

'Law on the Books' and High Risk Populations in Thailand

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Preface

This assessment is meant to provide an overview of the current state of law affecting high risk populations in Thailand with an emphasis on provisions, particularly criminal law, health care law and privacy provisions bearing on injecting drug users. It is not meant to be a comprehensive accounting of all law in these areas but rather a guide to the most important provisions affecting the health and safety of high risk individuals. All statutory sections relied on and cited to in the text are reproduced in the Appendix.

This assessment was completed utilizing the Rapid Policy Assessment and Response [RPAR] model. This model was originally designed by Scott Burris, Patricia Case, Zita Lazzarini and Joseph Welsh with support from the International Harm Reduction Development Program of the Open Society Institute, and revised under a grant from the National Institutes of Health, U.S.A. The RPAR was strongly influenced by the Rapid Assessment and Response model designed by Gerry Stimson, Chris Fitch and Tim Rhodes at the Imperial College School of Medicine, London, for the World Health Organization.

RPAR is a data collection and intervention model that mobilizes local knowledge and capacity to fight HIV/AIDS among sex workers, injection drug users, and members of other marginalized populations at the local level. Although the RPAR model has many potential uses, one goal is to identify ways in which law and the way law is put into practice can increase or reduce the risk of disease among marginalized populations.

Researchers and interventionists dealing with the health of marginalized populations have long recognized certain basic facts about the law in public health:

1. law often determines what sort of programs are available (e.g., HIV testing, needle exchange, treatment availability, 100% condom campaigns)
2. law influences the behavior of people at risk – it can create an enabling environment for prevention, but it can also increase risk
3. “law on the books” is often very different from “law on the streets” – good policies don’t always make for good practices
4. practices can often be changed to promote health in particular places even if national laws on the books cannot be addressed.

RPAR takes on these realities by combining traditional legal analysis of the law on the books with rapid empirical data collection on the implementation of law in particular places. Researchers in a site city may then use a variety of tools including interviews, focus groups and surveys to find out how the law is being applied and how it influences the attitudes and behavior of people at risk.

Although RPAR was developed to include an intervention component, the RPAR tools can readily be adapted for other populations and health concerns. The modules may also be used independently. The data provided in this report comes solely from Module II of the RPAR, which is used for collection of 'law on the books.' More information on the RPAR can be found at <http://www.temple.edu/lawschool/phrhcs/rpar.htm>.

Overview

Over the past few decades Thailand has come to incorporate extensive narcotics laws in an effort to combat its drug abuse and trafficking problem. The Narcotics Control Act of 1976¹ forms the pivotal penal enactment and is the cornerstone of this effort. Although Thailand has recently attempted to forge a more inclusive approach to drug use through the enactment of the Rehabilitation of Narcotics Act², the government is still mainly reliant on a penal approach to drug use.

It is estimated that between 2 million and 3 million Thais (roughly 5 percent of the population) currently use illegal drugs.³ The Thai Office of Narcotics Control Board estimates an increase of 25,000 new drug users every year.⁴ According to 2001 estimates, 274,200 of the current drug users are heroin users, with the preferred method of administering being by injection. It is estimated that 70 per cent to 80 per cent of Thai heroin users inject.⁵ The estimates also indicated that the prevalence of injecting heroin saw an increase from 52 per cent in 1993 of all heroin users to 70 per cent in 1998.

Available estimates indicate that of all new HIV infections in Thailand, Injecting Drug Users (IDUs) accounted for 5 per cent while heterosexual transmission accounted for approximately 84 per cent, with mother to child transmission (MTCT) and blood transfusion accounting for 4.4 per cent and 0.03 per cent respectively.⁶ However, these numbers are questionable because attempts to ascertain the number of IDUs are generally compromised by unwillingness of IDUs to identify themselves as such due to the harsh penalties and social stigma associated with being a drug user.

In early 1990, it was estimated that 60 per cent of those under HIV treatment were IDUs.⁷ Although more recent statistics are not available, anecdotal evidence strongly suggests that recent efforts have not been directed at this population. In fact, it seems as though the policy of the Thai Office of the Narcotics Control Board is to direct

1 The Narcotics Control Act 1976 (as amended by the Narcotics Control Act (2002).

2 Officially Narcotics Addict Rehabilitation Act B.E.2545 (2002)

3 UNODC. Drugs and HIV/AIDS in South East Asia. A regional Project for reducing HIV Vulnerability from Drug Abuse (AD/RAS/02/G22).

4 UNODC, 2004. Review and Assessment of Current Organizational Structure of the Office of Narcotics Control Board (ONCB) – Thailand – and its Capacity to Understand and Respond to the Emergent Issues on Drug Abuse Related HIV/AIDS Epidemic. UNODC Regional Center for East Asia and Pacific. Nov. 2003.

5 Journal of AIDS (JAIDS). Vol.33. No.2. 1 June 2003.

6 Epidemiology Division, MOPH, Thailand. <http://www.aidsthai.org/aidseng-lish/situation>.

7 UNODC, 2004. Review and Assessment of Current Organizational Structure of the Office of Narcotics Control Board (ONCB) – Thailand – and its Capacity to Understand and Respond to the Emergent Issues on Drug Abuse Related HIV/AIDS Epidemic. UNODC Regional Center for East Asia and Pacific. Nov. 2003.

resources to other populations: "HIV infection among the drug users peaked early in Thailand's AIDS epidemic and are no longer regarded as a priority for action.... nearly 84 per cent of infection is caused by heterosexual transmission".⁸

Research in the field suggests that about 69 percent of Thai inmates are serving sentences for drug related offences⁹. While there are laws in force pertaining to first time offenders and minors under 18 years of age charged with drug related offences, preventive and intervention efforts on HIV transmission among IDUs remain to be implemented with the drug treatment facilities sorely lacking in their approach and programmatic content. Prison settings in Thailand further compound vulnerability by increasing the risk of exposure to HIV for drug users, thereby fuelling the epidemic among them and others.

Recent studies indicate that despite the relative ease and availability of needles and syringes from pharmacies throughout most of the country (except in remote rural communities where it can still remain a problem) and the introduction of education programs in some institutions on risk reduction practices, a high HIV prevalence among IDUs still exists.¹⁰ This has been attributed largely to the frequency of heroin injecting and the widespread sharing of needles. Before HIV/AIDS risk education programs among IDUs in the early 1990s, frequent sharing of injecting equipment was universal. A later study in Bangkok showed that 96 per cent of the participants obtained clean injecting equipment from pharmacies yet sharing of equipment still occurred.^{11,12}

In Thailand, drugs such as ganja, marijuana and opium have been part of traditional, religious, medicinal and recreational practices for years, especially amongst the hill-tribes in Northern Thailand. Injecting drug use became widespread only in the mid-1980s and has been on the rise ever since. This shift from traditional to injectable drugs is attributed to various social, economic and legal developments, particularly prohibition and banning of the "traditional" drugs.¹³

The Narcotics Control Act of 1976 and its subsequent

⁸ *ibid*.

⁹ Treerat et al 2000; Peak 2001. Revisiting 'The Hidden Epidemic' – a situation assessment of drug use in Asia in the context of HIV/AIDS. Pp 212.

¹⁰ *ibid*

¹¹ *ibid*

¹² For details on 'knowledge-behaviour disconnect see - Drug Injection and HIV/AIDS in Asia. Pp 7 MAP Report 2005

¹³ Choopanya K, Vanichseni S, Des Jarlais D.C, Plangsringarm K, Sonchai W. et al. 1991. Risk factors and HIV seropositivity

among injecting drug users in Bangkok. AIDS. 5:pp1509-1513.

amendments¹⁴ has had a major impact on the manner in which drugs are used in Thailand. The introduction a harsh penal regime that bans the production, possession, consumption, sale and use of manufactured and psychotropic drugs and opium and its derivatives has resulted in a shift to heroin use through smoking and injection and an increase in the use of Amphetamine Type Stimulants (ATS). Thai law criminalizes the possession of extremely minor amounts of drugs, forcing users to carry very small quantities and ultimately leading to difficulty in drug users attaining 'highs' through less hazardous methods of administration such as oral intake and encouraging a shift to riskier methods, particularly injecting drug use. The penal regime under the Thai narcotics laws and related enactments prescribes severe punishments, makes all offences under it cognizable and non-bailable, and also gives wide powers of search, seizure and arrest to the police.¹⁵

IDUs in Thailand are often treated very harshly by law enforcement authorities. For example, an international NGO in a published report reported beatings of Akha villagers in Chiang-Rai and the mistreatment of other hill tribe villagers by army personnel in the Royal Thai Army (RTA) sponsored drug detoxification camp. In another documented incident, NGOs concerned with the welfare of highlanders reported that police and military units carried out several warrantless searches of villages for narcotics (under authority granted by the Narcotics Prevention and Suppression Act of 1979) in northern provinces during 2002.¹⁶ Further, under the existing Narcotics law, there is a presumption of guilt against the possessor of any drugs or apparatus for the manufacture of any drugs. The penal regime also makes any attempt or abetment punishable with the same severity as if the offence was actually committed. The Narcotics Suppression and Prevention Act in its display of power regards minimal attention to support structures within the law for de-addiction, detoxification and referral of drug users.

However, of late there has been some shift in the Thai legislative thinking and some amendments to drug related laws have been introduced focusing on support parameters and rehabilitation mechanisms. Chief among these is the "Rehabilitation of Narcotics Act, 1991" and its subsequent amendments in 2002. The amended Act of 2002 distinguishes itself from its predecessors inas-

¹⁴ Act on Prevention & Suppression of Narcotics; Narcotics Suppression and Prevention Acts and others.

¹⁵ See Code of Criminal Procedure, Narcotics Control Act, The Narcotics Act of B.E. 2522 (1979), Narcotics Prevention and Suppression Act of 1976.

¹⁶ Thailand-Country Reports on Human Rights Practices - 2002 Released by the Bureau of Democracy, Human Rights, and Labor, 2003

much as it recognizes in principle that addicts are akin to patients and not criminals and recognizing the importance of a multisectoral approach to drug use reduction. However, this development, though positive, has proved to be largely lacking in substance or conviction, betraying a lack of sensitivity to the needs of drug users and a prejudicial view of drug use. The view bears testimony that despite reiterated principles of reform and multisectorality¹⁷ the majority of effort is still directed towards drug use and abuse are highly punitive.

The Act on Suppression and Prevention remains unaltered in accommodating the logic for which the Narcotics Addicts Rehabilitation Act of 2002 came into effect (i.e., addicts are more patients than criminals), fear of harsh criminal sanctions still stands out as the main tool of prevention and control. Studies have suggested that harsh criminal sanctions leave drug users widely exposed to exploitation, harassment, abuse and arrest by the law enforcement machinery.¹⁸ This in turn proves problematic from a public health perspective as it prevents drug users from accessing prevention, harm reduction, and treatment information and services. Moreover, legal provisions pertaining to abetment, preparation and attempt have a severe impact on the manner in which interventions with IDUs are able to function.

In 1997, the Thai government's policy on HIV/AIDS recognized the importance of harm reduction methods vis-à-vis HIV/AIDS in decreasing the vulnerability of drug users, but at the same time declined any support on harm reduction approach that targeted injecting behavior. It was not until 2001 that the Ministry of Public Health advocated the reform in the narcotics regulation to extend the methadone treatment period.

The country's schizophrenic approach to drug policy is evident in the conflicting laws passed and orders issued by the government. For example, in contravention of the ideas expressed by the Rehabilitation of Narcotics Act, Prime Minister Thaksin Shinawatra announced on 28 January 2003 that a 'war on drugs' would begin on February 1, and continue until April 30, at which time the country would be 'drug-free'.¹⁹ This led to the establishment of the National Command Center for Combating Narcotic Drugs (NCCB) under the chairmanship of the Deputy Prime Minister.

17 Volume 119, Part 96A. Government Gazette, 30th September 2002.

18 In May 2001, two women accused a police officer of raping them in jail while they were serving a sentence on drug charges. The officer was suspended from duty and released on bail Thailand-Country Reports on Human Rights Practices - 2002 Released by the Bureau of Democracy, Human Rights, and Labor March 31, 2003.

19 Ministerial Order No. 29/2546.

Data on the impact of the Prime Minister's plan to fight narcotics shows drug users have been rendered even more vulnerable to HIV infection, abuse and stigmatization. This stepped-up government War on Drugs, characterized by extrajudicial killings, false charges and blacklisting, has had disastrous consequences.²⁰ As a direct result of government policy, users trying to escape police arrest and forced rehabilitation were pushed further underground and away from critical support and services.

It is apparent that the country suffers from a lack of coordination between the National AIDS Prevention and Control Committee (NAPCC), the Office of Narcotics Control Board (ONCB), and the Ministry of Justice. Although the Ministry of Public Health acknowledges the seriousness of the HIV epidemic among IDUs and reflects this concern in the priorities of the public health national work plan, ONCB failed to include an HIV prevention component in the National Drug Control Action Plan 2001-2005. Lack of communication, information sharing, and separate mandates contribute to the absence of an integrated action plan that accounts for HIV and drug use in Thailand.

A study conducted by Chiang Mai University's Research Institute for Health Science, Public Health Ministry and John Hopkins University showed that 37 per cent of Drug users who used to visit rehabilitation clinics in Chiang Mai before the "War on Drugs" had moved out of their homes due to government suppression and could not be located. Many drug users, under pressure from the government's anti-drug campaign went underground, thus becoming likely to share needles as they became less available, in turn exposing them to a greater risk of HIV infection.²¹ Further, a large number of IDUs sought methadone treatment in the initial phase of the "war on drugs" as this option was preferable to arrest. Unfortunately the public hospitals charged with the dispensing of methadone subsequently ran out of supplies very early in the "war on drugs", thus inevitably forcing those who willing sought treatment back underground in search of heroin.²²

It is in this context that this analysis was completed.

20 Human Rights Watch. NOT ENOUGH GRAVES: The War on Drugs, HIV/AIDS and Violations of Human Rights. June 2004, Vol.16, No. 8 (C).

21 The National AIDS Conference. War on Drugs 'raises Aids Risk': Runaway users more prone to infection. The Bangkok Post. July 2003. Bangkok, Thailand.

22 UNODC, 2004. Review and Assessment of Current Organizational Structure of the Office of Narcotics Control Board (ONCB) - Thailand - and its Capacity to Understand and Respond to the Emergent Issues on Drug Abuse Related HIV/AIDS Epidemic. UNODC Regional Center for East Asia and Pacific. Nov. 2003.

Domain I: Criminal Law

1. The Illegality of Being a Drug User

A. Drug Control Laws

1. Drug use, Possession and Sale

a. Traditional Penalties

b. Alternatives to Incarceration

2. Status Crimes Related to Drug Use

3. Identification & Registration of Drug Users

4. Non-Consensual Drug Testing

B. Paraphernalia Laws

C. Needle Exchange Programs

A. Drug Control Laws

1. Drug use, possession and sale

The Narcotics Act of B.E. 2522 (1979) is the main piece of legislation regulating controlled substances in Thailand. The Act provides control measures on the production, import, export and possession of narcotics. Controlled substances are enumerated and categorized into Schedules I, II, III, IV and V based on differences in attributes, effect and medicinal purposes²³. The schedule of narcotics is as follows:

Table 1: Categories of Narcotics

Category I	'Dangerous' narcotics such as heroin, amphetamine, methamphetamine, ecstasy and LSD
Category II	'Ordinary' narcotics such as coca leaf, cocaine, codeine, concentrate of poppy straw, methadone, morphine, medicinal opium and opium
Category III	Narcotics which are in the form of medicinal formula and contain narcotics of Category II as ingredients
Category IV	Chemicals used for producing narcotics of Category I or II such as acetic anhydride, acetyl chloride, ethylidin diacetate, chlorpseudoephedrine, ergometrine, ergotamine, isosafrole, lysergic acid, piperonal and safrole
Category V	Narcotics which are not included in Category I to IV - i.e. cannabis, kratom plant, poppy plant and 'magic mushroom'

a. Traditional Penalties

Penalties for production, importation or exportation run from possible death penalty for Category 1 drugs to imprisonment of 1-10 years and a fine of 10,000 to 100,000 baht for Category 4. Penalties for simple possession, meanwhile, range from a mandatory 1 to 10 years imprisonment for Category 1 to a maximum of 5 years imprisonment for categories two, four and five. The penalties for other drug related offenses generally fall within these two extremes.

The penalties for violations of the Narcotics Act for each Category are listed in the Appendix. The penalties can be severe and apply to even the smallest amounts of controlled substance. The effects of these penalties are addressed elsewhere in this manuscript.

²³ Notification of the Ministry of Public Health No. 135, 1996, and No. 150 1999. Bangkok, Thailand

b. Alternatives to Incarceration

The Narcotics Addict Rehabilitation Act B.E.2545 (2002) differs from its predecessors in that it embodies the principle of decriminalization of drug offences that compose the majority of the offences in the current Thai criminal judicial system by providing for alternatives to incarceration for some drug offenses. This approach is new to Thailand and it is unclear what effect the Act has had as of yet. Although the Rehabilitation of Narcotics Addicts Act has existed since 1991, it was not until 2002 that the laws were amended to incorporate provisions of appeal and rehabilitation in a more practical sense.

Under the Act, drug rehabilitation programs for drug users and drug addicts are classified into three different systems – voluntary, coercive and institutional:

Volunteer-based treatment system: This system is open for drug users and drug addicts to access the rehabilitation program without having committed a drug using offence at the drug rehabilitation centers provided by the Ministry of Public Health and other private agencies. There are 723 rehabilitation centers throughout the country. These centers provide services by the following steps:

1. Searching for drug users and drug addicts in the local areas using a basic survey form.
2. Classifying the target groups into different types of drug consumption such as a potential or risk group, a drug using group, and a drug addict group by the local health care volunteers and officers.
3. Setting up drug treatment and rehabilitation centers in the local area out of the existing establishments such as barracks, National Guard units, Boy Scout camps, temples, and schools.
4. Treatment process that includes physical exercise and therapy, disciplinary training, detoxification, and psycho-social therapy that involves all concerned parties, professionals, volunteers, as well as family members of drug users. Career training programs are also provided for those who need to work after the rehabilitation process.
5. Aftercare, follow up, and surveillance of those who have gone through the treatment program

by the volunteers and the community members. The volunteer-based treatment system may re-admit the former patients who fail to maintain a drug-free life after treatment.

These centers generally utilize the therapeutic community or FAST²⁴ model for in-patient addicts, while the psychosocial therapeutic method or Matrix program and methadone maintenance may be used for out-patient addicts. The duration of treatment for drug addicts varies from 4 to 6 months. The location for the treatment of drug addicts may be any public or private hospital around the country, public and private drug rehabilitation facilities and community centers as well as Buddhist temples that offer such services.

Coercive treatment allows those who are arrested for consumption and/or possession of narcotics to get into the drug treatment program with no penalty at the treatment centers set up by the Narcotics Addict Rehabilitation Act B.E. 2545.

Within the confinement facilities, the coercive treatment plans are classified into two different degrees of physical control: intensive physical control and less intensive physical control.

The Intensive Physical Control Plan:

There are two different methods usually used in the intensive physical control plan: the therapeutic and the Jirasa method. In Thailand, two types of cognitive behavior models dominate: psychosocial care for outpatients (Matrix Program) and the Jirasa treatment program. Both of the programs apply more or less the same technique of conceptual and behavioral modification. The differences between them are usually the details of the group-structured activities and frequencies of treatment. The Jirasa treatment program combines community treatment model and uses volunteers to accommodate the treatment. This model seems to be consistent with the concept of community participation in problem-solving.²⁵

24 FAST treatment model: (F = Family, A = Alternative treatment activity, S = Self help and T = Therapeutic community). The model is borrowed from the United States. During the first month, patients adjust to the center routine. During the second and third months, treatment and rehabilitation are the focus. The fourth and fifth months, patients become engaged in vocational training and agriculture.

25 Prat Boonyawongwiroj Curriculum National Defense College: Strategic Treatment and Rehabilitation Alternatives for the Methamphetamine Addicts. http://www.bangkok.cat.net/thaindc/research/t_ndc/ndc44/

The treatment programs in the intensive physical control plan normally take at least 4 months. The treatment locations for the intensive physical control plan are usually in a Narcotics Addict Rehabilitation Centers that are established under the supervision of the Department of Probation and the Air Force physical confinement drug treatment camps in 13 areas throughout the country.

The Less Intensive Physical Control Plan

This plan normally uses the FAST treatment model with 4 months of treatment. This program is located at 8 Army drug treatment camps, 3 Navy drug treatment camps, and 10 drug treatment camps of the national volunteer defense force that have been located in different areas throughout the country.

Institutional Treatment Program. Those who are in the correctional or juvenile institutions may attend the drug treatment program provided for them in such institutions. After they are released from the institutions, they must report to the operating units in their local areas.

The process for those in the alternative to incarceration programs is somewhat different than for those in the "regular" system, as outlined below.

The Investigation Process

The investigation officers are responsible for the investigation of those who have been arrested for the drug offences and, more importantly, for taking the offenders to court within 48 hours (24 hours in the case of juvenile offenders) to obtain a court order to identify the drug consumption and drug addiction of the offenders.

The courts order the offenders to be sent to the Narcotics Addict Rehabilitation Centers for drug consumption and drug addiction identification and inform the sub-committee of the narcotics addict rehabilitation in the areas. While the offenders are under confinement at the Narcotics Addict Rehabilitation Centers for drug consumption and drug addiction identification, the investigation officers are responsible for continuing the investigation process of the offence by submitting the investigation reports to the public prosecutors office with the information on the confinement of the offenders in

the Narcotics Addict Rehabilitation Centers.

Drug Consumption and Drug Addiction Identification Process

By order of the court, the provincial sub-committee of the narcotics addict rehabilitation is responsible for identifying whether the offender is either a drug user or drug addict. The sub-committee is required to investigate the biological, socio-economic background as well as the offensive behavior of the offenders within 15 days after the offenders are referred by the court. For those offenders who are identified by the sub-committee as drug users or drug addicts, the treatment plans for them have to be drawn up by the subcommittee and the report forwarded to the public prosecutors for consideration of suspension of prosecution. For those offenders who are identified as neither drug users nor drug addicts, the sub-committee has to refer them back to the police officers or public prosecutors with the report for further consideration of the cases.

Drug Treatment and Rehabilitation Process

Those who are identified as drug users or drug addicts are assigned to take the treatment programs according to the treatment plans at the narcotics addict rehabilitation centre for a period of 6 months. The treatment period of 6 months could be extended for those who the sub-committee believes need more treatment. However, the extension of the treatment period should not exceed a total treatment period of 3 years. Those who escape from the treatment centre during their treatment plan period will be considered escaping from officials' custody as indicated in the penal code. If the sub-committee is satisfied with the treatment results of those who have gone through the drug treatment program, they are released without being charged for the drug offence. The results of the cases are reported to the investigation and public prosecution officers. Those with unsatisfactory treatment results by the sub-committee will be referred back for further consideration to be prosecuted by the public prosecutors.

Right to Appeal

Those offenders who are not satisfied with the identification of drug consumption and drug addiction by the sub-committee retain their right to appeal such identification to the Narcotics Addict Rehabilitation Commission within 14 days after the notice of the identification. The identification of the appeal cases are finalized by the Commission.²⁶

Eng_4265.doc.

²⁶ For details see Ministerial Regulation (Governing Rules and Procedures

The Suspension of Prosecution and Adjudication Processes

As the Public Prosecutors receive the identification results of drug consumption and drug addiction of the offender, he will accordingly take necessary action, which may be:

1. An order of suspension of prosecution of the cases until they receive the results of the drug treatment of the cases from the sub-committee on the narcotics addict rehabilitation for those who are identified by the sub-committee as drug users or drug addicts
2. To forward the cases to be prosecuted to the court for those offenders who are identified as neither drug users nor drug addicts.
3. Prosecution by the public prosecution officers and the sub-committee will be informed of the decision on the cases for those non-eligible to be treated under the Narcotics Addict Rehabilitation Act.
4. Prosecution by the public prosecution officers for those who have completed the treatment plan but have had their results deemed unsatisfactory by the sub-committee.

2. Status Crimes Related to Drug Use

Although the Thai government has recently shifted its view of some drug offenders, at least on paper, from criminals in need of incarceration to patients in need of treatment, little of this shift has been turned into practice. Even with the current transition, the criminal code clearly indicates the criminal status attached to being a drug user. The law formally declares illegal the consumption of narcotics listed under category I or V with no exceptions, while consumption of substances listed in category II and III is an offence if without prescription from a registered medical practitioner. This category includes methadone. Finally, the exportation and importation of all drugs/chemicals under category IV are illegal unless a license for that purpose has been obtained from the concerned authorities. Although not an offence in itself, being associated with a drug user may be used as corroborative or circumstantial evidence against that

on submission of Appeal and Procedures in Consideration of the Appeal) vol 120, Part 17A, March 2, 2003.

person to prove involvement in the offence as an abettor or accomplice.

"All my peers disappeared from the scene and hid themselves. It's not like before when you could go outside and you knew who the drug users were After the war on drugs, people disappeared because they didn't feel safe."

—*Odd Thanunchai, a peer educator*

"They will be put behind bars or even vanish without a trace. Who cares? They are destroying our country."

—*Interior Minister Wan Muhamad Nor Matha, referring to drug dealers, January 2003, Open Society Institute.*

Section 48 of the Narcotics Act of 2002 forbids the advertisement of narcotics unless the advertisement of narcotics of category II or category III is directed to a medical practitioner, dental practitioner, pharmaceutical practitioner, first-class veterinary practitioner or it is a label or leaflet on the container or package thereof for the narcotics of category II, category III or category IV.

3. Identification and Registration of Drug Users

Sections 11 to 35 of the Addicts Rehabilitation Act of 2002 address identification of drug users, the identification process, authorized officials and their powers. Under the provisions of section 35 all competent officers in the execution for the Act (the Committee and sub-committee) are authorized officials under the Penal Code and may enforce the act. The officials directly responsible under the Act are²⁷:

1. The Minister of Justice
2. The Narcotics Addict Rehabilitation Commission that is chaired by the permanent secretary of the Ministry of Justice
3. The provincial sub-committees of the narcotics addict rehabilitation in each province that are appointed by the Commission and these sub-committees are chaired by the public prosecutors as the representatives of the Ministry of Justice in the province

27 For details see the Addicts Rehabilitation Act Section 35.

4. The investigation officers
5. The public prosecutors
6. The judicial officers
7. The directors of the Narcotics Addict Rehabilitation Centers
8. The probation officers
9. The other officers who are assigned to enforce the Act

Each of these persons has access to the registries maintained under the Act.

Section 36 of the Act gives the officers in Section 35 broad power and duties, including the power:

1. *to enter any dwelling place, premises or conveyance in order to search and arrest the person committed for rehabilitation in violation of section 29 or section 31, where there is a reasonable ground to suspect that such person is hidden and together with reasonable ground to believe that the any delayed obtaining a search warrant would result in such person escaping;*
2. *to issue a letter of inquiry to or summon any person related to the person committed for identification or the person committed for rehabilitation to give statements or to submit documents or any evidence for examination constituting the consideration in the performance under section 17;*
3. *to testify to facts with the preview of section 17;*
4. *to issue an order or provide to have, the person committed for identification or the person committed for rehabilitation, examined or tested for possession of narcotic*

Currently there are no specific laws governing registration of drug users or addicts. However some guidelines are available in this regard. One such directive is the Ministerial Order No. 29/2546. A reading of the Ministerial Order and the Narcotics Addicts Rehabilitation Act of 2002 indicates that registration of an addict/user may take place under two scenarios:

Voluntary Registration: As the name suggests,

voluntary registration is open to all substance or drug addicts. However, the repressive drug policies, combined with a lack of harm reduction programs such as sterile syringe and needle provision and non-judgmental counseling services and health-care provision ensure that drug users face a significant challenge if their "full participation" in government HIV/AIDS treatment and prevention efforts is to happen.²⁸

Compulsory Registration: Broadly categorized into two types:

1. Drug abuse treatment in the correctional system and
2. Drug dependence treatment for first time offenders.

The Thai government over the past few years has expanded the drug abuse treatment in the correctional system and the Department of Corrections has implemented therapeutic community programs in juvenile corrections and intake centers. The Thai Government also operates camps by the armed forces which provide three to nine months of rehabilitation for drug-dependent prisoners nearing the end of their terms. In the case of first time offenders the effort has been towards rehabilitation and sentencing drug-dependent first offenders charged with possession of small quantities of drugs to mandatory substance abuse treatment as an alternative to incarceration, in accordance with the Narcotics Rehabilitation Act of 2002.

4. Non-Consensual Drug Testing

Informed consent is mandatory under the Thai legal system.²⁹ However, when a person is arrested on a narcotics or related offence he may be ordered to be tested for drug consumption or use. As described above, the investigation officers are responsible for taking an arrestee to court within 48 hours (24 hours in the case

²⁸ See also: Irene Lorete, Harm reduction among Asian injecting drug users, Sexual Health Exchange 2003-1, www.kit.nl/exchange

²⁹ Informed consent (in the current context) implies that those individuals who are tested understand the risk and potential benefit of the test. Section 34 of the 1997 Thai Constitution states, "A person's family rights, dignity, reputation or his right to privacy shall be protected. The assertion or circulation of a statement or picture in any manner whatsoever to the public, which violates or affects a person's family rights, dignity, reputation or the right of privacy, shall not be made except for the case which is beneficial to the public."

of juvenile arrestees) for the court order to identify the drug consumption and drug addiction of the arrestee. By order of the court, the provincial sub-committee of the narcotics addict rehabilitation is responsible for identifying whether the offender is either a drug user or drug addict. The sub-committee has to investigate the biological, socio-economic background as well as the offensive behavior of the offenders within 15 days after the offenders are referred by the court. For those offenders who are identified by the sub-committee as drug users or drug addicts, the treatment plans for them have to be drawn up by the subcommittee and the report forwarded to the public prosecutors for the consideration of suspension of prosecution. For those offenders who are identified as neither drug users nor drug addicts, the sub-committee has to refer them back to the police officers or public prosecutors with the report for further consideration of the cases.

Section 14 of the Act, apart from providing provisions pertaining to search and arrest also provides the provision of mandatory testing of suspected drug users/addicts by competent officials.³⁰ It provides, in part:

In case of having necessity or with a reasonable ground to believe that any person or any group of persons consumed narcotics in any dwelling place or any other place or in the vehicle, the member, the Secretary-General, the Deputy Secretary General or the competent official under this Act shall have the power to examine or order the suspected person to be examined or to be tested whether such person or a group of persons have some narcotics substances within their bodies or not.

Section 19 sets up several methods by which persons may be discovered and forced into treatment. The coercive treatment system under the Narcotics Addict Rehabilitation Act allows those who are arrested for drug use and/or possession to enter a drug treatment program with no penalty at the treatment centers set up by the Act. The coercive treatment includes the following steps:

1. Searching for drug users and drug addicts by community members and urging them to use the voluntary drug treatment system. However, those drug users and addicts refusing to join the voluntary-based treatment program may be compelled to join the coercive treatment system by the Act.

2. Diagnosis of drug consumption for those who

are arrested by the sub-committee on drug rehabilitation as either drug users or drug addicts.

3. Aftercare, follow up, and surveillance of those who have gone through the treatment program by the volunteers and the community members. Those who fail to maintain a drug free life after rehabilitation will be sent into the criminal system and receive a penalty. After serving their penalty, the ex-drug users or drug addicts may apply for the voluntary treatment system under supervision of volunteers or community members.

B. Paraphernalia Laws

Section 36 of the Narcotics Control Act provides that competent officials have the power to:

..enter any dwelling place or premises to search when there is a reasonable ground to suspect that there is a person who had a reasonable ground to suspect that committed the offence relating to narcotics is hidden or there is property which possesses to be an offence or acquired through the commission of an offence or used or intended to use in the commission of the offence relating to narcotics or which may be used as the evidence, together with a reasonable ground to believe that because of more delayed to get the search warrant, such person shall escaped or such property shall removed, hidden, destroyed or transformed in original.

The explicit use of the wordings "...reasonable ground... there is property the possesses of which is an offence or acquired through the commission of an offence or used or intended to use in the commission of the offence relating to narcotics or which may be used as the evidence.." makes drug paraphernalia arguably illegal.

Note that there are no laws on the sale or possession of a hypodermic needle or syringe. Needles and syringes can be purchased from the drug stores in Thailand without a physician's prescription. However drug users are often reluctant to carry injecting equipment to avoid police scrutiny and arrest. Possession of paraphernalia is not used in itself as evidence but it may be used as collaborative evidence.³¹

30 Added by section 5 of the Narcotics Control Act (No.3) B.E. 2543 (2000)

31 For details see section 14 of the Narcotics Control Act, 1979.

C. Needle exchange programs (NEPs)

Although the Narcotic Act is silent on the sale or possession of hypodermic needles and syringes, the wordings of section 14 are explicit in making needle and syringe illegal heroin paraphernalia. Perhaps for this reason there are no needle exchange programs in Thailand except for a single pilot project in Chaingmai.

In 1993-1995 the first pilot needle and syringe project was initiated among the Akha people in the north of Thailand. A limited methadone program was introduced which allowed for 45 days of methadone treatment as part of a detoxification program. Though the general attitude of the government towards harm reduction is a non-supportive one, the Ministry of Health seems to be attempting to implement reforms to narcotics regulations to allow HIV prevention activities, for example, to extend the methadone program from 45 days to one to two years. The Akha NEP program is still operational but the government is generally unsupportive. This NEP is privately funded.

Public health authorities consistently recommend that for people who cannot or will not stop injecting drugs, using a sterile syringe for every injection is the most effective way to prevent HIV and other blood-borne viruses. In Thailand, it is common for injection drug users to purchase new syringes in pharmacies without needing a prescription. Human Rights Watch found, however, that Thai police frequently used possession of sterile syringes as sufficient evidence with which to make an arrest, whether for possession of drug paraphernalia or narcotics. Some drug users said they feared purchasing syringes in pharmacies because these arrests would sometimes occur in the vicinity of the pharmacy itself.

Kor D., twenty-six, told Human Rights Watch he began injecting heroin when he was about eighteen. He knew that sharing syringes posed a risk of HIV transmission, he said, but it was difficult to carry sterile syringes without being identified by the police as a drug user.

“I live in a slum that’s well known to have drug users. You have cops walking around. If they pick you up and see needle markings on your arm, they just arrest you. It gets even worse if you have a syringe with you, unless of course you have a certificate saying you have a disease that requires injection, like diabetes. The way I look, with all my tattoos, the cop doesn’t have a second thought about picking me up.”

The cops arrest you for drug possession, even if you don’t have any drugs with you. Karn S., twenty-five, said that buying syringes felt illegal, not unlike buying heroin.

I buy my syringes from a drug store. It’s quite easy, but you need to watch out for the cops. If the cops see it, they’ll arrest you right away, inside the store. If the cop knows that a storeowner is selling syringes to a drug user, the owner will get arrested, too. I need to look around for the police going in and buying a syringe. Once it’s safe, I just go in and buy it. It’s just like buying drugs—you need to be careful.”

Domain I: Criminal Law

2. Criminal Justice & Procedure

The Constitution of 1997 generally precludes warrantless arrests and searches³². It also provides for the provision of bail,³³ a “speedy, fair and continuous inquiry or trial,”³⁴ the assistance of counsel³⁵ and the right against self-incrimination.³⁶

However, the Narcotics Act of 1979 (as amended) and the Criminal Procedure Code give government officials great power to search, arrest and detain suspected drug users. Since these powers are defined in statute, particularly Section 14, portions of these sections are reproduced below:

Section 14 of the Act³⁷ grants authorized officials the powers:

- 1. to enter and search any dwelling place or premises on a reasonable ground to believe that any person or any group of persons suspected of committing an offence relating to narcotics is in hiding or there is property the possession of which is an offence or acquired through the commission of an offence or used or intended to be used in the commission of the offence relating to narcotics or which may be used as the evidence, together with a reasonable ground to believe that any person shall escape or such property removed, hidden, destroyed or transformed from original;***
- 2. to search any person or conveyance which there is a reasonable ground to suspect that there are narcotics unlawful hidden;***
- 3. to arrest any person who committed the offence relating to narcotics;***
- 4. to seize or attach narcotics which there are unlawful possessed or any property which used or intended to use in the commission of the offence relating to narcotics or may be used as the evidence;***
- 5. to search under the provisions of the Criminal Procedure Code;***
- 6. to make an inquiry of the alleged offender in the***

³² For details see Thai Constitution, Article 237 and 238 respectively

³³ *ibid.*, Article 239

³⁴ *ibid.*, Article 241

³⁵ *ibid.*, Article 242

³⁶ *ibid.*, Article 243

³⁷ As repealed and Replaced by section 8 of the Narcotics Control Act (No.4) B.E. 2545 (2002)

offence relating to narcotics;

7. to issue a letter of inquiry to or summon any person or the official of any Government agency to give statement or to submit any account, document or material for examination or supplement the consideration.

Section 14/2³⁸ provides that:

In case of having necessity or with a reasonable ground to believe that any person or any group of persons consumed narcotics in any dwelling place or any other place or in the vehicle, the member, the Secretary-General, the Deputy Secretary General or the competent official under this Act shall have the power to examine or order the suspected person to be examined or to be tested whether such person or a group of persons have some narcotics substances within their bodies or not.

Section 14/3³⁹ essentially allows a designated official to deputize any other person in carrying out his duties, while 14/4⁴⁰ allows officials to obtain information from “post, telegraph, telephone, fax telephone, computer, tool or instrument...or communication by information technology” on the same grounds as 14/2.

Further provisions concerning the ability of the government to test for narcotics and register suspected offenders are covered elsewhere in this document.

38 As Added by section 5 of the Narcotics Control Act (No.3) B.E. 2543 (2000)

39 As added by section 9 of the Narcotics Control Act (No.4) B.E. 2545 7

40 *ibid*

Domain I: Criminal Law

3. Criminal Exposure and Transmission

Section 2 of the penal code states:

A person shall be criminally punishable when an act committed by the person in question is provided to be an offence and the punishment is defined by the law in force at the time of the commission of the offence, and no punishment than that defined by shall be imposed.

If, under the law subsequently provided that such an act is no more an offence, the person committing it shall be exempt from being an offender. If there is a final judgment imposing the punishment, such person shall be regarded as not having been convicted by the judgment, or, if he is undergoing the punishment, such punishment shall be forthwith terminated.

It can be argued that an act of exposing others and exposure with an intent to expose HIV/AIDS could be covered and tried under the offenses against life and body covered under sections 288 to 300 of the Thai Penal code. Such acts qualify as violence, which is defined by section 1 clause 6 of the Penal Code to “mean(s) to injure the body or mind of any person either by using force or by any manner, and includes any act which causes any person to be in the state of being unable to resist...or by any other similar means.” However the determination of penalty (the nature, severity and extent) to be imposed is unclear at best.

With no existing laws or case law, the matter of affirmative defense is also open for debate. However, in application of any law criminal intent is critical. Under the laws covering criminal liability (section 59, Thai Penal Code), intent under the same section is defined as “an act of consciously committing at the same time the person committing it desired or should have for seen the consequences of such a commission.” The section further elaborates that if the person does not know the fact which is the essence of the offence, it can not be deemed he desired or that he should have foreseen the consequences of such a commission. Hence in the absence of explicit laws covering the issue, intent, knowledge (condom use and HIV status) may be used as a defense under penal law apart from other similar provisions.

Domain II: Health Care Law

1. Right to health care

Every individual has the basic right to receive health services as legally enacted in the Thai Constitution. Article 52 of the Constitution declares that:

A person shall enjoy an equal right to receive standard public health service, and the indigent shall have the right to receive free medical treatment from public health centers of the state as provided by law.

There are no HIV/AIDS specific legal enactments on the issue. However, a careful reading of Article 52 read in conjunction with the constitutional guarantees of the right to life and human dignity supports the right to treatment. Furthermore, the government's expanded ARV coverage program and the Universal Health Care scheme support the move towards the acknowledgement of both the right to health care and treatment.

In mid-2003, there were an estimated 670,000 people living with HIV/AIDS in Thailand. However, by the end of 2003, only an estimated 23,000 people were on ARV treatment. As part of a progressive policy, the Thai Ministry of Public Health promised soon to provide access to ARV treatment to all those who needed it. By mid 2004 there had been dramatic progress in this direction:

1. A national commitment to treat 50,000 new patients in 2004 because of the World AIDS Conference, the cheaper generic ARV, and the Global Fund
2. Social security insurance scheme (for insured workers) provides ARV since July 2004
3. AZT, 3TC, AZT/3TC, d4T, ddI, NVP, d4T/3TC/NVP (GPO-vir), NFV are the available generic drugs
4. 53 out of 76 provincial hospitals have CD4 facility in 2004, an increase from 19
5. Large scale training of doctors and nurses
6. ARV sites expanded from 110 to 800 hospitals
7. CD4 facility expanded from 19 to 53 hospitals with US\$1.25M for reagents
8. Increase in financial commitment towards ARV

Another crucial development towards this end is the Thai Prime Minister, Thaksin Shinawatra in televised speech (July 2005) announcing the governments' inten-

tion to officially included ARV into the 30 Baht scheme. However the details on operationalising the plan into reality are anything but clear.

Domain II: Health Care Law

2. Reportability of STDs

Thailand's contemporary surveillance history is, in some respects, inverse to that of the United States. In Thailand, officials immediately adopted mandatory notification by name of both HIV and AIDS and then withdrew from this position relatively quickly. They viewed nominal notification as ineffective and unnecessary within a system in which HIV and AIDS surveillance did not facilitate treatment nor prevention efforts while perpetuating discrimination and stigmatization. Additionally, there were anecdotal reports of those whose names were reported committing suicide. As such the emphasis of surveillance in Thailand is currently to monitor trends in the epidemic.

Physicians were obligated to make named reports to province officials, who forwarded information to the central government. Over time, this list was expanded to include roughly 50 diseases, including sexually transmitted diseases (STDs). Surveillance under this system was one of active case-finding with the intent to provide treatment. Although physicians rarely report under this system, there was good active surveillance and case-finding for several diseases including malaria and STDs. With the exception of leprosy, this active case-finding system only triggered treatment, not isolation or quarantine. For diseases such as STDs, the infectious disease surveillance system triggers contact tracing and partner notification.

When the first cases of HIV and AIDS were reported, both conditions (AIDS and HIV) were added to the list of "highly infectious diseases." Notification triggered some home visits by a public health team, which would provide education and counseling. Although the notification law made surveillance data confidential, legally mandated home visits soon came to serve as a tip-off that a villager was infected. The law covering surveillance data, moreover, did not apply to hospitals and physicians, who were under no legal obligations to protect patient confidentiality. Hospitals would flag the medical records of AIDS patients with a highly visible red marker or insist on using special red waste disposal bags, indicating hazardous waste materials, in the rooms of AIDS patients. Such problems still persist although at a lower level than earlier.

After a few years, as the number of cases of AIDS and HIV infection rapidly expanded, officials felt that the infrastructural burdens of mandatory notification and follow-up, and the resulting discrimination against those identified, outweighed the benefits. There was no medical intervention to offer and it became impossible to visit every family. Many physicians, moreover, would respect

patient requests not to report either HIV infection or AIDS. Official remarks that the name-based notification system suffered from about two-thirds under-reporting prompted the National AIDS Committee to drop HIV from the list of reportable diseases, while putting more emphasis on unlinked anonymous serosurveillance and estimation of AIDS populations.

Physicians still report AIDS cases by name to the province, while provinces report to the central ministry via a Soundex code. In place of traditional named surveillance crucial to personal follow-up, the Ministry of Public Health adopted a system of sero-surveys, behavioral surveys and sentinel surveillance.

While there is general agreement on the need for better AIDS case reporting, changing therapeutic prospects may rekindle debate on the need for named HIV reporting in Thailand. Some officials have discussed the possibility of making name based HIV notification for newborns and pregnant women mandatory for the purpose of administering the zidovudine-based regime for reducing mother-to-child HIV transmission.

The absence of mandatory nominal HIV notification should not be confused with the existence of regimes which protect the basic confidentiality rights of those with HIV/AIDS. Despite the absence of name-based reporting, breaches of confidentiality can still characterize the medical care of some people with AIDS and HIV infection.

Although there seem to be no specific laws governing the issue, the health care providers and laboratory directors or their designees are required to report all patients with a test indicative of HIV to the provincial/district health department which is then forwarded to the Ministry of Health.

Reports of HIV cases to the Provincial health department includes Soundex, gender, date of birth, mode of transmission information, test reported and date of test and the name, address and phone of the person or facility making the report.

Under the current system of reporting the information collected are for the purpose of monitoring and evaluating the maturing trend of the epidemic. The data, as explained earlier, is channeled to the Ministry of Public Health.

Domain II: Health Care Law

3. Privacy of medical information

There are no HIV/AIDS specific laws relating to the privacy of medical information. Sections 41 (Narcotics Rehabilitation Act), 322 and 323 (Criminal Procedure code) and 16/1 (Narcotics Control Act) are the main provisions providing for punishments for unauthorized disclosure of information. The Constitution is also implicated.

Article 37 of the constitution provides that:

A person shall enjoy the liberty of communication by lawful means. The censorship, detention or disclosure of communication between persons including any other act disclosing a statement in the communication between persons shall not be made except by virtue of the provisions of the law specifically enacted for security of the State or maintaining public order or good morals.

Section 322 of the Criminal Procedure Code provides that:

Whoever opens or takes away any sealed letter, telegram or other document belonging to another person in order to ascertain or disclose its contents, which is likely to cause injury to any person, shall be punished with imprisonment not exceeding six months or fine not exceeding one thousand baht or both.

Section 323 holds:

Whoever discloses any private secret which became known or was communicated to him by the reason of his function as a competent official or his profession as a medical practitioner, pharmacist, druggist, mid wife, nursing attendant, priest, advocate, lawyer, auditor, or by reason of being assistant in such and such profession, in manner likely to cause injury to any person, shall be punished with imprisonment not exceeding six months or fine not exceeding one thousand baht, or both.

A person undergoing training and instruction in the profession mentioned in the first paragraph who discloses any private secret which became known or communicated to him in such training and instruction, in a manner likely to cause injury to any person, shall be liable to the same punishment.

Hence, the right to confidentiality of information is substantiated by Criminal Code 323 - 325, and the same principles are enunciated in the provisions of the Information Act B.E. 2540 and Medical Council Code of

Conduct B.E. 2526, which is always treated with utmost importance as it is the basis of trust between patients and their medical practitioners. Thus, a patient has the rights to expect that her personal information will be kept confidential by the medical practitioner. The only exceptions are with the consent of the patient or under legal obligation. If any hospital or clinic informs HIV test results to individual company/organization or any other person without consent of the tested individual, that would amount to breach of the Constitutional right of the tested individual, a criminal offence punishable under section 323 and violative of the medical code of practice section 3 item 9, and the medical practitioner liable to lose their medical license.

Under World Health Organization's classification of communicable disease, there is a mandatory requirement to report AIDS cases. All identified cases of AIDS are reported to the MOPH as explained above. However, the disclosure of personally identifiable health care information to a third party – apart from when the law expressly requires, may be done when consented by the tested individual. Where the person tested is a minor or a person with mental disability incapacitating him/her or rendering such a person incapable of such decisions, the parent, guardian or the next of kin provided that such a decision is reached in good faith and in the interest of the person tested.

Under Section 41 of the Narcotics Rehabilitation Act:

Any person who brought any fact or document of evidence which is a personal information derived in the execution for this Act, disclosure to other person shall be liable to imprisonment for a term not exceeding five years or to a fine of not exceeding one hundred thousand Baht or both, except the disclosure in the performance of duties, inquiry or court trial or permitted by the Committee or the sub-committee of Narcotic Addict Rehabilitation. Any person who derived or acknowledged any fact from a person under paragraph one the disclosure of such fact shall be liable likewise, except in case where it may disclosure under paragraph one.

Section 16/1 of the Narcotics Control Act:⁴¹

Any person who knew or obtained any information derived under section 14 fourth, committed by any means to provide any other person such information shall be liable to imprisonment for a term of not

⁴¹ Narcotics Control Act. As added by section 10 of the Narcotics Control Act (No.4) B.E. 2545 (2002)

exceeding five years or a fine of not exceeding one hundred thousand Baht, except that is the disclosure was in the performance of duties or under the law. If the commission under paragraph one is committed by member, Secretary- General, Deputy Secretary-General and competent official, such person shall be liable to treble penalty imposed for offence that referred in paragraph one.

The ethical principle of confidentiality requires that information which persons want to keep to themselves or to a person whom they trust (doctor, councilor) is so kept and is not to be disclosed to others. The relationship between doctors and patients is based on mutual trust with special obligations demanded from health care professionals. However, confidentiality surrounding HIV/AIDS becomes a complex when viewed in the light of the ethics, rights of the tested individual on one hand and the right of others surrounding the tested individual on the other.

In the case of HIV/AIDS, with its potential individual, social and economical impact, adhering to the principle of autonomy may be, in some cases, in conflict with the principles of beneficence/non-maleficence that demands necessary information should be provided to protect the life of others enabling them to avoid a serious infection. The principle of autonomy and the principles of beneficence/non-maleficence need to be balanced, and each particular case have to be treated with caution and great sensitivity. Every attempt has to be made to help the patient to disclose the information to his/her partner involuntarily. Much more important is the need to ensure that confidentiality is not violated needlessly or carelessly.

Legally, informed consent is a prerequisite for all HIV/AIDS testing. Article 30 of the constitution clearly provides for this provision. Hence any person that conducts compulsory HIV testing stands in violation of Article 30 of the constitution. The requirement of informed consent is further reiterated by the medical code of conduct section 3 item 4.

Though there are explicit provisions in the Thai legal text mandating informed consent, countless number of cases have been cited by both local as well as international communities showing how loosely the concept is applicable in reality. In Thailand, its not the absence of law but lack of knowledge of those laws and effective enforcement mechanisms that frustrate the constitutional rights.

Domain II: Health Care Law

4. Anti-discrimination provisions

There is no explicit anti-discrimination law specifically covering IDUs or for that matter People Living with HIV/AIDS (PLHA). An extensive listing of applicable laws and orders applying to all individuals is contained in Appendix 2. Additionally, the 1997 constitution incorporates extensive provisions promoting and guaranteeing civil liberties and equality and prohibiting discrimination.

The Thai constitution guarantees rights and liberties for all individuals and determines the role that the State must play in respecting and the promoting of equality and human dignity. The Constitution under Article 5 declares equal protection and equality before law, while Article 30 prohibits all forms of discrimination.

Articles 5 of the Constitution read together with Article 30 provides for equal protection and treatment without discrimination. The Constitution by explicitly using the words "Discrimination against persons by reason of ...health status, personal status...," guarantees all persons including persons who have or are believed to have AIDS or related medical conditions, to equality of treatment and the protection of the state in employment, services and housing. The Constitution also contains a number of other Anti-Discrimination provisions:

Article 5: *The Thai people, irrespective of their origins, sexes or religions, shall enjoy equal protection under this Constitution.*

Article 30: *All persons are equal before the law and shall enjoy equal protection under the law. Men and women shall enjoy equal rights. Unjust discrimination against a person on the grounds of the difference in origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political view, shall not be permitted.*

Measures determined by the State in order to eliminate obstacle to or to promote persons' ability to exercise their rights and liberties as other persons shall not be deemed as unjust discrimination under paragraph three.

Article 55: *The disabled or handicapped shall have the right to receive public conveniences and other aids from the State, as provided by law.*

Article 80: *The State shall protect and develop children and the youth, promote the equality between women and men, and create, reinforce and develop family integrity and the strength of communities. The*

State shall provide aids to the elderly, the indigent, the disabled or handicapped and the underprivileged for their good quality of life and ability to depend on themselves.

Article 83: *The State shall implement fair distribution of incomes.*

Article 86: *The State shall promote people of working age to obtain employment, protect labour, especially child and woman labour, and provide for the system of labour relations, social security and fair wages.*

The Constitution thus forbids slavery, peonage, and forced labor. It establishes the full range of basic human rights, including those that pertain to workers such as the rights of freedom of association, the right to form trade unions and other organizations. Gender equality is required. This Constitution also forbids discrimination on the ground of race, religion, gender, age, handicap or disability, religion, education, politics, and status. It would violate the spirit of the Constitution to limit basic human rights to Thai citizens; with millions of foreign workers in Thailand, this reading is critical. Further, the Constitution confers the status of supreme law upon these basic human rights, binding on the state and all its organs and officers, including courts. Thus, every court has an obligation to enforce basic human rights, including worker rights.

The labor law requires equal treatment of men and women in employment, equal pay for equal work, and forbids termination on the ground of pregnancy. It forbids sexual harassment by management and inspectors. The Constitution affords citizens complaining of discrimination direct access to the courts.

In Thailand a disabled person is defined as "an individual who is limited by function and/or ability to conduct activities in daily living and to participate in society through methods used by persons without disabilities due to visual, hearing, mobility, communication, psychological, emotional, behavioral, intellectual or learning impairment, and has special needs in order to live and participate in society as to others."

The constitution by the virtue of Article 30 bans discrimination on all grounds including disability, while article 55 states that the disabled or handicapped shall have the right to receive public conveniences and other aids from the State, as provided by law. Article 80 indicates

that the State shall ensure a good quality of life for persons with disabilities and improve upon their ability to depend upon themselves for health protection and quality of life.

The Rehabilitation of Disabled Persons Act states that, disabled persons who have been registered in accordance with Section 14 shall be entitled to the following assistance, development and rehabilitation:

1. Medical rehabilitation services, expenses for medical treatment, aids and equipment for rehabilitating physical, mental or psychological conditions or for improving capacities as prescribed in the Ministerial Regulations.
2. Education in consonance with the compulsory, vocational or university education under the National Education Plan as considered appropriate. Such education may be provided in special schools or through mainstreaming in ordinary schools whereby the Center for Innovation and Technology attached to the Ministry of Education shall provide support as deemed appropriate.
3. Advice and consultation relating to occupation and vocational training appropriate to their physical conditions and potentialities so as to ensure fulfillment of their potential to work.
4. Entitlement to participation in social activities and access to various facilities and services essential to them.
5. Government lawsuit services and contact with governmental organizations.

The Constitution provides for access to public facilities and prohibits employment and education discrimination against persons with disabilities. However, the laws are not effectively enforced. The recourse in case of disability is same as that for discrimination. Though there are laws and directives covering disability in employment, public programs, and government/professional services, it is the lack of enforcement mechanisms that frustrate the existing laws.

Domain II: Health Care Law

5. Drug Treatment

There is no explicit law covering access to drug treatment, but the provisions of Article 52 of the Constitution, given a broad interpretation in light of Articles 26, 30 and 31 (right to life, equality and human dignity without discrimination) and Thailand's duties under international treaties, argue strongly that such a right exists.

Article 52 states that:

A person shall enjoy an equal right to receive standard public health service, and the indigent shall have the right to receive free medical treatment from public health centers of the State, as provided by law. The State shall prevent and eradicate harmful contagious diseases for the public without charge, as provided by law.

Thailand is a state party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), article 12 of which guarantees all individuals the right to the "highest attainable standard of health."⁴² Article 12(c) specifically obliges states to take all steps "necessary for . . . the prevention, treatment and control of epidemic . . . diseases" such as HIV/AIDS. This clause has been interpreted by the Committee on Economic, Social and Cultural Rights, the U.N. agency responsible for monitoring implementation of the ICESCR, as requiring "the establishment of prevention and education programs for behavior-related health concerns such as sexually transmitted diseases, in particular HIV/AIDS."⁴³ Even more immediate is the requirement that states not interfere with existing health services. According to the Committee, "the obligation to respect [the right to health] requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health."⁴⁴

Research supporting the establishment of methadone maintenance programs, including research conducted in Thailand, is compelling. A pilot methadone maintenance project conducted by the Bangkok Metropolitan Administration in 1991 showed that drug users who remained on methadone were more likely to stay in treatment and less likely to return to heroin use.⁴⁵ Longer retention in treatment is hence correlated with a reduction in HIV risk behaviors, according to evidence cited in

42 International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, entered into force January 3, 1976, UN General Assembly Resolution. 2200 (XXI), 21 UN GAOR, 21st Session, Supp. No. 16, at 49, UN Doc. A/6316 (1966), art. 12.

43 Committee on Economic, Social and Cultural Rights (CESCR), The right to the highest attainable standard of health: CESCR General comment 14 (22nd Session, 2000), para. 16

44 Ibid., para. 33

45 M. Ainsworth et al., Thailand's response to AIDS, Pp. 45; Beyrer, War in the Blood, Pp. 153.

a 2004 position paper by the World Health Organization, the United Nations Office on Drugs and Crime, and the Joint United Nations Program on HIV/AIDS.⁴⁶ The same position paper found a correlation between substitution maintenance and reduced death rates for people with opioid dependence; fewer complications for pregnant women and their children; higher annual earnings and employment levels; and reduced levels of criminal activity. The paper also noted that the risks associated with substitution maintenance, such as overdose and diversion of methadone into black markets, could be minimized by low doses at the beginning of treatment and effective oversight of methadone programs respectively.

In the case of Thailand state-imposed barriers to harm reduction programs for injection drug users constitute interference with the human right to health. To the extent that drug users suffer from addiction-related disabilities, restricting these programs also constitute a form of discrimination in access to health care.⁴⁷ The unique clinical challenges posed by drug addiction, including the high risk of HIV infection, obliges the government to tailor its health care services to drug users' needs rather than restricting safe and effective programs in the name of drug prohibition.

The many civil and political rights violations sited during Thailand's war on drugs (extrajudicial killings, blacklisting of drug suspects without due process, and arbitrary arrest and police abuse) also implicate the human right to health. It has been observed that the fear of being mistreated or worse by police has driven drug users into hiding and away from potentially life-saving health services.⁴⁸ The Thai government's deliberate use of fear tactics to deter drug activity, combined with its failure to take any effective steps to mitigate the health impact of its war on drugs, must be viewed as a failure to protect drug users' right to the highest attainable standard of health in violation of its obligations under the ICESCR.

The establishments such as rehabilitation centers and drug treatment centers are strictly regulated and controlled. Under law, these centers are deemed to be an institution for treatment under the Penal Code and are deemed to be a unit under the Department of Probation, Ministry of Justice.

46 WHO, UNODC and UNAIDS, "Substitution maintenance therapy," p. 18, paras. 33-34, p. 32, para. 6.

47 International law prohibits discrimination on the basis of disability. See, e.g., Committee on Economic, Social and Cultural Rights, General comment No. 5: Persons with disabilities, para. 5.

48 Human Rights Watch NOT ENOUGH GRAVES: The War on Drugs, HIV/AIDS, and Violations of Human Rights. June 2004, Vol. 16, No. 8 (C)

The Drug Rehabilitation Act was enacted in 1991, but it has yet to come into force in terms of implementation due to the unavailability of appropriate settings to provide drug treatment program for drug users. Therefore, drug users are still treated like criminals according to the traditional criminal laws, which means that they are likely to be convicted and sent to prison. In the past two years, efforts have been made by various agencies including the Department of Corrections to make the Drug Rehabilitation Act applicable, as it is viewed that if the Act is truly implemented the prison population would significantly decrease.

However, the present situation is inconsistent with the expressed goal of the Drug Rehabilitation Act. Due to the lack of budget for the construction of the Drug Rehabilitation Center, and in order to manage the activities in accordance with the Drug Rehabilitation Act, one prison in each province has been assigned as a temporary Drug Rehabilitation Center. Drug offenders are still sent to prisons. Consequently, the number of prisoners, particularly drug prisoners, is still as high as in the past.⁴⁹

As overcrowding and the increasing number of drug related offenders has been a major problem for the Department of Corrections for almost a decade and to accommodate the Prime Minister's policy to get tough on drug sellers and provide a proper treatment method for drug users, a quick fix solution was found in boot camps. Offenders and addicts qualifying to be sent to the military camps must graduate within 6 months in order for them to qualify for parole. In such a camp, the operations are under military command while correctional officers play a supportive role. The primary components of the boot camp include physical training, labor, and drill. Of late, rehabilitative components such as vocational training, academic education, and life skill training have also been added. Currently, there are approximately 5,000 boot camp participants in 39 military sites, two of which are for females.

Methadone, buprenorphine, and other drugs used in drug substitution therapy fall under the Schedule II The use, consumption, and disposal of these drugs is strictly regulated by the Narcotics Act, 1979, and any illicit use of these scheduled drugs is punishable by imprisonment of 6 months - 10 years and a fine of 5,000 - 100,000 Baht (section 91). Even possession without a license/permit amounts to an offence punishable under Thai Laws (see above scheduled drugs). Drug substitution is illegal and

49 Kanokpun Kalyanasuta, Atchara Suriyawong, 2002. The Criminal Justice System and Community-Based Treatment of Offenders in Thailand. 121st International Training Course Participants Papers

exists only as pilot programs.

Although the National Policy and HIV/AIDS and drug abuse/IDU have been harmonized to a great extent i.e., with the acceptance of harm minimization as a concept, there still are major constraints for the implementation of a successful harm reduction programs for IDUs and other drug users.

Thailand's main argument against Drug Substitution and Needle Exchange Programme is that drug substitution and/or harm reduction programs are long term initiatives, i.e. methadone providing to replace heroin with expectation that the addict will stop injection. In Thailand, a large number of the addicts who use purified heroin have the underlying psychosocial cause of heroin addiction which is difficult to give up. Long term use of methadone to replace heroin without any appropriate intervention to solve these problems will likely cause a so called 'drug substitute addiction' and such an action would be more like introducing a new drug to the black market. It is also argued among the ministerial quarters that black market methadone awareness is the reason that the Narcotic Act does not allow detoxification for a period longer than 45 days. Further, owing to the fact that methadone administration is medical practice (section 94/1 above and medical practitioners Act), such administrations are only possible if prescribed and conducted in a rehabilitation centers/medical facility as defined by law.

Substitution therapy such as methadone maintenance programs are rare in Thailand and are strictly regulated. Methadone can legally be used only for medical purposes and by registered medical practitioners. The focus in Thailand like many other countries in the region is more on detoxification and the medical treatment of addiction symptoms rather than long term maintenance. At present the medical use of methadone is regulated by the Narcotics Drug Control Act which stipulates that the "use of narcotic drugs is restricted to medical treatment, education and scientific research. Maintenance is prohibited unless specifically authorized by law.

Theoretically at least methadone is provided in all district and provincial hospital and primary health care centers. All of Thailand's 2100 district community health services are responsible for providing drug treatment, including methadone for detoxification, however, there is a high threshold of entry guidelines to methadone. And it seems that inadequate numbers of health workers undermine the capacity of these centers so it is likely that not many drug users are actually receiving metha-

done outside of Bangkok.

Altogether in October 2004 just 58 sites were providing methadone (Thanyarak Institute data). Overall just 5.4% of all drug users treated in Thailand are opioid users. In Bangkok, there are 20 clinics in 65 health centers.⁵⁰ All provide Matrix programs (even if there is no specific drug clinic). Sixteen clinics operate under the Department of Health, 2 under the Taksin hospital, and two clinics are under the Drug Abuse Prevention and Treatment Division. The number of IDUs in treatment has declined. In 2003, there were 4,430 drug user patients, and in 2004 there were 2,164 in MMT: In 2003, there were 2,183 patients, and in 2004, there were 1,584. The current year's figures have declined further. The BMA provides monthly figures on patients in treatment, and the average for Bangkok is between 600-700 patients.

Currently, only the Bangkok MMT provides maintenance for 1-2 years. It seems that most of the health care centers outside of Bangkok are likely to use methadone for detoxification only, but information is not available. The fee for service varies in accordance to the institution where it is provided. In the BMA methadone clinics, it is free. Elsewhere, to receive free methadone, patients have to fall under the 30 baht scheme. One can register for the scheme if one does not have health insurance, but not all hospitals participate in the scheme. The hospitals which do not participate set their own charges (which are generally low), as do private hospitals and clinics.

There is no cost for compulsory treatment, but methadone is not offered there.

Methadone, buprenorphine, and other drugs used in drug substitution therapy fall under the Schedule II and hence are scheduled drugs with strict regulations. The use, consumption, and disposal are strictly regulated by the Narcotics Act, 1979, and any illegal use of the said drugs is punishable by imprisonment of 6 months - 10 years and a fine of 5,000 - 100,000 Baht. Even possession without a license/permit amounts to an offence punishable under Thai Laws (see above scheduled drugs). Drug substitution is technically illegal and exists only as pilot programs.

Section 94/1⁵¹ of the Narcotics Act of 1979 specifies that:

Whoever administers treatment to narcotics as being the course of his or her normal business by using medicine in accordance with the law governing

50 UNODC. World Drug Report of July 2005
51 As added by section 33 of the Narcotics Act B.E 2545 (2002)

medicine, by psychotropic substances in accordance with the law on psychotropic substances or by narcotics in accordance with the law governing narcotics or any methods other than the foregone ones, in the clinics which are not the clinics prescribed by this Act, whether or not benefits may be given in return, shall be punished with imprisonment from six months up to three years or a fine from fifty thousand baht up to three hundred thousand baht.

Although the National Policy and HIV/AIDS and drug abuse/IDU have been harmonized to a great extent i.e., with the acceptance of harm minimization as a concept, many constraints still exist for the implementation of a successful harm reduction program for IDUs and other drug users.

In Thailand a large number of the addicts who use purified heroin have the underlying psychosocial cause of heroin addiction which is difficult to give up. It is argued that long term use of methadone to replace heroin without any appropriate intervention to solve their problems will only cause a switch and such an action would be more like introducing a new drug to the black market. It is argued in the ministerial quarters that black market methadone awareness is the reason that the Narcotics Act does not allow detoxification for a period longer than 45 days. Further, owing to the fact that methadone administration is medical practice (section 94/1 above and medical practitioners Act), such administrations are only possible if prescribed and conducted in a rehabilitation centers/medical facility as defined by law.

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Domain III. Specific Populations

1. Prisoners

Research and official government figures indicate that about two thirds of the inmates in Thailand are serving sentences for drug related offences.⁵² While there are laws pertaining to first time offenders and juveniles/minors involved in drug related offences and drug-treatment facilities, preventive and intervention efforts on HIV transmission among IDUs remain to be implemented. Unfortunately, the present enactments regulating drug abuse and rehabilitation facilities fail to include provisions related to testing, consent, and confidentiality pertaining to HIV/AIDS.

In Thailand, the courts have acknowledged and followed current trends in penological thinking, and several judgments recognize a wide array of fundamental and other rights of prisoners. However, these judgments are seldom enforced. Local and international NGOs have so often reported the poor state of the Thai prisons, problems further compounded by the overcrowding effect in the recent years. Sleeping accommodations and access to medical care have also been regularly reported as areas of concern.

HIV prevalence in the prisons is likely to be considered higher than the wider general population, mostly due to the fact that a large proportion of inmates belong to groups at high risk of HIV infections, especially IDUs. Prisons, with the current number of drug related offenders, enable previously unconnected injecting drug users networks to interact, allowing the virus to spread to groups of users with comparative low HIV prevalence.

One recent study conducted among inmates in Klong Prem Central Prison (Bangkok) found that 25% of the surveyed prisoners were HIV positive.⁵³ Half of the prisoners surveyed were regular injecting drug users, and 70% of those users had injected drugs while in prison. Almost all (95%) of the injecting drug users had shared injecting drugs at some point. Further, numerous interviews conducted by Human Rights Watch suggest that instead of taking steps to reduce HIV risk among inmates who inject drugs (for example by providing information on HIV/AIDS or substitution therapy) guards simply punished the inmates who used drugs.⁵⁴ The present state of affairs indicates that rather than recognizing the extent of injecting drug use in prison and taking steps to mitigate HIV risk, Thai authorities appear to have turned

52 Department of corrections, Ministry of Justice, Thailand. As of 31 May 2002 of the 257,196 Convicted over 66% were convicted of narcotics related offences. For statistical details see <http://www.correct.go.th/eng.htm>

53 UNDP 2004. Thailand's Response to HIV/AIDS: Progress and Challenges (Thematic MDG Report). Bangkok 2004..

54 Human Rights Watch interview, Samut Prakhan, May 7, 2004. (case: Noi N)

a blind eye to the problem, a state of denial.

Interviews with ex-inmates also indicate that the laid back attitude of prison authorities - taking few if any steps to address—or even evaluate—the enormous risk of HIV infection among incarcerated drug users. Ngu T. twenty-three, said he was sent to prison for two years in 2002 after a police officer found syringe markings on his arm. Following his release in 2003, Ngu T. tested HIV positive.⁵⁵

“It’s easier to get heroin in prison than outside. They have dealers inside prison. It’s not that expensive, about B400-500 [U.S \$10 - \$12] per pack. It’s a bit more expensive outside. We get syringes from some medical station inside the prison. I took them myself, they were proper syringes. You need to share needles, there’s never enough. I’d share with over fifty people. I didn’t have a choice. When there’s only one, you have to use it. It’s not very sharp, but you have to use it.”

“There were drugs in prison—all kinds,” “The situation in prison and here outside is just the same.” “We put the [drug] solution in an IV tube, and we blow on the tube to put pressure on the solution to get it into a vein. It really takes a lot of effort, making sure you blow with the right pressure. We mostly share the same equipment. It’s expensive, so we buy one injection of heroin, prepare it in a bottle cap, and there’s one person, the injector, who makes sure everyone gets the same portion. Between each person, the injector takes water in his mouth and blows it through the tube to clean the equipment.”

“About three or four . . . The way we do it is, four people will put their money together and buy an injection [of heroin] and then go to someone to rent the equipment. His fee would be a portion of the injection, so it becomes five instead of four.”

—Human Rights Watch 2004

In other cases Human Rights Watch reported a case where a peer educator spent between two and three months in jail after police stopped him on his way to a methadone clinic⁵⁶.

“I was in jail in 2002 for two months When I was in jail with the other drug users, everyone craved heroin and you couldn’t find a syringe. So you took a straw from an orange juice packet and used it to inject. There were needles in the jail that had been left behind by someone else, or we would ask somebody else to smuggle them in. We’d connect the needle to the straw and blow in. Seven or eight people would share the equipment. Before us, I wouldn’t know how many, maybe hundreds. When you crave heroin, you don’t give a damn about whether you get infected with HIV.”

—Human Rights Watch interview, Chiang Mai, April 30, 2004.

Although many drug users in Thailand avoid prison time for low-level offenses, most still spend time in pre-trial detention following their arrest. Yai T., twenty-eight, stated that there exists no HIV testing in jails and no information about AIDS.⁵⁷

“People would hide syringes in their anus and then take them out once they got into jail. The search is not as detailed in jail as it is in prison. There’s never enough, so they share needles in jail as well. You only need a needle and an IV tube, or even a pen. You sharpen it up, take out the ink, stick it in you and blow. The people who supervise the jail know this is going on. It depends how much you bribe them.”

Since the start of the epidemic, prison populations have been subject to coercive measures that are not used in the general population, such as segregation, isolation and mandatory HIV testing. The vulnerability of prisoners to HIV infection is increased by potentially unsafe behaviors, such as, sexual activity (coerced and consensual), or tattooing and needle and syringe sharing, particularly given that a large number of convictions are drug-related. Prisoners' exposure to risk is also heightened due to floating populations of under trials and the often closed, overcrowded, violent and unsafe environments in prisons. Once infected, incarcerated men and women are also more vulnerable to various violations of human rights by the correctional facility as well as the medical establishment.

55 Human Rights Watch interview, Samut Prakhan, May 7, 2004. Human Rights Watch asked numerous ex-prisoners how they brought drugs into heavily guarded prisons and jails without getting caught. Peer educator Odd Thanunchai, who had last been in prison in 2002, gave a lengthy description of smuggling drugs into two different prisons in Chiang Mai

56 Human Rights Watch interview, Chiang Mai, April 30, 2004.

57 Human Rights Watch interview, Samut Prakhan, May 6, 2004.

Domain III. Specific Populations

2. Minors

Issues of primary concern for children are not only limited to the creation of the enabling environment of non-discrimination and protecting them from abuse but also the confidentiality surrounding those infected by the virus or affected by AIDS (directly or indirectly). For children and adolescents, this is problematic, as they are not recognized as persons who can or should have access to sexual or general health services without a parent or a guardian. Not only does this restrict the rights of children in general, the system also does not account for a large percentage of children who live and work outside family structures. Under the Thai legal system this discretionary authority lies solely with the officials or persons entrusted under the provisions of law within a correctional facility or otherwise with no specific framework or criteria for testing or guidelines for such discretionary decision-making.

HIV/AIDS related discrimination is significantly felt by children in educational and institutional settings such as orphanages, juvenile homes and correctional facilities. Discriminatory practices such as the refusal to treat adolescents, the denial of sexual health information, the promotion of abstinence only approaches and perpetuation of gender and sexual stereotypes have put minors, especially youth, at an increased risk of HIV infection. International law, court rulings, and research have long recognized the need for adolescents to access sexual health information and have affirmed their right to receive age appropriate sexual and health information, including condoms. In Thailand, like most Asian countries, the level of sex education within educational institutes is limited to basic universal learning on sexual anatomy.

Thai law does not, as such, deal with child specific issues in civil or criminal laws, and children's issues have been discussed mostly in the context of child labor and child abuse. Unlike other jurisdictions, Thai law fails to recognize a child as separate from her/his parents or next of kin. This limited understanding prevents children from accessing sexual health information and services. Children living with or affected by HIV/AIDS have a very high risk of being discriminated against in schools and in many cases, schools refuse to accept children as students because they are HIV-positive or their parents are HIV positive. Similarly, children living and working on the streets or within informal structures face discrimination at different levels that not only affect their ability to protect themselves from HIV, but also in fact increase their vulnerability significantly.

Although Thai constitution mandates an obligation on the state for protecting children and juveniles, the

State has interpreted its protective role for children and minors living outside family structures or in violent situations as limited to providing for their institutionalization. This policy has contributed significantly to discrimination as it places minors in extreme positions of powerlessness. For instance, where children come in conflict with the law in drug related offences/abuse, the provisions of the Narcotics Addicts Rehabilitation Act of 2002, are applicable.

Domain III. Specific Populations

3. Indigenous People

Members of hill tribes without proper documentation, who account for approximately half of the estimated 1 million members of hill tribes, still face restrictions on their movement, may not own land, and fall beyond the coverage and protection of labor laws, including minimum wage requirements. The law provides that citizenship is not automatically granted to children born to persons living illegally or without status in the country. However, citizenship legislation passed after the 1997 Constitution provided for expedited naturalization for persons whose families had been in the country for several generations, arrived before 1982 and could meet certain citizenship tests, including literacy in the country's language. After an initial wave of successful citizenship applications in the late 1990s, the process has slowed down.

The lack of citizenship exposes hill tribe persons vulnerable to various forms of abuses and exploitation such as trafficking, often denial of adequate education, health care and also being barred from participating in the political process. In 2000, the Ministry of Interior (MOI) redefined the category of hill tribe residents eligible for citizenship to include previously undocumented tribal persons, now collectively called "highlanders." The definition includes persons who formerly were defined either as indigenous or migrants. The regulations were supposed to ease the requirements to establish citizenship by allowing a wider range of evidence, including testimony from references, and empowering local officials to decide cases. However, this process has not been without problems, in 2002, the MOI revoked the citizenship of 1,243 persons in Mae Ai district, Chiang Mai Province. Government officials claimed that irregularities in the issuance of their identification documents invalidated their claim to citizenship.

The non-legal status of these indigenous people (Highlanders), when viewed in the light of the existing unclear policy applicable to ARV allocation under the quota system puts them on a compromised platform of prioritization – citizens vs. non Thai's (illegal migrants).

Conclusion

The goal of increasing public health is not incompatible with that of maintaining public order. Although the passage of the Rehabilitation of Narcotics Act is laudable and its stated goals commendable, much more needs to be done to implement the goals of offering drug users a better life through treatment and rehabilitation instead of incarceration. Thailand should quickly provide the necessary resources to implement both the spirit and letter of the Rehabilitation of Narcotics Act.

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The opinions and ideas expressed in this document are solely those of the author and may not represent those of any of the sources cited or any other person or organization.

Appendix

1. Penalties for Offenses under The Narcotics Act of B.E. 2522 (1979)

Offence	Category 1	Category 2	Category 3	Category 4	Category 5
Production, Importation or Exportation	Life imprisonment For the purpose of disposal: death penalty Pure substances \geq 20 grams regarded as commission for the purpose of disposal	Imprisonment of 1-10 years and a fine of 10,000 - 100,000 Baht Morphine, opium or cocaine: imprisonment of 20 years to life and a fine of 200,000 - 500,000 Baht	imprisonment not exceeding 3 years or a fine not exceeding 30,000 Baht or both	imprisonment of 1-10 years and a fine of 10,000 - 100,000 Baht	Imprisonment of 2-15 years and a fine of 20,000 - 150,000 Baht
					<i>Kratom Plant:</i> Imprisonment not exceeding 2 years and a fine not exceeding 20,000 Baht
Disposal or possession for the purpose of disposal	pure substances \leq 100 grams: imprisonment of 5 years to life and a fine of 50,000 - 500,000 Baht >100 grams: life imprisonment to death penalty	Imprisonment of 1-10 years and a fine of 10,000 - 100,000 Baht Morphine, opium or cocaine: \leq 100 grams: imprisonment of 3-20 years and a fine of 30,000 -200,000 Baht.>100 grams: imprisonment of 5 years to life and a fine of 50,000 - 500,000 Baht	imprisonment not exceeding 1 year or a fine not exceeding 10,000 Baht or both	imprisonment of 1-10 years and a fine of 10,000 - 100,000 Baht	imprisonment of 2-15 years and a fine of 20,000 - 150,000 Baht
					<i>Kratom Plant:</i> Imprisonment not exceeding 2 years and a fine not exceeding 20,000 Baht

Possession	pure substances of less than 20 grams: imprisonment of 1-10 years and a fine of 10,000 - 100,000 Baht pure substances of 20 grams or more shall be regarded as commission for the purpose of disposal	Pure substances of not more than 100 grams: imprisonment not exceeding 5 years and a fine not exceeding 50,000 Baht pure substances > 100 regarded as commission for the purpose of disposal		imprisonment not exceeding 5 years and a fine not exceeding 50,000 Baht quantity of 10 kgs. upwards shall be regarded as possession for the purpose of disposal	imprisonment not exceeding 5 years and a fine not exceeding 50,000 Baht
					<i>Kratom Plant:</i> Imprisonment not exceeding 1 year and a fine not exceeding 10,000 Baht or both quantity of >=10 kg. regarded as possession for the purpose of disposal
Consumption	Imprisonment of 6 months - 10 years and a fine of 5,000 - 100,000 Baht	Imprisonment of 6 months - 10 years and a fine of 5,000 - 100,000 Baht			imprisonment not exceeding 1 year and a fine not exceeding 10,000 Baht
					<i>Kratom Plant:</i> imprisonment not exceeding 1 month or a fine not exceeding 1,000 Baht
Deceit, threat, use of violent force or coercion of another person for consumption	Imprisonment of 2-20 years and a fine of 20,000 - 200,000 Baht	Imprisonment of 1-10 years and a fine of 10,000 - 100,000 Baht	imprisonment of 1-10 years and a fine of 10,000 - 100,000 Baht	imprisonment of 1-10 years and a fine of 10,000 - 100,000 Baht	imprisonment of 1-10 years and a fine of 10,000 - 100,000 Baht
Instigating another person for consumption	Imprisonment of 1-5 years and a fine of 10,000 - 50,000 Baht	Imprisonment of 1-5 years and a fine of 10,000 - 50,000 Baht			<i>Kratom Plant:</i> imprisonment not exceeding one year and a fine not exceeding 10,000 Baht

2. Regulation and Policies Related to Discrimination Based on Disability

Regulation or statement	Relation to Law	Content
Ministerial Regulation No.1 A.D. 1994 (B. E. 2537) on the Employment of Disabled Persons and the Contribution to the Fund for Rehabilitation of Disabled Persons	Section 17 of the Rehabilitation Persons Act stipulated private companies are to hire disabled persons	Purpose is to establish a ratio of disabled employees to be hired by private companies and the rate of payment which must be paid by employers or owners of the companies to the Rehabilitation Fund for Disabled Persons (See note)
Ministerial Regulation No.2 A.D. 1994 (B. E. 2537) on the Designation of Type and Criteria of Disabled Persons	Section 4 of the Rehabilitation of Disabled Persons Act stipulates that persons with disabilities means a person with physical, intellectual or mental abnormality or malfunction	To designate the type and criteria of persons with disabilities. The types are classified as those with impairments in terms of : hearing or communication, physical or locomotion, mentality or behavior, Criteria are defined
Ministerial Regulation No.3 A.D. 1994 (B. E. 2537) on the Provision of Medical Rehabilitation Services and Expenses for Nursing Care and Equipment	Section 15 of the Rehabilitation of Disabled Persons Act stipulate that persons registered under Section 14 may receive medical care.	To establish medical rehabilitation services and expenses for nursing care and equipment. The purpose is to readjust physical, intellectual or emotional conditions or improve existing conditions of disabled persons
Ministerial Regulations on Accessibility for People with Disabilities, December 1999	Related to Section 17 of the Rehabilitation of Disabled Persons Act gives the Minister the right for design the characteristics of buildings, etc.	Includes provisions for welfare protection, social service including improving living conditions, equality and eradicating any barriers which deprive disabled persons from access to the facilities in building, sites, vehicles and public services.
Cabinet Resolution 12 July 1994 Vocational Rehabilitation And Employment for People with Disabilities	Related to Section 15(2) of the RDP Act which makes provisions for mainstreaming	This Cabinet Resolution declared that all vocational training institutions must accept students with disabilities (ESCAP, 1999, p.292)
Cabinet Resolution 8 April 1997 Employment Opportunities for People with Disabilities in State and Parastatal	Section 17 of RDP Act which only specified "employers" and not the state	Encourages employment opportunities for People with Disabilities in State and Parastatal Organizations but does not include a quota.
Cabinet Resolution 10 March 1998 Accessibility Resolution	Section 17 of RDP Act and the prior Ministerial regulation	1998 cabinet resolution directed state agencies to modify facilities for disabled to access, but most government agencies have not done so. The 1999 regulation that makes compliance mandatory has not been enforced.

Cabinet Resolution 10 November 1998 Declaration on the Rights of People with Disabilities	Rehabilitation of Disabled Persons Act	To further strengthen the Rehabilitation Act, including provisions on the right to receive vocational rehabilitation, vocational training and employment services.
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3. Significant Additional Legislation on the Education, Employment and Rehabilitation of People with Disabilities

National Education Act, 1999	This Act protects the rights of persons with disabilities to education in accordance with their Constitutional rights. People with disabilities are entitled to early intervention services, educational materials and facilities, and government-supported home schooling. All children receive 12 years of basic schooling free of charge. Educational materials are being produced to meet the needs of target groups.
Occupational Training Promotion Act of 1994	Establishes occupational training among active workers to enable them to enter the skilled labor market as well as improve productivity of the workforce. It calls for cooperation between employers and vocational institutes to provide students with on the job training. The Ministry of Labor is responsible for implementation.
Vocation Training Promotion Act 1996	Entitles registered private enterprises to a 50 per cent tax reduction of training expenses as well as other incentives to encourage training. Established the Vocation Training Committee, a tripartite group to establish skill standards.
Workers Compensation Act 1979	Provides protection for employees disabled at work so that they receive compensation for medical expenses, prosthetic devices and equipment, and physical and mental rehabilitation. In addition, under this Act, the Social Security Office provides special occupational rehabilitation at the Industrial Rehabilitation Centre in Bangpoo, Pathum Thani Province . The Act also promotes the issue of better safety and health at work places.
Social Security Act 1990	The Social Security Act covers employees in enterprises in the private sector with 10 or more workers. Insured members are granted certain benefits (health care, rehabilitation services, income replacement, etc.) in cases of illness, disability, maternity, old age and death. Chapter 8, pertaining to unemployment benefits, is not yet enforced. Physical, mental and occupational rehabilitation expenses are covered by invalidity benefits. Social Security services include 500 baht (US\$12) per month for living expenses a subsistence allowance for registered persons with disabilities.
Labor Protection Act 1998	This Act covers all aspects of labor protection including employment issues, rules on basic pay, holiday pay and overtime, remuneration including minimum wages, welfare, occupational safety and health, suspension from work, and severance pay. The Employees Welfare Fund was also established, which assists families of deceased workers, employees who resign or other cases. The Fund is used in companies with more than 10 employees where no Provident Fund has been established. There are no provisions relating specifically to persons with disabilities in the Labor Protection Act.
Provident Fund Act 1987	This voluntary fund was established to provide a legal and regulatory framework for employer-sponsored retirement savings plans for the employees of large enterprises of the private sector in the years preceding the establishment of the Social Security Act. Employees contribute between 3 to 15 per cent of their wages, and the contribute employers between or equal or greater amount up to a maximum of 15 per cent. There are no disability-specific guidelines in the Provident Fund Act.

Small and Medium Enterprise Promotion Act, February 2000

Established a Board of SMSE development under of the Office of SMSE that oversees a fund for SMSE development and establishes a plan for SMSE development

4. Criminal Law Provisions (selected provisions)⁵⁸

1. Penal Code

Section 1/6: "Violence" mean(s) to injure the body or mind of any person either by using force or by any manner, and includes any act which causes any person to be in the state of being unable to resist...or by any other similar means.

Section 2: A person shall be criminally punishable when an act committed by the person in question is provided to be an offence and the punishment is defined by the law in force at the time of the commission of the offence, and no punishment than that defined by shall be imposed.

If, under the law subsequently provided that such an act is no more an offence, the person committing it shall be exempt from being an offender. If there is a final judgment imposing the punishment, such person shall be regarded as not having been convicted by the judgment, or, if he is undergoing the punishment, such punishment shall be forthwith terminated.

Section 59: A person shall be criminally liable only for acts committed intentionally, except where the law provides that he must be liable for an act committed by negligence, or where the law expressly confers liability for an act committed unintentionally.

2. The Narcotics Act of B.E. 2522 (1979)

Section 14⁵⁹: For the execution to control the commission of offence relating to narcotics, the member, Secretary-General, Deputy Secretary-General and competent official shall have the following powers:

- (1) to enter and search any dwelling place or premises on a reasonable ground to believe that any person or any group of persons suspected of committing an offence relating to narcotics is in hiding or there is property the possession of which is an offence or acquired through the commission of an offence or used or intended to be used in the commission of the offence relating to narcotics or which may be used as the evidence, together with a reasonable ground to believe that any delay in obtaining a search warrant, such person shall escape or such property removed, hidden, destroyed or transformed from original;
- (2) to search any person or conveyance which there is a reasonable ground to suspect that there are narcotics unlawfully hidden;
- (3) to arrest any person who committed the offence relating to narcotics;
- (4) to seize or attach narcotics which are unlawfully possessed or any property which is used or intended to be used in the commission of the offence relating to narcotics or may be used as the evidence;
- (5) to search under the provisions of the Criminal Procedure Code;
- (6) to make an inquiry of the alleged offender in the offence relating to narcotics;
- (7) to issue a letter of inquiry to or summon any person or the official of any Government agency to give statement or to submit any account, document or material for examination or supplement the consideration.

⁵⁸ Except as otherwise noted, all provisions translated to English from Thai by the author.

⁵⁹ Repealed and Replaced by section 8 of the Narcotics Control Act (No.4) B.E. 2545 (2002)

The powers execution under paragraph one (1), the competent official who searched shall performance according to the rules prescribed by the Board, and produce an innocent before enter to search, report on the reason and the result of searching in letter to the senior superior, and record the reasonable ground to suspect and reasonable ground to believe that established the capable to enter for search in the letter, given it to the possessor of dwelling place or place where searched. But if have no possessor at such place, the competent official who searched shall consign with a copy of such letter immediately as could be done. And if should be the searching in the night time after sunset, the competent official who is the chief of the searching shall be a civil servant that hold the position up-to from level of seven, or police officer that hold the position up-to from the inspector or likewise, or defense official that hold the position up-to from the commander of a company or likewise.

A competent official of any position and any level who is to have all or part of such powers and duties as referred to in paragraph one, or shall have the approval of any person before performance, shall be prescribed by the Secretary-General with the approval of the Board by means of executing an instrument of authorization and delivering it to each official who has been so authorized.

The competent official who has been so authorized under paragraph one shall produce the instrument of authorization to the person concerned each time.

In the execution under this section, the member, the Secretary- General, Deputy Secretary- General and competent official shall be an official under the Penal Code.

The Secretary-General shall prepare the report of the result of the performance under section 14 to submit the Cabinet-Council for to report the result of annual performance, whereby its shall report of fact, obstruction problem, amount of the performance and the detail of the result of performance achievement, for the Cabinet-Council to submit such report together with the Cabinet-Council opinions to the Assembly of Representative and the Assembly of Senate.

Section 14/2:⁶⁰ In case of having necessity or with a reasonable ground to believe that any person or any group of persons consumed narcotics in any dwelling place or any other place or in the vehicle, the member, the Secretary-General, the Deputy Secretary General or the competent official under this Act shall have the power to examine or order the suspected person to be examined or to be tested whether such person or a group of persons have some narcotics substances within their bodies or not. The procedure of examination or testing as mentioned in the paragraph one shall be in accordance with the rules, procedures and conditions notified by the Board and published in the Government Gazette.

Section 14/3:⁶¹ In the performance of the duties under section 14 or section 14 bis, if the competent official requests any person to assist in the performance of thereof, such person shall have the powers to assist in the performance of the competent official.

Section 14/4:⁶² In the case where there is a reasonable ground to believe that any document or information which transmitted by any post, telegraph, telephone, fax telephone, computer, tool or instrument or communication by information technology was used or may be used for the purpose of the commission offence relating to narcotics. The competent official, with an authorization letter from Secretary- General shall submit unilateral application to Chief Justice of the Criminal Court for issuance to permit the competent official of obtained such information.

The permission under paragraph one, Chief Justice of the Criminal Court shall consider in affect individual rights or any right together with the following reason where necessary:

- (1)there is a reasonable ground to believe that there is committed for or will be committed offence relating to narcotics;

60 As added by section 5 of the Narcotics Control Act (No.3) B.E. 2543 (2000)

61 As added by section 9 of the Narcotics Control Act (No.4) B.E. 2545 7

62 As added by section 9 of the Narcotics Control Act (No.4) B.E. 2545 7

(2)there is a reasonable ground to believe that it will receive the information relating to the commission of offence relating to narcotics from the accessing of such information;

(3)may not used other procedure that have more suitability and effective.

All information obtained under paragraph one shall be kept and used only for the investigation and to be used as evidence in the case prosecution, in accordance with the rules prescribed by the Board.

Section 15: For the purpose of the execution of section 14, the member, the Secretary- General, the Deputy Secretary- General and the competent official who have been authorized under section 14 (3) shall be deemed to have the same powers and duties as the inquiry official under the Criminal Procedure Code for the entire Kingdom, and shall have the power to keep the person arrested in custody under section 14 (3) for inquiry for a period of not more than three days. Upon the lapse of such period or before it has elapsed as they may think fit, they shall send the arrested person to the inquiry official under the Criminal Procedure Code for further proceedings; provided that

Section 15/2:⁶³ The proprietor or the overseer of the business place who violated this Act or did not perform his or her responsibility in accordance with Section 13 bis shall be liable to a fine of ten thousand bath to fifty thousand bath.

Section 16:⁶⁴⁶⁵ Any person who obstructs, or fails to render facilities, or refuses to give statements or to submit any account, document or material to the member, the Secretary- General, the Deputy Secretary- General or the competent official who performs an Act in pursuance of section 14 shall be liable to imprisonment for a term not exceeding six months or to a fine of not exceeding ten thousand Baht.

If such action under paragraph one is committed against person who assists the competent official under section 14 tri, the offender shall be liable to punishment as provided in paragraph one.⁶⁶

If the commission under paragraph one is occurred to the person who assisted the performance of duties of the competent official under section 14 tri, the person who committed that shall be liable likewise the paragraph one.⁶⁷

Section 16/1:⁶⁸ Any person who knew or obtained any information derived under section 14 fourth, committed by any means to provide any other person such information shall be liable to imprisonment for a term of not exceeding five years or a fine of not exceeding one hundred thousand Baht, except that is the disclosure was in the performance of duties or under the law. If the commission under paragraph one is committed by member, Secretary- General, Deputy Secretary- General and competent official, such person shall be liable to treble penalty imposed for offence that referred in paragraph one.

Section 48:⁶⁹ In the execution of this Act, the competent official shall have the powers as follows:

(1)to enter the place of business of the import or export licensee, the place of production, and the place of disposal, the storage of narcotics or the premises that require a permission under this Act, in order to inspect compliances with this Act

(2)to enter the dwelling place, or any place to search when there is a reasonable grounds to believe that there is property which is possessed to be an offence or acquired by committed an offence, or used or will be used to commit an offence under this Act or which may be used as evidence, and there are reasonable grounds to believe that by reason of the delay in obtaining a warrant for search, the property is likely to be removed hid-

63 As added by section 6 of the Narcotics Control Act (No.3) B.E. 2543 (2000)

64 As repealed and replaced by section 7 of the Narcotics Control Act (No.3) B.E.2543 (2000)

65 As repealed and replaced by section 7 of the Narcotics Control Act (No.3) B.E.2543 (2000)

66 Compared by section 90 of the Narcotics Act B.E. 2522

67 As added by section 10 of the Narcotics Control Act (No.4) B.E. 2545 (2002)

68 As added by section 10 of the Narcotics Control Act (No.4) B.E. 2545 (2002)

69 As repealed and Replaced by section 13 of the Narcotics Act (No.5) B.E. 2545 (2002)

den, or destroyed or changed to its original condition.

(3) to search any person and vehicle when there are reasonable grounds for suspecting that there are narcotics hidden unlawfully.

(4) to search in accordance with the provisions of the Criminal Procedure Code

(5) to seize or attach unlawfully possessed narcotics, or any other properties which is used or will be used to commit an offence in accordance with this Act.

The usage of the power under the paragraph one (2), the competent official making the search shall act in compliance with the regulation promulgated by the Committee to identify good faith before searching, to reports reasons and results to the higher superior officer or in charge. To records the reasonable grounds to believe and the competent official shall show the document to identify himself and the document authorizing the search including the reasonable cause to believe that the searching official is entitled to do so and submit a document issued to the occupier of the dwelling place, searched place, unless there is no occupier at that place, the competent official making the search shall submit the copy of such papers and documents to the occupier immediately as soon as possible. And in case of a search made during night time, the competent official who is the chief of that search must be a civil official at position of level 7 upward or a police Chief officer or equivalent that has the rank of Lieutenant Colonel or higher.

The competent official of what rank and of what level, who shall have the power and duties as prescribed in paragraph one, wholly or in part, or must be authorized by any person before taking action, shall be designated by the Minister, with the approval of the Committee, who shall issue a document of authorization to the competent official.

In the performance of duties of the competent official under paragraph one, the person concerned shall afford him every reasonable facility.

Section 57: No person shall consume narcotics of category I or category V.

Section 58: No person shall consume narcotics of category II unless it is for the purpose of curing diseases upon the prescription of a medical practitioner or first-class modern medical practitioner in the branch of dentistry who has obtained a license under section 17.

Section 58/1:⁷⁰ In case of necessity and where there are reasonable grounds to believe that any person or any group of persons consumes narcotics of category I, category II, or category V which is the offence in accordance with this Act in dwelling place, any place, or vehicle, the administrative official, or police official or competent official under this Act shall have the powers to examine or test or order to receive examination or test that to determine whether such person or group of persons have narcotics within their body.

The administrative official, or police official or competent official under this Act of what rank and of what level, who shall have the powers and duties as prescribed in paragraph one or any other person, must be authorized before taking action, shall be as designated by the Minister, with approval of the Committee, who shall issue a document of authorization to the administrative official, or police official or competent official of this Act.

The method of examination or test under paragraph one shall be in accordance with the rules, procedure and conditions notified by the Committee as published in the Government Gazette. Whereas in the notification, shall at least state the procedure of showing good faith of administrative official, or police official, or competent official when carry out their duties, and the procedure related to non-disclosure of the examination and test resulting to any person

70 As added by section 16 of the Narcotics Act (No.5) B.E. 2545 (2002)

Section 94/1:⁷¹ Whoever administers treatment to narcotics as being the course of his or her normal business by using medicine in accordance with the law governing medicine, by psychotropic substances in accordance with the law on psychotropic substances or by narcotics in accordance with the law governing narcotics or any methods other than the foregone ones, in the clinics which are not the clinics prescribed by this Act, whether or not benefits may be given in return, shall be punished with imprisonment from six months up to three years or a fine from fifty thousand baht up to three hundred thousand baht.

3. Narcotics Addicts Rehabilitation Act of 2002

Section 12: The Committee shall consider to appoint a sub-committee of Narcotic Addict Rehabilitation in the localities where appropriate, consisting of the representative of Ministry of Justice as the Chairman of the sub-committee of Narcotic Addict Rehabilitation, one medical doctor, one psychologist, one social worker and not exceeding two members appointed from the persons who have the qualification according to prescribed in Ministerial Regulation as member and one representative of the Department of Probation as member and secretary.

Section 13: The sub-committee of Narcotic Addict Rehabilitation shall have the following powers and duties:

1. to consider in decide whether the persons committed for identification is a consumer or an addiction or not;
2. to follow-up and supervise the detention of alleged offender during the identification or rehabilitation for the execution accordance with rules prescribed by the Committee.
3. to consider the transfer of persons committed for narcotics dependence treatment or committed for rehabilitation from a rehabilitation centre to another rehabilitation centre, including to consider to reduce or extend the duration of rehabilitation;
4. to consider to grant provisional release of person committed for identification or the person committed for rehabilitation;
5. to inform the result of identification or the result of rehabilitation to the Committee, inquiry official or prosecutor, in case depend upon such in formation;
6. to consider the rehabilitation plan for the alleged offender charged with committing an offences as required under section 19;
7. to follow-up and supervise the rehabilitation of the persons committed for rehabilitation within its territorial jurisdiction and in accordance with rehabilitation plan;
8. to consider the result of rehabilitation under section 33;
9. to submit the recommendations to the Committee in respect of the identification procedure and rehabilitation procedure;
10. to perform other acts under the laws required in the execution of the powers and duties of the sub-committee of Narcotic Addict Rehabilitation;
11. to consider other matters as entrusted by the Committee. Rules and procedures in the consideration under section (1) (3) (6) and (8) shall be in accordance with the regulation prescribed by the Committee.

Section 14:⁷² In case of having necessity or with a reasonable ground to believe that any person or any group of

⁷¹ As added by section 33 of the Narcotics Act B.E 2545 (2002)

⁷² Added by section 5 of the Narcotics Control Act (No.3) B.E. 2543 (2000)

persons consumed narcotics in any dwelling place or any other place or in the vehicle, the member, the Secretary-General, the Deputy Secretary General or the competent official under this Act shall have the power to examine or order the suspected person to be examined or to be tested whether such person or a group of persons have some narcotics substances within their bodies or not. The procedure of examination or testing as mentioned in the paragraph one shall be in accordance with the rules, procedures and conditions notified by the Board and published in the Government Gazette.

Section 15: The Notification establishing a rehabilitation centre shall have the following particulars:

- (1)prescribing the exact territorial jurisdiction of the rehabilitation centre with the map specifying such territory attached to the Notification;
- (2)prescribing the localities falling within the territorial jurisdiction of the rehabilitation centre under (1).

Section 16: In the case where there is the reasonable ground, the Minister may notify in the Government Gazette modifying the territorial jurisdiction of the rehabilitation centre under section 15 (1) or modifying the localities falling within the territorial jurisdiction of the rehabilitation centre under section 15 (2). The modification of the territorial jurisdiction of the rehabilitation centre under the paragraph one, it shall have a map clearly specifying the original territory and the modified one to be attached to the Notification.

Section 17: Each rehabilitation centre shall have one Director of the Rehabilitation Centre as the superior official responsible for the performance of official duties thereof and having the following powers and duties:

1. to identify the consumption or the narcotic addiction of the persons committed for rehabilitation where admitted under section 19;
2. to detain the persons committed for identification or the persons committed for rehabilitation during the identification or the rehabilitation and supervise such persons to comply with various rules, conditions and regulations;
3. to carry out the rehabilitation of the persons committed thereof in accordance with the rules prescribed;
4. to follow up the result of rehabilitation of the persons granted provisional release;
5. to prepare a report on the result of the consumption or the narcotic addiction identification, including the result of the rehabilitation to be submitted to the sub-committee of Narcotic Addict Rehabilitation;
6. to issue regulations of the rehabilitation centre for the execution of this Act;
7. to perform other duties as entrusted by the Committee or sub-committee of Narcotic Addict Rehabilitation.

In the case where it is appropriate, the Minister shall have the power to notify in the Government Gazette requiring the institution for treatment, the institution for child and youth obligation and protection, the institution of government or other institutions to be the locality for identification, rehabilitation or detention where no such rehabilitation centre exists. In which case, the sub-committee of Narcotic Addict Rehabilitation shall have the power to confer the supervisors of such localities with any or such powers and duties necessary similar to that of the Director of Rehabilitation Centre under section 17.

Section 19: Any person who is alleged to consume the narcotics, consumes and have in possession narcotics, consumes and have in possession for the propose of disposal or consume and dispose narcotics of which character, type, category and quantity prescribed in the Ministerial Regulation and if he does not appear to be the alleged offender or been prosecuted for other offences which punishable with imprisonment or to be imprisoned by judg-

ment of court. The inquiry official shall transfer the alleged offender to the court within forty eight hours from the time when such alleged offender came to the office of the inquiry official for the court to consider and issue court order to transfer such alleged offender for the identification of narcotics consumption or narcotic addiction, except in exceptional circumstances other such cause that may have risen from such alleged offender or from the changing of circumstance in which case the transfer of the alleged offender can not be made to the court within the time prescribed as above.

If the alleged offender has not yet completed eighteen years old of age, in the proceeding under paragraph one. The inquiry official shall transfer the alleged offender to the court for it to issue the court order to identify within twenty four hours from the time when such alleged offender came to the office of the inquiry official.

In sending the alleged offender for examination or determination on narcotics consumption or addiction, the court shall take into consideration of the prerequisites such as, the age, gender, nature of each alleged offender, to be in custody of the officials of the Narcotics Addicts Rehabilitation Center, the place of examination (identification process), the place for narcotics addicts rehabilitation or custody of narcotics as prescribed in the Ministerial Notification, and then notify the sub-committee of Narcotic Addict Rehabilitation.

The inquiry official, during the identification and the rehabilitation, shall continue the inquiry proceeding and upon which the inquiry official shall consign such record to the prosecutor without the transferring alleged offender and inform the knowledge that the alleged offender was detained at the rehabilitation centre, the locality for identification, rehabilitation or detention. The inquiry official or prosecutor, during which time the alleged offender was detained under this Act, shall not carry out the committal or posting the prosecution under the law.

Section 20: If it appears that to take advantage of having himself committed for narcotics rehabilitation, any alleged offender falsified as an addicted to narcotics – before, during or after his arrest, in order in order to be excluded from being criminal proceedings on charges of consumption and having in possession , consumption and having in possession for disposal or consumption and disposal, of narcotics, such alleged offender shall not be entitled to receiving narcotics addicts rehabilitation under this Act. The sub-committee of Narcotic Addict Rehabilitation shall inform the inquiry official or prosecutor, to take custody of such alleged offender to continue the proceeding accordance with the law.

Section 21: In examining the alleged offender on narcotics consumption or addiction through scientific detection under section 19, the sub-committee on Narcotics Addicts Rehabilitation shall task its officials to make and maintain the record of the alleged offenders past, behavior on the commission of the offence as well as all related environment and the examination on narcotics consumption and addiction of such alleged offender.

The identification shall be conducted within fifteen days from the date when an alleged offender was committed into the locality for identification, except where there is a necessary cause, the sub-committee of Narcotic Addict Rehabilitation may issue order to extent that time not exceeding thirty days.

Section 22: In case where the sub-Committee on Narcotics Addicts Rehabilitation of the opinion that the alleged offender admitted for examination on narcotics consumption and addiction is a narcotics consumer or an addict, the sub committee shall formulate the plan for rehabilitation for such narcotics consumer or addict and then notify the public-Prosecutor on the results of the examination. In which case, the Public Prosecutor shall issue an order delaying the enforcement of the actions instituted against the alleged offender until the notification is received on the results of the narcotics addicts' rehabilitation under Section 33 (Narcotics Addicts Rehabilitation Act, 2002) form the Sub Committee.

In the case where the prosecutor is of the opinion that the results of the examination under paragraph one is not the requirement – entitling the alleged offender to be admitted for narcotics addicts rehabilitation under this act, the Public Prosecutor shall continue with the legal proceedings and then notify the Sub Committee on the results of such a proceeding.

If the result of identification process finds the alleged offender not to be a narcotics consumer or addict, the Sub Committee shall forward a report on the results of such an examination to the inquiry official or the Public Prosecutor for considering further legal proceedings according to laws prescribed for the purpose.

In the case where the transfer of the alleged offender is to be made to back to the inquiry official or prosecutor to continue the proceeding, the provision of Section 20 paragraphs two shall apply *mutatis mutandis*.

Section 23: In formulating the narcotic addicts rehabilitation plan under Section 22, the place and methods for such a rehabilitation to suit the condition of the person/s admitted for rehabilitation, due consideration shall be taken of the age, gender, biography, behavior, criminal history and all other relevant circumstances concerning the alleged offender.

In designating the place a narcotic addicts rehabilitation, under paragraph one, such place may be designated as a narcotics addicts rehabilitation center or narcotics rehabilitation place as may be prescribed by the Ministerial Order; such as a hospital or a clinic, office of observation or protection centers or official premises or any other place as the Sub Committee may deem it fit.

Formulation on the methods of narcotic addict's rehabilitation shall be carried out on the basis of the following considerations:

1. in the case where it is necessary to detain in restriction person committed for rehabilitation, shall transfer such person to be admitted for rehabilitation in rehabilitation centre or the locality of rehabilitation where there exists a detention system to prevent the escape;
2. in the case where unnecessary to detain in restriction under custody with strict measures, person/s committed for rehabilitation shall transfer such person to be admitted for rehabilitation in rehabilitation centre or the locality of rehabilitation as suitable and that the conditions regarding confinement area under which such a person must observe during the period of rehabilitation, shall be stipulated;
3. in the case where it is not necessary to detain the person committed for rehabilitation, any other methods for the person admitted for narcotics addicts rehabilitation to abide by under the supervision of the probation official may be formulate
4. during the rehabilitation, may require person/s committed for rehabilitation training in occupation, working on social service or to conduct any acts that is suitable to perform in order to build up stability in their lives keeping away from narcotics.

Section 24: In the case where a fact appears, after the court issues order under section 19 that the person who is committed for the identification or rehabilitation, was alleged or prosecuted on other offences for which such a person shall be liable for the imprisonment or to be imprisoned by judgment of court. The court shall consider issuing an order to transfer such person to the inquiry official for continue the proceeding.

Section 25: A person committed for rehabilitation shall undergo the rehabilitation under the rehabilitation plan for a period not exceeding six months from the date of the commission thereof.

In the case where it appears that the result of the rehabilitation is unsatisfactory, the sub-committee of Narcotic Addict Rehabilitation shall consider to extend the duration of rehabilitation.

The extension of or reduction in, the period of rehabilitation may be made as many times as may be deemed necessary provided that each extension must not exceed six months and that in total must not exceed three years commencing from the date the person was admitted under the plan for narcotics addicts rehabilitation

Section 26: In the case where there is a reasonable ground, the sub-committee of Narcotic Addict Rehabilitation may consider temporary release to the person committed for rehabilitation in accordance with the rules, procedures and conditions prescribed by Committee.

Section 27: In the case where the alleged offender have the domicile which may not facilitate to the admittance for rehabilitation in the rehabilitation centre, a narcotics addicts rehabilitation place or place of custody of the alleged offender, the Sub Committee, if considers fit or on petition, an order to transfer the alleged offender to another place or locality or custody may be executed by the sub committee, bearing that such a transfer must be beneficial in the implementation of rehabilitation plan of the alleged offender.

Section 28: Where any person committed for examination or rehabilitation is placed in confinement, it shall be deemed as if person under examination on narcotics consumption or addiction or narcotic addicts rehabilitation were in confinement in accordance with the Penal Code.

In the case where there is an escape from the detention of the rehabilitation centre, the locality of the identification, the rehabilitation or the detention of such person. The duration which he has been committed under the identification or the rehabilitation to the escaped date shall not included in the period of custody.

Section 29: During the identification or the rehabilitation, if any person committed for identification or rehabilitation escaped from the detention or escaped to outside the area of the rehabilitation centre, the locality of the identification, the rehabilitation or the detention of such person, its shall be deemed such person escape the custody under the Penal Code⁷³ and the competent official shall inform the inquiry official immediately. In this case the competent official shall have the power to pursue and arrest such person.

The provision of the paragraph one in the respect of the offence and punishment under the section 190 of the Penal Code shall not apply to person who has not yet completed eighteen years old of age, but the provisions of paragraph two of section 32 shall apply mutatis mutandis.

Section 30: A person committed for identification or a person committed for rehabilitation shall conduct in restriction in accordance to the rules and other conditions prescribed by the Committee and the sub-committee of Narcotic Addict Rehabilitation, including the regulations of the rehabilitation centre, the locality of the identification, rehabilitation or the detention of such person.

Section 31: In the case where the person committed for examination on narcotics consumption or addiction or narcotics rehabilitation and has been on a period of temporary release, fails to comply with or violates the prescribed rules, conditions or regulations, a competent official shall have the power to arrest and send those persons back to narcotics addicts rehabilitation center, the place designated for monitoring the examination, rehabilitation or custody, with out a writ.

Section 32: Any person committed for identification or a person committed for rehabilitation violates section 30, the Director of Rehabilitation Centre or the supervisor of the locality entrusted with such person shall have the power to inflict upon him any one or more of punishments as following:

1. probation;
2. suspension of permission of visiting rights or communication for not longer than three months;
3. solitary confinement not exceeding fifteen days for each confinement.

In case where it is deemed necessary to inflict the punishment to person under paragraph one, who has not yet completed eighteen years old of age, a measure to put the person under a bond of behavior in accordance with the laws governing Juvenile and Family Court and Family Procedure Code shall apply mutatis mutandis.

⁷³ Section 190 Penal Code

Section 33: On the exclusive decision of the Sub-Committee on Narcotic Addict Rehabilitation that person admitted for narcotics rehabilitation has received full course of rehabilitation in accordance to the rehabilitation plan with satisfactory results, such a person shall be relieved of the alleged offence under Section 19 and the Sub Committee on Narcotics Addicts Rehabilitation shall issue its orders to release such a person and then notify the inquiring official or the Public Prosecutor who is still proceeding with the legal action against such person, as the case may be.

In the case where any person committed for rehabilitation, in spite of finishing the full duration of rehabilitation as defined under section 25, with unsatisfactory rehabilitation results. The sub- committee on Narcotic Addict Rehabilitation shall forward its report with comments to the inquiry official or the Public Prosecutor to supplement the consideration for continuing the proceeding against such person and that the provisions of section 22 paragraph four shall apply mutatis mutandis.

Section 34: In trying and adjudicating the case of the alleged offender committed for narcotics addicts rehabilitation under paragraph two of Section 33, the court may inflict the punishment less than what was provided under the law for such an offence or may inflict no punishment at all. In this respect, the period for which such a person was committed to rehabilitation may be taken into consideration.

Section 35: In the execution for this Act, the Committee, the sub-committee and the competent official under this Act shall be deemed to be the administrative official or police officer under the Criminal Procedure Code and for the purpose be deemed as an official under the Penal Code.

Section 36: In the performance of duties, a competent official has the following powers:

- (1) to enter any dwelling place, premises or conveyance in order to search and arrest the person committed for rehabilitation in violation of section 29 or section 31, where there is a reasonable ground to suspect that such person is hidden and together with reasonable ground to believe that the any delayed obtaining a search warrant would result in such person escaping;
- (2) to issue a letter of inquiry to or summon any person related to the person committed for identification or the person committed for rehabilitation to give statements or to submit documents or any evidence for examination constituting the consideration in the performance under section 17;
- (3) to testify to facts with the preview of section 17;
- (4) to issue an order or provide to have, the person committed for identification or the person committed for rehabilitation, examined or tested for possession of narcotic =;

Section 41: Any person who brought any fact or document of evidence which is a personal information derived in the execution for this Act, disclosure to other person shall be liable to imprisonment for a term not exceeding five years or to a fine of not exceeding one hundred thousand Baht or both, except the disclosure in the performance of duties, inquiry or court trial or permitted by the Committee or the sub-committee of Narcotic Addict Rehabilitation. Any person who derived or acknowledged any fact from a person under paragraph one where such fact was then disclosed such a person shall be liable likewise, except in case where disclosure was as under paragraph one.

4. Thai Criminal Code

Section 322: Whoever opens or takes away any sealed letter, telegram or other document belonging to another person in order to ascertain or disclose its contents, which is likely to cause injury to any person, shall be punished with imprisonment not exceeding six months or fine not exceeding one thousand baht or both.

Section 323: Whoever discloses any private secret which became known or was communicated to him by the reason of his function as a competent official or his profession as a medical practitioner, pharmacist, druggist, mid wife, nursing attendant, priest, advocate, lawyer, auditor, or by reason of being assistant in such and such profession, in manner likely to cause injury to any person, shall be punished with imprisonment not exceeding six months or fine not exceeding one thousand baht, or both.

A person undergoing training and instruction in the profession mentioned in the first paragraph who discloses any private secret which became known or communicated to him in such training and instruction, in a manner likely to cause injury to any person, shall be liable to the same punishment.

5. Thai Constitution of B.E. 2540 (1997)⁷⁴

Article 5: The Thai people, irrespective of their origins, sexes or religions, shall enjoy equal protection under this Constitution.

Article 30: All persons are equal before the law and shall enjoy equal protection under the law.

Men and women shall enjoy equal rights.

Unjust discrimination against a person on the grounds of the difference in origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political view, shall not be permitted.

Measures determined by the State in order to eliminate obstacle to or to promote persons' ability to exercise their rights and liberties as other persons shall not be deemed as unjust discrimination under paragraph three.

Article 37: A person shall enjoy the liberty of communication by lawful means.

The censorship, detention or disclosure of communication between persons including any other act disclosing a statement in the communication between persons shall not be made except by virtue of the provisions of the law specifically enacted for security of the State or maintaining public order or good morals.

Article 52: A person shall enjoy an equal right to receive standard public health service, and the indigent shall have the right to receive free medical treatment from public health centres of the State, as provided by law.

The public health service by the State shall be provided thoroughly and efficiently and, for this purpose, participation by local government organisations and the private sector shall also be promoted insofar as it is possible.

The State shall prevent and eradicate harmful contagious diseases for the public without charge, as provided by law.

Article 55: The disabled or handicapped shall have the right to receive public conveniences and other aids from the State, as provided by law.

Article 64: Members of the armed forces or the police force, Government officials, officials or employees of State agencies, State enterprises or local government organisations shall enjoy the same rights and liberties under the Constitution as those enjoyed by other persons, unless such enjoyment is restricted by law, by-law or regulation issued by virtue of the law specifically enacted in regard to politics, efficiency, disciplines or ethics.

Article 80: The State shall protect and develop children and the youth, promote the equality between women and men, and create, reinforce and develop family integrity and the strength of communities.

⁷⁴ Office of the Council of State, Foreign Law Division; http://www.krisdika.go.th/html/fslaw_e.htm. Translation officially certified as true and correct and recognised by the Council of Ministers as well as all Government agencies.

The State shall provide aids to the elderly, the indigent, the disabled or handicapped and the underprivileged for their good quality of life and ability to depend on themselves.

Article 83: The State shall implement fair distribution of incomes.

Article 86: The State shall promote people of working age to obtain employment, protect labour, especially child and woman labour, and provide for the system of labour relations, social security and fair wages.

Article 237: In a criminal case, no arrest and detention of a person may be made except where an order or a warrant of the Court is obtained, or where such person commits a flagrant offence or where there is such other necessity for an arrest without warrant as provided by law. The arrested person shall, without delay, be notified of the charge and details of such arrest and shall be given an opportunity to inform, at the earliest convenience, his or her relative, or the person of his or her confidence, of the arrest. The arrested person being kept in custody shall be sent to the Court within forty eight hours as from the time of his or her arrival at the office of the inquiry official in order for the court to consider whether there is a reasonable ground under the law for the detention of the arrested person or not, except for the case of force majeure or any other unavoidable necessity as provided by law. A warrant of arrest or detention of a person may be issued where:

- 1) there is reasonable evidence that such person is likely to have committed a serious offence which is punishable as provided by law; or
- 2) there is reasonable evidence that such person is likely to have committed an offence and there also exists a reasonable cause to believe that such person is likely to abscond, tamper with the evidence or commit any other dangerous act.

Article 238: In a criminal case, a search in a private place shall not be made except where an order or a warrant of the Court is obtained or there is a reasonable ground to search without an order or a warrant of the Court as provided by law.

Article 239: An application for a bail of the suspect or the accused in a criminal case must be accepted for consideration without delay, and an excessive bail shall not be demanded. The refusal of a bail must be based upon the grounds specifically provided by law, and the suspect or the accused must be informed of such grounds without delay.

The right to appeal against the refusal of a bail is protected as provided by law.

A person being kept in custody, detained or imprisoned has the right to see and consult his or her advocate in private and receive a visit as may be appropriate.

Article 240: In the case of the detention of a person in a criminal case or any other case, the detainee, the public prosecutor or other person acting in the interest of the detainee has the right to lodge with the Court having criminal jurisdiction a plaint that the detention is unlawful. Upon receipt of such plaint, the Court shall forthwith proceed with an ex parte examination. If, in the opinion of the Court, the plaint presents a prima facie case, the court shall have the power to order the person responsible for the detention to produce the detainee promptly before the Court, and if the person responsible for the detention can not satisfy the Court that the detention is lawful, the Court shall order an immediate release of the detainee.

Article 241: In a criminal case, the suspect or the accused has the right to a speedy, continuous and fair inquiry or trial.

At the inquiry stage, the suspect has the right to have an advocate or a person of his or her confidence attend and listen to interrogations.

An injured person or the accused in a criminal case has the right to inspect or require a copy of his or her statements made during the inquiry or documents pertaining thereto when the public prosecutor has taken prosecution as provided by law.

In a criminal case for which the public prosecutor issues a final non-prosecution order, an injured person, the suspect or an interested person has the right to know a summary of evidence together with the opinion of the inquiry official and the public prosecutor with respect to the making of the order for the case, as provided by law.

Article 242: In a criminal case, the suspect or the accused has the right to receive an aid from the State by providing an advocate as provided by law. In the case where a person being kept in custody or detained cannot find an advocate, the State shall render assistance by providing an advocate without delay.

In a civil case, a person has the right to receive a legal aid from the State, as provided by law.

Article 243: A person has the right not to make a statement incriminating himself or herself which may result in criminal prosecution being taken against him or her.

Any statement of a person obtained from inducement, a promise, threat, deceit, torture, physical force, or any other unlawful act shall be inadmissible in evidence.

6. Civil and Commercial Law

Section 420: A person who, willfully or negligently, unlawfully injures the life, body, health, liberty, property or any right of another person, is said to commit a wrongful act and is bound to make compensation therefor.

7. International Covenant on Economic, Social and Cultural Rights⁷⁵

12: The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

8. Prime Minister's Order No. 29/2546⁷⁶

1. Purpose: To quickly, consistently and permanently eradicate the spread of narcotic drugs and to overcome narco-

⁷⁵ Office of the High Commissioner for Human Rights. http://www.unhchr.ch/html/menu3/b/a_ceschr.htm. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. Entry into force 3 January 1976, in accordance with article 27.

⁷⁶ Unofficial translation from Asian Legal Resource Center. <http://www.article2.org/mainfile.php/0203/83>.

tic problems, which threaten the nation. ...

2. Administration:

- In order to overcome narcotic drugs, there shall be the National Command Centre for Combating Drugs (NCCD), to be a command organ at the national level. There shall also be Operation Centers for Combating Drugs at different levels, to be the prevention and suppression centers for drugs in the regions. The appointed Deputy Prime Minister shall be the Director of the NCCD, who shall have the powers and duties to establish, amend or increase the number of centers or operating organs in the central and regional areas, including along the borders by land and by sea; so that they shall be responsible for the fight to overcome narcotic drugs.
- To develop structure, assemble strength, administer, direct, supply logistics, communicate, report, follow-up and evaluate the operations of the National Command Centre for Combating Drugs and the operation centers or organs for combating drugs at all levels, in accordance with the assignments made by the Director of the NCCD.
- All government agencies, local administration organs and public enterprises shall give the National Command Centre for Combating Drugs and the operation centers or organs to overcome narcotic drugs at all levels support as the highest priority. There shall be a unified and result-oriented management system to respond to the "Concerted Effort of the Nation to Overcome Drugs" policy and the action plans to overcome narcotic drugs.
- The Office of the Narcotics Control Board shall expedite the administration and support, especially in the policy-making process, technical process, legislation and regulations, and cooperate, follow-up and evaluate the fight to overcome narcotic drugs, so that it can be implemented swiftly, efficiently and effectively as planned. In any case where there are problems relating to the implementation of organs, or agencies, such shall be presented to the Director of the NCCD to consider, judge, interpret and order accordingly.

The Bureau of the Budget and the Ministry of Finance shall formulate a system and prepare the budget to support the operation and implementation of this order. They shall provide rewards or special levels of salary to the operating officials who fight to overcome narcotic drugs with outstanding performances and to the staff working at the National Command Centre for Combat