

**FREEDOM TO FEAR?**  
**FREEDOM OF EXPRESSION AND INFORMATION**  
**IN THAILAND**

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## **Abstract**

The freedom of expression and information regime in Thailand has worsened from 2005 – 2009. This has led to significant rise in the cases of human rights violations- especially the right to freely express one-self and access information, of nationals of Thailand and non-nationals. Therefore, in this research, I have explored the situation and considered some the major factors affecting freedom of expression and information in Thailand. Furthermore, I have also investigated the contributions and efforts of civil society in promoting the enthronement of a more democratic society - where citizens' rights are respected and protected. The research methodology applied is qualitative research, based on documentary analysis, drawing on primary and secondary materials.

The major findings include the fact that the weaknesses of existing relevant laws and institutions are germane to achieving worthwhile changes. In this context, the culture of clientalism leads to the forming of hierarchical social value systems which is prone to abuses as a result of its undemocratic character. To overcome the inhibitions, civil society organisations are employing different strategies to firstly, enable the public to access information through networking and the use of information and communication technology for interaction. Apart from that, they also resort to networking and cooperation at international level to use international pressure to reduce threats to freedom of expression and information locally. Scrutinizing the inconsistencies and the illegitimacy of legal practices that infringe of freedom of information and expression should be the core strategy of the civil society movements in Thailand.

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## List of Abbreviations

ALRC	Asian Legal Resource Centre
ASEAN	Association of Southeast Asian Nations
CDA	Constitution Drafting Assembly
CCA	Computer Crimes Act
FACT	Freedom Against Censorship, Thailand
FCCT	Foreign Correspondents' Club of Thailand
FOEI	Freedom of Expression and Information
MICT	Ministry of Information and Communications Technology
NHRC	National Human Rights Commission
PAD	People's Alliance for Democracy (yellow shirt)
SEAPA	Southeast Asian Press Alliance
TNN	Thailand Netizen Network
UDD	National United Front of Democracy Against Dictatorship (red shirt)
UDHR	Universal Declaration of Human Rights
WGI(s)	Worldwide Governance Indicators

## Chapter 1: Introduction

Prior to September 2006, and when compared to some countries in the same region, the situation of freedom of expression and information (FOEI) in Thailand was assessed as more advanced and progressive by the national and international institutions concerned (Freedom House, 2008; Worldwide Governance Indicators, 2005; 2006; 2007; 2008). However, it is observed that from 2006-2009, some significant political unrest took place in Thailand that has constrained the earlier gains, in terms of national credibility in the political and democratic advancement of Thailand, especially with regards to the issue of FOEI.

It is worth mentioning that after the September 2006 military coup d'état, Thailand could be identified as being at the crossroads of political transition: either pursuing genuine democracy or stepping back to make a u-turn to 'pseudo' democracy – constitutional monarchy. It can also be said that during the period 2006-2009 democracy in Thailand has shrunk constantly (Lynch, 2006; McCargo, 2009; Worldwide Governance Indicators, 2006; 2007; 2008). Human rights, in particular, freedom of expression, to include free speech in public through mediums such as television, newspapers, academic publications, conferences, and even public opinion, have confronted strong state control and censorship.

The shrinking of the democratic sphere is thus weakening the existing institutional systems and increasing incidences of human rights violations. The democratic setbacks include the 'peaceful' military coup of September 2006, state intimidation and state control and censorship over the media and public expression. For example, there have been increased persecutions resulting from non-compliance with and enforcement of the *Lese Majeste* Law (Somchai and Streckfuss, 2008) and the Computer Crimes Act (CCA). Those persecuted have

been mainly Thai and foreign journalists, academics, writers, online-magazine webmasters and bloggers. There are random arrests and prosecution of people for posting information on the web without reference to due process. In April 2009, one engineer was sentenced to 10 years imprisonment for posting a degrading picture of the Thai King, King Bhumiphol Adulyadej on a website (Romero, 2009). However, there are several other cases of prosecutions which have occurred without regard to the legal system, including the illegal detention of people, who have been held without trial for many months.

As a result, the majority of Thais are afraid to voice their views on most political, economic and social issues. At the same time, most of the media cannot continue their role as a watchdog in impartially reporting factual situations and in criticizing, especially the institution of the monarchy. They have less motivation to express their opinions of critical political matters because of the dire consequences that may ensue if such criticism is viewed as hostile to the King and his family or to royal interests. Criticisms have to be made very carefully; the media is rationally opting for self-censorship, and ordinary people are opting for being silent rather than speaking out, with academics also more careful for fear of state victimization.

Due to the worsening situation, some Thais and international scholars (Giles, 2008; Ubonrat, 2007; Pravit, 2009; Romero, 2009; Thongchai, 2008; Walker and Farrelly, 2009) have recently raised their concerns, especially after observing some undemocratic changes in rule of law and democratic institutions in Thai society, leading to major drawbacks in matters of human rights, particularly, in terms of the FOEL. Therefore, in order to get a better view of the FOEL in Thailand, this research has been conducted accordingly.



## **1. Research Objectives**

This research aims to analyse FOEI changes in Thailand under the existing political, social and economic conditions. It does this by exploring the factors of success and the challenges involved in applying the FOEI to Thai society. More particularly, it emphasizes those factors that have led to a seeming decline in human rights in Thai society and the proactive role of that civil society in resuming the FOEI. Hence, the research questions emphasise how the situation of FOEI in Thailand changed between 2006-2009, and looks at the factors which are driving the changes.

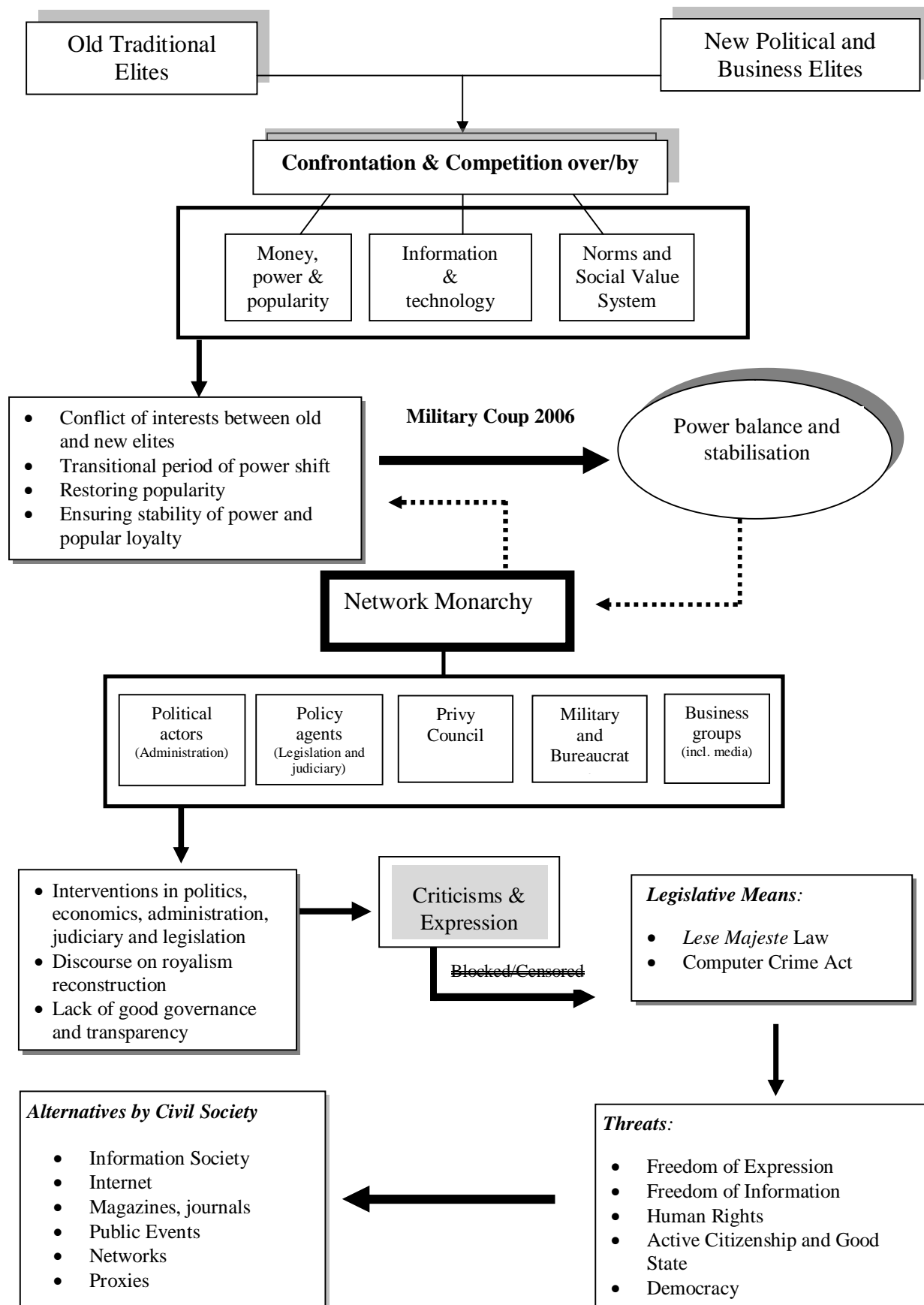
## **2. Theoretical Literature**

This research is situated in literature that is based on the concepts of democracy and human rights, including the concept of the FOEI. As Mendel (2008) states, access to information is a fundamental human right, as well as an essential underpinning of democracy. Apart from that, the freedom of expression and freedom of speech are also human rights. This research bases its theoretical analysis framework on whether or not, and to what extent, the Thais have the right to seek, receive and impart information and ideas.

## **3. Organizational Structure of the Research**

This research is divided into five chapters. Chapter 1 includes the research objective, research questions, methodology, contribution and organizational structure of the research. Chapter 2 focuses on the theoretical literature review for democracy and human rights, as well as the concepts of FOEI. Later in Chapter 3, the case study of the FOEI in Thailand is explored and conceptualized in accordance to Figure 1. Firstly, it describes the situation of change in FOEI between 2006-2009. Secondly, it discusses the factors that are driving the changes and the obstacles that are challenging successful implementation of the FOEI.

**Figure 1: Conceptualisation of the Case Study**



Thereafter, in Chapter 4, the role of civil society groups and organizations in FOEI campaigns and advocacy at national and international levels is discussed. Particularly, this chapter explores the practical efforts of civil society movements in mobilization, through the use of laws, institutions and networking. Finally, Chapter 5 includes research findings and the conclusion.

#### **4. Methodology**

This thesis requires the application of qualitative research based on documentary analysis, drawing on primary and secondary materials. The data collection comes from secondary literature: research, websites, newspapers, journals.

#### **5. Contribution**

This research advances the understanding of the FOEI in Thailand within the post-military coup period. The analysis contributes to the systematic thoroughness of shrinking human rights in Thailand, and most especially, this work should be useful for civil society, academics and eminent policy makers, urging them to take urgent action, both nationally and internationally, in order to rescue Thai society from this worrisome sinking of the FOEI.

#### **6. Research Timetable**

Research plan	April 2009	May 2009	June 2009	July 2009
1. Literature review & data collection/ analysis	25 - 30 April	1 - 31 May		
2. Research writing and submission of the 1 <sup>st</sup> and 2 <sup>nd</sup> chapters			1-25 June	
3. Research writing and submission of the 3 <sup>rd</sup> , 4 <sup>th</sup> and 5 <sup>th</sup> chapters			25-30 June	1-20 July
4. Finalising research				21-31 July

## Chapter 2: Theoretical Literature Review

This chapter contains the theoretical literature review applied to this research. It discusses the concepts of, and the association of, democracy and human rights in certain aspects. Furthermore, it includes some interesting and constructive debates on the differences of definition, interpretation and implementation of democracy and human rights in various contexts. Thereafter, it goes on to discuss the content of the FOEI as a part of human equality and freedom, acknowledged as one of the most predominant components of democracy and human rights.

### 2.1 Democracy and Human Rights

It is quite surprising to some of us, that until now, the history and idea of democracy is complex and marked by conflicting conceptions. The definition and the meaning of democracy still remains ambiguous (Richardson, 2002; Held, 1996). People and states around the world understand and implement the term differently depending on their perception, which exemplifies a particular framework of concepts, standards and “[b]eliefs – prejudices – do inevitably appear” (Held, 1996: 9).

As a matter of fact, the word ‘democracy’ came into English in the sixteenth century from the French *democratie*, and is originally Greek. The root meaning of the word is *demos* (people) and *kratos* (rule). “Democracy means a form of government in which, in contradistinction to monarchies and aristocracies, the people rule (Held, 1996: 1). But in reality, it has not always been so. The theory and practice of democracy has been highly criticised by many thinkers from ancient Greece to the present day.

The most crucial points of debates on democracy revolve around the understanding and the interpretations of “[t]he people rule.” There is a significant emergence of definitional problems when addressing these phrases: ‘rule’, ‘rule by’ and ‘the people’. Firstly, Held states the ambiguity of ‘the people’ that (Held, 1996: 2):

- Who are to be considered ‘the people’?
- What kind of participation is envisaged for them?
- What conditions are assumed to be conducive to participation? Can the disincentives and incentives, or costs and benefits, of participation be equal?

Secondly, Held points at the idea of ‘rule’ that evokes some questions:

- How broadly or narrowly is the scope of rule to be construed? Or, what is the appropriate field of democratic activity?
- If ‘rule’ is to cover ‘the political’ what is meant by this? Does it cover: (a) law and order? (b) relations between the states? (c) the economy? (d) the domestic or private sphere? (Held, 1996: 2)

Lastly, the third group of queries relate to ‘rule by’ and the obligation to obey, which Held (1996: 2) examines by seeking answers to the following questions:

- Must the rules of ‘the people’ be obeyed? What is the place of obligation and dissent?
- What roles are permitted for those who are avowedly an actively ‘non-participants’?
- Under what circumstances, if any, are democracies entitled to resort to coercion against some of their own people or against those outside the sphere of legitimate rule?

These eight questions are currently to be reflected upon, as well as clarified within the specific territory and circumstances. Democracy is one of the favourite discourses for being overwhelmingly abused in political advertisements and propaganda, in the place where less democratic systems exist, especially in order to legitimate monarchies or dictatorships. As Held points out “Democracy appears to legitimate modern political life: rule-making and law enforcement seem justified and appropriate when they are ‘democratic’” (Held, 1996: 1).

However, democratic ideas can be recognized “[o]nly when ideas are connected to propitious historical circumstances and structural forces that they develop sufficient influence to alter the nature and workings of institutional forms” (Held, 1996: 9). Agreeably, there are some arguments who claim that democracy is explicitly not connected to the current context of their society (Voranaï, 2009), as it is both controlled and occupied by elites or lower middle class groups (Lipset 2000). Its authentication of democratic concepts is not able to be fulfilled due to some limitations, for instance, the intervention of monarchies or dictatorships. Thus, in some circumstance, historically, institutionally and culturally, a move to an ideology of democracy may not be easy (Lipset, 2000). Indeed, transplanting it into the government system of some countries, for example, Thailand, has not been easy either (Suchit, 2007).

As a matter of fact, to pursue a genuine ideology of democracy, ‘equality’ cannot be dismissed. To resume equality in a society, the rights of individuals - human rights - are to be respected. Everybody should have the right to live and express themselves, as well as access to public services and resources. Under the democratic system, individuals - as citizens - must have the right to seek, receive and impart information and ideas. Mendel (2008) argues that, access to information is a fundamental human right, as well as an essential underpinning of democracy. Therefore, significant promotion and protection of the freedom of expression and freedom of speech also requires the non-violation of human rights.

Nevertheless, I would suggest that a separate campaign on human rights cannot successfully change liberty, freedom and democratization in a country because human rights are cross-cutting issues and related to a plethora of other rights: civil, political, social and collective. Erman (2005: 7) mentions that “A discourse theoretical understanding of human rights suggests that human rights cannot a *priori* stand above political rights, and thus not be treated as a homogenous universal phenomenon.”

According to the Model of Democracy VI (Held, 1996: 217-218), pluralism has its principle of justification in securing government by minorities and political liberty. However, I argue that the problems of both classical and neo-pluralism are the dominance of some eminent interest groups over other groups, due to better access to resources, distribution and decision making power. This leads to unequal participation in politics because this model emphasises election as a major factor of democracy, i.e. one-person-one-vote and a competitive electoral system. This is despite Held (Ibid.) mentioning that the key features of pluralism are citizen rights, freedom of expression, freedom of organization and the system of checks and balances between the legislature, executive, judiciary and administrative bureaucracy. Moreover, the problems of bureaucratic dominance can lead to dysfunction and the collapse of the checks and balances system (Richardson, 2002). As perceived in many countries where the democratic ingredients are still absent and good governance in bureaucracy rarely exists, pluralism can actually hinder human rights and the good will of the citizens, conversely facilitating the legitimisation of elites and their networks to benefit from the dysfunctional democratic process.

In order to avoid the limitation of pluralism mentioned above in dealing with human rights and FOEI, this research suggests a radical shift to the Model of Democracy IXa - Democratic Autonomy (see Table 1). It does this as democratic autonomy ensures respect and protection of freedom and equality in terms of rights and obligations of persons (Richardson, 2002; Held, 1996); it particularly emphasises political rights and the participation of civil society. Political rights and civil liberties are essential components of freedom and the light via which democracy may shine.

**Table 1: In Sum: Model of Democracy IXa, Democratic Autonomy**

<b>In sum: Model IXa Democratic Autonomy</b>	
<i>Principle(s) of justification</i> Persons should enjoy equal rights and, accordingly, equal obligations in the specification of the political framework which generates and limits the opportunities available to them; that is, they should be free and equal in the determination of the conditions of their own lives, so long as they do not deploy this framework to negate the rights of others	
<i>Key features</i>	
<i>State</i>	<i>Civil society</i>
Principle of autonomy enshrined in constitution and bill of rights	Diversity of types of household and of sources of information, cultural institutions, consumer groups, etc. (governed by principle of DP)
Parliamentary or congressional structure (organized around two chambers based on PR and SR respectively)	Community services such as childcare, health centres and education internally organized on principles of DP but with priorities set by adult users
Judicial system to include specialized fora to test interpretations of rights (SR)	Development and experimentation with self-managed enterprises (nationally owned if vital industries, otherwise socially or cooperatively regulated)
Competitive party system (recast by public funding and DP)	Diverse forms of private enterprise to promote innovation and economic flexibility
Central and local administrative services, internally organized according to principles of DP with a requirement to coordinate 'local user' demands	
<i>General conditions</i>	
Open availability of information to help ensure informed decisions in public affairs	
Introduction of new democratic mechanisms from 'citizen juries' to 'voter feedback' to enhance the processes of enlightened participation	
Overall investment priorities set by government in discussion with public and private agencies, but extensive market regulation of goods and labour	
Minimization of unaccountable power centres in public and private life	
Maintenance of institutional framework receptive to experiments with organizational forms	

*Note:* The institutional features of democratic autonomy are set out here, it must be stressed, in a highly tentative mode. They include a variety of forms of democratic decision-making and of methods of elections. The key abbreviations refer to:

- DP      Direct participation of particular sets of citizens (involving open meetings, local referenda and delegated representatives) in the regulation of an organization  
 PR      Election of representatives on the basis of proportional representation  
 SR      Representatives chosen on the basis of 'statistical representation' (that is, a sample of those who are statistically representative of key social categories including gender and race)

Source: Held, 1996: 324-325



## 2.2 Freedom of Expression and Information

The Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly in 1948, is considered to be the flagship statement of international human rights. In Article 19, which is legally binding on all states as a customary international law, it is stated that the right to FOEI exists in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

(UN General Assembly Resolution 217 A (III), 10 December 1948)

It is obviously true that a lack of freedom of expression and of access to information, intentionally or unintentionally, destroys and delays democratisation in many places in the world. Access to information is the bedrock of most power plays. Information is a major determinant of knowledge, which by itself also determines the level of power that anyone person or group of people can wield. There cannot be equality, accountability and transparency where there is a wide gulf in the level of information available to people within the same group or, as in this case, the same country. Most leaders use their privileged access to power to oppress those with little or no access. Thus there is a need for a proper flow of information. Kofi Annan ascribes the term ‘information society’ when describing this sort of society:

And of course, the information society is the very life blood of freedom. It is freedom that enables citizens everywhere to benefit from knowledge, journalists to do their essential work, and citizens to hold government accountable. Without openness, without the right to seek, receive and impart information and ideas through any media and regardless of frontiers, the information revolution will stall, and the information society we hope to build will be stillborn.

(Amnesty International UK, 2006)

Consequently, there is no doubt that ability, opportunity and possibility in accessing information varies. This is especially so when discovering that information can create unwanted consequences; for example, when disclosing some long hidden secret, the freedom to reveal that information seems diminished. In order to free people from fear, ignorance and passivity in politics, every citizen should have access to information and also exercise a strong degree of freedom of expression in society because “Freedom of information (FOI) is the key ingredient for an enabling environment that promotes and protects freedom of speech and freedom of the media in any democratic society” (Freedom of Information Workshop Paper, 2008: 5).

Moreover, the differentiation of understanding FOEI is problematic in many countries, due to diversity of context, cultural and social environment, and legislative interpretation. Ambiguities in these areas lead to divergent sets of principles, weakening implementation of the FOEI in general. Theoretically, it is necessary to focus on fine-tuning in order to reach a common ground for definition and understanding before misinterpretation leads to further confusion, delaying the attainment of set goals.

### **2.3 Thailand - Freedom of Expression and Information in International Schemes**

The Thailand’s FOEI, in international scheme can be seen from two angles, firstly, through use of the Worldwide Governance Indicators (WGIs) of the World Bank Institute, and secondly, via the Checklist Questions of the surveys in Freedom in the World reports of Freedom House. Sharing the common ideal of democracy, both indicators measure a level of freedom and governance across countries. As this research aims to observe the extent of

FOEI, it therefore emphasises the degree of voice and accountability in the case of the WGIs, and of political rights and civil liberties in the case of Freedom in the World.

### ***2.3.1 Worldwide Governance Indicators***

Since 1996, the World Bank Institute (World Bank, 2007), has released an annual report on the WGIs. This report presents the updated aggregate governance research indicators for 212 countries. The indicators measure 6 dimensions of governance:

- Voice and Accountability
- Political Stability and Absence of Violence
- Government Effectiveness
- Regulatory Quality
- Rule of Law
- Control of Corruption

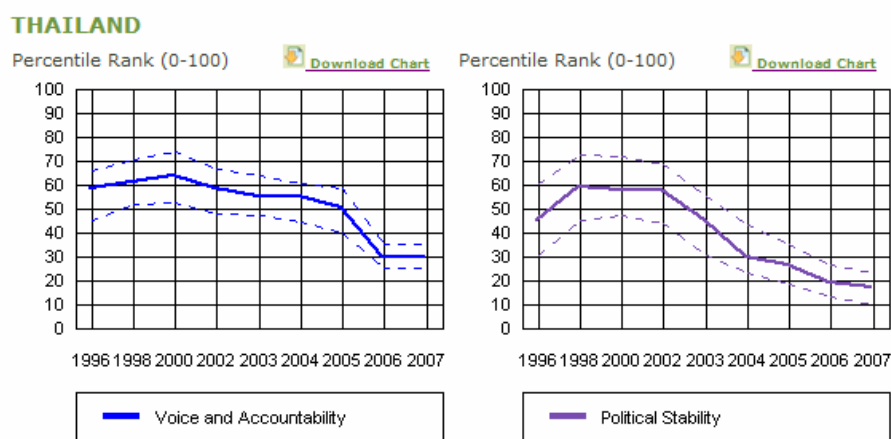
The methods of this report are defined and based on data collection from the annual survey, with the different organisations most prominently working on the issues of freedom and governance. In 2008, the research team described details of its method whereby:

The indicators are based on several hundred individual variables measuring perceptions of governance, drawn from 35 separate data sources constructed by 32 different organizations from around the world. These individual measures are assigned to categories capturing these six dimensions of governance mentioned above, and then an unobserved components model is used to construct six aggregate governance indicators in each period (Kaufmann, et al, 2007: 32.)

According to the WGI, which reports on increases and declines in estimates of governance, Thailand's scores on voice and accountability for 2006 and 2007 significantly declined (see

Table 2). The scores were at 0.39 in 1998, unfortunately dropping to -0.50 in 2006 (Kaufmann et al, 2007: 32) and to -0.61 in 2007 (Ibid, 2008: 33). Consequently, the percentile ranking for Thailand has shrunk from 61.1 per cent in 1998 to 29.8 percent in 2007 (Kaufmann et al, 2008). The drastic drop for governance scores became more noticeable from 2006 onwards, due to the correlative declines of both voice and accountability, alongside political stability.

**Table 2:** Thailand Percentile Ranks on Voice and Accountability, Political Stability



Source: [Kaufmann D., A. Kraay, and M. Mastruzzi 2008: Governance Matters VII: Governance Indicators for 1996-2007](#)

### 2.3.2 Freedom in the World 2009 Checklist Questions

Freedom in the World is the publication of Freedom House and has been published annually since 1972 to serve as the standard-setting comparative assessment of global political rights and civil liberties. The survey ratings and narrative reports on 193 countries and 15 related and disputed territories are used by policymakers, the media, international corporations, civic activists, and human rights defenders to monitor trends in democracy and to track improvements and setbacks in freedom, worldwide (Freedom House, 2009).

The Political Rights Checklist (see Section I in Table 3) composes of questions on electoral process, political pluralism and participation, and functioning of government. Apart from that, additional discretionary political rights questions are given to assess the adequacy and interaction of traditional monarchies and government in democratic systems. In terms of the Civil Liberties Checklist (see Section II in Table 3), its foremost content is focused on freedom of express and belief; associational and organizational rights, rule of law, and personal autonomy and individual rights.

The countries of the world are categorized into three groups, according to Freedom in the World Country Ratings, namely, free country, partly free country and not free country. The data in Table 4 demonstrates compilation of the Freedom in the World Country ratings covering 1972-2008. However, the correlation between the free countries and the not free countries is opposite. The more the percentage of free countries increases, the lower the percentage of not free countries. By and large, it appears that the freedom of the world still has a long way to go since there were only 46% of free countries rated in 2008, even not half the world. The remaining 54% rated as partly free and not free countries are still struggling to become free.

Finally, after touching upon the theoretical literature review for the concepts of democracy and human rights, within which this research is located, and considering the overall FOEI in the context of freedom and governance, the next chapter will provide extensive dialogue on the situation and challenges to FOEI in Thailand between 2006-2009.

**Table 3: Freedom in the World 2009 Checklist Questions** (Source: Freedom House, 2009)

## **I. Political Rights Checklist**

### **A. Electoral Process**

1. Is the head of government or other chief national authority elected through free and fair elections?
2. Are the national legislative representatives elected through free and fair elections?
3. Are the electoral laws and framework fair?

### **B. Political Pluralism and Participation**

1. Do the people have the right to organize in different political parties or other competitive political groupings of their choice, and is the system open to the rise and fall of these competing parties or groupings?
2. Is there a significant opposition vote and a realistic possibility for the opposition to increase its support or gain power through elections?
3. Are the people's political choices free from domination by the military, foreign powers, totalitarian parties, religious hierarchies, economic oligarchies, or any other powerful groups?
4. Do cultural, ethnic, religious, or other minority groups have full political rights and electoral opportunities?

### **C. Functioning of Government**

1. So the freely elected head of government and national legislative representatives determine the policies of the government?
2. Is the government free from pervasive corruption?
3. Is the government accountable to the electorate between elections, and does it operate with openness and transparency?

### **Additional discretionary political rights questions**

1. For traditional monarchies that have no parties or electoral process, does the system provide for genuine, meaningful consultation with the people, encourage public discussion of policy choices, and allow the right to petition the ruler?
2. Is the government or occupying power deliberately changing the ethnic composition of a country or territory so as to destroy a culture or tip the political balance in favour of another group?

## **II. Civil Liberties Checklist**

### **D. Freedom of Express and Belief**

1. Are there free and independent media and other forms of cultural expression? (Note: In cases where the media are state-controlled but offer pluralistic points of view, the survey gives the system credit.)
2. Are religious institutions and communities free to practice their faith and express themselves in public and private?
3. Is there academic freedom, and is the educational system free of extensive political indoctrination?
4. Is there open and free private discussion?

### **E. Associational and Organizational Rights**

1. Is there freedom of assembly, demonstration, and open public discussion?
2. Is there freedom for nongovernmental organizations? (Note: This includes civic organizations, interest groups, foundations, etc.)
3. Are there free trade unions and peasant organizations or equivalents, and is there effective collective bargaining? Are there free professional and other private organizations?

### **F. Rule of Law**

1. Is there an independent judiciary?
2. Does the rule of law prevail in civil and criminal matters? Are police under direct civilian control?
3. Is there protection from political terror, unjustified imprisonment, exile, or torture, whether by groups that support or oppose the system? Is there freedom from war and insurgencies?
4. Do laws, policies, and practices guarantee equal treatment of various segments of the population?

### **G. Personal Autonomy and Individual Rights**

1. Do citizens enjoy freedom of travel or choice of residence, employment, or institution of higher education?
2. Do citizens have the right to own property and establish private businesses? Is private business activity unduly influenced by government officials, the security forces, political parties/organizations, or organized crime?
3. Are there personal social freedoms, including gender equality, choice of marriage partners, and size of family?
4. Is there equality of opportunity and the absence of economic exploitation?

**Table 4: Freedom in the World Country Ratings, Freedom House**

*Freedom in the World Country Ratings*

<i>Freedom in the World</i> edition +	Year/dates covered *	Total Countries	Free Countries		Partly Free Countries		Not Free Countries	
			Number	%	Number	%	Number	%
2009	Jan. 1, 2008-Dec. 31, 2008	193	89	46	62	32	42	22
2008	Jan. 1, 2007-Dec. 31, 2007	193	90	47	60	31	43	22
2007	Dec. 1, 2005-Dec. 31, 2006	193	90	47	58	30	45	23
2006	Dec. 1, 2004-Nov. 30, 2005	192	89	46	58	30	45	24
2005	Dec. 1, 2003-Nov. 30, 2004	192	89	46	54	28	49	26
2004	Jan. 1, 2003-Nov. 30, 2003	192	88	46	55	29	49	25
2003	2002	192	89	46	55	29	48	25
2001-2002	2001	192	85	44	59	31	48	25
2000-2001	2000	192	86	45	58	30	48	25
1999-2000	1999	192	85	44	60	31	47	25
1998-1999	1998	191	88	46	53	28	50	26
1997-1998	1997	191	81	42	57	30	53	28
1996-1997	1996	191	79	41	59	31	53	28
1995-1996	1995	191	76	40	62	32	53	28
1994-1995	1994	191	76	40	61	32	54	28
1993-1994	1993	190	72	38	63	33	55	29
1992-1993	1992	186	75	40	73	39	38	21
1991-1992	1991	183	76	42	65	35	42	23
1990-1991	1990	165	65	40	50	30	50	30
1989-1990	Nov. 1988-Dec. 1989	167	61	37	44	26	62	37
1988-1989	Nov. 1987-Nov. 1988	167	60	36	39	23	68	41
1987-1988	Nov. 1986-Nov. 1987	167	58	35	58	35	51	30
1986-1987	Nov. 1985-Nov. 1986	167	57	34	57	34	53	32
1985-1986	Nov. 1984-Nov. 1985	167	56	34	56	34	55	33
1984-1985	Nov. 1983-Nov. 1984	167	53	32	59	35	55	33
1983-1984	Aug. 2, 1982-Nov. 1983	166	52	31	56	34	58	35
1982	Jan. 1, 1981-Aug. 1, 1982	165	54	33	47	28	64	39
1981	1980	162	51	31	51	31	60	37
1980	1979	161	51	32	54	33	56	35
1979	1978	158	47	30	56	35	55	35
1978	1977	155	43	28	48	31	64	41
Jan.-Feb. 1977	1976	159	42	26	49	31	68	43
Jan.-Feb. 1976	1975	158	40	25	53	34	65	41
Jan.-Feb. 1975	1974	152	41	27	48	32	63	41
Jan.-Feb. 1974	1973	151	44	29	42	28	65	43
Jan.-Feb. 1973	1972	151 [150] §	44 [43] §	29	38	25	69	46

\* Unless otherwise noted, the year/dates covered by each edition are January 1 through December 31.

+ These years refer to the various editions of *Freedom in the World*, except for the first five years (Jan.-Feb. 1973 through Jan.-Feb. 1977), which are from *Freedom at Issue*; the first *Freedom in the World* book survey is the 1978 edition.

§ Numbers in brackets exclude the South Africa (White) rating, but include the South Africa (Black) rating.

CEU

Source: Freedom House, 2009

### **Chapter 3: Freedom of Expression and Information in Thailand**

In order to understand the causes and context of the deficiency in FOEI in Thailand during the period under review (2006-2009), in this chapter, I examine the situation of FOEI, alongside the factors driving the changes and challenges to its successful implementation. Those challenges include the strengths and weaknesses of the existing and relevant legal mechanisms and institutions related to the promotion and protection of the FOEI.

According to McCargo (2005), the term ‘network monarchy’ describes King Bhumibol Adulyadej and his proxies, particularly the former Prime Minister, General Prem Tinsulanond; his argument emphasises the failure of the widely used ideas of bureaucratic polity, constitutional monarchy, transitional democracy and political reform in accurately characterising recent Thai politics. He suggests an alternative understanding of the latter through the perspective of political networks. The network monarchy - the leading network of the period 1973 to 2001 and centered on the palace - involved active interventions in the political process and was obliged to work with and through other political institutions (McCargo, 2005; Handley, 2006; Giles, 2008; Murphy, 2009).

After 1992, an increase in the influence of the network monarchy became noted. The main responsibilities of the key actors in the network can be categorized as follows: The Privy Council; military; police; civil service and business groups. Areas of its intervention are identified as covering: education, political parties, judiciary, administration, legislation and economics. General Prem acted on behalf of the palace to restore political equilibrium in the country. However, the landslide election victories of Prime Minister Thaksin Shinawatra in 2001 and 2005 activated the network monarchy to concerns regarding power losses (Murphy,



2009). Through his populist policies, Thaksin's popularity drastically increased, and he thus displaced network monarchy with new networks of his own cronies (McCargo, 2005).

Soon after, due to this prominent confrontation and the clash of interests between the old traditional elites and the new political and business elites and populists (Murphy, 2009), the situation of FOEI in Thai society declined (during 2006-2009). To retain and ensure stability of power and popular loyalty, particularly during the transitional period of power transfer to its prospective successor, the network monarchy needed to restore and institutionalise its popularity and credibility.

In this country we consider that we belong to the king. The armed forces [belong to the king]. That's what we take oath [on] and have to profess that we have to belong to the king... [I]n horse racing they have the stable and the owner of the stable owns the horse. The jockey comes and rides the horse during the race, but the jockey does not own the horse. It's very easy [to comprehend].

General Prem Tinsulanond, 19 September 2006  
(Murphy, 2009)

The above passage, quoted from an interview with the King's closest adviser and president of the Privy Council of Thailand, General Prem Tinsulanonda, was written by a journalist from the Far East Economic Review, Colum Murphy, on 19 September 2006 - the same day and some hours prior to the bloodless coup (Murphy, 2009). The sense of irrationality and lack of regard to democratic principles is vividly portrayed in the statements, particularly, when we interpret his analogy. The owner of the stable stands for the King of Thailand, the "jockey", in this sense, means the government in office, (then the Thaksin Administration), whilst the "horse" denotes the army, military of the Royal family.

The old elites exercised their power by enhancing the possibility of interventions in politics, economics, administration, the judiciary and legislation. Extensive reproduction of discourse

on royalism has also been an important agenda for regaining credibility and popularity. The interventions were carried out under a system lacking in good governance and transparency that consequently led to the use of double standards and poor democratic compliance. Significant criticism from progressives who do not belong to either pro-monarch nor pro-Thaksin groups, but are pro-democracy, grow stronger and are increasing in number.

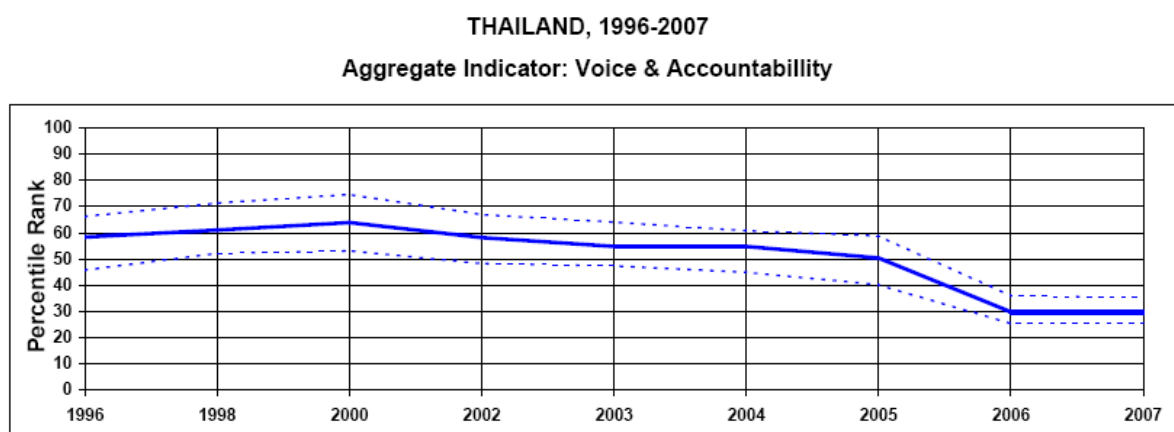
Without any doubt, Thaksin triumphed in the second election held in January 2005, but after a period of political unrest he was thrown out by the military coup on September 19, 2006. This coup drastically impacted the freedom of expression and freedom of the media as well as free speech in Thailand. At the same time, the difference of political opinion and ideology between pro-Thaksin (UDD or Red Shirt) and pro-Monarchy supporters (PAD or Yellow Shirt) led to a division within Thai society and affected the judgment of social activists, the impartiality of the media and academics as well as the judiciary, thus increasing polarizations and the practice of hate speeches. Skepticism regarding the military coup's mastermind fell on the network monarchy (Giles, 2008; The Economist, 4<sup>th</sup> July 2009).

Moreover, the Asian Legal Resource Centre (2009) which reports to the Human Right Council, identified "the resurgence of regressive anti-human rights forces in Thailand in the wake of the 2006 military coup as a grave threat to human rights in that country." Furthermore, it identified the shrinking of human rights in Thailand and the repeated overthrow of elected governments by antidemocratic forces. As expected, this included internet censorship and the use of draconian criminal laws to hunt out critics of the government and monarchy and threaten human rights defenders.

In Table 5, the WGI presents the percentile rank of Thailand's aggregate indicator on voice and accountability between 1996-2007. Accordingly and as mentioned previously, the

problems of poor governance and threats to the FOEI became more prominent after the military coup. The graph indicates a drastic and significant drop in voice and accountability in Thailand; from a percentile ranking of 50 in 2005 to 30 in 2006.

**Table 5: Aggregate Indicator on Vice and Accountability of Thailand (1996-2007)**



Source: [Kaufmann D., A. Kraay, and M. Mastruzzi 2008: Governance Matters VII: Governance Indicators for 1996-2007](#)

The journal, *The Economist*, published in December 2008 and 4<sup>th</sup> July 2009, were banned for publishing sceptical comments on the involvement of the monarchy in the midst of political turmoil. This was responsive to the restriction of Thai authorities on criticism towards the monarch. Intensive criticism of political interventions contributing to political unrest in Thailand, have been both informally and publicly forbidden. The authorities make consistent attempts to impede people from expressing their opinions, in particular, on political disputes which have an apparent link to the interference and influence of the network monarchy.

### 3.1 Existing and Relevant Legal Mechanisms and Institutions

In the following section, I will focus on the strengths and weaknesses of existing legal mechanisms and institutions related to the promotion and protection of the FOEI in Thailand.

These laws and institutions include the *Lese Majeste* Law, the Computer Crimes Act, the Official Information Act, the National Human Rights Commission and the international human rights obligation, namely, the Universal Declaration of Human Rights and the prospective ASEAN Human Rights Body.

### **3.1.1 *Lese Majeste* Law (LML)**

The LML is the most powerful political and social ‘hammer’ for the FOEI in Thailand (Somchai and Streckfuss, 2008; Streckfuss, 2009). The law, expressed in Article 112 of the Criminal Code, states that:

Whoever defames, insults or threatens the King, Queen, the Heir-apparent or the Regent, shall be punished (with) imprisonment of three to fifteen years.  
(Frank G. Anderson, 2008)

Consequently, unlike the concept of libel law, where only the plaintiff can and has the right to prosecute the defendant, this law allows any citizen to bring complaints against anyone they believe has insulted the country's monarchy.

By and large, under the Thai Constitution, the King should be apolitical and isolate his authority from political intervention. But there are some events that have confirmed that he or the network still has connections with political groups and institutions. Frequently, his public speeches have hinted at the direct decision making of some relevant institutions, for instance, the final verdict of the Administration Court in 2006 on the cancellation of the national election.

Furthermore, using the social network analyses framework (Mattana, 2008), it is observed that the network monarchy exists in Thai society and the monarchy does not stay above partisanship. The Privy Council does not work just as an Advisory Board of the King, but its members play significant roles in ensuring political, economic and social supremacy of the network monarchy in Thailand. Since the role of the network monarchy in political interference is so apparent, especially when some alternative media disclosed more revealing information to the Thai public after the coup, the more skepticism occurs. Subsequently, more Thais start questioning and this leads to more open discussions and debates in the public sphere than ever. To stop any criticism toward the Monarchy, the LML has been reactivated and also applies to whoever challenges the Royal Institution.

**Figure 2:** Campaign Poster of Freedom of Expression and Information



Source:  
[www.prachatai.com/05web/th/home/popup\\_cartoon.php?ID=92](http://www.prachatai.com/05web/th/home/popup_cartoon.php?ID=92)

The victims of this law are those regarded as progressive, for example, politicians, students, local and foreign journalists who have campaigned on democracy and the FOEI (see Figure 2 and Table 6). In 2009, the situation became more controversial (*Lese Majeste* Law Watch, 2009). There were 36 cases

of persons being prosecuted for violation of this law between 2006 and 2009, and up until July 2009, the number of cases had risen to 14 (see the Table 6).

Extraordinarily, the BBC Southeast Asia correspondent, Jonathan Head, was charged twice under this law: in December 2008 and July 2009. (Bangkok Post, 24 December 2008, The

Nation, 2009). In the most recent case, he and the 13 members of the Board of the Foreign Correspondents' Club of Thailand (FCCT) were accused by a Thai freelance translator of violating the LML. It was stated that this occurred by permitting the sale of DVDs which showed Jakrapob Penkair's speech criticising the coup and its master-mind, held in a seminar organized by the FCCT in 2007 (Pravit, 2009). The Board consists of Thai and international journalists, including three British nationals - amongst them three American nationals, including two working for Bloomberg and the Wall Street Journal plus an Australian national. The prosecutor claimed that the entire Board "may be acting in an organized fashion and the goal may be to undermine the credibility of the high institution of Thailand" (The Nation, 2 July 2009). No doubt that this raised grave concerns from the international media network, for example, from the International Federation for Human Rights and the Southeast Asian Press Alliance (SEAPA). SEAPA stressed that this development once again underscored the persistent and continuing threat that *lese majeste* provisions in Thailand's criminal law pose against press freedom and free expression in Thailand (Prachatai Online, 2009).

Although the LML has been in force for more than 100 years (revised in 1952), there is no comprehensible set of instructions and guidelines to help police officers, state prosecutors, or judges in deciding whether they should charge or try cases. Inevitably, this law has become a tool for silencing political opponents and has bred self-censorship among some Thais, including the media and academics. Only once, the King acknowledged that he realised the possible challenges posed by the law, saying in his Birthday Speech that:

"Actually I must also be criticised. I am not afraid if the criticism concerns what I do wrong, because then I know. Because if you say the King cannot be criticised, it means that the King is not human."

HM King Bhumibol Adulyadej, 4 December 2005  
(The Nation, 5 December 2005)

Somchai and Streckfuss (2008) suggest if there are no serious and concrete efforts to make people fully understand the history and concept of the LML, and no adequate attention given to revise and restrain it in situations where it is invoked, the law should be considered for abolition. Sharing the same opinion, McCargo (2005; 2009) suggests that in order to maintain the network monarchy in the contemporary era, conventional understandings of the power of the monarchy needed to be rethought. Social critic and *lese majeste* case defendant, Sulak Sivaraksa (Pravit, 9 July 2009), concluded after the case of the FCCT, that “the problem of abusing *Lese Majeste* Law is now completely messy”. The abuse of LML has led to negative publicity and a declining public perception of the monarchy, indeed, Thongchai (2007) is of the view that the LML has done more harm than good to the monarchy.

**Table 6: List of *Lese Majeste* Related Cases from 2003-2009**(Applied from *Lese Majeste* Law Watch, 2009)

Date	Name	Nationality	Career status	Cause of Accusation	Results
22 September 2003	Bandit Aneeya	Thai	Writer, translator	Discussion/distributed documents in a seminar	Admitted to bail , appealing conviction at the Appeal Court
5 December 2006	Oliver Jufer	Swiss		defacing several of the king's ubiquitous portraits with spraypaint	Jailed for 20 years, <u>pardoned</u> on 11/04/2007 and deported
2006	1. Thanaphol Eawsakul	Thai	Webmaster Samesky Webboard	Editor and Webmaster responsibility to the journal and web-board	Investigated
2006	2. Sulak Sivaraksa	Thai	Social critic	Interviewed in Samesky Journal, published a book and pubic speech	Investigated
2 July 2007	3. Pitsanu Phromsorn	Thai	(red-shirt leader)	Public speech during the Hyde-Park political rally at Sanam Luang	No information on status after issuance of arrest warrant by court
18 July 2007	4. Boonsong Chaising-ganond	Thai	Lecturer	Assignment for student examination contained insulting information	Dropped due to public pressure from national & international groups
25 September 2007	5. Chotisak On-soong and Chutima Penpark	Thai	Students	Did not stand for the Royal anthem in a cinema on 21 July 2007	Awaiting the prosecutor's decision on charge
2007	6. First sale of the Samesky Journal	Thai	Book Sale	Sale of journal containing sensitive, forbidden articles	Investigated
2007	7. Second sale of the Samesky Journal	Thai	Book Sale	Sale of journal containing forbidden articles	Investigated
<b>Total of cases in 2003 -2007</b>					<b>7 cases</b>
15 June 2008	1. Ratchaphin Jancharoen	Thai (female)	Student	Did not stand and pay respect to the Royal anthem in a cinema	Admitted to bail
15 July 2008	2. Bunyuen Prasertying	Thai (female)	Small business trader (red-shirt leader)	Public speech during the Hyde-Park political rally at Sanam Luang	Jailed for 6 years
22 July 2008	3. Daranee Charncheangsilapakul	Thai (female)	Journalist (red-shirt leader)	Public speech during the Hyde-Park political rally at Sanam Luang	Arrested and in jail without trial. Contesting plan for closed trial
20 August 2008	4. Chucheeep Sheevasuthi	Thai	DJ radio program (red-shirt leader)	Public speech during the Hyde-Park political rally	Self-exiled
31 August 2008	5. Harry Nicolaides	Australian	Teacher and writer	Published a novel called "verisimilitude" in 2005	Sentenced for 6 yrs, reduced to 3 yrs but <u>granted royal pardon</u> on 19/02/2009 and deported back home.
17 October 2008	6. Warawut Thanangkorn	Thai	Businessman	Public speech during the Hyde-Park political rally (red-shirt leader)	Self-exiled
18 October 2008	7. Prajin Thanangkorn	Thai	Businessman	Posted on the Web-board of Prachatai Online	Investigated and bailed out



**Table 6: List of Lese Majesty Related Cases from 2003-2009 (cont.)**

<b>Date of Allegation</b>	<b>Name</b>	<b>Nationality</b>	<b>Career status</b>	<b>Cause of Accusation</b>	<b>Results</b>
20 October 2008	8. Petcharawat Wattanapongsirikul	Thai	Businessman (red-shirt leader)	Speech published in CD produced and distributed by PAD	Investigated
2008	9. Jakrapob Penkair	Thai	Journalist, politician, UDD's leader	Public speeches during the Hyde-Park political rally and the FCCT (red-shirt leader)	Self exiled, case filed still open with the prosecutor
2008	10. Sondhi Limthongkul	Thai	Journalist PAD's leader	Public speeches during the Hyde-Park political rally (yellow-shirt leader)	Investigated
28 June 2008	11. Somkiat Phongphaiboon	Thai	Politician	Public speeches during the Hyde-Park political rally (yellow-shirt leader)	Privileged by MP status
2008	12. Jonathan Head	British	Journalist BBC	Published programme for BBC	Investigated
2008	13. "Phraya Phichai"	Thai		Posted on the Web-board	Charged under CCA
2008	14. "Thon Jan"	Thai		Posted on the Web-board	Charged under CCA
2008	15. Jitara Kotchadej	Thai (female)	Labour Union	Wore t-shirt printed with insulting words	Charged under CCA
<b>Total of cases in 2008</b>					<b>15 cases</b>
14 January 2009	1. Suwicha Thakaw	Thai	Engineer	Posted clips on website - YouTube	Jailed for 10 years each on 2 counts. (under LML and CCA), appeal for royal pardon
20 January 2009	2. Giles Ungphakorn	Thai	Lecturer	Published a book on "Coups for the Rich"	Self exiled
10 March 2009	3. Surachai Danwattananusorn	Thai	UDD leader	Public speech during the Hyde-Park political rally (red-shirt leader) at Sanam Luang	On trial
4 April 2009	4. Kitti Saenookrojwong	Thai		Distributed documents	Arrested
18 April 2009	5. Thosaporn Ruethaiprasertsoong	Thai (female)		Copied and distributed documents	No information on status available
23 April 2009	6. Prapatchanan Ching-inn and companies	Thai (female)	UDD member	Burnt a coffin and made a speech during the political rally in Korat	Investigated
14 May 2009	7. Thaksin Chinnawatra	Thai	Politician, Ex-Prime Minister	Interviews on the websites CNN and Al Jazeera	Awaiting trial
21 May 2009	8. Kawkaew Phikulthong	Thai	UDD leader	Public speech during a Hyde-Park political event (red-shirt leader)	Accused ran from police. Arrest warrant issued
6 March 2009	9. Jeeranuch Premchaiphorn	Thai (female)	Director/ Webmaster Prachatai	Webmaster	Investigated
2009	10. "Buffalo Boy"	Thai		Posted on a Web-board	Investigated
15 August 2009	11. Weera Muksikapong	Thai	Politician, UDD leader	Public speech during a Hyde-Park political rally (red-shirt leader)	
30 June 2009	12. Jonathan Head and 13 members of the FCCT		Journalists	Sale of DVDs at FCCT	Investigated
4 July 2009	13. Phisek Snithangkul	Thai	Student	Posted on the Web-board of Pantip	Investigated
	14. Charnvit Jariyanukul	Thai			Investigated
<b>Total of cases in 2009 (10 July 2009)</b>					<b>14 cases</b>
<b>Total of cases in 2007-2009 (10 July 2009)</b>					<b>36 cases</b>

### ***3.1.2 Thailand Computer Crimes Act 2007***

Due to strong state censorship of print and broadcast media, the progressives use internet technology to express and exchange information. As an extended help, and in addition to the LML in controlling public expression and freedom, in June 2007, the Computer Crimes Act came into effect. Officially, it is claimed as a tool for battling computer crimes, but in practice, it is an effort by the Thai authorities to manage recent online criticisms and debates, that runs alongside other mechanisms of censorship such as the media and newspaper and printing Acts, as well as the LML. The Committee to Protect Journalists (CPJ) made a remark about the Thai authorities cracking down on hundreds of websites for posting materials considered offensive to the monarchy (CPJ, 2008). Freedom Against Censorship Thailand (FACT) reported receiving secret blocklists of 1,303 websites in 2008 leaked from the Ministry of Information and Communications Technology. In 2008, the websites affected by this act were YouTube videos and their mirror sites, as well as many Thai web-board pages, particularly the popular web-boards for progressive discussion on some alternative websites; Prachatai and Same Sky. (Prachatai Online, 2008).

Under the conditions imposed by this Act, no website can be legally blocked and nobody will be arrested without a court order. Aside from this, any allegation and interrogation in the court must be carried out openly with guaranteed public access. In practice, this legal requirement is not rigorously adhered to and both the Royal Thai Police and more than 100 Thai Internet Service Providers typically censor access (Prachatai Online, 2008). This raises serious concerns as to the legislative framework of this Act (Article 19, 2007) because it can be, and has been used against, freedom of expression and limitations to internet interaction. In June 2009, Daranee Chanchaengsilapakul, a woman who was arrested and detained without

any court order, attended her first interrogation in court after being in detention for 11 months. Her closed trial was justified as being due to national security.

### ***3.1.3 Official Information Act***

Under the 1997 Constitution, freedom of the media, freedom of information and freedom of expression in Thai society were better recognised. Subsequently, the Official Information Act was passed into law in July 1997 and became effective in December 1997. The essence of this Act relates to the right of Thais and foreigners resident in Thailand to:

...demand official information from state agency including central, provincial and local administrations, state enterprises, the courts for information unassociated with the trial and adjudication of cases, professional supervisory organisations, independent agencies of the State and other agencies as prescribed in the Ministerial Regulation.

(Banisar 2006: 1)

Subsequently, there are two important Articles in this Constitution which enables guarantees of freedom of information, namely, Article 40 and Article 58. In addition to Article 40, Article 58 of the 1997 Constitution has strengthened the foundation of FOI in Thailand because it clearly states that:

A person shall have the right to get access to public information in possession of a State agency, State enterprise or local government organization, unless the disclosure of such information shall affect the security of the State, public safety or interests of other persons which shall be protected as provided by law.

(1997 Constitution, Article 58)

The Official Information Board (OIB) supervises and gives advice on implementation, recommends enactment of Royal Decrees, receives complaints on failure to publish information, and submits reports. The Office of the Official Information Commission (OIC) is

the secretariat of the IDT and the OIB. However, those denied information can appeal to the Information Disclosure Tribunal (IDT) whose decisions are considered final, except for appeals to the Administrative Court to prove that the decision of the Tribunal was unjust.

After some years of implementing this Act, the numbers of entire complaints and appeals increased significantly. The majority of claimers were private citizens, while government officers and journalists ranked second and third, respectively (Nakorn, 2001a). Nevertheless, the bureaucracy tradition of secrecy is the main factor militating against the successful implementation of the FOI Act in Thailand. Apart from the provision that all requests must be in the Thai language, written in a given format and never sent by e-mail, the culture of bureaucratic secrecy is another impediment.

In terms of OIC's efficiency, since the majority of the OIC members are bureaucrats, they prefer to play a safe role in decision making and just act in response to what the experts have produced, rather than taking their own initiative (Nakorn, 2001a). Moreover, placing the OIC under the Office of the Prime Minister of Thailand weakens its efficiency, leading to political intervention and influence. The government has denied a request to upgrade the OIC to a Department because it would thereby have more power and the authority to perform better; instead, the OIC is to be under the direct control of the Prime Minister (Banisar, 2006).

Nonetheless, there are discretionary exemptions which are considered as critical and may lead to weakening, eradicating, and destroying of the foremost essence of the Act. The first exemption is for information that "may jeopardize the Royal Institution" and the rest apply to information that would: jeopardize national security, international relations or national economic or financial security" (Banisar, 2006: 1). This clearly shows that if all these are

applied, the Act will absolutely fail to serve its purpose with regard to freedom to information.

However, some significant official information is disclosed by those progressive officials who want to make the information public. Their method is to leak official documents in order that civil society organizations will be able to subsequently engage the government with the needed information.

#### ***3.1.4 National Human Rights Commission***

The National Human Rights Commission of Thailand was established in accordance with the provisions of the 1997 Constitution. However, the 1997 Constitution, named 'The People's Constitution', is regarded as the more comprehensive, because it was the only Constitution written by a generally non-partisan assembly, called the Constitution Drafting Assembly, selected after the political turmoil of early 1992.

The key characteristic of the 1997 Constitution is that it was drafted with an emphasis on the necessity of political and social reform. Thus, its content focused on restructuring the legislature, electoral system, judiciary, cabinet, and the reorganisation of other forms of bureaucracy. It did this through the restoration of transparency and accountability, increased public awareness and the participation of civil society, in order to improve good governance. Without a doubt, access to information and human rights guarantees were of concern, even operating as the focal point of this constitution, and they also served as platforms for the emergence of civil rights' promotion and protection in Thailand.

The NHRC has made a fundamental contribution to some significant changes and improvements in human rights protection in Thailand, but it has not been effective and efficient enough at dealing with some of the more controversial aspects regarding the recent promotion of the FOEI. From 2006 to 2009, the performance and credibility of the NHRC has declined considerably, especially in terms of justification for cases under LML.

However, the existence of the NHRC can at least assure the functioning of a better channel through which to achieve some progress on civil rights and freedoms. Promisingly, this mechanism offers an opportune and supportive institutional setting for upcoming policy advocacy and the campaigning of civil society at national and international levels.

### ***3.1.5 International Human Rights Obligation***

Significantly, the Universal Declaration of Human Rights (UDHR) serves basically as an institutional setting for international campaigns and networking on FOEI. Strategically, the UDHR framework has contributed to the protection of human rights but more can still be done to increase compliance from its member states, especially, in terms of restrictions and compliance of the Declaration.

Furthermore, the recent agreement made at the Southeast Asian regional level meeting of the ASEAN, which led to the establishment of the ASEAN Human Rights Body in 2009, has enhanced cooperation among member states to improve the human rights situation in the region. A closer watch on these issues alongside the implementation of further discussions between the member states can thus be carried out more often, and so lead to more effective and efficient surveillance and scrutiny from the national authorities concerned, as well as from the civil society involved. With this regional institutional setting, the opportunity of

revealing any less than democratic practices from behind closed doors and out into an open public sphere is promising.

### **3.2 Challenges to FOEI Practices**

#### ***3.2.1 Culture: hierarchical social value system, norms***

The environmental setting which is most prone to threatening FOEI in Thai society is predominantly that of culture. In this context, the culture of clientalism manipulates the forming of hierarchical social value systems, norms which lead Thai society to accept the national practice of being uninformed, enduring irrationality and propaganda. For instance, the majority of Thais respect the King as a societal actor and a father of the land who is kind to his subordinates. In general, the Thais have an exceptional degree of respect and deference for both the King and his family. Legally, the presumption is that the “King can do no wrong”, and if there is any attempt to challenge this belief, LML is used to keep people in check.

Patronage and the client operate in a spiral born of Thai culture, thus cultivating a social value system of high dependency, inferiority and lack of social responsibility, especially, “the current ultra-Royalist social climate” (Prachatai Online, 2008). To some extent, confrontation, criticism and straightforward dialogue seem rare in Thai society, and indeed, they are often avoided due to potential loss of face. Also, being privileged is not considered as connected to double standards in this society. It is no doubt somewhat difficult to change perceptions so as to increase self-esteem, despite the attitude of obedience in the patronage-client system which is embedded in the culture of hierarchical value systems and conservative norms.

The cultural stereotype underlines the belief that groups carry some traits which make some of the members feel inferior, surrendering to the superiority of a few and accepting the existence and necessity of a privileged few as rulers. The balance of power and equality as well as human equity does not matter. Due to certain types of social indoctrination in the patronage-clientalism system, it has become difficult to alter people's perceptions so as to believe in human rights, to respect civil liberties and to work for social equity.

For instance, the July 2009 ABAC Poll, conducted by the Research Center, Assumption University of Thailand, presents worrying and shocking findings from a survey on the perception of Thais towards the scourge of corruption. The report revealed that 84.5% of the 1,228 household who responded across 17 provinces accepted that corruption is a normal practice in investment and business. Moreover, 51.2% of them admitted that they do not mind if a government is involved in corruption as long as it manages to bring about prosperity in the country, increasing livelihoods and making sure people are economically better-off. Most of the respondents, 75%, were reported to have an undergraduate level of education, it was the result of the education system (Veera, 2009). Controversially, I accept naming a poor education system is a scapegoat, but on the other hand, I argue that cultural indoctrination from the family, community and society does shape the perception and social value system in which education plays a less important role.

In some circumstance, Thai society is not able to openly express its opinion because of cultural limitations, thus gossip culture is taking a stronghold on the social interactions of the people and may be a "weapon of the weak" for disseminating information. Some facts are thus revealed through the rumour mill, as a way of overcoming the dangers to personal liberty of otherwise credible sources. Whistle-blowing can only be carried out anonymously and



becomes less legitimate and less valid, consequently not encouraging more people to follow this path.

### ***3.2.2 Weak Institutions - educational, political and legislation institutions***

Why is it so easy for these institutions to accept political intervention into their institutions? The explanation of weak institutions can be the most suitable answer to the above question. Existing institutions necessary for democracy, namely educational, political and legislative, as well as institutions of the judiciary, have been interfered with by the political elites since 1932, when the first reform from absolute to constitutional monarchy took place in Thailand.

Moreover, the institutions responsible for human rights and FOEI in Thailand downplay the double standards operating within society, thereby worsening the situation by discriminatory decision-making. The underlying perception which breeds discrimination and harms the freedom of expression receives no response from these institutions. The Thailand National Human Rights Commission (NHRC) put itself in a very compromising situation by trying to justify and legitimise the 36 cases being prosecuted by the state under LML or the Computer Crimes Act.

How do the others in Thai society, especially those advocating for the guarantee of basic freedoms – the progressives – deal with the non-transparent, undemocratic, secretive practices which are prevalent in the country, and operate contrary to human rights principles. In the next chapter, I will examine the contributions and efforts of some Thai progressive groups that are promoting the enthronement of a more democratic, open Thai society, a place where citizens' rights to free speech are respected and protected.

## **Chapter 4: Pressure and Networking of Civil Society Engaging in FOEI**

Despite the limitations posed by the deficiencies in freedom and democratic practices in Thailand, there are some promising prospects which can serve as the foundation for Thailand's bid to pursue a better and more respected society, in terms of human rights and democracy. The less the social and public sphere is made available and opened up for free expression and criticism, the harder civil society groups search for alternative means of communicating, so as to engage a wider audience. This chapter examines the main key factors and prominent actors involved, in particular, the civil society movements and organisations that campaign for a more democratic society, (one that guarantees free speech) in the midst of growing censorship and intimidation.

### **4.1 Campaigning and Networking at National Level**

In order to cope with state censorship and cultural restrictions, a number of Thai progressive groups are promoting the enthronement of a more democratic, open Thai society, where citizens' rights to free speech are respected and protected. These civil societies vary from national and international policy advocacy organisations to some alternative publishing houses and also include an active and progressive network of internet users. The following paragraphs discuss these in more detail.

#### ***1. Campaign for Popular Media Reform (CPMR)<sup>1</sup>***

Recognized as one of the most significant groups in the campaign for FOEI in Thailand, the CPMR is a policy think-tank consisting of academics, NGOs and media professionals who

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<sup>1</sup> [www.media4democracy.com](http://www.media4democracy.com)

originally gathered to form a working group to ensure the implementation of Article 40 of the 1997 Constitution. Since then they have been involved in reforming the media in Thailand, focusing on public participation and the national and public interest. Its objectives and strategies are focused on building up democratization of communication, carrying out the reform of radio and television media and telecommunication businesses, so as to make sure that they all serve the principles of democracy, in particular, transparency, accountability and public accessibility. Apart from being an intellectual think-tank, CPMR organises public events to discuss current debates on FOEI and promotes the enhancement of possible linkages with national and international groups who have similar interests.

## ***2. Freedom Against Censorship Thailand (FACT)<sup>2</sup>***

FACT focuses its mandate on internet freedom of speech and campaigning against internet censorship as well as respect for all citizens' right to know in a free society. Thus, FACT's core strategy is on "transparency and accountability in government and freedom of expression, freedom of communication and freedom of association as fundamental human rights" (Prachatai Online, 2008).

## ***3. Midnight University<sup>3</sup>***

Midnight University was one of the first alternative and progressive websites used for interaction among intellectuals, activists, students, media and business groups. It is regarded as an online university. Serving as intellectual communities where more than 1,300 articles in Thai are available for free download and with more than 4 million hits per month (Midnight University Website, 2008) there is also progressive discussion available on its web-board. This was the first web-board banned by the Ministry of Information and Communications

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<sup>2</sup> <http://facthai.wordpress.com>

<sup>3</sup> [www.midnightuniv.org](http://www.midnightuniv.org)

Technology (MICT) in 2006, after it was accused of publishing sensitive information about the Royal Family and national security. Later, it gained permission to reopen after a successful campaign appealing against censorship at national and international levels.

#### ***4. Prachatai Online<sup>4</sup>***

The name of the website, ‘Prachatai’, means people of freedom or the liberality of the people. Prachatai has been one of the most influential instances of alternative media (an online magazine), in Thailand, with articles and news available both in Thai and English. Strategically, it serves as a panel for the freedom of speech, and enables the freedom of the media. Unsurprisingly, it was also banned by the MICT because of some of the discussions on its web-board containing messages which were regarded as insulting to the Thai monarchy. The webmaster was later accused under LML and the Internet Crimes Act, respectively, in 2007 and in 2009. The cases are still under police investigation. Its popular online news and web-board both serve as a well-recognised and reliable source of information on Thailand politics for the international community. Hence, it is a hub for information dissemination during national and international campaigns.

#### ***5. Thailand Journalist Association (TJA)<sup>5</sup>***

The TJA is, theoretically, a media organisation promoting FOEI among Thai journalists. However, there are still some reservations towards Thai journalism and the media business community with regard to their self censorship and partiality which, especially, has led to the promotion and reproduction of hate speech in Thai society, starting with the political unrest of 2006 and continuing to the present day. However, a significant number of good and reliable articles dismantling the current political unrest in Thailand are published even if they might

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<sup>4</sup> [www.prachatai.com](http://www.prachatai.com)

<sup>5</sup> [www.tja.or.th](http://www.tja.or.th)

be a risk because the conflict is caused by the confrontation between politicians and the monarchy network.

#### **6. *Thai Netizen Network (TNN)***<sup>6</sup>

The TNN is composed of freedom of expression activists, Internet bloggers, Internet service providers, members of the online media, and other dedicated Netizen. Since the Computer Crimes Act of 2007 came into effect, its unclear policy and validity has raised a great number of concerns for the Thai public and the international community (Agenda 19, 2007), especially those who feel that this Act is an obstacle to democratic debate and expression and is therefore open to abuse. The TNN was launched publicly and carries out its campaigns and policy advocacy by organising public forums to exchange experiences and debate good practices imported from other international cyber groups. Because of its approaches, which are more liberal and less controversial than the other civil society groups mentioned here, its core members have been invited to some consultations of the MICT and the police unit responsible for monitoring internet crime.

#### **7. *Same Sky Publishing House***<sup>7</sup>

The Same Sky initially started as the very progressive publishing house of a journal called Same Sky (Faa Deaw Khan – in Thai), which was published every three months. Later on, it opened a channel for online free speech, which is considered as the most provocative and outspoken form of media, in terms of its criticism of the dominance and intervention of the Thai monarchy over Thai politics. In 2006, one of its journals was banned for publishing information on the King of Thailand and his unknown wealth; The Forbes Index ranked him as the World's Richest Royal in 2008 (Serafin, 2009). Consequently, the editor was arrested

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<sup>6</sup> [www.thainetizen.org](http://www.thainetizen.org)

<sup>7</sup> [www.sameskybooks.org](http://www.sameskybooks.org), [www.sameskyboard.org](http://www.sameskyboard.org)

under the provisions of LML. After the publishing house finally reopened, the website registered its domain with a service provider abroad, in order to avoid future problems.

Following the local blockade of its website, a form of software was introduced to allow people to bypass the blockade. However, to avoid future blockades, and as previously mentioned, the website is now registered abroad and available to the international community without the use of any special software. Moreover, the web-board administration is unique as there is a team formed to work voluntarily with the webmaster on technical support and monitoring of posts. Most notably, there are two interesting and exceptional things to be discussed about this website, especially its web-board. Firstly, their fund-raising system is the only website in Thailand which runs partly on the contributions of its members, so as to secure independence of the website. Secondly, the site promotes self-regulation among its members; in July 2009; the members started drafting web-board rules and regulations to ensure self regulation.

#### **8. *Lese Majeste Law Watch (LM Watch)*<sup>8</sup>**

Acknowledging that the cases brought under LML are seldom made public, reported or broadcast either by newspapers, TVs or radio programmes, LM Watch was initiated in 2009. It is intended to be a solely online source, which closely monitors police investigations and informs the public about new cases and the progress being made with respect to existing ones. However, this website has to operate under a strict code of anonymity (that is through a free domain location abroad) otherwise it certainly would be banned and blocked by the MICT because the sensitive nature of its content.

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<sup>8</sup> <http://lmwatch.blogspot.com/>

## 4.2 Pressure from International Alliances

To some extent, it can be said that the networking, at national and international levels, of civil society groups to campaign for FOEI and free speech in Thailand is recognised and acknowledged. In March 2009, the year in which the allegations under LML hit their highest number (see Table 6), several eminent international scholars and public intellectuals expressed their concern, signing a letter to the Prime Minister calling for the reform of Thailand's LML.

Those signatories comprised of prominent world leaders in human rights and civil liberties, for instance, Lord Eric Avebury, Dr. Caroline Lucas, Senator Martone, Smitu Kothari, Walden Bello. Apart from these, some prominent scholars were also involved, including Noam Chomsky, Stuart Hall, James Scott, Arjun Appadurai, Arif Dirlik, Stanley Tambiah, Immanuel Wallerstein. Furthermore, there was the involvement of several fellows of the British Academy, and the American Academy of Arts and Sciences; Presidents, Former Presidents and leaders of several internationally prestigious academic associations, namely the Associations for Asian Studies, the American Political Science Association, the American Sociological Association, the Asian Studies Association of Australia.

Beyond that, this campaign has been supported by some leading legal scholars such as a former judge in the International Court of Justice, a former President of Australian and New Zealand Society of International Law, and leading scholars on human rights law, and, by leading international scholars of Southeast Asia and Thailand in many fields including political science, history, anthropology, literature, geography, economics, environmental studies, most of whom have long term experience in Thailand and the region (Walker and Farrelly, 2009).

Consequently, since then, the debates on FOEI in Thailand have emerged in the international arena through the networking undertaken by members of civil society. This has helped to enhance the discussion level and serve as a precautionary approach for the government agencies involved. It encourages them to limit their less democratic practices in censorship and legal actions against their opponents if they want to avoid any embarrassment and pressure from relevant international communities.

To summarise, I have identified the roles that civil society movements and organisations can play and have been playing in guaranteeing FOEI in Thailand. I have looked especially at those strategically using the new media, especially internet technology, as an open space for discussion, information dissemination and advocating for change as well as networking at national and international levels. In the next chapter, I will identify the research findings and conclude.



## **Chapter 5: Conclusion**

The freedom of expression and information in Thailand has been blocked and reduced due to several factors, for example, censorship and control by the state through particular laws. Moreover, self censorship due to fear, the Thai culture of obedience, faith, beliefs, values and the norms of Thai society have caused freedom of speech and expression to decline. Political polarization and conflicts of power between elites have built upon conservatism and progressivism. Both sides are more inclined to look for loopholes and manipulate existing weaknesses in institutions.

In this research, I have considered the factors of change affecting the establishment and the practices of freedom of expression and information in Thailand. It has established that the weaknesses of existing and relevant legal bodies and institutions are the most predominant factors driving these changes. Besides, the influence of the culture inherited from a clientalism society can worsen one's self-esteem, and thus lead to both a high level of dependency and an increased superiority complex.

### **5.1 Findings**

However, I have argued that even though there are some challenges to the FOEI in Thailand, the citizens of a critically engaged civil society can still play a prominent role in safeguarding human rights. Despite state control and censorship, the campaigns and advocacy for FOEI have gradually grown, perhaps due to living in a high information and communications technology intensive society. Through access to the internet, a significant increase in the number of civil society campaigns has occurred, making the public more informed and able to access and reveal more information. National and international networking facilitates their

ability to improve human rights. The more censorship and restrictions are applied, the more curious people become and stronger reactions are boosted.

Importantly, civil society groups advocating for FOEI and their alliance, have to keep persisting and continue with their strategies as long as threats to freedom and civil liberties still exist. They need to continue focusing on providing information to enhance the information society, pursue a new political ideology to transform the Thai social value system and extend their networks.

To ensure the promotion and protection of human rights and freedom of expression and information in Thailand, civil society groups/organizations can do more in breaking down existing discrimination and restrictions; it is possible they can make a fundamental change in Thai politics and in the political ideologies of Thai society. To embed democratic practices into Thai society, a new hegemonic ideology (Somsak, 2009) with respect to equity, equality, and the liberties of humankind needs to be established and institutionalized into the average Thai perception, replacing the monarchist ideology which encourages autocratic power rather than democracy.

The transparency and accountability of institutions should be enhanced, especially in the political sphere, and more so regarding the monarch and his networks' interests in political disputes. Scrutinizing the inconsistency, irrelevance and illegitimacy of legal practices should be the core strategy of the civil society movement in terms of overseeing and securing fewer human rights violations and promoting and protecting FOEI in Thailand.

On the other hand, there is the need to immediately end any form of legal harassment using the instrumentality of LML, even though ultra-royalists may not easily buy such an idea. But otherwise there will be no future for democracy and intellectual maturity in Thai society. Without a doubt, this law extensively violates human rights and cultivates a culture of self-censorship in the media, being hazardous to the freedom of expression and dispersement of information.

The revision of legislation, however, is not the first and most compelling thing to do; rather it is to change the attitude of the majority of Thai citizens. What is needed most is a radical paradigm shift. The attitude and perceptions of the average Thai towards themselves needs to be shifted to instead focus on self-esteem, self-respect, self-reliance – modelling citizens as equal participants in a democratic country, not as obedient subordinates under a patronage-client system; if this perception changes, then the requirement to update or revise legislation will be easier to accomplish.

To improve the quality of engagement for society groups, it is necessary to launch more intimate forms of networking and cooperation, thus garnering higher levels of international pressure, especially the inclusion of prospective ASEAN Human Rights Body (AHRB) and the use of the Universal Declaration of Human Rights (UDHR). In particular, civil society groups should monitor and advocate for increased participation in the Charter drafting process of the AHRB, as regional cooperation and networking in Southeast Asia can efficiently neutralize any prospective campaigns at an international level.

Environment setting is necessary to increase freedom of expression and information. That is, preparing a healthy environment which is suitable and coherent with the Thai mentality and

culture in which verbal-based communication is practiced more frequently than the written-form. For example, establishing more local People's Juries may be more useful than merely emphasising the official judicial process. Apart from that, promoting awareness for social responsibility, especially educating people about active citizenship and introducing a new social code of self respect and self-reliance can be built into the existing educational curriculum at all levels.

Finally, an increase of FOEI practices in Thailand is foreseen if Thai citizens are well-aware of their rights and realise the importance of proactively practice their rights to access, seek, receive and impart information without any fear.

## **5.2 Strengths and Weakness of Approach**

Human rights and the FOEI concept can be applied effectively in a place where a democratic political culture - democratic autonomy - is respected and trusted. Without a strong sense of goodwill in society for living and working together in horizontal coordination, the concept will never be fulfilled. Contrarily, apart from failing to explain and to analyse the situation, it can be used by some privileged groups/elites to legitimize inadequacies in the judiciary, and those administrative and legislative systems that are not supportive of human rights tenets.

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