other than to transfer state power and patronage from the crown to shifting cliques of senior bureaucrats and military officers. The absolute rule of the monarchy was simply transformed into the absolute rule of an elite. The 1997 Constitution is Thailand's first charter which seeks to significantly reform the centralized system created under the absolute monarchy and place absolute power in the hands of citizens.

The elite who overthrew the Absolute Monarchy presumed Thai citizens to be illiterate and incapable of governing themselves. The Promoters of the 1932 Change of Government therefore established a guided democracy under the leadership of the People's Revolutionary Party which had been established in Paris during 1927¹. Influenced by the revolutionary trends of the era, the Promoters structured the Party along lines similar to the systems created by the

Bolsheviks and the Kuomintang in order to ensure the Party's absolute control over the state and public policy².

A central feature of this control was maintenance of a balance of power within the legislative branch, between elected representatives of the people and appointed members who represented the elite. The Promoters established a unicameral legislature, the Assembly of the People's Representatives, in which half of the members would be elected³ and the other half would be appointed by the Military Council of the Party. Nearly half of those appointed on June 28, 1932, were leading members of the Party. The balance represented senior bureaucrats from the ancien regime⁴.

The 1932 Constitution stipulated that eventually all representatives of the Assembly would be directly elected. This would occur when half the electorate had completed primary education, but no later than within 10 years [June 1932: Article 10]. Although educational standards were met by the late-1930s, to reinforce party tutelage, in 1940 the Constitution was amended to extend the term of appointed representatives until December 1952 [1940: Article 65]⁵.

During a brief period of democratic reform in the immediate post-World War II period, the framers of the 1946 Constitution attempted to introduce a directly elected Senate and promote greater participation in public policymaking. Had the elite allowed the reforms of the 1946 Constitution to unfold, permanent civil servants and active military officers would have been excluded from the Senate and the House of Representatives, as well as from ministerial positions⁶. This attempt to balance the power of the bureaucracy led directly to a military coup in 1947 against the civilian administration and abrogation of the 1946 Constitution. For the next half century, no government or constitutional drafting committee sought to establish a legislative branch in which all members were directly elected by citizens. With two brief exceptions in 1949 and 1974⁷, no constitution excluded the executive branch's bureaucratic and military allies from the legislature. These tasks were left to the drafters of the 1997 Constitution.

The People's Party was not a monolith. The theoretical power it had over policy through its control of the legislature was weakened by factionalism within the Party⁸. As a result, for much of Thailand's constitutional history, politics has centered on which group of elites would have the right to this power. Until recent years, little serious thought had been given by elites to transferring this control to citizens.

The 70 appointed members of the People's Assembly first met on June 28, 1932, and appointed Phraya Manophakorn Nitithada president of the People's Committee, a position equivalent to prime minister. Phraya Mano had not been involved in the coup or associated with the Promoters. Rather, he was a respected Appeals Court judge who had received his legal training in Great Britain. His government lasted less than a year. On June 20, 1933 a military junta in the People's Assembly initiated Thailand's first coup to install the ostensible leader of the Promoters, Colonel Phraya Phahol, as the new prime minister⁹. Thus began a Thai tradition of military coups followed by military strongmen as prime minister.

After the overthrow of Mano, the senior military faction was able to maintain its control for only five years before the junior army officers assumed power to run a fascist-oriented regime from 1938 through 1944. As World War II drew to a close, the civilian clique briefly tried to democratize the polity, but they were overthrown by a military coup in April 1948. This coup marks the end of power for the People's Revolutionary Party and the Promoters. Although Field Marshall Phibunsongkhram was able to retain the premiership, the leaders of the 1948 coup were a new breed of military officers who owed no allegiance to the People's Party. Over the next decade, these officers progressively asserted their absolutist control. The fiction of Thai democratic governance was laid to rest by Field Marshal Sarit Thanarat in 1958. Under Article 17 of the 1959 Constitution, Sarit and his successors were able to rule Thailand by military decree. They did not even have to bother with the Parliament they packed with senior bureaucrats and military officers.

The Legacy of Thailand's Guided Democracy

During the first quarter century of constitutional rule in Thailand, the new elites used an array of nationalist economic interventions and regulation to exercise state power and patronage to divert resources in support of their own private, bureaucratic fiefdoms. In the process, they atomized the bureaucracy, set state apart from society, and wreaked havoc on Thailand's macroeconomic stability.

Although Field Marshall Sarit placed democracy on hold, he did redirect the economic system. His innovation was to understand that more could be made by skimming off the top of a growing economy than could be made by simply plundering available resources from a stagnating economy. Sarit did not seek to eliminate traditional forms of patronage graft. That would have required major systematic reform. Nevertheless, he did place technocrats in charge of macro-economic policy in order to limit the adverse economic impact of the patronage

system. This reform established the fundamentals for Thailand's economic take-off and subsequent boom.

Senior bureaucrats quickly learned how to manipulate Sarit's new system for their own benefit. The result was further bureaucratic atomization. Officially there was a centralized bureaucracy which could act in a coherent manner when it wished to do so. In practice, however, with administrative discretion assigned to departments, even ministries were atomized as each department had the potential to become its own fiefdom, its own patronage profit center. In effect, each profit center was protected by, and was only accountable to, the next level above it in the patronage chain.

This fiefdom mentality encouraged a supply-driven government in which the administrative elite supplied institutions and services which were not necessarily demanded by, nor designed to serve, the public. These projects did cumulatively serve to build the Thai nation, as well as create new centers of wealth, patronage, and power. However, they were also an excellent source of graft which fueled the continued development of a bureaucratic polity which was accountable only to itself. Under these circumstances, the elite had no interest in turning over any power to the people.

By the late 1960s, this lack of transparency and accountability added fuel to rural discontent, communist insurgency, and student protests. With the entire system buffeted in the early 1970s by public unrest, the first oil shock, and the withdrawal of U.S. forces after the Vietnam war, traditional elites had to accommodate new centers of influence. These new centers coalesced behind business-oriented political parties which allied factions from the traditional bureaucratic and military elite with Sino-Thai business interests. The traditional policies and rules of the game had not substantially changed, however. Control over the state and regulations continued to be seen as vehicles for both enrichment and political survival, and thus they served as the basis for political party strategies in the 1970s through the early 1990s.

After the brief euphoria of the brief democracy of the October 1973 student revolt and the 1974 Constitution, the military, the bureaucracy, and business interests sought an accommodation to continue guiding Thai democracy while building the nation's economic strength. It was an uneasy relationship. Business interests soon dominated the elected House of Representatives while civil and military bureaucrats held the Senate and the Cabinet. In 1983, the military sought to amend the 1978 Constitution in order to enshrine their right and duty to guide Parliament and the Cabinet. The military was surprised by

the level of opposition in the House, criticism from the academic community and the press, and street protests. The amendment failed.

Over the next five years the military continued to spar with the business community over the issue of political control. During the 1988 elections most parties campaigned on the issue of having the prime minister chosen from among the elected members of the House. Chatichai Choonhavan's Chat Thai Party formed the new government as the generals temporarily stepped aside. The Chatichai administration immediately moved to trim the power of the bureaucracy and the military. At the same time, however, politicians moved aggressively to take control of the corruption revenues the bureaucracy had thrived on for the last half decade. In February 1991, the military hit back with a coup and the formation of the National Peacekeeping Council.

Political Reform and the Origins of the 1997 Constitution

During the first 60 years of Thailand's constitutional history, there were no serious attempts to reform the political process and its associated problems of inefficiency and corruption. Nor were citizens offered real participation in public policy. There were those, nevertheless, who wished to democratize the system and who offered credible methods for doing so. If the academic community could be credited with developing these ideas, it was the Democratic Party which tried to move the agenda forward when it briefly held the reigns of government in the mid-1940s and mid-1970s. In each case, the response of the military was to overthrow the civilian government and impose narrow boundaries on public policy discussion.

The return to civilian rule in 1988 under the Chatichai Choonhavan administration demonstrated the worst flaws in the political system that had evolved out of the 1932 Change of Government. When the military overthrew the Chatichai government in 1991, Thai citizens were disturbed by the thought of another coup. They were not upset, however, that a corrupt government had been removed. Nevertheless, neither the Thai public nor the media were willing to be cowed into yet another era of benevolent military rule. The age of fax, mobile phone, Internet, CNN and BBC, and the free flow of information had arrived. The military could no longer control discussion and demands for political reform.

The military appointed former diplomat-turned-business-executive Anand Panyarachun as prime minister, to run a clean, interim government prior to promulgation of yet another new constitution and general elections. Prime

Minister Anand used his position to raise the issues of transparency, accountability, and public participation to the level of public policy discussion. The public had high expectations.

After the March 1992 elections, the military sought to retain their control through the appointment of coup leader General Suchinda Kraprayoon as prime minister. Public reaction was immediate and intense, leading to a bloody suppression of protesters in May. On May 21, 1992, Thais were glued to their televisions as the two major protagonists, General Suchinda and democracy advocate General Chamlong Srimuang, crawled prostrate across the floor toward the king's throne for a stern regal warning to work together for constitutional amendments to resolve political conflicts.

More interested in trying to divide the spoils of power politics and opportunities for corruption revenues, the political parties found it impossible to work out a coalition formula in order to form a government. Anand was called in once again to serve as an interim prime minister, and new general elections were scheduled for September 13, 1992. This time, the Democrat Party, viewed by the middle class as the cleanest party, won by a small majority.

The government formed by the Democrat Party, under the leadership of Prime Minister Chuan Leekpai, announced that it would seek reform of the political process. After much internal debate and pressure from civic sector organizations for action rather than just words, President of the National Assembly Marut Bunnag (Democrat, Bangkok) established the Committee for Democratic Development on June 9, 1994, with the widely respected physician and social commentator, Dr. Prawase Wasi, as chairman. The Committee was charged with examining the problems inherent in Thai politics, administration, and law, as well as formulating recommendations to implement political reforms which would resolve these problems.

The Committee lost no time. On August 24, 1994, it issued its first study on the fundamentals of constitutionalism, highlighting the key reforms required to make the Thai political system transparent and accountable. It commissioned a series of 15 studies to evaluate these issues in greater detail. On April 28, 1995, the Committee issued two principle recommendations to the National Assembly. First, it proposed that an official organization, with representation from all sectors of society, be established to advance political reform. Second, the Committee submitted the draft of an amendment to Article 211 of the 1992 Constitution. If adopted by the National Assembly, the amendment would enable the creation of a Constitutional Drafting Assembly.

The new charter would institute the mechanisms required to implement political reform.

Less than a month later, on May 19, 1995, Prime Minister Chuan's coalition government fell apart after charges that one of his ministers had been involved in corruption. During the subsequent campaign for the general election, political reform was a topic of heated debate. After Banharn Silapa-acha's Chat Thai Party formed the new coalition government, he proclaimed his support of the Committee's recommendations. As the first step in that process, he ordered the establishment of the Political Reform Committee on August 8 to draft a blueprint for political and administrative reform following the recommendations prepared by the Committee for Democratic Development. He appointed his brother, Chumphorn Silapa-acha, as chairman.

Chumphorn's committee recommended that the 1992 Constitution be significantly amended, or an entirely new charter be drafted. Banharn announced his government would seek a new charter, and on May 17, 1996, he submitted an amendment to Article 211 to the National Assembly. After significant modification, the amendment was passed on September 14, 1996. Two weeks later, on September 27, 1996, after an intense no-confidence debate focused on corruption in his administration, Banharn was forced to step down as prime minister. General Chavalit Yongchaiyut's New Aspiration Party formed a new coalition government while the process of establishing the Constitutional Drafting Assembly (CDA) moved forward.

This was not Thailand's first drafting assembly, but its composition and mandate were very different from the first two, in 1948 and 1959¹⁰. The CDA was indirectly elected to represent a cross section of society, rather than being appointed by the government in power. Second, the assembly had a specific mandate to reform the political process, not just to redistribute power among elites. The Assembly was required to adopt a participatory approach to ensure public input in development of the charter. Finally, the Assembly had a specified series of benchmarks to be achieved within 240 days, to ensure that the new charter was drafted efficiently, publicly, and expeditiously.

The 99-member Constitution Drafting Assembly (CDA) was composed of two indirectly elected groups: 76 members representing each province, and 23 recognized political, administrative, and legal experts. Residents of each province who met the criteria established by the Amendment to Article 211 could register their candidacy to serve as the CDA representative of their province. If more than 10 candidates applied in any province, they were to vote among themselves to prepare a list of the top 10 candidates which were submit-

ted to the National Assembly. Parliament then voted to select one individual from each provincial list.

After five days of registration, 19,327 individuals applied for candidacy, 12,538 males and 6,789 females¹¹. In order to ensure that women were represented on the CDA, a loose coalition of women's organizations under the banner of the Women's Network for the Constitution encouraged women to apply for candidacy so that when the first round of elections were held, women would have sufficient force to ensure that women would be among the list of 10 names sent to Parliament. Unfortunately, the strategy was subsequently adopted by the Law Council, teacher's organizations, and some provincial business groups. In a few provinces, groups of politicians also adopted the "bloc vote" strategy. While 64 women were elected in the first round elections on December 15, 1996, the 760 nominees were dominated by lawyers (270), businessmen (174), and retired civil servants (148)¹². In the final round of elections on December 26, only six women were among the 76 successful candidates.

Thirty government and private universities nominated candidates for the second group of CDA members. The Council of each institution submitted the names of five political scientists, five public law experts, and five public administration specialists. The president of the National Assembly collated all of the nominees into three lists. Parliament then selected eight individuals from the public law list, eight from the political science list, and seven from the administration list. The result was a group representing some of Thailand's most eminent and respected individuals.

The Constitution Drafting Assembly formally began its work on January 7, 1997, with the election of former opposition MP and democracy advocate, Uthai Phimchaichon, as president. The Provincial CDA members returned to their home provinces and worked with first-round CDA candidates and civic groups to conduct a series of public hearings in February and March in order to gather public opinion. In April, the CDA gathered in Bangkok to develop the preliminary draft which was passed by the CDA on May 7 by a vote of 89 to 1. This draft was published and widely disseminated by the CDA and the media. For the next two months, as the Thai economy began visibly to crash, the CDA's Constitution Scrutiny Committee, chaired by Anand Panyarachun, organized public hearings broadcast nationwide over radio and television to gather public opinion on the preliminary draft. Similar hearings were held at the provincial level by the Committee and civic sector organizations.

After intense public debate, the preliminary draft was revised and approved by the CDA on August 15, 1997, by a vote of 92 to 4. The charter was submitted to the National Assembly for debate from September 4-10. On September 27, 1997, the National Assembly approved the draft with 578 votes for, 16 against, and 17 abstentions. The Constitution was promulgated on October 11, 1997.

The open process through which the 1997 Constitution was drafted was unprecedented in Thai history. It allowed thorough, if not heated, public debate on the issues. The resistance to political reform became apparent as those whose interests would be harmed by the new charter began to raise their objections. Interior Minister Sanoh Thienthong warned that the new charter was a communist plot. Village headmen, appointed by the Ministry, threatened to march 10,000 strong to protest their exclusion from ex officio positions in elected local government organizations. A group of conservative MPs and senators led by Prachakorn Thai Party leader Samak Sundaravej sought to amend Article 211 once again in order to secure for Parliament the right to change the draft charter before ratifying it. Deputy Supreme Commander Preecha Rojanasen, chairman of a military committee studying the draft, voiced the view that the military wanted a clearer definition of its duties.

Against a backdrop of massive pro-Constitution demonstrations in the central business district, near university campuses, and around Parliament, the inevitable coup rumors began. However, Army Chief of Staff General Chettha Thanajaro proclaimed that the military would not interfere. Indeed there were credible reports that the military rejected a request by senior members of Chavalit's administration for the military to step in so that a government of national unity could be established. This process would have delayed further consideration of the draft charter for another year.

As Prime Minister Chavalit considered the option of dissolving Parliament, rather than moving forward with debate on the constitution, the Democrat Party called for a censure debate against the government for its failure to remedy the deteriorating economy. Remarkably, the constitution drafting and debate process proceeded in spite of Thailand's economic crisis. Early in the year, the stock market fell wiping out 80 percent of the wealthy's stock fortunes. In June, the central bank closed 16 leading finance firms, with another 58 suspended on September 8 during parliamentary debate on the charter. After battling currency speculators since mid-May, the Baht went into free-fall on July 2. In August, the IMF was called in to bail out the kingdom. Considering

the significant changes, the new constitution would make in the power structure and the resistance of the old guard to reform, it is uncertain whether or not the Constitution would have been passed were it not for the economic crisis. To the business community and to average citizens, the new Constitution was perceived as essential for economic recovery. The reforms it would impose on the system would reduce the corruption and lack of transparency many blamed as the root cause of the economic crisis.

The Democrat Party was able to initiate the process of political reform with Dr. Prawase's Committee. It took three years to achieve promulgation of a new constitution to implement these reforms. The force behind this change included a highly educated middle class and a network of committed civic sector organizations. This commitment was expressed through continued pressure for reforms after the Democrats were forced from office. Both the Banharn and the Chavalit administrations had much to lose once political reforms were implemented. And although they allowed the process to move forward, they did so reluctantly. Shortly after the Constitution was promulgated, the Chavalit government fell. On November 9, 1997, Chuan Leekpai and his Democrat Party once again formed a coalition government with a narrow majority. It will be incumbent on the Democrats to continue the process they set in motion by faithfully executing the 1997 Constitution. The Party's future, and that of the nation, rides on how successful the Democrats are at implementing political reforms.

Constitutional Supremacy

At the heart of constitutional governance are laws and administrative procedures which protect individual liberties, promote citizen participation, restrict the power of the state to infringe on individual rights, and hold leadership accountable to the public. Central to this tradition is the supremacy of constitutional law over all other laws, decrees and administrative rules and regulations. Under the concept of separation of powers, judicial review, the authority to adjudicate the constitutionality of law, is removed from the political sphere and vested in an independent judiciary.

Thailand's constitutional government developed along a different path. In practice, the constitutions have been subservient to code and administrative law. For extended periods, even when there was a constitution, the kingdom was ruled by military decree. The Thai bureaucracy designed a vast system of administrative law in the form of royal decrees, executive orders and ministerial regulations. This administrative law has contributed to the bureaucracy's political power and its ability to regulate individuals in society by restricting the fundamental rights and liberties proclaimed in the constitution. Rather than promote transparency and accountability, many decrees and administrative rules have conveniently offered bureaucrats the opportunity for rent-seeking, and other forms of corruption.

The 1997 Constitution seeks to remedy these problems by reversing the course of Thai constitutional law. It establishes the constitution as the basis for all law, thereby reducing the bureaucracy power to subvert constitutional intent. For the first time in Thai history, it establishes a judicial review process independent of executive branch control, thereby enhancing both government accountability and the protection of civil liberties.

The primary objective of the 1932 Constitution was to transfer the power to establish policy and law from the monarchy to the nonroyal sector of the bureaucratic elite. Under the Absolute Monarchy, the law had not applied in practice to the royal family. The Promoters were not opposed to the law in force, they merely wished it to be applied equally to all, regardless of an individual's status at birth. It is not surprising therefore that Thailand's original constitution did not incorporate the concept of constitutional supremacy. It was only introduced after the close of World War II by the short-lived second constitution which provided that:

The provisions of any laws which are contrary to or in conflict with this Constitution are unenforceable [1946: Section 87].

Most subsequent Thai constitutions have included a similar article¹³. At face value, Article 87 implies the supremacy of the constitution. Nevertheless, every Thai constitution has recognized the higher authority of code and administrative law constructed by the bureaucracy by adopting the convention of qualifying rights and liberties with clauses such as “in accordance with the provisions of the law,” “as provided by law,” and “subject to the conditions prescribed by law.”

The 1997 Constitution terminates this convention. For the first time in Thai constitutional history, the supremacy of the constitution is unequivocally stated:

The Constitution is the highest law of the country. The provision of any law, act or decree which is contrary to or inconsistent with this constitution shall be unenforceable [1997: Article 6].

Reinforcing this supremacy, Article 27 binds all branches of the government to enforcement of Constitutional law:

Rights and liberties endorsed by this Constitution explicitly or implicitly, or by the Constitution Court, shall be protected and legally bind Parliament, the Cabinet, courts, and other government agencies in making, enforcing and interpreting laws [1997: Article 27].

To expand this precedent, the new Constitution replaces many of the broad “in accordance with the law” clauses with specific limitations on the extent to which any law may restrict constitutional rights and liberties. Article 29 stipulates that the only legal restrictions allowable are those specified in the Constitution. Such a law must identify the constitutional provision allowing for the restriction and demonstrate it does not exceed what is necessary to achieve the stated provision or affect the essence of the right or liberty. To ensure that the bureaucracy does not subsequently subvert this process with restrictive rules and regulations, Article 29 further stipulates that administrative rules and regulations must also be in accordance with the constitution¹⁴.

A significant body of Thai law, and in particular the administrative rules and regulations which govern the implementation of such law, fails to meet the standards of the 1997 Constitution. Transitory Provision Article 335(1) acknowledges that Article 29 cannot be implemented immediately. All enacted laws, on the date of promulgation of the Constitution, remain in force.

However, if any single amendment is made to a law, or to the rules and regulations issued by virtue of the provisions of that law, all aspects of the law and related rules and regulations must be amended to comply with Article 29.

Civic sector organizations seek to overturn all unconstitutional laws, rules, and regulations over the next decade. For example, the Women's Network for the Constitution, a coalition of 45 organizations, is already developing a strategy to bring gender equality to a number of laws. The Network's impact will be significant. Any amendment to secure gender equality in a specific law will force further amendments under Article 335(1), to bring the law into compliance with all other constitutional guarantees.

Judicial Review

While it is clearly useful for a constitution to assert its supremacy, the prerogative of judicial review is critical to ensuring the preeminence of the constitution. For a constitution to serve as the foundation for a political system premised on the rule of law, the jurisdiction of politicians and bureaucrats over judicial review must be limited. One of the principle reasons Thai constitutions have failed to promote transparency and accountability, or to promote the rights of citizens is because the executive branch has retained significant control over judicial review. As a result, constitutions have functioned as mere political documents serving the interests of the executive branch rather than as the foundation for rule of law.

Judicial review includes the power to interpret the meaning or intent of the constitution as well as the right to declare any law or decree, or an action by anyone in the government, to be invalid or unconstitutional. The process of judicial review was not addressed by the 1932 Constitution. It remained a moot point during Thailand's first 12 years of constitutional history. Thereafter, the judiciary was offered little opportunity by military regimes to develop the concept as a central element of constitutional governance.

The Thai Supreme Court first asserted its right of judicial review in 1946 when it ruled that the War Criminals Act of 1945 was unconstitutional. The Court's decision, which effectively saved war-time Prime Minister Field Marshal Plaek Phibunsongkhram from a firing squad, was immediately criticized by Parliament for shaking the very foundations of democracy. Parliamentary leadership immediately established a committee to examine the issue. As a result, the drafters of the 1946 Constitution created the Judicial Committee for the Constitution with absolute powers of judicial review. Thereafter, if a court

considered a law to be unconstitutional, it could reserve judgement and submit an opinion to the Judicial Committee for a ruling [1946: Articles 87-89]¹⁵.

The political leadership had significant influence over the Committee since its members were nominated by the executive branch, appointed by Parliament, and their terms ended with each general election. Nevertheless, to ensure political dominance over judicial review, the leadership went one step further. The framers of the 1946 Constitution adopted Article 86, vesting Parliament with the right to interpret the constitution:

Subject to the provisions of Section 88, absolute right to interpret this Constitution is vested in Parliament. A decision on interpretation of this Constitution must be passed by not less than half of the total number of members of both Houses [1946: Article 86].

As a result, even if the Committee issued a judgement against the government, Parliament could always overrule the Committee asserting the Committee had improperly interpreted the constitution in formulating its decision. Subsequent constitutions over the next 45 years, including the admired 1974 Constitution, continued to vest Parliament with the power of interpretation¹⁶.

It was not until adoption of Article 207 of the 1991 Constitution that this anomaly was rectified and the right of interpretation was granted to the Constitutional Tribunal. This however failed to depoliticize the judicial review process because the Constitutional Tribunal remained an institution controlled by the executive branch, rather than operating as part of an independent judiciary¹⁷. With the ultimate decision on constitutionality resting with a political creature, the Constitutional Tribunal, lower court judges found it unwise to raise constitutional issues. Secondly, to initiate judicial review, a case must have first been brought before a court. Article 17 of the 1957 Constitution granted the prime minister the power to take any legal action, including summary execution, without a court trial. This extra-judicial power remained in the hands of the executive branch until promulgation of the 1974 Constitution.

The 1997 Constitution seeks to resolve the issue of political interference in judicial review through the establishment of an independent Constitutional Court. However, to ensure that the courts are accountable in raising constitutional issues, the new Constitution provides additional avenues for the initiation of judicial review. The parliamentary ombudsman, for example, is empowered under Article 198 to refer any case the ombudsman determines to

be in violation of the Constitution to either the Administrative Court or the Constitution Court. Article 28 is perhaps most innovative. For the first time in Thai history, citizens who believe their rights or liberties have been violated, have the constitutional right to cite provisions of the Constitution as the basis for their case. This removes the court's discretion to initiate the judicial review process. Now, through a citizen's complaint, the constitutionality of any law can be questioned.

Constitutional Court

Although formulas for the composition and powers of the Tribunal may have changed from constitution to constitution over the decades¹⁸, the fundamental problem has remained that it was a political institution rather than part of the judiciary. Its lack of importance was highlighted by the fact that its members were not even full-time Tribunal members. They all served full time in other capacities such as president of the Senate or House, attorney general, or senior judge of another court.

The 1997 Constitution, by contrast, establishes the Constitutional Court as an independent body with 15 full-time judges appointed by the king with the advice of the elected Senate. For the first time in Thai history, judges of the Constitutional court are considered under the law to be judicial officials rather than political appointees or civil servants [1997: Article 259].

Constitutional Court judges must demonstrate that they are above politics. Candidates for the Court may not be members of the House of Representatives, nor may they have been a member or an official of a political party for the three years previous to their taking office. Candidates may not be senators, political officials, or members of a local assembly or local administration [1997: Article 256]. Judges must also be willing to make the Court their career for nine years. Within 15 days from the date of their election, Constitutional Court judges must resign from any government position or association with a state agency or enterprise. They must resign from any partnership or employment with any for-profit business. They may not engage in any independent profession [1997: Article 258].

In addition to meeting these qualifications, a complex election process seeks to ensure that Constitutional Court judges are above political or business interests. Five members of the Court are Supreme Court judges and two are Supreme Administrative Court judges selected by their peers through secret ballot¹⁹. The remaining eight are elected by the Senate from among candidates

nominated by the academic community. The president of the Supreme Court, the Deans of four law schools and the deans of four faculty of political science nominate 10 law experts and six political scientists. The Senate then elects five of the law experts and three political scientists [1997: Article 255].

The new Constitutional Court is one of the most critical elements of Thailand's political reform process. The power to enforce adherence to the reforms rests in the hands of its 15 judges. If they falter in the execution of their duties, if they allow politics to override a strict interpretation of the constitution, the 1997 Constitution will fail to function as the foundation for a political system premised on the rule of law.

Citizen Participation in Governance

Prior to 1997, the role of Thai citizens in public policy formulation was limited to voting for representatives of the Lower House of the National Assembly, and the occasional street demonstration against a military regime. Under the Anand administration, the government sought greater citizen input through participation in the development of the 8th National Economic and Social Development Plan. However, when civic sector organizations attempted to pursue development of policy and legislation outside the bounds of the NESDB, they often met with resistance from a bureaucracy jealously guarding its virtual monopoly over public policy formulation and the drafting of legislation.

The 1997 Constitution significantly expands the scope of public participation, and provides a legal basis for such participation. First, it removes State control over an Upper House dominated by civil and military bureaucrats in favor of directly elected senators representing civil society. Second, it eliminates the bureaucracy's monopoly over public policy formulation in favor of public participation. Third, it erases the fiction of bureaucratic ownership of national resources in favor of citizen stewardship. Fourth, it establishes a process to diminish the central bureaucracy's domination over local affairs in favor of political, fiscal, and administrative decentralization.

An Elected, Civil Society Senate

Throughout the first 65 years of Thailand's constitutional history (1932-1997), the executive branch has had the power to control the legislative branch through the appointment of bureaucratic allies as either senators to the Upper House or as second category representatives, when a unicameral legislature was in effect. Whether senators were appointed by the king (i.e., by the government) or indirectly elected by the House of Representatives, the Senate was essentially a creature of the government. Rather than representing and serving the interests of the general public, too often senators were promoting the status quo interests of the bureaucracy. The primary function of the Senate was to provide the prime minister with the extra balance required, should directly elected representatives become too independent-minded.

In 1995, the term of half of the Senate expired and the king appointed a new group of senators. Among the new senators was a small group which did not represent traditional bureaucratic interests. Rather, they were representatives from leading nongovernmental organizations, some of which had been aggressively pursuing a democratic agenda as early as the mid-1970s. This

group of young Turks was a harbinger of the democratization of the Senate under the 1997 Constitution.

The new Constitution requires senators be elected by popular vote on a constituency basis for a term of six years. They must be at least 40 years of age and have the equivalent of a bachelor's degree [1997: Articles 122, 126 & 130]. Under the political reforms imposed by the 1997 Constitution, the majority of senators will be representatives, by default, of civil society rather than political, administrative, or business interests. Moreover, since candidates must demonstrate ties to their constituency [1997: Article 107], the Senate is more likely to represent a cross section of diverse national interests, rather than the narrower, Bangkok-based, bureaucratic focus of previously appointed Senates.

To ensure that senators are withdrawn from party politics, candidates for Senate elections may not be an official or a member of any political party. Candidates may not be a member of the House of Representatives or a member of any local assembly. Former members of Parliament must wait at least one year after leaving the House of Representatives before they can apply to be a Senate candidate. Once elected, a senator may not be appointed to a ministerial position or accept any other political appointment. If a senator decides to resign his position in order to enter politics, he may become a candidate for election to the House of Representatives but he must wait a minimum of one year after resigning his Senate position before accepting a ministerial position or any other political appointment. Term limits ensure the Senate does not become itself a political institution. While an individual may be elected to the Senate more than once, a senator may not serve two successive terms [1997: Articles: 126-128].

To disengage the Senate from the influence of the bureaucracy, candidates for Senate elections may not be a permanent government official or the employee of any State agency or enterprise. Nor may a senator hold any other State position. Once elected, a senator may not accept any position or have any duties in any government agency or state enterprise [1997: Articles 126, 128].

The 1997 Constitution also seeks to discourage the Senate from domination by business interests, particularly by influential provincial businessmen, often referred to as godfathers, whose wealth is derived from government construction contracts and natural resource exploitation concessions. Specifically, senators are prohibited from receiving any concession from any state agency or state enterprise, or being a partner or shareholder in any company which receives such concessions [1997: Article 128].

The 1997 Constitution mandates a critical role to these elected representatives of the civic sector. In addition to their legislative duties of balancing the political interests reflected by the House of Representatives, senators will control the appointment of nominees to new, independent agencies mandated by the Constitution to promote transparency and accountability. These agencies include the Constitutional Court, the National Counter Corruption Commission, the Election Commission, Ombudsmen, the National Human Rights Commission, and the State Audit Commission²⁰.

Citizen Participation in Public Policy

For the first time in Thai history, the 1997 Constitution establishes civic involvement as both state policy and a civic right. Article 76 stipulates that the government must encourage public participation as a matter of policy:

The State shall promote and encourage public participation in laying down policies, making decisions on political issues, preparing economic, social and political development plans, and inspecting the use of State power at all levels [1997: Article 76].

Linked to this precedent, is another path-breaking article under the Chapter on the Rights and Liberties of the Thai People:

A person shall have the right to participate in the decision-making process of State officials in the performance of an administrative act which affects or may affect his or her rights and liberties, as provided by law [1997: Article 60]²¹.

The 1997 Constitution also recognizes the special interests of civic sector organizations in the formulation of policies which directly affect their members or constituents. For example, when deliberating a bill concerned with children, women, the elderly, the disabled, or the handicapped, the House of Representatives is now required to appoint an ad hoc committee in which a minimum of one-third of the members are invited from concerned civic sector organizations [1997: Article 190].

In another precedent, the civic sector has been extended the right to promote a legislative agenda outside the bounds of party politics. Under parliamentary tradition, the government determines the legislative agenda. Most Thai legislation, therefore, has been initiated by the Council of Ministers. This conferred significant powers, in fact, to the bureaucracy which usually drafted

such bills. The 1949 Constitution, and subsequent charters, allowed members of the House to initiate nonmoney bills. Although this was initially rare, during the past decade political parties have often developed their own bills to compete with the bureaucracy's drafts [1949: Article 121; 1942: Article 73]²².

However, civic sector efforts to propose legislation were often dismissed by the bureaucracy which asserted that drafting legislation was not the prerogative of NGOs. Therefore, if an organization wished to pursue a particular agenda, it had few options other than to seek support from a political party. To address this problem, Article 170 of the 1997 Constitution allows 50,000 eligible voters to submit a petition to the president of the National Assembly to consider their draft of a bill. No longer must interest groups seek the prior support of the bureaucracy or a political party to have a bill introduced into Parliament. Moreover, since the bureaucracy now understands that it can be by-passed, it is much more likely to cooperate with civic sector organizations when approached for discussions on public policy issues.

Citizen Participation in Local Resource Management

A major source of conflict between the Thai state and the civic sector has centered on issues of environmental and quality-of-life degradation which result from development projects planned by the bureaucracy or by natural resource concessions granted to the private sector. When faced by government or state-enterprise projects such as the construction of dams, highways, or pipelines, or by powerful business interests with concessions for rock quarries, timber extraction, or other natural resource exploitation, local communities have had little recourse to express their views other than through protests. Rarely have they been able to stop an activity or force the redesign of a project to reduce local impact. Under the new constitution, bureaucrats can no longer implement such projects or grant such concessions without significant public participation. Article 79 specifically directs the state to "promote and encourage public participation in the preservation, maintenance, and balanced exploitation of natural resources and biological diversity, and in the promotion, maintenance and protection of the quality of the environment."

Communities now have the constitutional right under Article 46 to participate in the management, maintenance, preservation, and exploitation of natural resources and the environment. In another unprecedented move, Article 290 extends to local government powers and duties concerned with the management, preservation, and exploitation of natural resources and the

environment, both within their immediate jurisdiction and in adjacent areas which may impact their jurisdiction.

To ensure civic participation, Article 56 requires that environmental impact studies be conducted prior to the implementation of an activity or project, while a freedom of information clause under Article 58 grants citizens the right of access to such studies, as well as to other public information held by government agencies, state agencies, state enterprises, or local administrative organizations. Finally, Article 59 establishes another precedent, requiring public hearings for any project or activity that may affect the quality of the environment, health or sanitary conditions, the quality of life, or any other material interests of an individual or a community.

Citizen Participation through Administrative Decentralization

True civic participation in public policy cannot emerge unless citizens have the right to control issues of immediate interest and impact in their local communities. Since the reforms of Chulalongkorn at the end of the 19th Century, public policy in Thailand has been driven by centralized decisionmaking within the Bangkok-based ministries. While such policies may have had the interest of the nation at heart, they did not necessarily conform to local conditions or needs. Too often they were the source of corruption.

Within the context of nation-building, the issue of local self-governance was not raised during the first 40 years of Thailand's constitutional democracy. The 1974 Constitution was the first to include a chapter on Local Administration. It stated that the organization of local administration was to be in accordance with the principles of self-administration, with governance at every level of the province based on locally elected organizations²³. After the military overthrew the 1974 Constitution in 1976, subsequent charters made local administration subject to the law. Local governance, henceforth, was premised on traditional methods through "basically elected" assemblymen, meaning that the Ministry of Interior still had both immediate and ultimate control over local administration through its own centrally appointed officials²⁴.

By contrast, the 1997 Constitution stipulates, for the first time, that government policy "shall undertake the decentralization of power to localities for the purpose of independence and self-determination of local affairs" [1997: Article 78]. Chapter IX on Local Government further stipulates that the government "shall give autonomy to the locality in accordance with the principle of self-government according to the will of the people in the locality" [1997:

Article 282]²⁵, and that local administrative organizations are to be governed by directly elected local assemblies and local official committees [1997: Article 285]²⁶.

The Constitution further stipulates that the National Assembly pass legislation that will delineate the powers and duties in the management of public services between the central government and local administrative organizations. This legislation is to include provisions for the allocation of taxes and duties which will promote decentralization [1997: Article 284]. Furthermore, to remove control over local officials from the hands of the Ministry of Interior and other line ministries, the appointment, transfer, promotion, salary increases, and punishment of officials and employees of a local administrative organization are to be determined by the elected Local Officials Committee [1997: Article 288]²⁷.

Citizen Participation through Public Policy Referendum

In many nations, citizens are able to participate in public policy debate on issues of significant public interest through referenda, whereby eligible voters concur with or reject a specific policy or bill. Thailand does not have a history of referenda. Indeed, perhaps the first such instance of a referendum was amendment to Article 211 of the 1992 Constitution which outlined the process for drafting the 1997 Constitution. If Parliament had rejected the draft charter, a national referendum would have been held²⁸.

The 1997 Constitution introduces referenda for the first time in Thai constitutional history, though it is limited. If the Council of Ministers is of the opinion that any issue may affect national or public interests, the prime minister can propose a referendum [1997: Article 214]. Parliament has two years from the date of promulgation of the Constitution to enact an organic law governing referenda [1997: Article 329(5)].

There are two problems with the 1997 Constitution's referendum provisions. First, the decision to hold a referendum is in the hands of the cabinet, and more specifically, a single person, the prime minister. Second, referenda are restricted to national issues. There are no provisions for referenda on much more common issues of local interest. It is uncertain whether the civic sector will be extended the right to call for a referendum through a petition process or whether local referenda will be possible, unless there is a constitutional amendment to that effect or such provisions are included in the organic law.

Citizens and civic sector organizations have been extended significant new rights under the 1997 Constitution to become directly involved in public policy formulation. Civic sector organizations have demonstrated their resolve over the past decade to work with the government to improve Thai society. There is now a mandate for the bureaucracy to respond in a cooperative manner or face charges of malfeasance. As this adjustment unfolds, the new Senate is more likely to cast their support behind the NGOs rather than the bureaucracy.

Urban, middle class voters have demonstrated in the past four elections their desire for clean, transparent, accountable government. It is the majority in the countryside, however, who elect the greatest number of MPs and thereby influence the composition of inevitable coalition governments. The question remains whether or not the average villager will continue to sell their vote to the highest bidder regardless of the political consequences. The new electoral law and independent Election Commission may help to reduce vote-buying to some degree. Ultimately, however, only when citizens are allowed active participation in determining local public policy, and they can see the impact of their vote on issues of local concern, will they begin to give more serious attention to who receives their vote.

Constitutional Mechanisms to Promote Accountability and Transparency

The system of governance which evolved after the 1932 Change of Government allowed both bureaucrats and politicians to do as they wished with little accountability to the public. The only real threat to any elite circle's fiefdom was if it encroached on another clique's turf, or if it grew too powerful, posing a threat to the interests of other circles. The distinction between public and private interests, between public goods and private property, failed to mature in Thai society. The Thai language has yet to coin a term for the concept of conflict of interest. As a result, the Thai political system has been racked by six decades of continuous allegations of corruption against political leaders and senior bureaucrats. Under the new Constitution, Thailand seeks to curb corruption through a system for the declaration of assets and liabilities and through the creation of an independent counter-corruption agency with teeth.

National Counter Corruption Commission

From 1932 to 1975, corruption and bribery were regulated through the Penal Code. Although the code prescribed heavy penalties, it was an ineffective tool against corruption because the direct evidence required to prosecute under the Criminal Procedure Code is difficult to collect. Furthermore, when counter-corruption measures are incorporated into a penal code, it is not possible to prosecute the new, innovative methods of corruption developed by entrepreneurial officials. Since these innovations are not mentioned in the code, such acts are not technically illegal. As a result, the code only focused on issues of petty corruption engaged in by lower level officials. It did not cover the large-scale corruption committed by high-ranking officials who helped to design and pass the code²⁹.

During the brief interim of civilian democratic rule in the mid-1970s, Parliament passed the Anti-Corruption Act (1975), establishing Thailand's first Counter Corruption Commission (CCC). The CCC did not have an auspicious birth. It took the government 16 months to develop a list of Commission members. Before the nominees could be approved by Parliament, the military overthrew the civilian government on October 6, 1976. CCC members were finally appointed by the military junta the following year, two years after creation of the CCC in law.

From its inception, the CCC has been a "paper tiger." It has had limited powers of investigation and no prosecutorial authority. The CCC is not

authorized to initiate an investigation until after it has received a formal complaint. Neither the CCC, nor any other agency, has the power to investigate a complaint against an MP who does not hold a ministerial position. Investigation of the prime minister or other ministers can only proceed if the complaint is filed while the minister is in office. As a further restriction, the investigation must be completed within one year after the minister leaves office [Pasuk: 46]. Under these conditions, the CCC has had a difficult task, even when leadership has been strong and the Commission has had the full support of the government.

Perhaps the major problem facing the CCC is that it lacks prosecutorial authority. After the CCC has completed an investigation and submitted its report to the accused official's superior, the Commission's duties end. The superior of the accused is responsible for taking further action. The first step in that process is the establishment of an internal committee to study the Commission's findings. At this point, a case can be conveniently buried or forgotten with the accused given appropriate disciplinary action by his peers. Only the most egregious cases are sent to the attorney general for prosecution. Unfortunately, too often there is insufficient direct evidence for a conviction.

The 1997 Constitution seeks to remedy previous problems with the CCC through the establishment of the National Counter Corruption Commission (NCCC) [1997: Chapter 10, Part II]. The NCCC is an independent agency with broad powers of investigation. More significantly, it has the power to overrule the attorney general to independently initiate prosecution. This is the first time in Thai history that any independent agency has been granted prosecutorial powers.

The CCC was open to political interference because it was under the prime minister's office, and commissioners were appointed by the prime minister with the concurrence of the government-controlled House of Representatives. Moreover, since commissioners had only two-year terms, a commissioner who took his duties too seriously could be removed easily. In contrast, the 1997 Constitution establishes the nine-member Commission as an independent agency with its own administrative unit. NCCC members are elected by the Senate to a single, nine-year term.

To reduce previous political influence over the appointment of Commission members, the Constitution establishes a complex selection process to vet potential commissioners for nomination to the Senate. Nominations are made by a 15-member Selection Committee which includes three ex officio members:

the presidents of the Supreme Court, the Constitutional Court, and the Supreme Administrative Court. Seven selectors are rectors of state higher education institutions elected by their peers. A representative from each political party, which has at least one member in the House of Representatives, elect from among themselves the final five members of the Selection Committee. The Committee submits a list of nominees to the Senate, equal to twice the number of commissioners to be elected. Those who receive the highest number of votes from the Senate are considered elected [1997: Article 297-298].

Nominees must be prepared to serve in the Commission as a full-time career. Similar to judges of the Constitutional Court, Commission members must resign from any government position, state agency or enterprise, or any company or independent profession within 15 days of their election. If they fail to do so, their election will be deemed invalid and a new candidate will be selected [1997: Article 258].

To further reduce the potential of political influence, nominees must meet strict criteria. For example, they cannot be a member of the House of Representatives or a member of a local assembly at the time they are nominated. Nor can they be a senator or a local administrator. More specifically, they cannot have been an official or a member of a political party for the previous three years prior to their appointment. Nor can they have ever served as a minister [1997: Article 297].

Declaration of Assets and Liabilities

The NCCC is provided with broad investigatory powers. No longer must it wait to receive a complaint before it can conduct investigations [1997: Article 301(3)&(4)]. The Constitution mandates that the Commission examine the assets of politicians to determine if any individual has become wealthy in an unusual manner. As noted in the introduction to this section, the Criminal Procedure Code requires documented evidence in order to prosecute a specific act of corruption. In most cases, evidence such as receipts and invoices for bribes or pay-offs simply do not exist. To address the difficulty of securing documented evidence to prosecute a specific corrupt act, Thailand has adopted the concept of “unusual wealth.” Simply stated, if an individual exhibits a significant increase in disposable income or assets, Thai courts presume the increase is the result of corrupt activities. It is up to the individual to document how the wealth was legally obtained³⁰.

To support this process, within 30 days after taking and leaving office, the prime minister, ministers, members of the House of Representatives and Senate,

other political officials, and local administrators and members of local assemblies must file an account of their assets and liabilities, as well as a copy of their tax return for the previous fiscal year, with the NCCC. The submission must also include the same information for their spouse and dependent children [1997: Article 291]. The intent of the Constitution is clear: an organic law on countercorruption would extend this list, and NCCC investigatory powers, to include senior bureaucrats [1997: Article 296]³¹.

Previous law, of course, required similar submissions. However, the information remained sealed, even to CCC officials, until a formal complaint had been filed and an investigation initiated. In contrast, under the reforms initiated by the 1997 Constitution, the NCCC has a mandate to review all submissions to determine whether or not it should itself initiate a formal investigation.

Article 293 is one of the most-innovative and publicly popular sections of the 1997 Constitution. The intent of Article 293 is to allow citizens and the media to review for themselves the assets of senior politicians, and thereby ensure that the Commission faithfully executes its mandate. It requires the NCCC to publicly disclose the submissions of the prime minister and all ministers within 30 days after the deadline for the NCCC's receipt of asset reports. Thai newspapers have used submissions filed by members of the Chavalit and Chuan administrations as the basis for a variety of articles. The questions on everyone's mind: why are the wives so wealthy and the husbands so asset poor; why do ministers pay so little income tax? The Bangkok Post, on the other hand, has created a daily serial on the assets and liabilities of individual ministers and their families. The column details cash on hand and bank accounts; investments in publicly listed and private companies; land holdings, houses, condos, and other buildings; vehicles from lowly Toyota's to Jaguars; and personal property including diamond rings and Rolex watches.

Politicians are advised to take their submissions seriously. Should, in the opinion of the NCCC, any individual fail to submit proper documentation, or should an individual submit false statements or conceal facts, the NCCC must submit a report to the Constitutional Court. If the Court concurs with the NCCC findings, the individual is immediately removed from office and prohibited from holding any political position for a period of five years [1997: Article 295]³².

If, in the NCCC's opinion, the assets of any individual appear to have increased unusually, the chairman of the NCCC is required to forward a report and all documents to the president of the Senate to initiate impeachment

proceedings, and to the attorney general to institute proceeding in the Supreme Court's Criminal Division for Persons Holding Political Positions.[1997: Article 294].

Impeachment

Prior to 1997, there were no constitutional provisions in Thailand for the impeachment of officials. The removal of nonelected officials, as well as senators or MPs was strictly an internal matter. Ministers, individually or collectively, could be removed from office (although not from MP status) only through no-confidence debate procedures.

The regulations and practices of individual ministries and the Civil Service Commission have made the removal of government officials difficult. Instead of dismissal or prosecution, the common practice has been for an official to be offered early retirement with full pension, transfer to an inactive post with full pay, or transfer to a remote outpost. The removal of elected officials has been technically more transparent, yet nevertheless rare. Some constitutions allowed as few as five senators or MPs to lodge a complaint against one of their peers. The political Constitutional Tribunal then made a decision³³.

The 1997 Constitution provides mechanism not only for the removal from office of officials for corrupt actions or malfeasance but for their criminal prosecution as well. Section 304 provides that one-fourth of MPs may lodge a complaint with the president of the Senate against a member of the House of Representatives, the prime minister or any other minister, the president or judge of any court, the attorney general or any prosecutor, an election commissioner, a state audit commissioner, an ombudsman, or any high-ranking official. In a precedent typical of the 1997 Constitution, 50,000 voters are also granted the right to lodge complaints, except against a senator [1997: Articles 303 & 304]³⁴.

Complaints filed with the president of the Senate are in essence requests that the Senate pass a resolution to remove an individual from office under Section 307 of the Constitution [1997: Article 304]. Under Article 307, the secret vote of three-fifths of all senators is required to remove an official. It is important at this juncture to note the "apolitical" nature envisioned by the Constitutional Drafting Assembly for the 200-member Senate. Senators, by default, will be representatives of civil society rather than political, administrative, or business interests. It is therefore assumed that their collective decision on the removal of an official under Article 307 will be premised on an honest

evaluation of the facts of the case rather than any political, bureaucratic, or business allegiances.

Once the president of the Senate has received a complaint, he or she is required to forward it to the National Counter Corruption Commission for investigation. After investigation, the president of the National Counter Corruption Commission is required to submit a report to the president of the Senate which includes all existing documents and the Commission's opinion. Based on this information the president of the Senate must convoke a sitting of the Senate to consider the case and call for a vote under Section 307. If three-fifths of the Senate vote against the accused, the accused is immediately removed from office and barred from holding any political or government position for a period of five years [1997: Articles 305-307].

Criminal Prosecution

In addition to impeachment, a complaint under Article 304 may also lead to criminal prosecution. If, in the opinion of the NCCC, the accusation has a prima facie case, the president of the National Counter Corruption Commission is required to submit the same report and documents provided the Senate to the attorney general for initiating prosecution in the Supreme Court's Criminal Division for Persons Holding Political Positions. As a check on potential political interference with the decision of the attorney general, the NCCC itself may prosecute. After review of the Commission's evidence and opinion, as well as any other supplementary information requested by the attorney general, should the attorney general claim there is insufficient evidence to prosecute, the Commission has the constitutional powers to either prosecute the case itself or to appoint a lawyer to prosecute on the Commission's behalf [1997: Article 305].

Whether the attorney general, the Commission, or the Commission's appointed lawyer prosecutes, the Supreme Court's Criminal Division for Persons Holding Political Positions has jurisdiction to adjudicate the case. In a precedent designed to deter individuals from involvement in the corrupt affairs of an official, the Constitution provides the Supreme Court with a mandate to expand the scope of a case beyond the individual impeached by the Senate to include criminal prosecution of other individuals involved in the case either as a principle, an instigator, or a supporter [1997: Article 308].

The constitutional mechanisms to promote accountability and transparency established by the 1997 Constitution are critical to Thailand's political reform

process. Every nation must deal with corruption in its society. It cannot be eliminated; the best that can be hoped for is controlling it and reducing its impact. Thailand has been unable to moderate the vicious cycle of corruption and malfeasance in office that has become endemic. If the National Counter Corruption Commission does not have early and significant successes against major officials, corruption will only accelerate. Citizens will then consider the reform process to be a failure; they will consider the 1997 Constitution to be just another cause without substance.

The Road Ahead

The 1997 Constitution represents an important benchmark in the reform process that began in earnest after the last military coup in 1991. The charter establishes a framework for significant reform of Thai politics and administration. Much remains to be done, however, to actually implement these reforms under unpredictable circumstances. What are the chances of success in the face of resistance from conservative elements in the military, the bureaucracy, and political parties? The prognosis is good. Nevertheless, it must be anticipated that reform will be incremental. The task is simply too monumental to address all at once. In addition, democracy is the art of the possible. Therefore, there will be the need, at times, to compromise by accepting a weaker version of a reform in order to secure the precedent for future efforts to strengthen the reform.

To understand the process underway in Thailand, the classical perspectives of Thai political culture dominated by deference to hierarchy, reliance on patron-client relations, and politics dominated by class-driven, urban versus rural divisions must be modified. These are still important elements to the discussion of Thai society. However, they are no longer sufficient to adequately explain the events unfolding in Thailand. The political culture has begun to change over the past three decades, in which Thailand achieved the highest rate of growth in the world. This economic development has broken down old patterns with the expansion of educational and employment opportunities, the emergence of a mobile society no longer tied to one's village of birth, the establishment of a vibrant, open media, and the evolution of a robust civic sector. Previous efforts to reform the Thai political and administrative systems failed because the environment and incentives for change—the social forces for reform—were insufficient. The process through which political reform was debated in the 1990s and the ability to secure a constitutional blueprint for these reforms demonstrates the environment has transformed sufficiently for change to proceed.

Earlier attempts to make even minor adjustments to the system created by the Promoters of the 1932 Change of Government were met by military coup and retrenchment of reform. The Thai military has become a more professional body forced to redefine its role since the end of domestic insurgency and a reduction in military threat from hostile neighbors. That role is not yet clearly defined but there were encouraging signs in 1997, indicating the military has decided it no longer has an interest in direct control of political affairs.

Efforts to enshrine a political role for the military in 1992, along the lines of Burma and Indonesia, were violently rejected by the civic sector, the business community, and politicians. To reassert a dominant political role, the military would have to rely on a traditional coup d'état and the ruthless suppression of civil liberties. However, this would result in the suspension of IMF and World Bank assistance essential to economic recovery. It would also provoke civil disobedience and public disorder from a civic sector which is even more self-confident than it was when the public forced the military to back down in 1992. Such a scenario might provide the military with temporary power; however, it would fail to yield any of the prestige or monetary incentives traditionally conferred by that power. Military leadership would be an international pariah actively undermined by Thai civil society and the business sector. Since the military would lose more than it would gain by seizing political power, it would appear the Thai tradition of military coup d'état has run its course. Political domination is no longer in the military's interests.

The more critical question is whether or not the military will actively support public participation, accountability, and transparency. Or, will the military indirectly give encouragement to conservative elements among the bureaucracy and political parties who seek to thwart reform. There will be numerous opportunities over the next few years to dilute reforms through the legislative process. Within two years of the promulgation of the Constitution, (i.e., by October 11, 1999), a series of organic laws must be drafted, publicly debated, and passed by the National Assembly. Much of this may occur before the next general election, and therefore it will be considered by the current Senate which is dominated by military and civil bureaucrats. Which way will the military senators vote on critical legislation to establish the Parliamentary Ombudsmen and the National Human Rights Commission? Will the military allow its officers to be subject to the National Counter Corruption Commission, or will it continue to insist on handling military discipline internally? What influence will the military exert over drafting of organic law governing public audits, public referendum, and criminal justice administration involving public officials?

If the domestic and international environment are no longer conducive to the military regaining its former dominant position, then its interests lie in assuring that no other sector will be able to engineer control of the system. The military's strategic interest, therefore, will be to ensure legislation provides the balanced playing field promised by the new constitution. Thus, while there

may be internal dissent, the military is likely to actively support most reform efforts.

Without crucial backing by the military, the bureaucracy will not be in a position to significantly water down the intent of the constitution through loopholes in organic law. The bureaucracy is no longer in a dominant position to dictate law. Indeed, as a leader of Thai society, the bureaucracy is in retreat. Its interest, therefore, lies in trying to regain a position of prestige within Thai society. Many in the bureaucracy believe this can be achieved only through accommodation with civil society.

At one time, the Thai bureaucratic polity attracted Thailand's best and brightest; the civil service was the secure path to influence, power, and material comfort. Neither has been true for a decade. As a result of the growth of higher education in Thailand, by 1980 the civil service could no longer absorb all of the nation's bright young minds. As a result of economic growth, there were new opportunities to seek one's fortune. As a result of social development, there were new opportunities to experiment with ideas and methods of achieving personal social fulfillment. The excess best and brightest have filled the ranks of academia, civic sector organizations, the media, and the business community. At the same time, many within the bureaucracy have sought greener pastures, monetarily or philosophically, in the private and nonprofit sectors. This has created a new balance of power within the Thai polity. No longer are Thailand's best and brightest confined to a bureaucracy ruling over an illiterate rural population. The bureaucracy must now compete with the brain power and ambition of other sectors who have claimed their role in national affairs through the new Constitution.

Secondly, the omniscience and omnipotence of the bureaucracy is no longer blindly accepted by any sector in Thai society. For example, since the 1950s, macrobureaucrats in the Bank of Thailand had been able to propagate their prestige to god-like proportions. In 1998, farmers, small businessmen, corporate executives, academics, civic sector leaders, politicians, and even other bureaucrats, are calling for the criminal prosecution of those in the Bank whom they believe destroyed the Thai economic miracle through inept, if not corrupt, actions. Civil servants across the board have seen their prestige plummet. The average Thai in the street, and in the dusty village lane, is fed up with petty payoffs to the police and excessive, subjective bureaucratic regulation. Traditional deference to bureaucratic authority is being replaced by public demands for service. In response, many civil servants have concluded that they must reach out to society to develop new forms of partnership in the belief that

this is the only way in which the bureaucracy can rebuild a role for itself in Thai society.

There are conservative elements in both the military and the bureaucracy which will, nevertheless, seek to reduce the impact of constitutional reforms. For this minority to have any chance of success, they will have to join forces with politicians whose interests are also opposed to reform. The political base of these politicians is the rural countryside where the tradition of patron-client relationships remains strong and votes are easily bought. Rural voters return the majority of MPs to Parliament. Ultimately, therefore, the countryside will be an important variable in the reform process.

For over a decade, the urban middle class has condemned their rural cousins for continuing to return disreputable individuals to Parliament. Rural voters have always countered that they are not ignorant buffalo who fail to understand the value of their vote. In addition to a bit of cash at election time, disreputable as their MPs might be in the eyes of the urban middle class, these MPs bring roads, electricity, water, and jobs to their constituents. Rural citizens have understood the value of their vote. However, a new trend, still subtle, is emerging.

The economic crisis has prompted many rural voters to appreciate for the first time that decisions made at the national level can also have a profound impact on life in the village. It was their politicians, many believe, that created the environment for the economic crisis. They also conclude that in order to protect their own personal interests, these same politicians were unwilling to make the reforms required in order to resolve the crisis in a timely manner. Secondly, as the economic crisis began to hit local communities, when students were going to school without shoes or dropping out for lack of lunch money, or medical supplies were in short supply at the local clinic, villagers noticed their MPs stopped dropping in for visits. Villagers noticed that despite their MP's ostentatious wealth, they were not sharing any of it to help alleviate local problems.

Traditional rural society, premised on isolated village life was the perfect greenhouse for patron-client relations to be nurtured. With few avenues to express grievances or seek justice, Thai villagers had little recourse other than their patron. The Thailand of the 1990s, however, is a mobile society. Individuals are no longer tied to their village of birth; through educational and employment opportunities they have a broader social network; through civic organizations they have alternate avenues for seeking their needs; they are tuned into national and international developments through an open media.

Previous constitutions reflected struggle among elites to control the political system and national wealth with little regard for rural interests. In contrast, villagers see opportunities for themselves in the new Constitution because they were part of the national debate on how the charter would impact their lives. Therefore, the 1997 Constitution is not generally viewed in rural communities as just another elite struggle—between bureaucratic and political elites versus the urban middle class. Thai villagers want greater control over their lives; they demand social justice. It is therefore in their interests to see the new constitution succeed.

Discredited by the economic crisis, many rural politicians will find it difficult to secure re-election through old-style campaign tactics. Many may simply choose not to run because the new election law and assets disclosure rules remove incentives for buying a seat in Parliament. Those politicians who do wish to run in the next general election, however, will have to be careful about how they vote on the new organic laws. Should they vote against reform, they will be targeted by reform elements and forced to defend their actions during the general election campaign. With so many politicians faced by these complications, conservative military and bureaucratic elements will find it difficult to forge the majority they will require to reverse or significantly impede the reform process.

At each step in the reform process, civic sector vigilance will be required to ensure that proponents of the status quo do not subvert the intent of the Constitution. At the same time, civic sector organizations must begin the process of challenging unconstitutional laws, decrees, and administrative rules. The courts must begin establishing precedents for protecting and securing citizen rights and liberties. The public and the bureaucracy must be made aware of new citizen rights and duties, particularly in the area of public policy formulation. Free, fair, and open elections at both the national and local level must proceed.

There is a final, critical issue. Will the Thai government have the funds to properly finance all of the new mechanisms mandated by the Constitution? The answer is no, not without assistance from the international community. Thailand has already been forced to reduce its budget to meet strict IMF requirements. The World Bank and others will assist Thailand to protect important social welfare and human resource development projects cut by budgetary limitations. This assistance may help to avert a worst case scenario of public unrest. However, who will support Thailand's reform process; who will assist Thailand to build the institutions required to make reform a reality?

In the early 1990's the Thai civil sector demanded action, not words, from the Chuan administration to move the reform process forward. Now the Thai civic sector is requesting both understanding and financial support, not simply words of encouragement, from the international community to help achieve these reforms.

Endnotes

1. The People's Party was established on February 5, 1927, at a three-day meeting held at Rue du Sommerard, No. 5, in Paris. Pridi Panomyong was elected chairman and provisional leader of the Party by the six other founders: Lt. Gen. Prayoon Bhamornmontri, Lt. Plaek Phibulsongkhram, 2nd Lt. Tasanai Niyomsuk, Toua Labhanukrom, Nab Bhaholyothin, and Luang Siri Rachamaitri [Charoon Singhaseni]. Vichitwong, p. 54.
2. For a discussion of the parallels between Sun Yat Sen's Kuomintang and Lenin's Soviet system, see Thawat, pp.115-119.
3. The first general elections were held on November 15, 1933. Under Article 12 of the Interim Constitution of Siam Act (June 27, 1932) the first elections were indirect. Eligible voters in a village elected one village representative who would vote for a Tambon representative. The Tambon representatives elected the first category representative(s) for their respective province. In general, successful candidates were leading local figures. Stowe, p. 67. Villagers were allowed to directly elect their provincial representative during the second general election held on November 7, 1937. Only 11 former representatives were re-elected. Most successful candidates were lawyers or retired civil servants who supported constitutional democracy rather than the trend toward military rule. Stowe, p. 99; Aakesson, pp. 665, 686. Prime Minister Phahol quickly dissolved this Assembly when it demanded details on the national budget. About half of the assembly men, representing critics of the government, were re-elected in the November 12, 1938 elections. Stowe, p. 103, 106. The next election was not held until eight years later after World War II in 1946.
4. The Military Controllers of the Country were Deputy Army Inspector General Colonel Phraya Phahol Phonpayuhasena [Phote Phahonyothin], Chief Instructor of the Army Academy Colonel Phraya Song Suradet [Thep Panthumasan], and Commander of the First Royal Artillery Regiment Colonel Phraya Ritthi Akhane [Sala Emaisiri]. Thawat, p. 114. On June 28, 1932, in his capacity as Military Governor, Phraya Phahol appointed the 70-member Assembly of the People's Representatives, which subsequently served as the second category representatives of the House of the People's Representatives through 1946. Among the leading Party members appointed were future Prime Ministers Luang Pradit Manutham [Pridi Phanomyong]; Luang Kowit Aphaiwong [Khuang Aphaiwong]; Thawi Bunyaket; Major Luang Phibunsongkhram [Plaek Khitasangkha]; and Admiral Luang Thamrong Nawasasdi [Thawan Tharisawat]. Vichitwong, p. 64. Among the 25 senior bureaucrats who were appointed to the Assembly were three ancien regime ministers: former Minister of Education Chao Phraya Thammasakdi Montri; former Minister of Agriculture Chao Phraya Pichaiyart [Dun Bunnak]; and former Minister of Justice Chao Phraya Srithammathibes [Chit na Songkhla]. Other high-ranking officials included the former Under Secretary of State for Foreign Affairs Phraya Sriwisan Wacha [Thianliang Huntrakul], former Under Secretary of War Major-General Phraya Prasert Songkhram [Thiab Khomroetsa], Ministry of Commerce Inspector Luang Dech Sahakorn [M.L. Dech Sanitwong], and Court of Appeal Judge Phraya

Manopakorn Nitithada [Kawn Hutasing], who served as Thailand's first prime minister.

Under the Absolute Monarchy, many of the senior civil servants were members of the royal family. Article 11 of the 1932 Constitution excluded members of the royal family with the rank of serene highness (Mom Chao) and higher from participating in politics and therefore from appointment to the People's Assembly and the People's Committee. This prohibition was removed from the 1946 Constitution and subsequent charters.

5. It is important to note that this amendment was not merely an extension of the system whereby the Party's central committee could appoint half of the legislature; it was an extension of the term of those surviving individuals who had been appointed in 1932.
6. See 1946: Articles 24, 29, & 66. The 1946 Constitution did provide for the direct election of senators. However, Transitory Provision Article 90 stipulated that the first Senate would be elected by members of the People's Assembly sitting on the last day before the new constitution came into effect. Direct election of senators never came into effect because within 18 months the military overthrew the government and installed the 1947 Provisional Constitution which returned to the practice of an appointed Upper House.
7. After democratic forces temporarily gained the upper hand in 1949 and 1973, the Constitutions of 1949 and 1974 once again sought to exclude permanent civil servants and active military officers from the Senate and ministerial appointments. Neither charter, however, proposed an elected Upper House. In both cases the Crown was given greater power to appoint senators. Under the 1949 Constitution the Upper House was appointed by the king and countersigned by the Privy Counsel rather than the prime minister. Active civil servants and the military were prohibited from serving as senators. Both charters met with the same fate as the 1946 Constitution: they were abrogated within a short period by military coup. The 1949 Constitution was abrogated on November 29, 1951, the 1974 Constitution on October 6, 1976. See 1949: Articles 72 & 142; 1974: Articles 99, 100, & 170.
8. The Promoters were splintered into a number of factions, consisting of two major cliques: seniors and juniors. The seniors were composed of senior army officers, whom the juniors had cultivated in order to secure the force of arms required to overthrow the monarchy. Led by Phraya Songsuradet, the seniors were far closer in their conservative views to the senior bureaucrats of the ancien regime whom the government brought into the People's Assembly and the People's Committee. The junior clique was splintered into three factions: younger civilian civil servants led by Luang Pridi; the navy clique, led by Luang Sinthu; and the junior army officers, led by Luang Phibulsongkram.
9. In March 1933, Phraya Mano issued a decree, the effect of which was to bar all government officials and military officers from membership in the People's Committee. He urged his Cabinet (the People's Committee) to reject the economic plan developed by Luang Pridi as communist inspired. When the Assembly sought to debate not only Pridi's plan but also details of the national budget, Phraya Mano prorogued the Assembly on April 1, 1933. After the coup,

Phraya Mano was exiled in July 1933 to British held Penang, where he died in 1948. See Stowe, pp. 27, 40-41 and Thawat, p. 128.

10. Chao Phraya Sithammathibet's (Chit na Songkhla) 40-member Assembly was established in 1948 to draft the 1949 Constitution. As the last minister of justice under the Absolute Monarchy and the second minister of finance under the Constitutional Monarchy, and in 1948 president of the appointed Senate, Chao Phraya Sithammathibet and the other appointed assembly members represented conservative, royalist bureaucrats. The second assembly was established in 1959 by Field Marshal Sarit Thanarat. The military-dominated assembly took nine years to draft the 1968 Constitution, while Sarit and his successors ruled primarily through military decree.
11. See the Bangkok Post, December 14, p. 1.
12. See the Bangkok Post, December 16, 1996, p.1.
13. See for example, 1947: Article 95; 1949: Article 178; 1952: Article 113; 1974, 1978 and 1991: Article 5.
14. For example, previous constitutions stipulated that "the formation, incorporation, management and dissolution of an association, union, league, cooperative or any other group shall be in accordance with the provisions of the law" [1978: Article 37; 1992: Article 40]. The qualifier for Article 45 of the 1997 Constitution is more specific:

People have the right to form associations, unions, federations, cooperatives, and other nongovernmental organizations. It is unconstitutional to restrict this freedom except through specific laws aimed at protecting public interest, or maintaining peace and order and good social morality, or preventing economic monopolies [1997: Article 45].

15. Somyos Chuathai, Khamathibai Lak Rattathammanun Thuabai [Explanation of General Constitutional Principles] (Bangkok: Faculty of Law, Thammasat University, 1992), pp. 59-60.
16. The short-lived 1951 and 1957 constitutions are an exception as they were, with some amendment, a restoration of the 1932 Constitution. It is a moot point, however, since these constitutions were used during periods governed by military decree.
17. While the 1947 Constitution dispensed with the Judicial Committee and the concept of judicial review, the 1949 Constitution reconfirmed the process by establishing a Constitutional Tribunal (1949: Article 179). This institution was more clearly a political creature controlled by the State. The president of the nine-member Tribunal was the president of the government-appointed Senate, invariably a senior military official or bureaucrat. Other ex officio members were the president of the House of Representatives, the president of the Dika Court, the Chief Justice of the Court of Appeal, the Director General of the Department of Public Prosecution, and four legal experts appointed by Parliament. To ensure political control, the composition of the Tribunal was to change after each general election (1949: Articles 168-170).

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18. For a brief period, the 1952 Constitution provided greater separation for the Constitutional Tribunal by eliminating parliamentary ex officio members and reducing the number of parliamentary appointments to three qualified individuals. The ex officio members were the president of the Dika Court, as Tribunal president, the Chief Justice of the Court of Appeal and the Director General of the Public Prosecution Department (1952: Article 106).

During a brief interim of civilian democracy, the 1974 Constitution sought to reduce the State's influence on the selection of Tribunal members. The Tribunal was to elect its president from among its nine members, composed of three members selected by the National Assembly, three by the Cabinet, and three by the Judicial Commission (1974: Article 208). The president of the Supreme Court served as chairman of the Judicial Commission.

The 1978 Constitution, and subsequent charters, however, reverted to the practice of appointing the president of the National Assembly as the president of the Tribunal, along with other ex officio members and appointees of the National Assembly. Under the 1978 Constitution the president of the Supreme Court and the director general of the Public Prosecution Department were the other ex officio members serving with four parliamentary appointees (1978: Article 184). The 1991 Constitution added one more ex officio member, the president of the Senate, and two additional appointees (1991: Article 200).

19. In accordance with Article 258, after a judge has been elected, he must resign from his position in the court.
20. Article 257 establishes the procedures for the Senate to elect eight of the 15 Constitutional Court Judges. The other seven are nominated by the Supreme Court and the Supreme Administrative Court with confirmation by the Senate. The right of the Senate to reject a Court nomination is currently an issue of debate. The Senate rejected one Supreme Court nominee on the grounds that he did not meet constitutionally mandated qualifications. The individual withdrew his nomination although the Constitutional Tribunal subsequently ruled the Senate did not have the power to reject a Court nominee.

Article 138(4) confers on the Senate the power to elect all five members of the Election Commission. Article 297 confers on the Senate the power to elect all nine members of the National Counter Corruption Commission. Sections in the Constitution which refer to the selection of the members of the other agencies merely state that they will be appointed by the king with the advice of the Senate. However, Transitory Provisions Article 322 suggests that this advice will be through elections by the Senate.

21. A potential obstacle to faithful government enactment of the policy of public participation is a traditional Thai constitutional loophole. Beginning with the Constitution of 1949, Thailand's constitutional framers have included a Chapter on "State Policies." The articles in these chapters were considered principles which were to guide the formulation of government policy but not bind the government. Each constitution has specified that the policies cited were only directive principles and could not be the cause of any action against the state in the event the state chose not to follow the principles. The 1997 Constitution dispenses with this qualification and requires the Council of Ministers to clearly

state to the National Assembly the activities it intends to carry out in order to implement the principles of fundamental State policies provided in the Constitution. It further requires the government to annually submit to the National Assembly a report on implementation of these policy principles, including problems and obstacles encountered [1997: Article 88].

22. Beginning in 1978, a member could only introduce a bill if the member's political party had passed a resolution approving the bill, and if the bill was endorsed by 20 or more members of the House of Representatives from the member's political party [1978: Article 125; 1992: Article 137; 1997: Article 169].
23. 1974: Articles 205-206.
24. See 1978 and 1992: Chapter 9.
25. Article 282 is subject to Article 1: "Thailand is a unified and indivisible Kingdom."
26. Under Transitory Provision Article 335(7), the provisions of Article 285 shall not apply to members or the executives of the Tambon Administrative Organization ex officio, who hold office on the date of the promulgations of the Constitution, until the expiration of the term of office of the elected members of the Tambon Administrative Organization.
27. Under the terms of Transitory Provision Article 335(8) the National Assembly has two years from the date of promulgation of the Constitution [October 11, 1999] to enact legislation for this purpose.
28. The Ministry of Interior was authorized to conduct a national referendum within 90-120 days of the vote by Parliament. If a minimum of one-fifth of eligible voters participated in the referendum, and a simple majority approved of the draft charter, it would be submitted to the king for his approval. The drafters of the 1974 Constitution had proposed a similar referendum but the clause was deleted in the final draft.
29. For example, when the government of Thanom Kittikachorn sought to seize the assets of the deceased Field Marshal Sarit, the Penal Code offered no remedy. Thanom therefore used Article 17 of the 1959 Constitution to seize the assets.
30. Earlier precedents for government seizure of wealth were after the death of Prime Minister Sarit in 1963 and after the ouster of Prime Minister Thanom and Minister of Interior Praphat in 1973. The most recent case was after the National Peace Keeping Council (NPKC) staged a coup against the Chatichai Government in February 1991. The NPKC created a special committee to investigate whether Prime Minister Chatichai or members of his cabinet had become unusually wealthy during their term in office. After investigating the documentary evidence, the committee ordered assets valued at 1.9 billion Baht (\$76.0 million) seized from 10 politicians on the grounds that they were acquired through corruption. After the return to parliamentary government in 1992 and an appeal, the Supreme Court ruled in March 1993 that the Assets Committee established by the NPKC had no right to act as a court of law. A case of unusual wealth should be adjudicated by a court of law, not by an ad hoc committee. Therefore, the Committee's ruling was unconstitutional. See Pasuk, pp. 23, 46; and Murray,

pp. 59-68. The court did not rule on whether or not the assets were acquired honestly.

31. The 1997 Constitution requires Parliament to pass an organic law on countercorruption within two years from the date of promulgation of the Constitution, (by October 11, 1999) [1997: Article 329]. In addition to the provisions in the Constitution, this organic law must describe the characteristics of unusual wealth and acts amounting to corruption, including a definition of conflict of interest. The law must also specify the procedures for making an accusation, for investigation of the facts and for instituting criminal action [1997: Article 331].
32. An Anti-Money Laundry Bill is working its way through the legislature which will enable the Ministry of Finance to confiscate assets gained through corruption.
33. Article 21 of the 1932 Constitution required a two-thirds vote of members present. Article 81 of the 1949 Constitution and Article 103 of the 1974 Constitution provided for not less than five senators or MPs with the right to lodge a complaint. The signature of one-tenth of senators or MPs is required by Article 81 of the 1978 Constitution. The 1952 Constitution (Article 50) requires a two-thirds vote to pass a case to the Dika Court for decision. Article 92 of the 1992 Constitution made removal the most difficult by requiring a vote of three-fourths of the total number of senators or MPs. The removal of a minister or the entire Council of Ministers has remained technically easy, especially since the 1952 Constitution. Only one-fifth of the members need call for a no-confidence debate while a simple majority decided the issue.
34. Complaints against senators may only be lodged by one-fourth of the senators themselves [1997: Article 304].

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